Representing Yourself at a Fair Hearing

Introduction
If you disagree with any decision, either verbal or written, made by the Department of Social and Health Services (DSHS), you have the right to appeal that decision by asking for a fair hearing, also called an administrative hearing. WAC 388-02-0085.

Examples: DSHS denies your application, reduces or stops any benefits, including cash, Basic Food (formerly Food Stamps), or medical assistance, says you are being sanctioned or claims you have an overpayment of benefits.

This publication tells you about
- the deadline to request a fair hearing
- how to make the request
- how to get ready for your hearing
- what to expect at your hearing and afterward

If you have a hard time speaking or understanding English or you cannot communicate in spoken language, you have the right to a qualified and impartial interpreter at no cost to you. WAC 388-02-0120. To ask for an interpreter, talk to the Fair Hearing Coordinator, also called an Administrative Coordinator, at your local DSHS office or call the Office of Administrative Hearings (OAH) at (360) 664-8717 or 1-800-583-8271 to let them know that you need an interpreter. You have the right to get notices about your hearing in your primary language. WAC 388-02-0130.

What is the deadline for requesting a fair hearing?
DSHS must give you a written notice if it plans to deny, lower or stop your benefits, to place you in sanction, or to assess an overpayment of benefits. WAC 388-458-0002. The notice must tell you both what action DSHS is taking and what rule or rules DSHS is relying on.

You can request a fair hearing anytime within 90 days of the date of the notice.

If you are getting benefits and you request a fair hearing within ten days of the date on the notice, or before the effective date of the proposed action, DSHS must keep your benefits going until an ALJ has made a decision in your case. If DSHS stops your benefits without giving you written notice, you may request a fair hearing to ask for continued benefits.

Exception to this rule: DSHS may stop your Basic Food benefits even though you have requested a hearing, if your Basic Food certification period has ended. WAC 388-458-0040(5)(c).

If DSHS is stopping or lowering your benefits, any continued assistance that you
get may become an overpayment -- a debt you owe to DSHS, if you lose the fair hearing. WAC 388-458-0040(6). You will not have to repay more than 60 days’ worth of continued assistance. WAC 388-410-0001(1)(b). Our publication How to Fight an Overpayment of Cash Assistance, Medical Assistance or Food Stamps explains how DSHS collects an overpayment.

How do I request a fair hearing?

Written Request: Write the Office of Administrative Hearings, P.O. Box 42488, Olympia, WA 98504. WAC 388-02-0100. If it is an emergency, ask to have your hearing held as soon as possible by calling the Office of Administrative Hearings (OAH) at (360) 664-8717 or 1-800-583-8271. This is an “expedited” hearing.

You have the right to ask for an interpreter, at no cost to you. You may also request a fair hearing by contacting the Fair Hearing Coordinator in your local DSHS office.

Verbal Request: You may also ask for a fair hearing verbally by calling OAH or by telling the DSHS Fair Hearing Coordinator or other DSHS staff person that you want a fair hearing. DSHS may ask you to follow up by putting your request in writing.

After you request a fair hearing, OAH will send you a "Notice of Hearing." This will tell you the time, date and place of your hearing. If the notice tells you that the hearing is to be held by phone but you want it to be in person, call OAH at the number listed on the notice to ask for an in-person hearing as soon as you can. It is usually better to have an in-person hearing. You have the right to have your hearing held at your local DSHS Community Services Office.

How should I get ready for my fair hearing?

Make an appointment to meet with the DSHS Fair Hearing Coordinator (FHC). The FHC is usually not a lawyer. S/he is the person who will represent DSHS at your hearing.

Ask the FHC

- to explain why DSHS is denying, lowering or stopping your benefits, or taking any other action against you
- to give you copies of all the rules DSHS is using to support its action
- to ask if DSHS will have any witnesses at your hearing. If so, ask who they will be and what they will be asked to testify about
- to view and get copies of relevant documents from your electronic case file

The documents in your electronic case file may include letters, notices, case notes, case narratives, medical reports and evaluations, cash and Basic Food computations, WorkFirst notes and documents, applications, eligibility reviews.

Well before your hearing, DSHS should give you a packet of all the documents they will be using. If you do not get the packet by a week before the hearing, call the FHC about that problem. If you believe that DSHS gave you the packet too late for you to review and understand it, ask the ALJ to reschedule the hearing or take other action to be fair to
you because you did not get the packet in time to prepare.

The FHC may write or call you to schedule a pre-hearing conference. WAC 388-02-0175 and so on. You can meet in a pre-hearing conference with the FHC if you choose to. This is separate from your hearing.

The pre-hearing conference is your chance to understand the issues better from both sides and to help you get ready for your hearing. You may be able to settle the matter. If not, you still have the right to have your hearing. You should not be pressured to withdraw your fair hearing request.

Before your hearing, you should send to both the judge at the Office of Administrative Hearings and to the FHC at DSHS, identical copies of all documents, pictures, and other papers that you will use to explain to the judge why you think DSHS is wrong. Most hearings are by phone. The judge and the FHC will need to have gotten your documents in time for your hearing. You should send them in beforehand even if your hearing is in-person.

The FHC must also give you a packet that has copies of all documents DSHS will use as exhibits in your fair hearing.

**What should I bring to the fair hearing?**

Bring a list of points you want to be sure to explain to the ALJ. You may bring any documents, pictures, or other papers to show the ALJ why you think that DSHS is wrong. You may bring witnesses to testify on your behalf. You may also bring a friend or relative for support, no matter whether that person will be a witness testifying on your behalf. You may also bring a friend, relative, or other person to represent you at the hearing. Your representative does not have to be a lawyer. Most people represent themselves at their hearing.

**What happens at the fair hearing?**

Your hearing will be conducted by an ALJ who does not work for DSHS. The ALJ works for a separate agency called the Office of Administrative Hearings (OAH).

Hearings are held by telephone unless you ask for an in-person hearing. For that it is held at the DSHS office. Hearings are less formal than legal proceedings in a courtroom. The ALJ will tape record what is said and will take notes.

At the start of the hearing, the ALJ will explain that s/he does not work for DSHS, has never seen your file, and knows nothing about you or your case except what you wrote in your fair hearing request. The ALJ will explain that in deciding your case, s/he will consider only

- documents that you and DSHS submit, and
- all sworn testimony.

The ALJ will then swear in everyone who will testify.

Usually, the FHC talks next. S/he tells the ALJ why DSHS believes it is right, and explains the documents that are DSHS’ exhibits. When the FHC is done, you can ask the FHC any questions you have about what s/he said. If the FHC has any witnesses, you can ask the witnesses questions when they are done testifying. The ALJ may also have questions for the FHC and any witnesses, to clarify the facts.

Now is your turn to tell your side of the story. **Remember**: all the ALJ knows about you or the case before the hearing starts is what you stated in your fair hearing.
request. You must tell the ALJ everything that you want her/him to know. Look at your notes. Tell the ALJ exactly what happened from your perspective. When you are done, the FHC and the ALJ may ask you questions. Then if you have a witness you may ask your witness to testify. The FHC and ALJ may ask your witnesses questions also.

How you act at the hearing is very important. The ALJ hears or sees you only this once and decides if you are credible. Some tips:

- Be polite. Do not interrupt the FHC, ALJ, or a witness.
- Be firm about what you are saying. Do not yell.
- Do not swear or use other offensive language.

If your hearing is in person:

- Look at the ALJ when you testify.
- Do not roll your eyes or use other offensive gestures.

What should I expect after my fair hearing?

The ALJ does not decide who wins at the end of your hearing. Instead s/he sends a written decision to you and to DSHS, about one month after the hearing. The written decision of the ALJ will be called either an Initial Order or a Final Order. There is an important difference in appeals between these two types of decisions. See below.

Initial Order:  **WAC 388-02-0217**.

If you or DSHS disagree with the ALJ’s Initial Decision, you have the right to appeal to a Review Judge who works for DSHS’ Board of Appeals (BOA). The appeal is called a Petition for Review. Instructions on how to petition for review and the deadline will be attached to the ALJ’s Initial Decision.

This appeal is in writing only. You do not appear before the Review Judge. The Review Judge considers only the documents and testimony from your fair hearing. You cannot add any new facts or documents on appeal. This is why you must present all your evidence (documents and testimony) at your fair hearing. If you send a written appeal to the BOA, DSHS will have a chance to respond in writing to your appeal, and vice versa.

The Review Judge will send a written decision to you and to DSHS. This is called a Review Decision. If you disagree with the Review Decision, you have the right to file a Petition for Review of Administrative Decision to the Superior Court of your county or to the Superior Court of Thurston County. If your fair hearing was about public assistance, there is no fee for filing your Superior Court case. If you decide to do this, you must do so within 30 days of the date of the Review Decision. If you cannot find a lawyer to help you file your appeal to Superior Court, use our do-it-yourself packet **How to Petition for Superior Court Review**.

Final Order:  **WAC 388-02-0217**

If your fair hearing notice has a “B” in the docket number, then you will get a Final Order. If you or DSHS disagree with the ALJ’s Final Order, neither of you can appeal to the BOA.

You do both have the right to ask the ALJ to reconsider the decision s/he made. The decision of the ALJ on Reconsideration is the final agency decision. DSHS has to accept the decision and cannot appeal it to a higher court.
If you disagree with the Reconsideration decision, you can appeal to a higher court by filing a Petition for Review of Administrative Decision. You also have the right to skip the request for Reconsideration and appeal a Final Order to Superior Court with a Petition for Review of Administrative Decision. See our do-it-yourself packet *How to Petition for Superior Court Review* to file this appeal.