DHS Policy
Oregon Department of Human Services

Children, Adults and Families

Policy Title:	Contested Case Hearings – OAR				
Policy Number:	I-A.5.2 413-010-0500 thru 0535	Version:		Effective Date:	11/4/11

Approved By: *on file* Date Approved: 11/03/11

Prior Version

Reference(s):

- HB 2127 (2009)
- OAR 137-003-0501 – 137-003-0700
- ORS 183.411 – 183.685, 411.095

Form(s) that apply:

- CF 344, Child Welfare Administrative Hearing Request

Rules:

413-010-0500
Purpose, Right to Request Hearing, Applicable Rules, and Computation of Time

(1) The purpose of these rules (OAR 413-010-0500 to 413-010-0535) is to--

(a) State the rights of individuals and entities to request a contested case hearing when the Department takes certain actions; and

(b) Set forth rules governing some aspects of the contested case hearings process.

(2) The individuals and entities described below have the right to request a contested case hearing under ORS Chapter 183. In order to exercise the right to a hearing, the individual or entity must submit and the Department must receive a hearing request which complies with OAR 413-010-0505 within the timeframes described in that rule.

(a) A *child* or *young adult* placed in substitute care by the Department may request a hearing in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights that:

(A) Reduces or terminates the *base rate payment*;

(B) Determines, denies, reduces or terminates a *level of care payment*;

(C) Determines, denies, reduces or terminates a *level of personal care payment*;

(D) Denies eligibility under Title IV-E of the Social Security Act when such denial impacts a benefit;

(E) Denies, reduces or terminates the *base rate payment* made on behalf of the child's or young adult's minor *child* when the minor *child*:

(i) Lives with the *child* or *young adult* in substitute care; and

(ii) Is not in the legal custody of the Department; or

(F) Denies eligibility for medical assistance under Child Welfare Policy I-E.6.2, "Title XIX and General Assistance Medical Eligibility," (OAR 413-100-0400 through 413-100-0610) when such denial impacts assistance.

(b) Unless an *adoption assistance* agreement automatically expires, a *pre-adoptive family* or an *adoptive family* applying for or receiving *adoption assistance* under Child Welfare Policy I-G.3.1, "Adoption Assistance," (OAR 413-130-0000 to 413-130-0130) may request a hearing in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights and:

(A) Denies Title IV-E *adoption assistance* benefits;

(B) Denies *adoption assistance* from state funds;

(C) Reduces *adoption assistance* payments or terminates *adoption assistance* without the concurrence of the *adoptive family*;

(D) Reduces *adoption assistance* payments or terminates *adoption assistance* for a reason other than a *child* turning age 18 or a *young adult* turning age 21 when an extension has been granted; or

(E) Offers the family a specific amount or type of *adoption assistance* when the Department and the *adoptive family* or *pre-adoptive family* are unable to reach agreement through a negotiation or renegotiation under OAR 413-130-0070 or 413-130-0075.

(c) Unless a *guardianship assistance* agreement automatically expires, a *potential guardian* or a *guardian* applying for or receiving *guardianship assistance* payments under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance," (OAR 413-070-0900 to 413-070-0982) in the manner set forth in OAR 413-010-0505 when the Department issues a notice and decision that includes a statement of hearing rights and:

(A) Denies Title IV-E *guardianship assistance* benefits;

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(B) Terminates, reduces, or otherwise changes *guardianship assistance* payments without the concurrence of the *guardian*;

(C) Terminates *guardianship assistance* for a reason other than a *child* turning age 18 or a *young adult* turning age 21 when an extension has been granted; or

(D) Offers the family a specific amount or type of *guardianship assistance* when the Department and the *guardian* or *potential guardian* are unable to reach agreement through a negotiation or renegotiation under OAR 413-070-0917, 413-070-0939, or 413-070-0969.

(d) An applicant for a *Certificate of Approval* or a *certified family* may request a hearing in the manner set forth in OAR 413-010-0505 when the Department denies the application or revokes a certificate under Child Welfare Policy II-B.1, "Standards for Certification of Foster Parents, Relative Caregivers, and Approval of Potential Adoptive Resources," (OAR 413-200-0301 to 413-200-0396);

(e) An applicant for a license to operate a *private child-caring agency* or a *licensee* may request a hearing in the manner set forth in OAR 413-010-0505 when the Department denies, suspends, or revokes a license or imposes a civil penalty under Child Welfare Policy II-C.1, "Licensing Umbrella Rules," (OAR 413-215-0000 to 413-215-0131);

(f) An organization or school that operates a residential care program for children and is not also a *private child-caring agency* may request a hearing in the manner set forth in OAR 413-010-0505 when the Department orders the organization or school to alter the conditions under which a *child* lives or receives schooling or denies, suspends or revokes a license under Child Welfare Policy II-C.1, "Licensing Umbrella Rules," (OAR 413-215-0000 to 413-215-0131);

(g) An applicant to adopt or an applicant for a *Certificate of Approval* may request a hearing in the manner set forth in OAR 413-010-0505 when the Department determines that the applicant is unfit based on the criminal offender information or a false statement regarding criminal offender information of the applicant or of another individual in the household of the applicant under Child Welfare Policy I-G.1.4, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Relative Caregivers, Foster Parents, Other Persons in the Household and Adoptive Parents for Children in the Care or Custody of DHS," (OAR 413-120-0400 to OAR 413-120-0470).

(3) A person may request a hearing in the manner set forth in OAR 413-010-0505 when that person has the right to a contested case hearing under a statute concerning Child Welfare Programs or a rule in Chapter 413.

(4) These rules (OAR 413-010-0500 to 413-010-0535), apply to contested cases arising from the properly made hearings requests described in sections (2) and (3) of this rule. The following other rules do or do not apply as noted:

(a) OAR 137-003-0501 to 137-003-0700 apply to these contested cases, except to the extent that rules in Chapter 413 are permitted to and provide otherwise.

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(b) Rules in Chapter 461 do not apply to these contested cases unless a rule in Chapter 413 expressly refers to them.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Prior Version

413-010-0501
Definitions

The following definitions apply to these rules (OAR 413-010-0500 to 413-010-0535):

(1) "Adoption assistance" means assistance provided on behalf of an eligible *child* or *young adult* to offset the costs associated with adopting and meeting the ongoing needs of the *child* or *young adult*. "Adoption assistance" may be in the form of payments, medical coverage, reimbursement of nonrecurring expenses, or special payments.

(2) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the *child* who joined the family through a judgment of the court.

(3) "Base rate payment" means a payment to the *foster parent* or *relative caregiver* at a rate established by the Department for the costs of providing the *child* or *young adult* with the following:

(a) Food -- including the cost to cover a child's or young adult's special or unique nutritional needs;

(b) Clothing -- including purchase and replacement;

(c) Housing -- including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision -- including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child's or young adult's chronological age;

(e) Personal incidentals -- including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation -- including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, *child* care, recreational, and cultural activities.

(4) "Certificate of Approval" means a document that the Department issues to approve the operation of a certified *relative caregiver* home or a foster home.

(5) "Certified family" means an individual or individuals who hold a current *Certificate of Approval* from the Department to operate a home to provide care, in the home in which they reside, to a *child* or *young adult* in the care or custody of the Department.

(6) "Child" means a person under 18 years of age.

(7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated *child* or *young adult* placed in the home by the Department.

(8) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(9) "Guardianship assistance" means assistance on behalf of an eligible *child* or *young adult* to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the *child* or *young adult*. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(10) "Level of care payment" means the payment provided to an approved or *certified family*, a *guardian*, a *pre-adoptive family* or an *adoptive family* based on the need for enhanced supervision of the *child* or *young adult* as determined by applying the CANS algorithm to the results of the CANS screening.

(11) "Level of personal care payment" means the payment to a qualified provider for performing the personal care services for an eligible *child* or *young adult* based on the child's or young adult's need for personal care services as determined by applying the personal care services algorithm to the results of the personal care services rating scale.

(12) "Licensee" means a *private child-caring agency* or an organization or school that offers a residential program for children (regulated pursuant to ORS 418.327) and holds a license issued by the Department.

(13) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(14) "Party" means a person entitled to a contested case hearing under these rules.

(15) "Potential guardian" means an individual who:

(a) Has been approved by the Department or *participating tribe* to be a child's *guardian*; and

(b) Is in the process of legalizing the relationship to the *child* through the judgment of the court.

(16) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's *adoptive family*; and

(b) Is in the process of legalizing the relationship to the *child* through the judgment of the court.

(17) "Private child-caring agency" is defined by the definitions in ORS 418.205, and means a "child-caring agency" that is not owned, operated, or administered by any governmental agency or unit.

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(a) A "child-caring agency" means an agency or organization providing:

(A) Day treatment for disturbed children;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs (defined at OAR 413-215-0911); or

(E) Other similar services for children.

(b) A child-caring agency does not include residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830, and 443.835 for children receiving developmental disability services.

(18) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related *child* or *young adult* who is placed in the home by the Department.

(19) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0502
Representation

(1) When a *child* or *young adult* has the right to a hearing because the Department takes an action under OAR 413-010-0500(2)(a), the *foster parent* or *relative caregiver* may:

(a) Request a hearing on behalf of the *child* or *young adult*; and

(b) Participate in the hearing as a representative on behalf of the *child* or *young adult*.

(2) When the Department takes an action to deny, reduce, or terminate a benefit or service that is provided under Title IV-E or Title XIX of the Social Security Act, a *party* may be represented by an attorney, a relative, a friend, or other spokesperson as authorized by federal law.

(3) In all other cases, a *party* may represent themselves or be represented by an attorney.

(4) The Department, with the consent of the Attorney General, has authorized its employees to represent the Department in cases involving the actions described in OAR 413-010-0500(2)(a).

(5) A Department employee acting as the Department's representative may not make legal argument on behalf of the Department.

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(a) "Legal argument" includes argument on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or administrative rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of a motion, evidence, examination and cross-examination of a witness, or presentation of a factual argument or arguments on:

(A) The application of a statute or administrative rule to the facts in the contested case;

(B) Comparison of a prior Department action when handling a similar situation;

(C) The literal meaning of a statute or administrative rule directly applicable to an issue in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of a procedure being followed in the contested case hearing.

(6) The Department may be represented in any contested case proceeding by the Department of Justice.

(7) Contested cases under these rules are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of each *party* and the Department.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0505
Hearing Requests

(1) To request a hearing under OAR 413-010-0500(2)(a):

(a) The *party* or the party's representative must complete and sign a hearing request form approved by the Department: and

(b) The form must be received by the Department not later than 30 days following the mailing date or date of personal delivery of the notice.

(2) Requests for a hearing under OAR 413-010-0500(2)(b)-(g) must be in writing and must be received by the Department by the date specified in the Department's notice.

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(3) In the event a request for a hearing is not timely, OAR 137-003-0528 applies, except to the extent provided otherwise in section (5) of this rule.

(4) If a contested case notice was sent by regular mail, and the *party* or party's representative indicates that neither the *party* nor the party's representative received or had actual knowledge of the contested case notice, the Department must advise the *party* or party's representative of the right to request a hearing under section (5) of this rule.

(5) When the Department receives a hearing request that is not filed within the timeframe required by section (1) or section (2) of this rule but is filed no later than 60 days after a notice becomes a final order under OAR 413-010-0510(3):

(a) If the Department finds that the *party* and party's representative did not receive the written notice and did not have actual knowledge of the notice, the Department refers the request for a hearing to the Office of Administrative Hearings (OAH) for a contested case hearing on the merits of the Department's action described in the notice.

(b) The Department may refer the request for a hearing to the OAH for a contested case proceeding to determine whether the *party* or party's representative received the written notice or had actual knowledge of the notice. At the hearing, the Department must show that the *party* or party's representative had actual knowledge of the notice or that the Department mailed the notice to the correct address of the *party* or party's representative.

(6) Upon receipt of a hearing request that is not described in OAR 413-010-0500(2), the Department may enter an order that the hearing request is not eligible for referral to OAH. Alternately, the Department may refer a hearing request to OAH for a decision on the question of whether there is a right to a contested case hearing.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005, 2009 Or. Laws ch. 126

413-010-0510
Notice

(1) When the Department takes any of the actions described in OAR 413-010-0500(2), the Department issues a written notice to the person that has the right to a contested case hearing.

(2) When the Department takes any of the actions described in OAR 413-010-0500(2)(a)-(c), the written notice must:

(a) Specify the date the notice is mailed or personally delivered;

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(b) Specify the action the Department intends to take and the effective date of the action. If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department, it is sufficient to meet this requirement that the notice state all of the following:

(A) The general nature of the change.

(B) Examples of how the change affects the benefits of the group of affected clients.

(C) The month in which the change will take place.

(c) Specify the circumstances under which payments or benefits are continued if a hearing is requested and whether continued payments or benefits may be subject to recovery by the Department if the Department's action is upheld; and

(d) If the Department intends to terminate benefits or payments because the individual is ineligible for the benefits or payments or the program is terminated, state that the individual may reapply for assistance if circumstances affecting the eligibility of the individual change.

(3) Department notices indicate that the Department designates the record of the proceeding, including information in the Department's file or files and materials added by a *party*, as the record upon default. The Department's notice becomes a final order --

(a) The day after the date prescribed in the notice as the deadline for requesting the hearing if the *party* fails to request a hearing; or

(b) The day the Department or OAH mails an order dismissing the hearing request because the *party* withdraws the request or fails to appear on the date and at the time set for the hearing.

(4) When the Department terminates or reduces benefits or services under subsections (2)(a) through (2)(c) of OAR 413-010-0500, the Department must send the notice --

(a) At least 10 calendar days before the effective date of the action, except as provided in subsection (b) of this section.

(b) When the Department changes a benefit standard that results in the reduction, suspension or closure of a grant of public assistance:

(A) At least 30 days before the effective date of the action; or

(B) At least 10 working days before the effective date of the action when the Department has fewer than 60 days before the effective date to implement the proposed change.

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(c) For purposes of this rule, the term "changes a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

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Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0515
Continuation of Benefits

(1) Except as otherwise provided in this rule, a recipient of benefits is entitled to receive continuing benefits when the Department takes any action to suspend, reduce, or terminate benefits or services as described in subsections (2)(a)(A)-(F), (2)(b), or (2)(c) of OAR 413-010-0500, and the Department has:

(a) Provided at least 10 days notice of such action as required by OAR 413-010-0510;

(b) Received a request for a hearing from the recipient not later than 30 days following the mailing date or date of personal delivery of the notice, whichever is earlier; and

(c) Received such request prior to the effective date of the action.

(2) Any continuing benefits authorized by this rule are subject to recovery by the Department to the extent that the Department's action is sustained or otherwise upheld.

(3) Continuing benefits may not be provided:

(a) When the recipient specifically requests that he or she not receive continued assistance pending a hearing decision;

(b) After a final order is issued by the Department;

(c) After a change affecting the recipient's grant, as described in subsections (2)(a)(A), (B), (D), and (E), (2)(b) or (2)(c) of OAR 413-010-0500, occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change; or

(d) After a determination is made at a hearing that the sole issue is one of state or federal law or policy or change in state or federal law and not one of incorrect grant computation.

(4) Except as otherwise provided in this rule, if the Department provides less than 10 days notice of an action to suspend, reduce, or terminate benefits or services as described in subsections (2)(a)(A), (B), (D), and (E), (2)(b) or (2)(c) of OAR 413-010-0500, a recipient of benefits is entitled to receive continuing benefits if the Department:

(a) Receives a request for a hearing from the recipient within 10 days of the mailing of the notice of the action; and

(b) Determines that the action resulted from other than the application of federal or state law or policy or a change in state or federal law.

(5) Except as otherwise provided in this rule, if the Department provides less than 10 days notice of an action to suspend, reduce, or terminate benefits or services as described in subsection (2)(a)(C) or (F) of OAR 413-010-0500, or 5 days notice in cases of probable fraud as described in 42 CFR 431.214, a recipient of benefits is entitled to receive continuing benefits if the Department:

(a) Receives a request for a hearing from the recipient within 10 days of the mailing of the notice of the action; and

(b) Determines that the action resulted from other than the application of federal or state law or policy.

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Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0520
Informal Conference

(1) The Department representative and the *party* or party's representative may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(4). The informal conference also may be used to:

(a) Provide an opportunity for the Department and the *party* to settle the matter;

(b) Ensure the *party* understands the reason for the action that is the subject of the hearing request;

(c) Give the *party* an opportunity to review the documents that are the basis for that action;

(d) Give the *party* an opportunity to review the rules that support the Department's action;

(e) Give the *party* and the Department the chance to correct any misunderstanding of the facts; and

(f) Give the Department an opportunity to review its action.

(2) The *party* may, at any time prior to the hearing date, request an additional informal conference with the Department representative.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0525
Burden of Proof

In any contested case covered by these rules (OAR 413-010-0500 to 413-010-0535), the *party* has the burden of proof.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Prior Version

413-010-0530
Withdrawals and Dismissals

(1) Withdrawals.

(a) A *party* or party's representative may withdraw a request for a hearing orally or in writing at any time before a final order has been issued on the contested case.

(b) Following a withdrawal under subsection (a) of this section, the Department or OAH sends an order dismissing the hearing request to the party's last known address. The *party* may cancel the withdrawal if a request to cancel the withdrawal is received by the Department representative up to the tenth work day following the date such an order is sent. If the *party* withdrew the hearing request in writing, the Department must receive a timely written request to cancel the withdrawal.

(c) The Department may withdraw any pending referral from OAH at any time before a final order is served when:

(A) The Department provides to the *party* the relief sought; or

(B) The Department and the *party* reach an agreement under ORS 183.417(3).

(2) Dismissals. An order dismissing a hearing request is issued when the *party* or the party's representative does not appear at the time and place specified for the hearing.

(a) The dismissal by order is effective on the date the order is issued.

(b) The Department may reconsider and cancel the dismissal under OAR 137-003-0675 on request of the *party* on a timely showing that the *party* was unable to attend the hearing and unable to request a postponement for reasons beyond party's reasonable control. The Department may refer the reconsideration decision to OAH.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

413-010-0535
Proposed and Final Orders

(1) When the Department refers a contested case under these rules (OAR 413-010-0500 to 413-010-0535) to OAH, the Department indicates on the referral whether the Department is authorizing:

(a) A proposed order;

(b) A proposed and final order (OAR 137-003-0645(4); or

(c) A final order.

(2) During or after a contested case hearing, when it is determined that the correct application of OAR 413-020-0230, 413-090-0133, or 413-090-0150 requires the consideration of facts that differ from the facts on which the Department made a decision to deny, reduce, or terminate either a *level of care payment* or a *level of personal care payment*, the Department will reapply OAR 413-020-0230, 413-090-0133, or 413-090-0150 based on new or different facts.

(3) When the Department authorizes either a proposed order or a proposed and final order:

(a) The *party* may file written exceptions and written argument to be considered by the Assistant Director for Children, Adults, and Families Division or the Assistant Director's designee. The exceptions and argument must be received at the location indicated in the order not later than the tenth day after service of the proposed order or proposed and final order.

(b) If the *party* does not submit timely exceptions or argument following a proposed and final order, the proposed and final order becomes a final order on the eleventh day after service of the proposed and final order unless the Department has issued a revised order or has notified the parties and the administrative law judge that the Department will issue the final order.

(c) When the Department receives timely exceptions or argument, the Department issues the final order, unless the Department requests that OAH issue the final order under OAR 137-003-0655.

(4) A request by a *party* for reconsideration or rehearing must be filed with the person who signed the final order within the time limits of OAR 137-003-0675.

(5) A final order should be issued or the case otherwise resolved no later than 90 days following the receipt of the request for a hearing.

(6) A final order is effective immediately upon being signed or as otherwise provided in the order.

(7) The Department reserves the right to withdraw or amend any final order issued by OAH or the Department at any time permitted by law.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005

Prior Version

Contact(s):

- **Name:** Kevin George; **Phone:** 503-945-5987

Policy History

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