

Policy Title:	Contested Case Hearings – OAR		
Policy Number:	I-A.5.2 413-010-0500 thru 0535	Version:	Effective Date: 12/29/09

Approved By: *on file*

Date Approved

[Policy](#)

[Forms, etc.](#)

[References](#)

[Contact](#)

[History](#)

Reference(s):

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

Form(s) that apply:

- CF 344, Child Welfare Administrative Hearing Request

Rules:

413-010-0500

Contested Case Generally

- (1) The following definitions apply to these rules (OAR 413-010-0500 to 413-010-0535), unless the context indicates otherwise:
 - (a) "Adoption assistance" means financial and medical coverage granted to an adoptive family to offset the costs of adopting an eligible adoptive child and may include cash payments, medical coverage, an agreement only, or special payments.
 - (b) "Adoptive family" means a family that includes at least one child who joined the family through a legally finalized adoption.
 - (c) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, preadoptive home, or a regular foster home.
 - (d) "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.

- (e) "Child" means a person under 18 years of age.
- (f) "Foster care base rate" means the payment to a foster parent or relative caregiver on behalf of an eligible child for the costs of providing food, clothing, housing, daily supervision, personal incidentals, and transportation.
- (g) "Foster parent" means a person who operates a home that has been approved by Child Welfare to provide care for an unrelated child or young adult placed in the home by the Department.
- (h) "Guardian" means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:
 - (A) Authorize surgery for the child;
 - (B) Authorize enlistment in the armed forces;
 - (C) Consent to the child's adoption when the child is in the permanent custody of the agency;
 - (D) Make other decisions of substantial legal significance concerning the child; but
 - (E) A guardian is not a conservator of the child's property or estate.
- (i) "Guardianship assistance payment" means a monthly cash payment made by the Department to the guardian on behalf of the eligible child.
- (j) "Level of care" means the payment for enhanced supervision needs of a child or young adult to a certified family.
- (k) "Level of personal care" means the payment to a qualified provider for performing the personal care services for an eligible child or young adult.
- (l) "Licensee" means a private child-caring agency or an organization or school that offers a residential program for children (regulated by ORS 418.327) and holds a license issued by the Department.
- (m) "Party" means a person entitled to a contested case hearing under section (2) of this rule.
- (n) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.
- (o) "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.

- (A) A "child-caring agency" means an agency or organization providing:
 - (i) Day treatment for disturbed children;
 - (ii) Adoption placement services;
 - (iii) Residential care, including but not limited to foster care or residential treatment for children;
 - (iv) Outdoor youth programs (defined at OAR 413-215-0911); or
 - (v) 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.
- (p) "Relative caregiver" means a person who operates a home that has been approved by Child Welfare to provide care for a related child or young adult who is placed in the home by the Department.
- (q) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.
- (2) The following persons have the right to a contested case hearing under ORS 183 when the Department receives a timely and completed hearing request:
 - (a) A child or young adult placed in substitute care by the Department when the Department takes action to:
 - (A) Reduce or terminate payment for the foster care base rate;
 - (B) Deny, reduce or terminate a level of care payment for enhanced supervision;
 - (C) Deny, reduce or terminate personal care services or a level of care payment for personal care services;
 - (D) Deny eligibility for benefits under Title IV-E of the Social Security Act;
 - (E) Deny eligibility for medical assistance under Title XIX of the Social Security Act; or
 - (F) Deny, reduce or terminate payment for the foster care base rate on behalf of the child's or young adult's child when that child lives with the child or young adult.

- (b) A prospective adoptive family, an adoptive family, and a child when the Department takes action under Child Welfare Policy I-G.3.1, "Adoption Assistance," (OAR 413-130-0000 to 413-130-0125) to deny Title IV-E adoption assistance benefits, deny adoption assistance from state funds, reduce adoption assistance payments or terminate adoption assistance before the child's 18th birthday or when the Department cannot reach agreement with the family about the amount or type of adoption assistance;
- (c) A prospective guardian, a guardian, and a child when the Department takes action under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance," (OAR 413-070-0900 to 413-070-0982) to deny Title IV-E guardianship assistance benefits, deny guardianship assistance from state funds, reduce guardianship assistance payments, or terminate guardianship assistance before the child's 18th birthday or when the Department cannot reach agreement with the family about the amount or type of guardianship assistance;
- (d) An applicant for a Certificate of Approval or a certified family when the Department takes action to deny the application or revoke a certificate under Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents," (OAR 413-200-0301 to 413-200-0396);
- (e) An applicant for a license to operate a private child-caring agency or a licensee when the Department takes action to deny, suspend, or revoke a license or to impose 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 when the Department takes action to order the organization or school to alter the conditions under which a child lives or receives schooling or to deny, suspend or revoke 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 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 another person 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);
- (h) An individual whose allegation that the Department delayed or denied the placement of a child for adoption when a family with an approved home study was available outside the state of Oregon was denied or not acted upon within a reasonable time under Child Welfare Policy I-G.1.5, "Adoption Placement Selection," (OAR 413-120-0000 to 413-120-0080); and
- (i) A person when that person has the right to a contested case hearing under a statute concerning Child Welfare Programs or a rule in Chapter 413.

- (3) These rules describe the policies that apply to the contested cases described in section (2) of this rule.
- (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.
 - (b) Rules in Chapter 461 do not apply to these contested cases unless a rule in Chapter 413 expressly refers to them.
 - (c) The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in these rules.
- (4) Representation.
- (a) When a child has the right to a hearing because the Department takes an action under subsection (2)(a) of this rule, the foster parent or relative caregiver may:
 - (A) Request a hearing on behalf of the child; and
 - (B) Participate in the hearing on behalf of the child.
 - (b) 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 a relative, a friend, or other spokesman as authorized by federal law.
 - (c) In all other cases, a party may be represented as provided in OAR 137-003-0555.
 - (d) The Department, subject to the approval of the Attorney General, has authorized its employees to represent the Department in cases involving the actions described in OAR 413-010-0500(1)(a)-(c).
 - (e) A Department employee acting as the Department's representative may not make legal argument on behalf of the Department.
 - (A) "Legal argument" includes argument on:
 - (i) The jurisdiction of the Department to hear the contested case;
 - (ii) The constitutionality of a statute or administrative rule or the application of a constitutional requirement to the Department; and
 - (iii) 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 on:
 - (i) The application of a statute or administrative rule to the facts in the contested case;

- (ii) Comparison of a prior Department action when handling a similar situation;
 - (iii) The literal meaning of a statute or administrative rule directly applicable to an issue in the contested case;
 - (iv) The admissibility of evidence; and
 - (v) The correctness of a procedure being followed in the contested case hearing.
- (f) The Department may be represented in any contested case proceeding by the Attorney General.
- (5) 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)-(c):
- (a) The party or the party's representative must complete and sign the Department's Administrative Hearing Request form: 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)(d)-(i) must be in writing and must be received by the Department by the date specified in the Department's notice.
- (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 the Office of Administrative Hearings. Alternately, the Department may refer a hearing request to the Office of Administrative Hearings 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 as described in OAR 137-003-0505 to the person that has the right to a contested case hearing.
- (2) In addition to the information required by OAR 137-003-0505, when the Department takes any of the actions described in OAR 413-010-0500(2)(a)-(c), the written notice also must:
 - (a) Specify the date the notice is mailed or personally delivered;
 - (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 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) to (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.
- (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.

Stat. Auth.: ORS 418.005

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

413-010-0515

Continuation of Benefits

- (1) When the Department terminates or reduces benefits or services under subsections (2)(a) to (2)(c) of OAR 413-010-0500, the party may receive continuing benefits to the extent provided in this rule while the contested case is pending until a final order is issued in the case. Continuing benefits are not available to maintain benefits or services at a level for which the only issues in the contested case hearing are issues of state or federal law or policy or change in state or federal law or policy.
- (2) To be entitled to continuing benefits under section (1) of this rule:

- (a) When a Department hearing request form gives a party choice of whether or not to receive continuing benefits, the party must indicate that the party wants continuing benefits on the hearing request form received by the Department; and
 - (b) If the notice indicates that the Department is setting as the deadline to request continuing benefits the date the Department intends to terminate or reduce services, the Department must receive the completed hearing request by that deadline.
- (3) To the extent the Department's action is sustained by the final order, a dismissal of the hearing request, or the withdrawal of a hearing request by the party, the Department may institute recovery procedures to recoup the cost of any continuing or reinstated benefits to the extent they were furnished solely by reason of this rule.
- 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

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 the Office of Administrative Hearings 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 the Office of Administrative Hearings at any time before a final order is served:
 - (A) When 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) 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 the Office of Administrative Hearings.

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 the Office of Administrative Hearings (OAH), the Department indicates on the referral whether the Department is authorizing a proposed order, a proposed and final order (OAR 137-003-0645(4)), or 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 for enhanced supervision or personal care services or a level of care payment for personal care services, 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 not later than the tenth 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 the Office of Administrative Hearings 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

Contact(s):

- **Name:** CAF Reception; **Phone:** 503-945-5600

Policy History

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