

**Lay Representation in Contested Case Hearings**

- (1) Subject to the approval of the Attorney General, an officer or employee of the Oregon Department of Human Services (Department) is authorized to appear on behalf of the Department in the following types of hearings conducted by the Office of Administrative Hearings:
  - (a) Public assistance, including but not limited to eligibility for services available through a waiver or state plan or other benefits, the level and amount of services or benefits, effective date, and the termination, suspension, reduction, or denial of services or benefits;
  - (b) Medical assistance, including but not limited to eligibility for services available through a waiver or state plan for medical assistance or other medical benefits, the level and amount of services or benefits, effective date, prior authorizations, medical management decisions, and the termination, suspension, reduction, or denial of services or benefits;
  - (c) Employment Related Day Care under the authority of Chapter 461, including child care provider overpayments and intentional program violations;
  - (d) Eligibility for Supplemental Nutrition Assistance Program (SNAP), the level and amount of benefits, effective date, and the termination, suspension, reduction, or denial of benefits;
  - (e) Overpayments and intentional program violations, related to public assistance or medical assistance, Employment Related Day Care under the authority of Chapter 461, SNAP, waived service benefits or medical benefits or services;
  - (f) Provider enrollment or denial of enrollment, provider overpayments, audits, and audit sanctions; and
  - (g) Estate administration hardship waivers.

- (2) The Department's representative may not make legal argument on behalf of the Department.
  - (a) "Legal argument" includes arguments on:
    - (A) The jurisdiction of the Department to hear the contested case;
    - (B) The constitutionality of a statute or 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 motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:
    - (A) The application of the statutes or rules to the facts in the contested case;
    - (B) Comparison of prior actions of the Department in handling similar situations;
    - (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
    - (D) The admissibility of evidence; and
    - (E) The correctness of procedures being followed in the contested case hearing.
- (3) When an officer or employee appears on behalf of the Department, the administrative law judge shall advise the Department's representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection.

- (4) If the administrative law judge determines that statements or objections made by the Department representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the Department representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.
- (5) The Department is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>. A Department representative appearing under section (1) of this rule must read and be familiar with it.

Statutory/Other Authority: ORS [409.050](#), [411.060](#), [411.404](#), [411.816](#), [412.014](#), [412.049](#)

Statutes/Other Implemented: ORS [183.452](#), [409.010](#), [411.060](#), [411.404](#), [411.816](#), [412.014](#), [412.049](#)

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