

WHAT HAPPENS AFTER THE NOTICE OF ACTION?



TRAINING OVERVIEW



The Notice of Action and
appeal



Preparing for the
hearing



At the hearing



After the
hearing

Slide 2

M11

Maria Iriarte, 5/15/2020



EMILIO

Mrs. Macias gets a Notice of Action (NOA) dated April 1, 2020 terminating IHSS protective supervision for her 12 year-old son Emilio who has autism and auditory processing disorder because:

- He is self-directing
- Does not need 24/7 supervision.



NOTICE OF ACTION



Explains eligibility and/or services for any CA public benefit

Used to notify a recipient of a denial, change, or termination of services or eligibility



NOTICE OF ACTION

Adequate notice – what does this mean?

1. Intended action
2. Reason(s) for the action
3. The specific regulations or laws supporting the action
4. An explanation of the right to request a hearing
 - Appeal within 90 calendar days of the decision
 - **Aid-paid-pending**



NOTICE OF ACTION

Aid Paid Pending (Front page of IHSS NOA)

Date of NOA: 4/1/2020

As of May 1, 2020 the services you can get and/or the amount of time you can get for services has changed. Here's why:

Total HRS:MINS of IHSS you can get each month is now: _____. This is a/an increase/decrease of _____.

You will now get the services shown below for the amount of time shown in the column...



NOTICE OF ACTION

5. Deadline to request hearing and how to request it
6. Information the county still needs

Needs to be language compliant





NOTICE OF ACTION

What is timely notice?

A written notice that is mailed to the person affected at least 10 days before the effective date of the action.



NOTICE OF ACTION

Additional information in IHSS NOA:

- A description of each task for which need is assessed
- The number of hours authorized to complete the task
- The hours for tasks increased or decreased and the difference from previous hours authorized



NOTICE OF ACTION

Things to consider:

- Interpreter?
- Reasonable Accommodation?
- Subpena?
- Continue the hearing?: See https://www.cdss.ca.gov/shd/res/pdf/SHD_PostponementProcedures.pdf
- In-person, by phone, video, home, other?
- Expedited hearing?
- Length of hearing





NOTICE OF ACTION

What will the state fair hearing office do?

- Letter confirming receipt of appeal, hear from appeals specialist
- Letter from appeals specialist/representative
- Letter with date, time, place of hearing



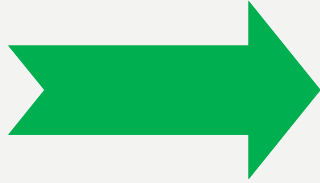
NOTICE OF ACTION

Where to find info on SFH procedures:

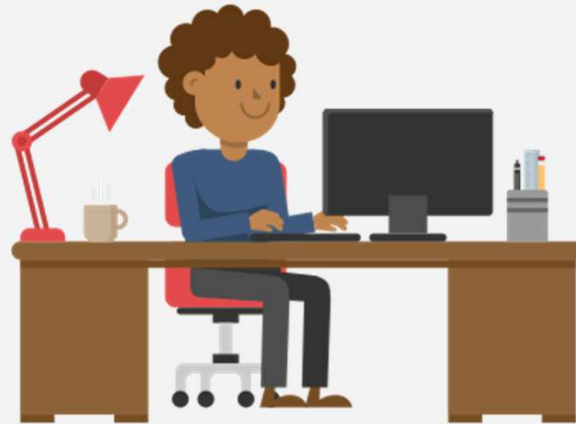
CDSS: <https://www.cdss.ca.gov/reporting/hearings-and-appeals>

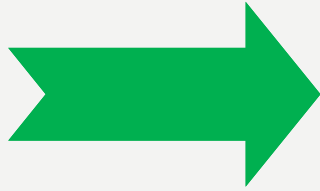
MPP 20-000:
<https://cdss.ca.gov/ord/entres/getinfo/pdf/4cfcman.pdf>

ALJ BENCH BOOK:
<HTTPS://IHSSADVOCATE.COM/WORDPRESS/WP-CONTENT/UPLOADS/ADMINISTRATIVE-LAW-JUDGE-MANUAL.PDF>



PREPARING FOR THE HEARING





PREPARING FOR THE HEARING

1. Identifying the issue(s):

- NOA
- Conversation with Appeals Specialist/Representative
- Review your file MPP 20-051.1
- County's position statement



PREPARING FOR THE HEARING

2. Understanding the law

Manual of Policies and Procedures (MPP):

[https://cdss.Ca.Gov/inforesources/letters-regulations/legislation-and-regulations/adult-services-regulations_\(30-700...\)](https://cdss.Ca.Gov/inforesources/letters-regulations/legislation-and-regulations/adult-services-regulations_(30-700...))

All County Letter 15-25:

<https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-25.pdf>

DRC:

<https://www.disabilityrightsca.org/publications/in-home-supportive-services-ihss>



PREPARING FOR THE HEARING

Understanding the law (cont.) - criteria for protective supervision:

- Non self-directing due to mental impairment/mental illness?
- Likely to engage in potentially dangerous activities
- Need more supervision than minor same age who is not mentally disabled? (for minors only)
- 24/7 need



PREPARING FOR THE HEARING

3. Identify and gather evidence

- IEP ? Triennial?/ IPP?: accurate and current needs. *Important that all documents be consistent!*
- Doctor/specialist records and/or letter





PREPARING FOR THE HEARING

Identify and gather evidence (cont.)

SOC 821 – shall not be determinative: MPP 30-757.173 (a)

- Memory – recall learned behaviors and information, short and long term
- Orientation – awareness of time, place, self and other individuals in one's environment
- Judgment – make decisions so as to not put self in danger; understands risks and consequences of actions



PREPARING FOR THE HEARING

Identify and gather evidence (cont.)

- ABA provider
- Witnesses

Declarations, by phone, in-person?

- What happened at the home evaluation?

Practice tip: have someone present to write down what was asked, answered, length of evaluation...





PREPARING FOR THE HEARING

Identify and gather evidence (cont.)

- Hazard log
- Regional Center (age and equivalent functioning level, describe how the person has poor memory or judgment; confusion; or disorientation). C-Der?
- Other?



PREPARING FOR THE HEARING

4. Preparing your position statement

1. Not required but helpful



2. Usually provide on the day of the hearing
provide sooner?



PREPARING FOR A HEARING

5. Preparing your questions for witnesses

- Social worker
- Your witness(s)
- Other(s)?



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PREPARING FOR A HEARING

Things to consider:

- Invite your regional center service coordinator to attend and help advocate/explain the person's needs.
- Make notes of what you want to say to the ALJ (if no position statement)



PREPARING FOR A HEARING

What is a Conditional Withdrawal?

- Appeals Specialist may offer this before the hearing to try to settle the case: If agree – no hearing, if don't agree – go to hearing
- Make sure understand what agreeing to (ask the Appeals Specialist to explain it)
- You can change your mind after you signed and proceed with the fair hearing

AT THE HEARING



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AT THE HEARING

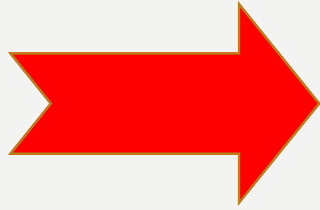
Who will be at the hearing?

- Administrative Law Judge (ALJ)
- Appeals specialist/representative
- Social worker
- You (Claimant)
- Your Authorized Representative

- Form:

<https://www.Cdss.Ca.Gov/cdssweb/entres/forms/english/dpa19.Pdf>

- Witnesses
- Interpreter

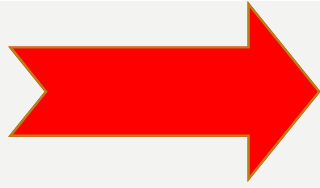


AT THE HEARING

What is “the record”?

Leaving the record open

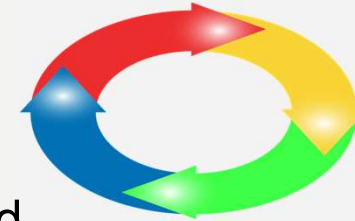




AT THE HEARING

General sequence of events:

- ALJ swears in witnesses
- ALJ reviews the evidence parties have submitted
- ALJ asks the County to explain its position



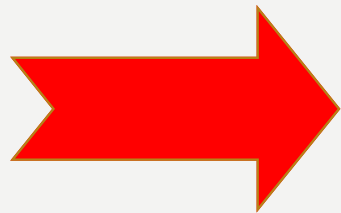
Appeals Specialist may question the social worker (others)

You can ask questions too (called cross-examine)

- ALJ asks you about your position (why do you disagree, what do you want, your evidence to support what you want)

You can question your witnesses

Appeals Specialist can ask them questions too (cross-examine)



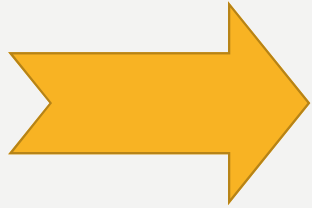
AT THE HEARING

What happens after all witnesses have testified?

ALJ will give instructions as to next steps,
timeline for decision.



(If ALJ left the record open – make sure you comply!)



AFTER THE HEARING

The Decision

- What the ALJ decided

Alternated Decision

- Appeal rights

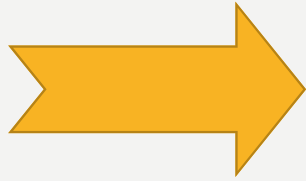
Rehearing

Writ of Administrative Mandamus (writ) – Superior Court

Attorney Fees

- Requesting the recording





AFTER THE HEARING

Rehearing (MPP 22-065)

30 days after receipt of decision

State why asking for rehearing

State date the decision was received

If new evidence:

Describe and submit new evidence (if not submitted explain why)

State why not submitted earlier

Explain why material

Explain how could have changed the decision



AFTER THE HEARING

Complying with the Decision (MPP 22-078)

- Immediately upon receipt of a decision, the county shall initiate action to comply.
- If the Decision of the Director is wholly or partially in your favor, the county shall, within 30 days of receipt of the Decision, submit a compliance report to the State Hearings Division.
- You may contact CDSS, orally or in writing, if dissatisfied with the compliance.
- Upon notification that the County has failed to comply with a Decision, CDSS can take appropriate action to ensure compliance.

QUESTIONS?

Contact Maria F. Iriarte, Esq.

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or (619) 814-8505

