

Ad Hoc Meetings with Staff

Re:

SHD Internal Assessment and Strategic

Planning Process:

February 17, 2013

In an effort to gather comments from all staff members, staff were invited to meet with Manuel and Lonnie to individually provide their input on how the Division could improve by becoming more effective and efficient. These comments were from a number of different individuals having a wide range of job responsibilities.

I. Pre-Hearing Topic, Issues and Recommendations;

1. Issue: It is difficult to find forms used for/in State hearings.

How to Fix: An on-line listing of forms should be made available for ALJs use.

2. Issue: Case Record Data Entry Problems: Case record data regarding claimant names, addresses and phone numbers are often inaccurate requiring the ALJ to do follow-up work to correct.

How to Fix: This appears to be a training issue for intake staff.

3. Issue: Should Counties be required to have Pre-hearing conferences with claimants to clarify the issue(s)?

- a) Claimants should be required to more clearly identify their claims, and the evidence that bears on their claims, before the hearing. The hearing should be that place where evidence on clearly defined issues is presented, and not where those issues are clarified or the claimant's evidence first is revealed to all. A **prehearing procedure** involving either only county staff or possibly also SHD staff should be put in place to force claimants and counties to clarify the issues to be heard and the evidence that will be submitted in support of the party's action. One benefit to requiring this procedure is that the county hearing representative will see and understand the claimant's position and evidence, and then either correct the county's wrong action before the hearing or come to the hearing with appropriate evidence and argument to rebut the claimant's wrong claim.

4. Issue: Should the Programs/SHD/Legal Services provide better information about Program/Issue requirements (particularly for IHSS cases) for claimants on their Website/Publications that will enable claimants to better prepare for and to bring important documents/evidence to their hearings?

- a) Claimants should be given better access to information about how hearings are held and what evidence should be submitted. The programs themselves should put up information on their websites about how to

establish eligibility for a program benefit. Our SHD website should put up information, and ideally a video, which shows claimants how hearings will be done and what kind of evidence should be submitted. Local legal aid offices should be encouraged to provide more advice to claimants BEFORE their hearings, so that the claimants know what to address at the hearing or even whether they should pursue their claims. Some local legal aid offices meet with claimants before hearings at the hearing sites and do advise claimants to withdraw because the county's action is correct – if that was done well before the hearing, that claim could be removed from the calendar and no Statement of Position would need to be prepared on that claim.

- b) SHD should add more information to the PUB 412 about IHSS hearings so claimants are better prepared for their hearings and what to expect.
 - c) SHD should consider having analysts send a questionnaire to claimants in all IHSS cases asking information about what the claimant's time for task requirements are and the limits set by regulation. Note: translations of the questionnaire will have to be done. Also note: SD Legal Services may have a form it uses-suggest contacting it to get a copy for guidance.
5. Issue: Should Hearing Schedules/Calendars be published early so ALJs can plan for hearings and writing time?
- a) The hearing schedules for ALJs are being published as late as Saturday for hearings the following week. The calendars should be published at least one week in advance.
 - b) ALJs can advise the PALJs of any particular requests for accommodation for certain days in a month by posting a message to a central calendar, and last minute assignments can be made taking into account those requests.
6. Issue: Should Pre-hearing and Post-hearing **Procedural** matters be handled by staff other than ALJs?
- a) As for other procedural matters that must be performed by non-hearing judges, such as bifurcation requests, dismissal requests, subpoena requests, aid pending requests, and rehearing requests, these should all be done by ALJ specialists. Proposed decisions should continue to go through the PALJ, so that the PALJ can evaluate both the content of the decision and the performance of the ALJ. Calendar assignments also should be made by the PALJ, who is in the best position to know the workload of those 10 or fewer ALJs.
 - b) For bifurcation request decisions, there needs to be better published criteria to promote consistency.
7. Issue: Should IHSS and Scope cases be done by the Disability Hearings Bureau?

- a) The SHD should redirect this workload to the DHB whose judges are specially trained to do disability related issues including IHSS and Scope issues.

II. Hearing Topic, Issues and Recommendations:

1. Issue: Hearing Locations and How Hearings are done:

How to Fix:

- a) If hearings will be done primarily **in person**, with the judge in the same room as the parties, then the ALJs and the support for those ALJs (support staff and management staff) should be as close to where the hearings are done. That may mean having 4 or 5 regional offices with support staff and Presiding Judges in those offices. This would avoid or limit non-productive activity of the ALJ, which includes driving time.
- b) If hearings will be done primarily by **video** for counties where ALJ staff are not physically located (**this was the recommendation**), there can and probably should be centralization of staff in one or two locations in the state, either all in Sacramento or some in Sacramento and some in one location in So Cal. A two location model would allow more in-person hearings in the highly populated counties in So Cal.
 - 1) **Video** hearings should be set up so that only the judge appears by video and the parties are present in the same room. Our hearings are constitutionally required to preserve the rights of aid applicants and recipients to present evidence directly to the decision maker and to confront adverse witnesses. By having the claimant and the county staff who purport to have evidence that bears on the claim in the same room, those rights are protected. Counties should be directed to make their best efforts to ensure that those witnesses (e.g. social workers) and documents which bear on the claim are there in the same room with the claimant. Toward that end, video hearing sites should be established in each county welfare office, and not just one central location, so that claimants can go to their local offices to have their claims heard. This procedure may require hearing representatives for the counties to travel to those sites, but presumably the county staff actually responsible for the county action would be located at that same office and so would more likely be available to participate in the hearing. All programs for which we do hearings should be required to have a percipient witness available by video for the hearing if that action in dispute is based substantially on that percipient witness' observations and perceptions (including, for instance, Medi-Cal claims involving nurse evaluations and IHSS claims involving home assessments). Telephone hearings, where the judge cannot see the participants and they cannot see each other, should be permitted only under very limited circumstances.
 - 2) If **video** hearings primarily are used, continued hearings should be granted routinely where additional evidence not available at the hearing is required. Holding records open to allow one side to submit

documents and then the other side to comment in writing on those records should be discouraged. Both sides should be required to be in the same room as often as possible where any evidence is received by a judge. Occasionally requiring a claimant to return to a hearing location for a continued hearing to present additional evidence, or to see new county evidence, is less onerous if the hearing site is at his or her local office. Again, the focus of the hearing should be on the making the correct program decision in the context of a constitutionally protected evidentiary process. The ALJ's video location should have individual faxes or copiers to receive and send documents.

- 3) If we do primarily video hearings, the judge has no time lost to traveling to and from that hearing site to do the continued hearing, so the cost-benefit considerations to SHD of getting that additional evidence tip strongly toward the benefit side, and presumably the county's hearing representatives and claimants will learn to be better prepared to come to the first hearing with all necessary evidence.

2. Issue: Use of Tele-Interpreters.

- a) They are a very helpful resource and the interpreter has always been highly qualified from a language standpoint. It is true that something is lost without the in person contact but tele-interpreters for the more obscure languages have in my opinion been far superior to the in person individuals we have recruited.

III. Post-Hearing Topic, Issues and Recommendations:

1. Issue: Decision Typing by ALJs: ALJs have to do heavy typing in producing their decisions. This is very time-consuming.

How to Fix: Introduce as an alternative for ALJ use Dragon Professional with reference to Medical Terms. This will speed up production and could avoid carpal tunnel issues in the future.

2. Issue: Decision Submission Credit Point for RA Pay: Presently RAs are not given credit for pay purposes for their final decisions until they are adopted and sent out. There is an element of unfairness about this as there are times when decisions are delayed due to support staff problems which result in pay delays for work performed timely.

How to Fix: Recognize that when an ALJ submits a final decision that is the point when the ALJ should be credited for pay purposes.

3. Issue: Who to go to for advice about particular issues?
 - a) Could the SHD provide a list of judges with particular areas of expertise/experience to which other judges could consult with for assistance? This would be in addition to consultations with the ALJs PJ and/or mentor.

4. Issue: Quality Control Standards are needed.
 - a) SHD should consider other methods of reviewing decisions including techniques used by other administrative hearing agencies. For example, OAH uses a process called “tech review” (peer review) where ALJs review each other’s decisions before they are adopted. Reading other ALJ decisions and seeing how other judges handle the issues can improve the quality and consistency standards in decision writing.

5. Issue: Rehearings:
 - a) Guidelines are needed for rehearing review and analysis.
 - b) Process is not reliable-reviews differ from past reviews.
 - c) Advocate involvement more likely to be granted.
 - d) Correct results in proposed decisions are granted rehearings even when the facts or authority are diminish errors.
 - e) Specialists should do rehearings on the record.
 - f) The Substantial Evidence Rule should be the standard applied by the rehearing unit when reviewing decisions to grant or deny a rehearing request.
 - g) The rehearing unit, in addition to providing statewide training, should schedule and meet with all regional ALJs at least twice a year to discuss new and emerging issues and to receive feedback from staff directly.

6. Issue: Policy that impacts decisions:
 - a) Precedent Decisions should be issued to memorialize policy decisions and promote consistency among judges.
 - b) If Legal is involved and the decision is otherwise correct Legal want to avoid a possible writ, Legal should prepare the Director Decision (Alternate).
 - c) There need to be better guidelines from Programs about their policy decisions and authority in support.

7. Decision processing by Support Staff:
 - a) The NVO is understaffed for this support function.
 - b) IT efficiencies have helped but more are needed.
 - c) Promotions of Support Staff to SSA and above positions have reduced ALJ direct support.
 - d) The SHD should pursue an upgrade of the OT classification to Legal Clerical Typists by adding function such as scheduling open record cases, etc.
 - e) Support Staff need to be cross-trained and rotate positions.

IV. Other Topic, Issues and Recommendations:

1. Issue: Need for ALJ training/mentors-this is a top priority.
 - a) It would be helpful to have more standardized training with as many case scenarios as possible. It would be ideal, but perhaps not practical, to have new judges observe and train in the program areas as they are learned. In addition, training for new judges about what is expected of

them in terms treating the parties with courtesy, dignity and respect needs to be emphasized.

- b) Every new judge should have a mentor (mentors must be carefully selected as having strong technical programmatic and procedural skills but also have the ability to effectively train) who helps by reviewing proposed decisions and sitting in on hearings, and answering questions as they arise and providing guidance as needed. Use of RAs would be ideal until the newer staff gain the necessary skill to be as effective. Mentors should be carefully selected. Not necessarily everyone who is skilled at conducting hearings or writing quality decisions would be a good mentor or trainer. Training for trainers and mentors may be necessary based on guidelines. The Hearing Performance check list should be used by the mentor to provide feedback to the new judge when evaluating hearing procedural performance.
- c) RAs use should also be used/directed toward developing regulations, assisting with IT management, preparation of model decisions and notices, and training. However, consistent with this approach is the need to develop those skills with existing staff to meet succession planning goals of the division.
- d) In terms of training new judges, the focus of that training should be on determining the correct program result, and not on which side is more right than the other side or which side has failed to perform a technical procedural rule that doesn't really bear on the ultimate question of eligibility or ineligibility for a program benefit. Judges should be reminded that these programs exist to aid eligible recipients, and that the hearing exists to better examine whether a county's decision on a claimant's eligibility for a benefit is correct or not. There are some procedural rules which do cut off certain otherwise eligible claimants from getting benefits (such as failing to complete an application without good cause or failing to make a timely hearing request without good cause), and those procedural rules should be respected. When the disposition of the claim does not involve one of those rules, however, the county and the claimant should make a greater effort to gather the evidence needed to make the correct program decision before the hearing and, at the hearing, the judge should be enabled and encouraged to identify any additional relevant evidence and have that evidence submitted right then or, if needed, at a continued hearing.
- e) Additional thoughts on training ideas for new ALJs:

Initial training should be a consistent and structured program to help the new Administrative Law Judges adjust to the agency and their new position as an Administrative Law Judge. Training should be overseen by the Training Unit with service delivery provided by the Presiding Judges and Administrative Law Judge Specialists. Some areas that training should cover include:

Descriptions of all of the programs over which the department has jurisdiction at its hearings. This includes understanding the concepts upon which the programs are founded and how they operate. ,

Hearing procedures that govern state hearings and the practical aspects of hearing procedures,

Efficient decision writing including what is in and how to utilize the computer Decision Writing Program,

Informing the Administrative Law Judges of the resources that are available to help them and where to find them,

An overview of the applicable laws,

The internal geography of the agency including its purposes and structure of the agency,

Utilizing an outline system which describes and details important questions that need to be answered at a hearing and are specific to a particular program and a particular issue in the program and are likely to be heard by the Administrative Law Judge.

f) Additional thoughts for ongoing training for ALJs:

Continuing Education for the Administrative Law Judges again should be monitored and supervised by the Training Unit and delivered by the Training Unit, Presiding Judges and Administrative Law Judge Specialists. Of critical importance, continuing education must be based on an annual training needs assessment.

The Training Needs Assessment should be conducted by the Training Unit and primarily based on stakeholders input. Input should include:

Complaints/concerns with input from all parties,

Feedback from the Rehearings Unit,

Feedback from the Chief Judge, Presiding Judges and Judge Specialists,

Feedback from the Director of the Department of Social Services,

Feedback from the legal department of the Department of Social Services,

Feedback from the Administrative Law Judges who are conducting the hearings.

g) The training needs assessment:

Areas that should be addressed in the annual assessment include:

In service training,
Legal updates,
Areas identified from the annual needs assessment,
Other areas identified from the input received.

2. Issue: What should be the ratio of ALJ to PALJ?
 - a) In terms of ALJ to PALJ ratios, it should be no more than 10 ALJs to one PALJ.
3. Issue: Should the SHD have an Assistant Chief Administrative Law Judge position?
 - a) The SHD should consider seeking an Assistant Chief ALJ position to handle and oversee any special matters which do not relate to the day-to-day operations of the hearings functions. The PALJs should not have any responsibilities above managing the 10 or fewer ALJs.
4. Issue: The visual quality of **Video Hearings** transmission needs improvement. At times the transmission becomes blurred-this may be a technical problem.
5. Issue: Low morale is an issue for some ALJs in Sacramento.
 - a) Problems:
 - 1) There are no published minimum quality control standards for decisions resulting in poor quality decisions being issued.
 - 2) There are no published or enforced hearing procedure standards for ALJs. Some judges take far too long to conduct hearings resulting in the other sitting judges getting a disproportionate number of hearings that day. In addition, some judges use post hearing time to prepare their decisions even though there are cases waiting to be heard. This again results in other judges who are aware of the pending for hearing cases having to conduct a disproportionate number of hearings. For example, it was reported that some ALJs do 2 hearings while others end up with 8.
 - 3) There does not appear to be an adjustment in calendar assignments or workload for ALJs who hear 8 cases verses an ALJ who hears 2 cases in a calendar week.
 - i) Why not try a docket like system for general jurisdiction ALJs similar to that used in DHB?
 - ii) Management should be regularly adjusting the #s and days for ALJ hearing assignments.
 - iii) Earlier notice to judges of assignments will enable judges to plan work schedules-time/management.
 - iv) Published standards/protocols are needed as to the factors that are used to calendar an ALJ.

- v) ALJs that continually have late cases due to poor time-management issues should be dealt with in performance reviews.
 - vi) Unfair calendaring assignments for productive ALJs represent the biggest low morale factor for them.
6. Issue: Should there be added incentives for encouraging staff to compete for PALJ and ALJ II Specialist positions?
- a) Problems:
 - 1) PALJ are required to come in every day-There should be an opportunity for the PALJ to tele-work.
 - 2) Parking costs could be lowered if the PALJ did not have to come in every day.
 - 3) Lunch costs could be avoided if the PALJ does not brown bag.
 - 4) It was estimated that the actual difference in pay for a PALJ and an ALJ I works out to be about \$5/month!
 - 5) There should be a substantial difference in pay between an ALJ II Supervisor and an ALJ II Specialist and a much wider difference between those two classifications and ALJ I.
7. Issue: Should the SHD issue a survey of ALJs performance at hearing to be completed by the parties?
- a) If used, the survey should be anonymous as to the identity of the ALJ. However, there is a split here-some feedback suggested that personalized comments would be welcomed provided they were not used for performance ratings or actions.
 - b) If the comments were personalized but not used for performance, some ALJ would like to know how they are perceived individually, how they come across in hearings, and whether there may be a need for some focus training. The survey should also be viewed in the aggregate to find out the overall view of ALJ performance from both the claimant and county perspectives.
 - c) The survey should be done and administered by SHD. For telephone hearings, SHD would mail the survey to the claimant when the returned calendar is received. It is suggested that the turn-around time should be no more than two weeks after the survey is sent for telephone hearings or received by the claimant at the in person or video hearing site. Reception would give the survey to the claimant and the county representative before the hearing commences in person or by video.
 - d) It should only be used to gage procedural related issues. For example, did the ALJ provide you with sufficient opportunity to explain why you felt the county's action was incorrect?
8. Issue: Should the SHD do a survey for county appeals staff performance?
- a) Any customer survey we do should address and incorporate out of hearing resolutions (both withdrawals and conditional withdrawals) as we should be making sure that the **counties** are not discouraging the right to proceed with an appeal.
 - b) Related to the above, we need to examine why counties differ so greatly in their out of hearing resolution rate. We have two counties that are of similar size in recipient population but San Diego has at least twice the go

rate than San Bernardino County has. There may be many variables affecting this outcome: better and more consistent efforts by appeal workers in San Bernardino, greater authority of appeal workers in San Bernardino to settle certain types of cases especially IHSS, San Bernardino may be sometimes discouraging claimants from proceeding, greater travelling distances in San Bernardino etc. Until we do a survey and follow-up, these are just guesses. Once we understand the disparity, we can engage in efforts to produce a more uniform "go" rate statewide.

9. Issue: There is a need for management to engage in succession planning for PALJ and RA retirements. The Division, at present, is extremely dependent on its use of RAs to provide training and technical advice to ALJs and management.
 - a) Staff recommended that someone should be trained on computer support and Maintenance of the decision preparation program. Three videos have been recorded which take the viewer step by step over what needs to be done and how to do it. RA support is willing to work with anyone who has an interest in this. At this point it does not involve an overwhelming amount of work except occasionally. For example, just three full days were spent redoing the IHSS computation program to reflect time in hours and seconds to conform to the new notices.
 - b) Paraphrased Regulations: RAs continue to do by default the paraphrased regulations. These absolutely have to be maintained on a regular basis. No real computer skills are necessary for this task but rather a willingness to track the changes in the various rules we deal with and update the pararegs on a regular basis to be consistent with them.
10. Issue: Should the SHD develop a Corp of ALJ II Specialists with each person being the program specialty expert in a specified area for training and consultation support?
 - a) Having the regional specialists specialize in a particular policy subject and be a resource in that subject for the entire division is a very good idea. This would have the benefit of insuring that the specialist is being used for more than just hearings. The specialist would be able to carry on a regular relationship with the applicable program specialist and quickly develop an expertise in the assigned subject area. This would be a terrific resource and time-saver for the line Administrative Law Judge.
11. Issue: What measures should the SHD do to improve decision/conduct of hearing quality control?
 - a) Rehearing review is a valuable tool.
 - b) Peer review of all decisions, including final decisions, before they are issued.
 - c) Duty Judge reviews as an alternative.
 - d) Observing other ALJ hearings
 - e) Publication of standards for production of quality decisions and conducting fair State hearings.

12. Issue: There needs to be instructions given to new judges about how to handle their caseload as part of their training. This is particularly an issue when several cases are due at the same time. The following issues have been raised:
- a) Should there be training on how to reduce the content of decisions and they will still be legally correct?
 - b) Should there be a better understanding of the penalty protocols?
 - c) If there is a late case, what are the protocols?
 - d) What are the priorities for grant v. denial cases? Are APP and/or eligibility denial factors to be considered?
 - e) What's the role of the PJ in monitoring the ALJs workload? Does the ALJ have to ask for relief when multiple cases are due at once with little writing time?
 - f) How can a new ALJ kick start their writing day to become productive?
 - g) New ALJs should not have to work weekends and holidays to keep up with the workload.
 - h) Are proposed v. final decisions part of the priority order?
 - i) New ALJs should have an electronic library of decisions listed by issue code that they can access and use when writing decisions.
 - j) Training on taking notes at hearing and marking testimony on digital recordings would help the new ALJ in decision preparation. This would reduce their need to listen to entire recordings.
 - k) New ALJs should be trained to record a statement of facts at the conclusion of their hearings if time permits or at the end of the hearing day.
 - l) New ALJs need a list of who to contact to consult with on procedural, legal and programmatic issues.
 - m) New ALJs during training should be encouraged to look at the pararegs after reading the SOP, evaluating the evidence, and determining the likely issues before commencing the hearing
 - n) The SHD should issue Guidelines of questions to be asked and answered for the ten most often disputes in State hearings-i.e. earned income overpayment/CalFresh over-issuance cases with or without Equitable Estoppel as an element.
 - o) Training or guidance should be provided to new ALJs as part of the training curriculum about how to handle days when a number of cases are due and the ALJ doesn't have the writing time to complete them all.
13. Issue: Use ALJs to do Special Projects:
- a) A number of our ALJs, including our newest ALJs, have background and experience that would enable them to provide a valuable contribution doing special projects on a voluntary basis.
 - b) During periods when caseloads are light, they could assist in providing support for preparing Pararegs and Precedent Decisions, developing guidelines for addressing policy questions and providing training.
14. Issue: Regular ALJ Staff meeting should be mandatory for all regions and convened at least monthly. They should be arranged to encourage:
- a) Group interaction. Work at group tables with a mix of experience and expertise to discuss issues and make recommendations to the PJ. Set

guidelines for discussions and topics. Group to choose leader for project discussion and preparing recommendations.

- b) Use skills that people bring in to educate others.
- c) New ideas could streamline the hearings process.

15. Issue: Duty Judges:

- a) The use of Duty Judges carefully selected and trained for 4 to 5 weeks of service on a rotational basis is a valuable tool for PJs and promotes:
- b) Promotional opportunity for the ALJs.
- c) Getting valuable experience in understanding all aspects of the SHD process (the "Big Picture").

16. Issue: Should a Work Sheet for IHSS cases go out with the Acknowledgment Letter or sent later on by SSA staff when an IHSS hearing is scheduled?

- a) Disabled Rights uses a worksheet for its clients and we should review it for possible SHD use.

17. Issue: Supervisory training and the supervisor's backup is needed at every level. Supervisory Qualities:

- a) They should not be allowed to use AWW/4-10. They need to be available when staff is present unless on approved vacation or sick leave.
- b) Progressive discipline should be punitive only after all other measures have failed to rehabilitate/save employees.
- c) Supervisors need to know the jobs and work of staff under their supervision. How else can they judge performance?
- d) For accountability to work in terms of expectations of a supervisor to employee, the supervisors must be in frequent contact with staff, provide guidance (a published Manual describing the roles, responsibilities and expectations of the manager, and the staff) and regular informal feedback on progress, improvement, etc.
- e) Qualities a supervisor should possess in the selection process should include: being approachable; able to maintain confidential communications; has good rapport with staff at all levels; is not cliquish; does not apply different standards for staff doing the same job; is professional; and communicates with staff individually and collectively regularly. Length of service should not be the primary factor for selecting people for supervisory positions.