

CDSS STATE HEARINGS DIVISION
ADMINISTRATIVE HEARING WRITS PROTOCOL

May 2015

Notes: Some paragraphs in this document are repetitive because they were drafted with the intent to be used as “stand alone” sections of information that may be inserted into other documents, such as a staff training manual, the Administrative Law Judge’s Benchbook, a Presiding Judge Benchbook/Manual, or other documents, at a later date.

ADMINISTRATIVE HEARING WRITS PROCESS

General Overview

A writ of mandamus is a judicial remedy in the form of an order from a state superior court to a government subordinate court, or public authority, to do some specific act which that body is obliged under the law to do. (California Code of Civil Procedure sections 1094.5, setting forth the rules for an Administrative Mandamus Writ, and 1085 contain a more detailed description of the civil state court writ process.)

Writ proceedings involving the State Hearings Division (SHD) of the California Department of Social Services (CDSS) usually arise when a party in a SHD administrative hearing disagrees with the decision of the Administrative Law Judge, and the party seeks injunctive relief in state court to have the decision set aside, a new hearing held and a new decision issued in the matter, or to request a particular county take further actions regarding a party’s receipt of public benefits. Generally, a state court writ action to challenge a SHD decision must be filed in state court within one year of the release date of the SHD decision.

After the CDSS Director is served with a state court writ action, the Legal Division will request that the SHD send them a copy of the decision at issue and a copy of the recording of the hearing. The CDSS Legal Division will also request that the SHD prepare a complete certified record of the administrative hearing record, including a transcription of the hearing recording. The CDSS is represented by the California Attorney General’s Office in the state court writ action.

SHD Responsibilities

A state court writ action involving an administrative hearing held by the SHD must be served on the Director of the CDSS with the Legal Division being the agent of service. The CDSS Legal Division attorney assigned to the matter, sometimes in conjunction with the SHD Writs Analyst, the Regional Presiding Judge (PJ), and/or the Training, Quality Development, Rehearings, and Special Projects Bureau (TB) Administrative Law Judge Specialist, will ascertain the specific administrative hearing(s), decision(s) at issue in the pending writ action.

Upon the request of the CDSS Legal Division, the SHD must prepare a certified administrative hearing record for the matter(s) in dispute in the state court writ action.

SHD Writs Analyst Responsibilities

When the CDSS Legal Division notifies the SHD Writs Analyst that a writ has been filed in a particular matter, the SHD Writs Analyst sends the Legal Division attorney a copy of the decision and the hearing recording. At the same time, the SHD Writs Analyst also notifies the TB Administrative Law Judge Specialist about the new writ action and sends them a copy of the writ action pleading and the decision at issue.

When the CDSS Legal Division requests that the SHD provide a certified copy of the administrative hearing record, the SHD Writs Analyst will immediately begin preparation of the administrative hearing record. A detailed written protocol to be followed by the SHD Writs Analyst when preparing the certified administrative hearing record is attached to the end of this document.

Once the administrative hearing record is prepared by the SHD Writs Analyst and certified to be a complete and accurate record of the administrative hearing record in the pending state court writ matter, the certified record is reviewed and approved by the TB Administrative Law Judge Specialist.

After approval, the certified record on appeal is delivered by the SHD Writs Analyst to the CDSS Legal Division. Unless there are questions from the Legal Division regarding the contents of the certified administrative hearing record, or questions arise during litigation of the state court writ matter and the Superior Court issues an interlocutory remand to the SHD to conduct further proceedings, the SHD's responsibilities are complete at this point.

If resolution of the state court writ proceeding results in injunctive relief which requires further action by the SHD, or by the particular county involved in the original administrative hearing, the Chief Counsel of the CDSS Legal Division will issue a Decision Pursuant to Court Order (DPCO), send it to the SHD, and request verification from the SHD of compliance with the orders in the DPCO.

Writs Pertaining to Department of Health Care Services (DHCS) Hearings

If the state court writ action pertains to a hearing held by the SHD under the Department of Health Care Services (DHCS), such as a hearing regarding Medi-Cal benefits and all benefits under the Affordable Care Act, the DHCS is responsible for the preparation of the administrative hearing record in the pending writ matter.

**DECISION PURSUANT TO COURT ORDER (DPCO) AND
INTERLOCUTORY REMANDS PROCESSES**

General Overview of DPCO

At the conclusion of a writ proceeding in state court, which often occurs several months after the certified administrative record has been prepared by SHD, the matter may be remanded by the state court to the CDSS for further action. If the state court orders injunctive relief in the writ proceeding, which requires further action by the SHD and/or the county involved in the original administrative hearing, the Chief Counsel of CDSS issues a Decision Pursuant to Court Order (DPCO) specifying the injunctive relief ordered by the state court. If the injunctive relief granted by the state court includes further action by the SHD, the CDSS Legal Division attorney may informally notify SHD in advance, that the writ proceeding is in the process of being settled and that the matter will be remanded by the state court judge to CDSS for further action by the SHD.

Official notice of the further action required by the SHD occurs when the CDSS Legal Division's Chief Counsel, or a Chief Counsel in the Legal Services Division of the Department of Health Care Services (DHCS), issues and sends a Decision Pursuant to Court Order (DPCO) to the SHD. The DPCO specifies the injunctive relief ordered by the state court and describes the specific action required to be taken by the SHD, or by the particular county involved in the original administrative hearing.

General Overview of Interlocutory Remands from the Superior Court

An interlocutory remand hearing may be ordered by the Superior Court for the purpose of deciding a very specific issue in a pending writ matter. Whenever possible, a remand hearing should be assigned to the same Administrative Law Judge who heard the original case. Copies of the entire administrative hearing record and the Superior Court's remand order should be provided to the Administrative Law Judge assigned to conduct the remand hearing in advance of the hearing date. The Administrative Law Judge should limit the issues and evidence at the remand hearing to the specific issue described in Superior Court's remand order.

The interlocutory remand order from the Superior Court will specify the time period within which the remand hearing must be held and a decision issued. The processes described below, regarding the SHD responsibilities when assigning an Administrative Law Judge to conduct a new hearing pursuant to a DPCO, should be used when assigning and scheduling an interlocutory remand hearing to ensure timely compliance with the Superior Court's order.

SHD Responsibilities After DPCO (or Interlocutory Remand Order) is Issued and Received by the SHD

The DPCO is sent to the SHD Writs Analyst by the CDSS Legal Division or the DHCS, depending on the nature of the original administrative proceeding. The DPCO will inform the SHD of the specific action required, the time limits within which to act, and may order the SHD to conduct a new administrative hearing in the matter. A copy of the corresponding state court order after hearing and the settlement agreement is also sent to the SHD Writs Analyst along with the DPCO.

Within one week of receiving the DPCO, the SHD Writs Analyst sends a copy of the DPCO to the county involved in the original administrative hearing in all matters and the original signed

DPCO is sent to the claimant, claimant's attorney and, if appropriate to the Authorized Representative.

When a new state hearing is ordered to be conducted by the SHD, the following is an example of common language in a DPCO:

“Pursuant to the Order of the Superior Court in the writ proceeding case number _____, the decision of the Director of CDSS, in the matter of (claimant's name), SHD case # _____, dated _____, is hereby set aside. This matter is remanded to the SHD to conduct another hearing.”

The DPCO may also specify, for example, the specific issues the new hearing shall be limited to, or that an Administrative Law Judge, other than the judge who conducted the first hearing, be assigned to conduct the new hearing, and will include the time limit within which the SHD must act.

When the DPCO directs the county involved in the administrative hearing to take specific action as ordered by the state court judge in the writ proceeding, the SHD Writs Analyst sends the original signed DPCO to the claimant and/or the authorized representative and a copy the county. The SHD Writs Analyst will contact the county thirty days after sending the DPCO to request proof of compliance with the DPCO if none is received within that time period.

SHD Writs Analyst Responsibilities

Copies of the DPCO are sent by the CDSS Legal Division to the SHD Writs Analyst at the time it is issued by the CDSS Chief Counsel. The SHD Writs Analyst sends the original signed DPCO to the claimant and/or the authorized representative and a copy to the county involved in the original administrative hearing.

If the DPCO specifies a new hearing shall be held, the Writs Analyst will immediately send a copy of the DPCO, the court order, the settlement agreement, and the original SHD file, to the appropriate Regional Presiding Judge of the region in which the original hearing was conducted, or depending on the specific injunctive relief ordered in the DPCO, to the Regional Office Presiding Judge where the new hearing shall be conducted.

If the DPCO indicates the specific action the county involved in the original administrative hearing is required to take, requiring no new SHD hearing to be conducted, the SHD Writs Analyst requests the county to provide proof of compliance with the DPCO to the SHD within the time frame indicated on the DPCO (usually 30 days).

A detailed written protocol to be followed by the SHD Writs Analyst when processing a DPCO is attached to the end of this document.

Regional Presiding Judge Responsibilities

A DPCO issued by the CDSS Chief Counsel ordering that a new hearing be held requires the prompt scheduling of the new hearing. Similarly, a Superior Court interlocutory remand order requiring that a remand hearing be held on specific issues requires the same prompt scheduling

of the remand hearing. The Regional PJ will receive a copy of the DPCO and the SHD case file from the SHD Writs Analyst as soon as possible after SHD receives the DPCO from CDSS Legal Division. If the settlement agreement and the court order from the state court writ proceeding is provided by the CDSS Legal Division to the SHD, a copy of those documents will also be sent to the Regional PJ. The Regional PJ will review the DPCO and the case file, and immediately assign the matter to an Administrative Law Judge to schedule and to conduct a timely new hearing.

As soon as the new hearing date is set, the Regional PJ informs the SHD Writs Analyst of the hearing date and the name of the assigned Administrative Law Judge, so that the information may be entered into the SHD case management system. The SHD Writs Analyst notifies the CDSS Legal Division that SHD has complied with the DPCO by assigning the matter to an Administrative Law Judge and that a new hearing has been scheduled.

Administrative Law Judge Responsibilities in Conducting a New Hearing Pursuant to a DPCO or an Interlocutory Remand Order

An Administrative Law Judge, assigned by the Regional PJ to conduct an administrative hearing in a writ matter remanded to the SHD for further proceedings, should review the DPCO, or the interlocutory remand order issued by the Superior Court, and the SHD case file immediately upon assignment of the case, and inform his or her clerk of the new case assignment.

The Administrative Law Judge should coordinate the timely special setting of the new hearing with the assistance of the Regional PJ, in accordance with the terms and time limits specified in the DPCO or the interlocutory remand order issued by the Superior Court, and inform his or her clerk of the hearing date as soon as one is set. The Administrative Law Judge will provide case updates, such as a postponement of the hearing, to the clerk in the same manner as is done in all assigned cases. The Administrative Law Judge should verify the assigned remanded case appears on his or her weekly pending decisions case list.

Because the DPCO or the interlocutory remand order may contain instructions limiting the issues at the new hearing, the order and the case file should be carefully reviewed by the Administrative Law Judge prior to scheduling and conducting the new hearing, to ensure complete and accurate compliance with the DPCO or the interlocutory remand order during the hearing and when issuing a timely decision.

Upon completion of a new hearing held pursuant to a DPCO, the Administrative Law Judge should prepare a timely decision which is then released pursuant to the regular decision release process.

Upon completion of an interlocutory remand hearing, the Administrative Law Judge should prepare a timely written decision addressing the specific issues described in the Superior Court's order. The decision from the remand hearing must be sent to the SHD Writs Analyst for transmittal to the appropriate attorney in the CDSS Legal Division.

SHD Responsibilities for Compliance with the DPCO or an Interlocutory Remand Order from the Superior Court

SHD is Ordered to Conduct a New Hearing or a Remand Hearing

If the DPCO instructs SHD to conduct a new hearing in the remanded state court writ matter, the Regional PJ shall inform the SHD Writs Analyst of the new hearing date and the Administrative Law Judge to whom the matter has been assigned as soon as possible after receipt of the DPCO. The SHD Writs Analyst then informs the Legal Division attorney of the date for the new hearing and SHD compliance responsibilities are concluded.

The interlocutory remand order from the Superior Court will instruct the SHD to conduct a remand hearing. The Regional PJ shall inform the SHD Writs Analyst of the remand hearing date and the Administrative Law Judge to whom the matter has been assigned as soon as possible after receipt of the interlocutory remand order. The SHD Writs Analyst then informs the Legal Division attorney of the date for the remand hearing. The SHD Writs Analyst will send a copy of the decision issued after the remand hearing to the CDSS Legal Division.

If Only the County is Ordered to Take Further Action

If the DPCO does not require the SHD to take further action, such as hold a new hearing, the SHD is still responsible to verify compliance with the terms of the DPCO by the county. In all matters, when the SHD Writs Analyst receives a DPCO from the Legal Division of the CDSS or the DHCS, a copy is sent to the county involved in the original administrative hearing. When the DPCO requires further action by the county, the SHD Writs Analyst will contact the county 30 days after sending the DPCO to the county, if sufficient written proof of compliance has not yet been provided to the SHD.

If the SHD Writs Analyst is unable to obtain satisfactory or sufficient verification of the county's compliance with the DPCO, or if the county submits compliance verification documents that are incomplete or appear defective in some way, the SHD Writs Analyst notifies the TB Administrative Law Judge Specialist. The TB Administrative Law Judge Specialist reviews the compliance verification documents to determine whether the compliance is complete or defective.

The TB Administrative Law Judge Specialist will determine whether or not the county's compliance verification documents are complete, and if they are not, will specify the additional documents the county should provide to make their compliance complete. The SHD Writs Analyst informs the county of the specific additional documents required for compliance.

After a reasonable period of time, usually 30 days, if the county sends no additional documents verifying compliance with the DPCO, or if the documents are still incomplete, the TB Administrative Law Judge Specialist will either communicate directly with the county to resolve the issue, or will contact the Regional PJ and work collaboratively with that PJ to ensure county compliance.

Once the county submits complete verification of compliance with the DPCO to SHD, the SHD Writs Analyst sends the verification of compliance documents to the CDSS Legal Division, who sends them to the Attorney General representing CDSS to be provided to the state court.

The Training, Quality Development, Rehearings and Special Projects Bureau (TB) Administrative Law Judge's Role in the Writs and DPCO Processes

The TB Administrative Law Judge Specialist is informed by the SHD Writs Analyst when a writ has been filed in cases held under the CDSS or the DHCS, when a DPCO is issued to SHD by the Legal Division of the CDSS and the DHCS, and when an interlocutory remand is ordered by the Superior Court in a pending writ matter.

The TB Administrative Law Judge Specialist tracks issues raised in writ proceedings and the corresponding resolutions for the purpose of identifying potential training topics for Administrative Law Judges, to anticipate future potential workload demands of the SHD, and to compile statistical reports for the SHD and CDSS.

The TB Administrative Law Judge Specialist reviews and approves the certified administrative hearing record prior to it being sent by the SHD Writs Analyst to the CDSS Legal Division.

The TB Administrative Law Judge Specialist serves as a liaison for the SHD with the CDSS and DHCS Legal Division attorneys throughout pending writ actions, and will be available to answer questions, to assist the assigned attorney in resolving issues arising throughout the writ proceedings, and to monitor compliance with the DPCO.

The TB Administrative Law Judge Specialist keeps the Chief Administrative Law Judge informed of the progress of writ actions, DPCOs, and county compliance issues.

Upon request, and as appropriate, the TB Administrative Law Judge Specialist provides guidance to the CDSS Legal staff in drafting settlement agreements in writ proceedings and in drafting the DPCO.

The TB Administrative Law Judge Specialist's role includes participation with SHD staff in the development of a comprehensive tracking system for writs, including the ability to produce reports, and to identify training issues for all Administrative Law Judges.

Protocols for SHD Writs Analyst in Administrative Writ Decisions Pursuant to Court Order (DPCO), and Superior Court Interlocutory Remand Orders Processes

ADMINISTRATIVE WRIT PROCESS

SHD Writs Analyst Responsibilities

1. The State Hearings Division (SHD) Writs Analyst receives an email from CDSS Legal Division which includes petitioner's name, superior court # and SHD case #, with a request to prepare the certified administrative hearing record. .
2. The SHD Writs Analyst enters the information onto a log sheet located in COMMONADMINISTRATIVE RECS FOR WRITS named ADMIN WRIT LOG (current year) listing the case name, case #, name of attorney and phone #, superior court case #, date request was received, date file was requested from archives (if not in file room). There are other fields in the log sheet that do not get completed at this stage such as date file was received from archives (if case not in file room), date sent for transcription, date received transcription and date administrative record completed.
3. The SHD Writs Analyst then searches for the original decision and audio recording, sending both to the attorney from Legal Division who sent email request. Sometimes audio files are too large to be sent as email attachments and must be copied onto a CD. Two copies of the CD should be made, one for the attorney (sent via interoffice mail) and one for the case file (for transcriptionist use).
4. The case file is retrieved from the file room by the SHD Writs Analyst notifying the file clerk the case file was taken by completing an OUT CARD and placing in the space where the case file was found. For cases in storage, the SHD Writs Analyst contacts the file clerk in the Customer Service Unit to send request for retrieval.
5. If the case file is located in the file room, the SHD Writs Analyst gives it to the transcriptionist, emailing recording to be transcribed (if file too large a CD should have already been made and placed in the file as stated in #3). Then the SHD Writs Analyst enters information in the log sheet in two fields: in the RECEIVED FILE field, enter "in house" to indicate that the case file was on the premises, in the SENT FOR TRANSCRIPTION field enter the date the case file was given to transcriptionist.

NOTE: If case file had to be requested from archives, the SHD Writs Analyst enters in the log sheet the date the file was requested under REQ'T FILE FROM ARCHIVES. When the case file is received from file clerk the date is entered in the log sheet under RECEIVED FILE.

6. Once transcription is complete, the case file and the transcription of the hearing are returned to SHD Writs Analyst by the transcriptionist. The date the file was received from the transcriptionist is entered onto the log sheet (RECEIVED TRANSCRIPTION).
7. SHD Writs Analyst begins preparation of the preliminary Administrative Record by reviewing contents in case file and placing original documents in a predetermined order as listed below, using numbered tabs to separate documents:
 - Decision
 - Hearing request and AR form
 - Claimant and/or AR position statement

- County position statement
- Claimant's rehearing request (if filed for one)
- DHCS/State response to rehearing
- Transcript

This is not an exclusive list, some items listed above may or may not be in any given case file and there may be other documents that are pertinent to the case that would be included. Any documents requested by Petitioner that are not privileged or confidential, and relevant to the case, shall be included.

8. After original documents above have been put in order, the SHD Writs Analyst makes a complete copy of all documents, keeping them in order, placing the originals back in the case file.
9. Then the SHD Writs Analyst generates a cover page by using a coversheet TEMPLATE, changing case information to match claimant name, case number, county and benefit type. The cover page is saved in COMMON\ADMINISTRATIVE RECS FOR WRITS\COVER SHEETS using the claimant last name as the file name. A copy of the cover page is printed and placed on top of the documents. This is now a complete preliminary Administrative Record ready for review.
10. The SHD Writs Analyst gives the TB Administrative Law Judge Specialist the copy of the Administrative Record prepared above for review. The TB Administrative Law Judge Specialist reviews contents of cover sheet to make sure that documents are listed in correct order and may review decision to make an assessment of the possible outcome. If any changes need to be made to the cover sheet, the TB Administrative Law Judge Specialist will give the Administrative Record back to the SHD Writs Analyst for correction.
11. Once the TB Administrative Law Judge Specialist has signed the cover page of the preliminary Administrative Record, the final Administrative Record is ready for preparation. To do so, the SHD Writs Analyst makes one complete scanned copy of the preliminary Administrative Record including signed coversheet using a Bizhub machine to send to his/her email. (The preliminary Administrative Record is now placed in the case file for internal use).
12. The scanned document must be saved in the same folder where the transcription for the case is found in COMMON\ADMINISTRATIVE RECS FOR WRITS\DECISIONS TRANSCRIBED under last name of claimant. From that folder, the file can be dragged onto eCopy (must have access to this program, if not PCA must install on computer). Then follow steps below:
 - a. Click on DOCUMENT
 - b. BATES ENDORSEMENT

- c. CREATE/EDIT
- d. SAMPLE BATES STAMP
- e. BATES NUMBER TAB
- f. CHANGE # TO START AT 1
- g. CLICK OK
- h. YES
- i. OK (CONFIRM)

Then the file must be saved again to keep the changes made.

13. The SHD Writs Analyst then prints 4 copies of the final Administrative Record, collated in folders with labels (claimant name vs director/DSS, and superior court #) and delivers to legal to be distributed as follows:
 - a. CDSS Legal Division
 - b. Superior Court
 - c. Attorney General's Office
 - d. Petitioner's Counsel

Completed files are delivered to CDSS Legal Division in OB8, 5th floor.

DECISIONS PURSUANT TO COURT ORDER (DPCO) AND COMPLIANCE WITH DPCO AND INTERLOCUTORY REMANDS BY SUPERIOR COURT IN PENDING WRIT MATTERS

SHD Writs Analyst Responsibilities when a DPCO is Issued

1. Receive DPCO from Legal. If not dated, contact CDSS Legal Division to obtain dated copy.
2. Stamp DPCO with "RELEASED DATE" stamp and current date.
3. Review the DPCO for understanding and notify the TB Administrative Law Judge Specialist if the document is unclear.
4. Within 7 days of receiving the DPCO from Legal, the SHD Writ Analyst shall send the original DPCO to claimant (check updated address for claimant as needed) and make four copies to distribute as follows:
 - Attorney of record in the Superior Court case (if any)

- Authorized Representative (if any)
 - County (via SFT, fax or otherwise)
 - Case file
4. The SHD Writs Analyst will contact the county to verify compliance with the DPCO thirty days after sending the DPCO to the county. Once SHD receives notice of compliance from county, the SHD Writs Analyst sends a copy to CDSS Legal Division to the appropriate staff counsel and places another copy in the case file.
 5. If a new hearing is ordered in the DPCO, the SHD Writs Analyst enters the new case number for claimant with a notation as to why a new hearing is being held (can copy information from the court order itself). The case file, the DPCO, and the state court settlement agreement, if one is provided by the CDSS Legal Division attorney, are given to the Regional Presiding Judge of the region in which the original hearing was conducted for assignment to an Administrative Law Judge and scheduling.
 6. The SHD Writs Analyst makes 4 copies of screen print with new case number to be distributed as follows: case file, county, the SHD hearings scheduler and Legal Division (as proof of compliance).
 7. Notifies Legal Division of outcome of new hearing, providing copies of new hearing decision (process pending).

SHD Writs Analyst Responsibilities for Interlocutory Remand Orders from the Superior Court in Pending Writ Matters

1. The SHD Writs Analyst receives a copy of the interlocutory remand order issued by the Superior Court from the Legal Division attorney. A new case number for claimant is not entered into the system because the remand hearing is a continued hearing. As soon as possible after receiving the interlocutory remand order, the case file and a copy of the interlocutory remand order are given to the Regional Presiding Judge of the region in which the original hearing was conducted for assignment to an Administrative Law Judge and scheduling of the remand hearing.
2. The SHD Writs Analyst receives a copy of the Administrative Law Judge's decision issued after the remand hearing has been held. The Writs Analyst sends a copy of the decision to the Legal Division attorney.

DRAFT (updated 4/1/15)

