

CDSS State Hearings Division Postponement Procedures

A. Introduction

The mission of the State Hearings Division (SHD) is to resolve disputes of applicants and recipients of public benefit programs in an impartial, independent, fair and timely manner, ensuring that due process is met in accordance with federal and state law. To safeguard the timeliness of the delivery of due process throughout the hearing process, SHD implements the postponement request review process in this document pursuant to section 22-053.1 of the Manual of Policies and Procedures.

B. Key Concepts

The following concepts will apply as relevant throughout the procedures outlined in section C.

1. Good Cause

If a claimant requests a postponement, it may be granted upon the claimant establishing good cause per section 22-053.113, with an exception for first time CalFresh postponement requests. A postponement granted for good cause continues aid paid pending.

Section 22-053.113 provides a list of non-exhaustive examples of good cause established by the claimant that would result in a postponement:

- Death in the family (§ 22-053.113(a))
- Personal illness or injury (§ 22-053.113(b))
- Sudden and unexpected emergencies that prevent the claimant or the authorized representative from appearing (§ 22-053.113(c))
- A conflicting court appearance that cannot be postponed (§ 22-053.113(d))
- At the hearing, the claimant contends that he/she is not adequately prepared to discuss the issues because he/she did not receive an adequate notice required by section 22-071.1 and/or language-compliant notice required by section 21-115.2, and the Administrative Law Judge (ALJ) determines that the required notice was not received. (§ 22-053.113(e))
- The county, when required, does not make a position statement available to the claimant at least two working days prior to the date of the scheduled hearing, or the county has modified the

position statement after providing the statement to the claimant, and the claimant has waived decision deadlines contained in MPP section 22-060. (§ 22-053.113(f))

The Chief Administrative Law Judge or his/her designee may grant postponements prior to a hearing, with good cause deemed to the claimant to continue aid pending. At the hearing, the ALJ assigned to the hearing will decide whether a postponement shall be granted. Further examples¹ of what constitutes good cause postponements are:

- The claimant needs assistance in understanding issues and communicating at the hearing.
 - The claimant's crucial witness is unavailable due to illness and is unable to submit an affidavit.
 - The claimant requests a first postponement because he/she was unable to obtain legal assistance.
 - The claimant requests a second postponement to obtain legal assistance in a case involving potential criminal prosecution if the claimant was unable to obtain legal assistance after the first postponement despite a diligent effort to obtain such assistance.
 - The claimant arrived on time for a scheduled hearing that was significantly delayed due to other hearings and cannot wait any longer.
 - The parties mutually agree to postpone the case and there are no prior postponements.
 - The county did not provide the claimant with an opportunity to examine his/her case records as requested, pursuant to section 22-051.1.
 - The county fails to make available, upon request, specific policy materials, including regulations, necessary for an applicant or recipient to prepare for a state hearing.
 - If either party has not received notice of the time and place of the hearing at least ten days prior to the hearing and that party requests a postponement, per section 22-053.14.
 - A postponement based on information submitted by a county prior to a hearing or to the ALJ at the hearing.
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- Example: If the county is able to show that its intent was to go forward with the hearing and the county witness becomes unavailable due to an emergency, the sudden unavailability of the county's witness can be a basis for a good cause postponement.

¹ See CDSS Administrative Law Judge Manual ("Bench Book"), January 2009, for a discussion on postponement requests from which some of these examples are taken.

- Example: Prior to the hearing, the county informs the Chief Administrative Law Judge or his/her designee that the county's witness will be unavailable on the hearing date and a reason for the unavailability.

NOTE: County postponement requests will be carefully evaluated and only granted where there are exigent circumstances that warrant postponing the hearing, taking into account the claimant's right to a timely decision and the potential harm to the claimant from the delay. For example, where a crucial witness for the county has suddenly and unexpectedly become unavailable due to illness and there is no reasonable alternative method of proving the facts that the witness was expected to testify to, a postponement may be warranted, particularly if the hearing does not concern the claimant's current need for public social services. A postponement granted solely upon the county's request, even though "good cause" exists to grant the county's request, does not extend the decision due date because the request was not made by the claimant.

2. Department's Authority to Verify Information Related to Good Cause

Section 22-053.112 authorizes the Department to request verification from a claimant in evaluating good cause. In exercising this authority, SHD developed a postponement and reopening data gathering tool ("postponement request form") to assist SHD Customer Service with tracking information pertinent to requests. The postponement request form is used to elevate the requests for review by a Duty Judge or a Presiding Judge in select circumstances. The postponement request form is an internal tool for SHD procedures only.

a. Contacting the Counties Regarding Claimant Requests

In the course of verifying a claimant's request for postponement, Customer Service may also seek input from the county of involvement as necessary to complete a proper good cause evaluation. For example, it is appropriate to contact the county and provide details concerning the request when it is based on the county's failure to fulfill one of its duties in section 22-073, such as making the statement of position available prior to the hearing.

To promote consistency and to retain an accurate record of any contact made with the county, SHD will utilize the e-mail addresses submitted by the counties to Customer Service as the direct channel for communication between SHD and the counties, unless otherwise agreed with each county.

Upon request, an accurate copy of the postponement request verification e-mail exchange will be forwarded by e-mail to a claimant and/or authorized representative.

b. Contact with Parties Limited to Evaluation of the Postponement Only

Contacting the county must also be weighed against SHD's receipt of information that is not related to the issue for hearing but would violate HIPAA and impact confidentiality, such that any contact with the county would be limited to the facts surrounding the postponement request made rather than details concerning the hearing request itself.

3. No Good Cause

The regulations do not prohibit the granting of a postponement request made at the hearing absent good cause. Thus, if an ALJ applies discretion to grant a claimant's request for postponement but determines it is without good cause, aid paid pending will terminate and the ALJ will proceed to issue a DPA 284 – Aid Paid Pending Decision to the county for processing.

4. Aid Pending Hearing

As noted above, a postponement granted for good cause or deemed for good cause continues aid pending until the hearing. See generally 22-053.4. Section 22-053.42 reiterates that if a postponement is granted under section 22-053.133, the ALJ shall order that aid pending be continued only if the postponement was for good cause.

5. Impact on Decision Time Frame

Section 22-053.3 provides that any postponement granted at the request of the claimant automatically extends the decision due date, not to exceed 30 days for each instance. SHD provides the claimant with notice of this extended period of time.

6. Discretion of the Chief Administrative Law Judge and Designees

Sections 22-053.131 and .132 allows the Chief Administrative Law Judge or his/her designee to grant a postponement, deemed as with good cause, prior to the hearing. These two regulations are distinctly separate from assessing good cause based upon a claimant's request for postponement in section 22-053.11.

This discretion allows SHD to ensure necessary efficiencies during the prehearing process. It is applicable in situations such as, but not limited to, when a county presents information regarding being the incorrect county of involvement identified, whether joinder is appropriate, when the case is assigned to the wrong region, when the county has a witness unable to participate at the scheduled hearing, etc.

7. Exploring Options In Lieu of Postponement

As an alternative to a postponement, the claimant may be offered the option of proceeding with a telephonic hearing at the same time (especially where lack of transportation or child care is the basis for the postponement request), and/or given the option, to the extent feasible, of trailing their matter to another time-slot within the same calendar week.

Any arrangements that change the time or mode of the hearing shall be done with knowing and voluntary consent of both parties as such changes are absent the required ten day notice for a rescheduled hearing.

If the claimant will proceed by telephone on the same hearing day and established time, SHD will communicate with the county regarding the feasibility of providing the statement of position to the claimant in time for the hearing. Refusal to accept the telephonic hearing option is not a factor in the good cause determination for the postponement request. A claimant will not be forced to accept a telephone hearing.

8. "No Wrong Door"

As claimants are provided with the State Hearing Support Section's toll free number in the notice of hearing, the expectation is that most postponement requests are received through that route. However, on occasion, a claimant may contact a Regional Office directly. The Regional Offices and Customer Service will coordinate the response to ensure that a claimant calling SHD via any route will be served appropriately.

C. Procedures

1. Claimant's first postponement requested prior to hearing day:
 - a. CalFresh issue: SHD staff grants the request with aid pending continued.
 - b. CalFresh issue interrelated with CalWORKs or other program issue: SHD staff grants the request with aid pending continued.
 - c. Non-CalFresh issue, including ACA cases:
 - i. SHD staff grants the request based on the claimant establishing good cause.
 - ii. If good cause is not established, SHD staff will complete the postponement request form and elevate to the Review Judge.
 - d. In a. and b., SHD staff will inform the claimant that any future requests will require verification of good cause.
2. Claimant's second request, requested any time up to three days prior to hearing day:
 - a. SHD staff requests verification of good cause, with fax or email preferable, within the next seven days, no later than three days prior to the hearing

date. If claimant must mail, SHD staff will inform the claimant that verification is due three days prior to the hearing date.

- i. Example: Hearing scheduled for January 24th. Claimant makes the second request on January 20th, which is four days prior to hearing. SHD staff will request the claimant to submit the verification by January 21st, which is three days prior to the hearing date, to give the Review Judge time to review the request and to provide time to notify the county of the second postponement should it be granted.
 - ii. Example: Hearing scheduled for January 24th. Claimant makes the second request on January 12th, which is 12 days prior. SHD staff will request the claimant to submit the verification in the next seven days – by January 19th. This provides the Review Judge with time to review and both parties with ample time to prepare for a granted or denied postponement.
 - b. SHD staff completes the postponement form and forwards to the Review Judge once complete. If no verification received, the form will reflect the deadline expressed to the claimant to submit verification.
3. Claimant's second request made within the two days prior to the hearing day:
 - a. SHD staff requests verification of good cause immediately by fax or email in order to ensure review by the end of the day. If the claimant cannot provide verification that day, the Review Judge shall evaluate the postponement request based on the claimant's statements as reflected on the postponement form.
 - b. SHD staff completes the postponement form and forwards to Review Judge to review on the same day.
4. Claimant's third or more request for postponement prior to the hearing day:
 - a. SHD staff will first determine whether the case is under General Jurisdiction or ACAB to route as appropriate:
 - i. LARO and SDRO General Jurisdiction matters: Refer claimants residing in LARO or SDRO counties to the Regional Office Presiding Judge (PJ) or acting PJ for review. SHD staff will ensure that the Regional Office has the claimant's contact information in order to transfer the request to the Regional Office. This may also include forwarding the postponement request forms on record for the claimant's previous requests if the information is not captured in the SHD data base to enable the PJ to review.
 - ii. NRO General Jurisdiction matters: Refer claimants in the NRO to the Duty Judge (DJ) via the postponement request form.

- iii. ACAB: Refer claimants to the reviewing judge designated at the ACAB.
 - b. The respective reviewer (PJ, acting PJ, or DJ) will review the request to respond by the end of the day.
- 5. Claimant's requests made on the day of the hearing:
 - a. If the claimant appears at the hearing: The ALJ assigned to hear the matter shall decide whether to grant or deny the postponement request and if there is good cause for the request, in which case aid pending continues.
 - b. If the claimant contacts SHD staff prior to the hearing time: Route in accordance to C.4.a., for review; follow steps upon routing as outlined in C.5.c below.
 - c. If the claimant contacts the Regional Office directly or once SHD staff routes the claimant to the appropriate Regional Office/ACAB: Each Regional Office and the ACAB maintains its own procedure to ensure immediate review of the same-day request, communicate with the county and the claimant, and coordinate with queue clerks/finalize return calendar. The claimant will be directed as follows:
 - i. NRO counties of residence: NRO Duty Judge will review.
 - ii. LARO counties of residence: PJ/PJ designee will decide requests related to LA County. The PJ/PJ designee will connect all other claimants to the ALJ conducting hearings at other county sites. If the PJ/acting PJ is unable to connect with the line judge, the PJ/acting PJ will decide.
 - iii. SDRO counties of residence: PJ/PJ designee will receive the request and connect the claimant to the ALJ conducting hearings at the county site. If the PJ/acting PJ is unable to connect with the line judge, the PJ/acting PJ will decide.
 - iv. ACAB: ACAB PJ/acting PJ or the ACAB Duty Judge will review.
- 6. Postponements granted at claimant's request
 - a. The time frame for rendering a decision will be automatically extended.
 - i. Prehearing: SHD will issue a notice of the postponement granted and inform the claimant of the extension to the decision release due date.
 - ii. At hearing: judges must give the claimant a written notice that explains the time for rendering a decision is extended for a period not to exceed 30 days or orally advise the claimant that the time for releasing a decision will be extended for a period not to exceed 30 days.
 - b. The granting of a postponement without good cause will terminate aid pending.
- 7. Requests originating from the county/DHCS/Covered California: Under limited context, the state or county department initiating the action against a claimant may provide information to SHD warranting a request for postponement. Refer to Section B.1.

D. Inappropriate Granting of Postponements at Hearing:

Once the record is opened, the claimant and county representative sworn in, and evidence has been taken, the matter shall not be postponed. The judge has taken jurisdiction of the case and should conduct the hearing, even if it means continuing the case. Any exceptions should be approved by the appropriate PJ.

E. Quality Review

The State Hearings Division will establish protocols to review periodically the process of deciding postponement requests, which will include samplings of postponements granted and denied, to ensure that all individuals participating in the decision-making process are applying the policies and procedures that define when a postponement may be granted fairly and uniformly to those requests. These quality review meetings will also include a review of complaints received concerning the process.