



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



EDMUND G. BROWN JR.  
GOVERNOR

September 29, 2017

ALL COUNTY LETTER (ACL) 17-102

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY STATE HEARING REPRESENTATIVES  
ALL COUNTY SPECIAL INVESTIGATIVE UNIT COORDINATORS  
ALL COUNTY COUNSELS  
ALL ADMINISTRATIVE LAW JUDGES

SUBJECT: COUNTY HEARING REPRESENTATIVE'S PRE-HEARING  
RESPONSIBILITIES

REFERENCES: [Welfare and Institutions Code, Section 10952.5 \(as amended Stats. 2016, c. 522, Assembly Bill \[AB\] 2346, §1, eff. Jan. 1, 2017\);](#)  
[Evidence Code, Section 1152; Manual of Policy and Procedures](#)  
[\(MPP\) sections 21-001 through 22-073.37; All County Information](#)  
[Notice \(ACIN\) No. I-12-09 dated February 4, 2009; ACL No. 16-02](#)  
[dated January 20, 2016; ACL No. 17-21 dated February 16, 2017](#)

## INTRODUCTION

The purpose of this ACL is to provide clarification of the county hearing representative's responsibilities after a person has filed a hearing request and before the hearing is held. Although other state public-and-private agencies whose actions or inactions are subject to a state hearing have similar responsibilities, this ACL focuses on the execution of these pre-hearing responsibilities by county hearing representatives.

The Department acknowledges the county hearing representative's position is unique. Current regulations define a county hearing representative as: "An employee who is assigned the major responsibility for preparing and/or presenting a hearing case on behalf of the County Welfare Department (CWD)" (MPP, § 22-001(c)(7)). At the onset of being assigned a hearing request, the county hearing representative is an impartial party reviewing the facts of an action disputed by the claimant. After the review is completed, the county hearing representative determines the appropriateness of the county action, and has the authority to either order the county to take corrective action or defend the county's action at hearing. Additionally, prior to the hearing, the county

### REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☒ Initiated by CDSS

hearing representative is to provide claimants with information regarding the administrative hearing process, including the preparation of the Statement of Position (SOP) which provides information regarding the action(s) taken by a given county (MPP, §§ 22-073.232 and .25.).

## **AUTHORITY OF COUNTY HEARING REPRESENTATIVES**

Every state hearing request must be assigned to a county hearing representative, providing sufficient time for the county to fulfill its responsibilities under MPP, § 22-073, et seq. The county hearing representative shall not have had immediate prior involvement with the case that is assigned to them. (MPP, § 22-073.13). The determination of how to proceed with the case is the responsibility of the county hearing representative (MPP, § 22-073.13.).

Prior to the hearing, the county hearing representative shall ensure Aid Paid Pending is provided to the claimant as appropriate pursuant to MPP, § 22-073.1; identify the issues raised by the hearing request (MPP, §22-073.21); review the appropriateness of the disputed action(s) based on the existing evidence, as well as the applicable statutes, regulations and policies (MPP, § 22-073.22); determine whether the county can resolve the hearing issue by corrective action or whether the county should pursue a hearing (MPP, § 22-073.23.). The county hearing representative shall resolve any disagreements or misunderstandings at the lowest possible administrative level to avoid unnecessary hearings, and by regulation, is granted the authority to settle cases on behalf of the county (see also MPP, §22-073.231(a)).

County hearing representatives are given the authority to make determinations on behalf of the county about whether or not a case should proceed to hearing and how to resolve the case throughout the hearing process. For more information, refer to ACIN No. I-12-09 "Authority of County Appeals Representatives to Settle a Case" (February 2, 2009). When a case is assigned, the county hearing representative assumes full responsibility for the case and is authorized to make binding agreements and stipulations on behalf of the CWD (MPP, § 22-073.37) in all cases. The CWDs shall not require the county hearing representative to seek prior approval before entering into an agreement with a claimant to resolve any aspect of the issues for hearing.

## **REASONABLE ACCOMMODATIONS**

When preparing for a hearing, the county hearing representative, in contacting the claimant, must be aware of and become informed of the claimant's need for a reasonable accommodation due to a disability or lack of English language proficiency, and must provide the necessary auxiliary aid or services consistent with the requirements in MPP, § 21-115, "Provisions for Services to Applicants and Recipients Who Are Non-English Speaking or Who Have Disabilities."

## **COMMUNICATIONS WITH CLAIMANTS REQUESTING LANGUAGE SERVICES**

When the claimant has indicated that his/her primary language or preference to communicate is a non-English language, the county is required to use forms or documents that have been translated by the California Department of Social Services (CDSS) into the claimant's preferred language when communicating with the claimant. When CDSS has not translated the form/document, all written communication with non-English speaking claimants must include a GEN 1365 "Notice of Language Services" form if the claimant's language is on the form. The GEN 1365 includes instructions on how to obtain interpreter services for written communications.

All verbal communication with non-English speaking claimants must occur in the claimant's primary or preferred language using an interpreter at no cost to the claimant. This includes case file review. The county shall also notify the State Hearings Division (SHD) if the claimant has requested an interpreter or if the case is flagged for language services. (MPP, § 22-073.241.)

## **PRE-HEARING ISSUE IDENTIFICATION**

If the hearing request does not clearly set forth the claimant's basis for the hearing, the county hearing representative shall immediately attempt to contact the claimant or the claimant's Authorized Representative (AR) for clarification and/or identification of the issues. (MPP, § 22-073.211.) The county hearing representative shall document all attempts to contact the claimant and/or AR, and their review of the case record.

When a county hearing representative is unable to reach the claimant or AR prior to the hearing and cannot determine the issue from the hearing request, the county hearing representative is encouraged as a best practice to do a review of the case file for the period 90 days prior to the hearing request to determine the actions taken by the county. The county hearing representative shall contact the eligibility worker and other county personnel as appropriate. (See MPP, §§ 22-009.2 and 22-073.221.)

After determining the issues, the county hearing representative shall conduct a review of the issue(s) and determine the appropriateness of the county action. (See MPP, § 22-073.22.)

If a county hearing representative has attempted to contact the claimant or AR prior to the hearing without success and thoroughly reviewed the case file (including contacting the county worker), but still cannot determine the issue(s)/action(s) being challenged, the county hearing representative should prepare a "limited SOP." The limited SOP should provide as much background information as possible including household composition, aid being received and an explanation of the county hearing representative's attempts to determine the issue(s) for hearing, including contacting the county worker and documented attempts to contact the claimant or AR.

At the hearing, if the county is proceeding on a limited SOP, the Administrative Law Judge (ALJ) shall attempt to determine the issue(s) and whether the hearing should occur, be continued, or be held open, to allow both parties to submit additional information. (MPP, § 22-053.13.)

## **REVIEW OF COUNTY ACTION AND HEARING ISSUES**

Once the county hearing representative has determined the issue(s), the county hearing representative shall review the applicable statutes, regulations and policies about the evidence contained in the case record. (MPP, § 22-073.22, et seq.) Following this review, the county hearing representative must determine whether the county's action was appropriate, in which case an SOP must be prepared (MPP, § 22-073.25), or inappropriate, requiring corrective action from the county. Any disagreements or misunderstandings shall be resolved quickly at the lowest possible administrative level to avoid unnecessary hearings. (MPP, § 22-073.23.)

When the county hearing representative concludes that the county action was appropriate, the county hearing representative shall attempt to contact the claimant and/or AR as soon as possible to explain the basis and regulatory support for the action taken. During this conversation, the county hearing representative must be careful not to imply the claimant or AR cannot or should no longer go to his/her hearing. Even when the county hearing representative believes that the county's action was appropriate, it is important that the claimant and/or AR be made aware the hearing is his/her right, s/he can still disagree with the county's finding(s), and attend the hearing to have an ALJ make a formal finding. If the claimant or AR indicates that s/he no longer wants to have a hearing, the county hearing representative will explain to the claimant and/or AR the right to withdraw the request for hearing. Under no circumstance, however, is the county hearing representative permitted to request such a withdrawal.

The claimant and/or AR shall be provided with contact information to any free legal representation. (MPP, § 22-073.232(c).)

The county hearing representative shall inquire if the claimant and/or AR plans to attend the hearing and determine whether there are additional issues in dispute. The county hearing representative must also provide the claimant and/or AR with all information that could be of assistance in preparation for the hearing. (MPP, § 22-073.232, et seq.) This assistance shall include informing the claimant and/or AR about all relevant regulations and evidence, including those that are favorable to the claimant's case. (MPP, § 22-073.232(c).) County hearing representatives should also inform the claimant and/or AR that s/he has the right to review his/her case file before, during and after the hearing by calling and making arrangements two business days in advance. Any claim of privilege or confidentiality that the county makes shall be raised at the time that the claimant asks to review his/her file, as discussed below.

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or claimant, for which they have jointly agreed to discuss, prior to or at the hearing. (MPP, §22-049.5.) In cases where the additional issue(s) is/are discussed and the county hearing representative believes corrective action can resolve the issue(s), but the claimant or AR disagrees with the proposed terms of the corrective action (e.g. conditional withdrawal), the hearing will proceed and the county hearing representative shall offer to stipulate to the intended corrective action on the record. If the claimant still chooses to reject the county's stipulation, the ALJ will review the merits of the case and issue a decision. (MPP, § 22-073.37.) Any prehearing settlement discussions between the parties discussed at hearing shall not prejudice the claimant in any manner. (Evid. Code § 1152, subd. (a).)

### **CONDITIONAL WITHDRAWALS**

If the county hearing representative concludes that the county's action was inappropriate or that the evidence does not support the county's action, the county hearing representative shall contact the county worker to have the action corrected and follow-up to inquire whether all appropriate actions have been completed in a timely manner. The county hearing representative shall also contact the claimant and/or AR to inform them of the case findings and that their county worker is correcting the action, and to offer an agreement to resolve the issue without a hearing. The county hearing representative has the authority to make such a decision. A conditional withdrawal is usually appropriate for such circumstances (MPP, §§ 22-073.231 and 22-073.231(a)).

The language contained in a conditional withdrawal shall provide specific information regarding the respective duties of the county and claimant, as appropriate, necessary for the action to be corrected. As an example, a conditional withdrawal that merely states the county "will re-review its action" would be insufficient. A sufficiently detailed Conditional Withdrawal of Request for Hearing form (DPA 315) is one that states the specific program and issue to be reevaluated, that the claimant agrees to provide any information needed to complete the reevaluation or cancellation of the county action, and that a new adequate notice informing the claimant of the outcome of the reevaluation, or cancellation of the county action, will be issued by the county. For example, the terms of a conditional withdrawal shall include the time frame of the county action to be reevaluated or cancelled, the effective or eligibility date based on a reevaluation, reassessment or cancellation of the county action, etc. For overpayment or over issuance cases, the conditional withdrawal must include the claim numbers, amounts, and time frames to be reevaluated or cancelled.

Conditional withdrawals should always be in writing. When a claimant and county hearing representative agree to enter into a conditional withdrawal, the county should provide a written copy to the claimant as soon as possible to promote early resolution of the case.

The county must monitor the county's compliance action and ensure that the required corrective action is completed within 30 days of the agreement.

In all instances, the county hearing representative must be prepared to attend the hearing if the claimant and/or AR choose to attend. If the issue(s) for the hearing is/are still unclear on the day of the hearing [e.g. no Notice of Action (NOA) and the claimant or AR did not respond to the request to clarify the issue(s) prior to the hearing day], the county hearing representative should attempt to meet with the claimant or AR prior to the hearing being convened and seek clarification from the claimant or AR as to what the hearing issue(s) is/are and, if possible, resolve the issue(s).

### **POSTPONEMENT REQUESTED BY COUNTY**

In cases where the issue(s) is/are identified on the day of the hearing and the county hearing representative and the claimant or AR cannot come to an agreement that resolves the hearing issue(s), the county may request a postponement if not prepared to go forward based on the issue(s) the claimant or AR identified on the day of the hearing.

In such cases where the county is asking for a postponement, the ALJ may question the county hearing representative about his/her attempted contacts with the claimant and/or AR, the prehearing review of the case record, particularly for actions taken by the county in the 90 days preceding the request for state hearing, and contacts with the claimant's county worker(s). The county hearing representative must be prepared to provide testimony or evidence of these attempts to independently determine the issue. If the county provides this information, and the claimant and/or AR wishes to proceed, the ALJ has the discretionary authority to postpone the hearing to give the county additional time to prepare. (MPP, § 22-053.133.)

### **ACCESS TO CASE RECORDS PRIOR TO HEARING**

After the claimant or AR has filed a hearing request, the claimant may request to review the case file before the hearing is held. ACL No.16-02, "Access to Public Assistance Case Records Reminders and New Case Record Inspection Request Form" (January 20, 2016), provides additional information. This review includes the claimant's right to copies of documents from the case file at a charge related to the cost of reproduction except in the CalFresh program, where copies are made available at no charge. (MPP, §§ 22-051.3, .31.)

The claimant's right to review the entire contents of the case record pre-hearing may be challenged by the county claiming confidentiality or privileged communications and/or information. Should the county hearing representative deny the claimant or AR access to certain documents based on privilege or confidentiality, county hearing representatives are advised to prepare and present to the claimant or AR ATTACHMENT A, "Access to Case Records Documents," upon request for case

access, following a request for subpoena, or at the state hearing, setting forth the specific reason(s) for withholding the document(s).

Any welfare fraud investigation information from an active investigation (i.e., in progress) relating to the application, receipt, or misuse of public assistance by the recipient, adult or head of household in or out of the home is confidential. The exception to this would be any non-privileged, non-confidential information that the CWD has used or relied upon in making its decision in taking an administrative action and either a hearing on those issues has been requested or an Administrative Disqualification Hearing (ADH) pertaining to that administrative action has been initiated. (See ACL No. 16-02.)

When the claimant or AR challenges the county's claim, the ALJ will convene an *in-camera* proceeding. Please see ATTACHMENT B, "*In-Camera Process*," for details.

## **THE STATEMENT OF POSITION**

By the time the case reaches the hearing stage, the county hearing representative will have produced either a full SOP, supporting the county's action(s), or a limited SOP, detailing the county hearing representative's attempts to contact the claimant and/or AR and to develop the issues. A copy of the SOP shall be made available to the claimant and/or AR at least two working days prior to the hearing. ACL No. 17-21, "Providing Statements of Position to Claimants Before a State Hearing" (February 16, 2017), gives additional information following the recent revision to section 10952.5 of the Welfare and Institutions Code.

The SOP must clearly outline the facts the county is alleging, the legal authority that the county relied on when taking the contested action (including but not limited to statutes, regulations, and state/county policies), and the facts illustrating how a specific authority supports the action taken. The limited SOP is an exception to the following practices.

The county hearing representative shall prepare a typewritten position statement that summarizes the facts of the case and sets forth the regulatory justification for the county's action. (MPP, § 22-073.25.) For claimants or ARs to understand the county's action, the discussion of why the facts lead to the county's action should include citations to the regulatory authority. County hearing representatives should remember to write the SOP at a 6th grade level, avoiding multi-syllable words, technical phrasing and acronyms, when possible. When it is not possible to avoid their use, county hearing representatives should define or explain the technical phrase, acronym, etc.

A complete SOP shall include, as attachments, copies of all documentary evidence relied upon to write the SOP (including documents referred to in worker notes or third party testimony used to reach a given conclusion) and a list of witnesses that the county intends to call during the hearing. (MPP, § 22-073.251, et seq.) Similarly, if the issue deals with the amount of aid, grant adjustment, or a demand for repayment, the SOP

must include a complete final budget computation, month by month, for the period at issue. (MPP, § 22-073.251(a).)

The SOP should never include irrelevant statements that are judgmental or not supported by evidence, such as “The County doesn’t believe that the claimant is entitled to benefits and has never believed that claimant was ever eligible.” In contrast, a relevant statement would be, “The County rejected claimant’s evidence of ‘X’ because it is contradicted by Exhibits 1 & 2 she previously submitted as well as by her prior statements.”

As a best practice, an SOP should be formatted as described below:

1. Provide a statement about the county’s action or inaction:
  - a. A statement of the **Issue(s)** being presented as identified by the parties.
  - b. Listing of the relevant **Facts** leading to the issuance of the NOA or the hearing request that support the county’s position.
    - i. If the county is alleging lack of jurisdiction, the Facts shall include reference to the date that the contested NOA was mailed, the address to which the NOA was sent, the language preference indicated by the claimant and whether the NOA was in the claimant’s preferred language, that all legal adequacy requirements under the regulations were met, and any information the county has that supports a finding that the NOA was received by the claimant.
    - ii. If the request for bifurcation contains all the required information for an SOP, the letter requesting bifurcation may be used as the SOP for the jurisdiction issue, providing it clearly states the basis for challenging jurisdiction.
    - iii. The County must also still prepare an SOP on the substantive issue, unless the hearing was ordered bifurcated prior to the hearing.
  - c. County hearing representatives should check, and provide any **Evidence** in the SOP, that the NOA was, in fact, mailed, and not merely put in a print queue.
    - i. If the county is relying on a notice sent out as part of a mass mailing, then the county hearing representative should include a copy of the individual notice sent to the claimant, or other proof of mailing to the individual claimant, and should not simply assert that “everyone received that notice.”
    - ii. The county may cite Evidence Code, Section 641, in its SOP stating there is a presumption that the NOA was received if it was correctly



addressed and mailed. However, the county should not rely on this presumption alone. The county should present as much evidence as possible to establish that the NOA was received. Such evidence can include, but not be limited to establishing that the claimant's address was his/her current address at the time of mailing, as well as presenting evidence it sent the claimant other NOAs to the same address that were not returned as undeliverable and that the claimant undisputedly received.

**2. The Authority** that the county relied upon when taking the contested action(s):

- a. Regulations, statutes, and/or state/county policies.
- b. Other authority. This would include ACL's and ACIN's, state Policy Interpretations, etc.
  - i. For issues in which county discretion is permitted, the SOP must refer to, and include, the county's written policy as an attachment.
  - ii. The county shall offer a settlement if it fails to have a written county policy when the county discretionary policy was the basis for the action.
  - iii. It is recommended that references to specific regulations be contained within the "Facts" section of the SOP.

**3. Final Remarks and Conclusions** providing the connection or bridge between the facts, regulatory authority and the county's action taken.

4. All evidence as **Attachments**, used to develop the SOP, must be copied and attached to the SOP, including evidence that may not support the county's case.
  - a. It is recommended that reference to the specific evidence (i.e. Attachments) be contained after the corresponding fact. (e.g. the claimant failed to submit his/her QR-7 on time. (See Attachment X).)
  - b. For lengthy SOPs, it is recommended that all pages be labeled at the bottom providing the page number.
  - c. The SOP will identify documents that are being withheld due to privilege and the reason for that claim, with enough specificity to identify the document without revealing privileged information. For example, an SOP should identify that medical document X is being withheld because it contains privileged information regarding a third party. If the privilege may be maintained by redacting the document, the redacted document shall be provided.

- d. Regarding the issue of withholding of documents as privileged or confidential, please see ATTACHMENT A:
  - iii. This form may be used by the county hearing representative for purposes of the state hearing to identify the reason(s) why access to the case record documents or information was/were limited, again for purposes of the state hearing, due to the county's claim the document(s) is/are privileged or confidential.
- 5. A list of all **Witnesses** the county intends to use during the hearing shall be attached to the SOP or cited at the end of the SOP, with the witnesses' names and titles.
  - a. It is recommended that a short summary of the testimony that the witnesses will provide be included, either in the body of the SOP or within the witness list (e.g. "Social worker will testify to observations made while in claimant's home."). (MPP 22-073.251.)
  - b. If the summary of testimony is included in the body of the SOP, the SOP should identify the witness by name to allow claimants/ARs to know which witness will be testifying to what aspect of the case.

Sincerely,

***Original Document Signed By***

MANUEL A. ROMERO  
Deputy Director and Chief Administrative Law Judge  
State Hearings Division

Attachments

**ATTACHMENT A  
ACCESS TO CASE RECORD DOCUMENTS  
AT STATE HEARING**

For purposes of this state hearing, the county has given the claimant/Authorized Representative limited access to information in the claimant's case file. The county maintains, with the assistance of County Counsel, that some of the documents contain privileged or confidential information. Accordingly, the county has removed all privileged or confidential documents, or has partially redacted information on documents, from the claimant's case record for the reason(s) listed below:

☐ Confidential information about another adult or head of household in or out of the home. The county can authorize inspection of this information could be provided if the person signs a release form giving permission.

Number of Removed/Redacted Documents: \_\_\_\_\_

☐ Mental health records of the public assistance recipient in which the health care provider has indicated disclosure could be harmful to this person's health if seen by him or her.

Number of Removed/Redacted Documents: \_\_\_\_\_

☐ Whereabouts of an absent parent received from a Child Support Agency.

Number of Removed/Redacted Documents: \_\_\_\_\_

☐ Child Protective Services reports or information regarding the whereabouts of children removed from the home by Child Protective Services.

Number of Removed/Redacted Documents: \_\_\_\_\_

☐ Other \_\_\_\_\_

Number of Removed/Redacted Documents: \_\_\_\_\_

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_  
Name and Title of Preparer

## **ATTACHMENT B**

### ***IN-CAMERA* PROCESS**

To provide a forum for parties to allege privileges or confidentialities, the ALJ may conduct an *in-camera* proceeding when the hearing is conducted. The following are SHD's guidelines for how to conduct an *in-camera* proceeding:

1. The party asserting the privilege or confidentiality must make an offer of proof to the ALJ as to why an *in-camera* proceeding is needed, and the opposing party shall be given an opportunity to agree or disagree as to the need for an *in-camera* proceeding;
2. The ALJ has the discretion to order an *in-camera* proceeding;
3. If held, the *in-camera* proceeding must be recorded on a separate record from the hearing;
4. Only the party or the party's Authorized Representative asserting the privilege or confidentiality may be present as the information alleged to be privileged or confidential is presented to the ALJ, unless this party consents for other party to attend and/or the ALJ deems their presence is appropriate;
5. Following presentation of asserted privilege or confidential information to the ALJ, both parties shall be provided the opportunity to argue their positions before the ALJ as to the allegation of privilege or confidentiality, or relevance of the information to the matter at hand;
6. The ALJ will determine whether all or part of the information is privileged or confidential, as well as determine the relevance of the information to the matter at hand. If the information is determined to not be relevant, a determination about whether the information should be excluded based on privilege or confidentiality does not need to be reached;
7. The ALJ shall exclude all or any portion of the information if disclosure is forbidden by law, or, as a matter of justice, the reason(s) for finding the information privileged or confidential outweigh(s) the reason(s) for not finding the information privileged or confidential.;
8. If only part of documentary information is excluded, the party asserting the privilege or confidentiality will be responsible for redacting that portion of the excluded document prior to admittance of the information at hearing;
9. The party asserting the privilege or confidentiality may be ordered to disclose the information that the ALJ orders to be disclosed; if that party refuses, the information shall be excluded from the record, and shall not be considered or relied upon in any way by the ALJ when rendering his or her decision;
10. Any part of the information which the ALJ orders excluded cannot be admitted into evidence, nor can the ALJ in any way consider or rely upon any information that has been excluded in order to render a decision;
11. The recording of the *in-camera* proceeding must be preserved for subsequent review.
12. Where a document is deemed admissible, the ALJ may need to provide the other party time to respond by either continuing the hearing or holding the record open for response and rebuttal.

13. When reconvening the state hearing, the judge shall summarize on the record the decision s/he made regarding the assertion of privilege or confidentiality, and the ALJ will include a summary of the proceeding in the proposed decision when appropriate.