

# *Office of Hearings & Appeals*



## *Fair Hearing Basics*

### ***Introduction***

An individual or household that applies for or receives public assistance benefits (Alaska Temporary Assistance, Adult Public Assistance, Child Care Assistance, Chronic and Acute Medical Assistance, Heating Assistance, Food Stamps, Medicaid) administered by the State of Alaska Department of Health and Social Services (Department) has the right to request a hearing if the Department:

- a. Denies an application, or
- b. Does not act promptly on an application, or
- c. Modifies or terminates benefits.

The Office of Hearings and Appeals (Office) is a separate office located in the Department of Health and Social Services that is responsible for holding these hearings, which are called “Fair Hearings,” and deciding the dispute. This Office is staffed by impartial Hearing Officers (referred to as “Hearing Authority”) who do not work for the various divisions/offices of Department (for example, the Division of Public Assistance) that made the challenged decision or action. These Hearing Officers also did not participate in the decision or action taken by the Department that is being challenged.

The Hearing Officers conduct the hearing and issue the decisions. Both sides, the individual and the Department, present testimony, witnesses, and evidence. The hearings are not as formal as trials in state court, and do not use formal court rules. The Alaska regulations that govern how a hearing is requested, and conducted are contained at 7 AAC 49.010 through 7 AAC 49.900 ([http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=\\*/doc/{t36856}](http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=*/doc/{t36856}))).

This following is a short explanation of the Office of Hearings and Appeals fair hearing process. If you still have questions after reading this guide, you may wish to contact the agency representative.

### ***1. Purpose of the Fair Hearing.***

\*Opportunity to challenge the agency’s action.

\*Opportunity to be heard by an impartial person who does not work for the agency.

## ***2. Who is the Hearing Authority?***

\*An IMPARTIAL decision maker who DOES NOT work for the Agency.

\*Impartial means the Hearing Authority does not represent either side.

\*The Hearing Authority conducts the hearing and makes the decision.

\*The Hearing Authority does not offer legal advice.

## ***3. What Does the Hearing Authority Know About My Case?***

\*The Hearing Authority considers only the hearing record, which is admitted documents and the recorded hearing.

\*The Hearing Authority does not have access to records from any state agency.

\*The Hearing Authority listens to both sides, yours and the agency's.

\*The Hearing Authority considers testimony, documents submitted by the parties, laws, regulations and policies when making its decision.

\*The Hearing Authority does not investigate facts outside of what is presented by the parties.

## ***4. Your Rights at a Fair Hearing.***

\*You can appear in-person or by telephone.

\*You can appoint anyone to represent you, including an attorney.

\*You can present your side.

\*You can present documents.

\*You can call witnesses or question the agency's witness.

\*You can challenge documents presented by the agency.

\*You can request one postponement prior to the hearing.

## ***5. What Usually Happens at a Fair Hearing?***

Usually, the people at the hearing are: you, the Hearing Authority, the agency's representative, and any witnesses. The hearing is recorded.

### **A. Preliminary Matters**

At the beginning of the hearing, the Hearing Authority:

- \*Identifies everyone present.
- \*Administers the oath.
- \*Reviews hearing rights.

### **B. Agency's Presentation**

- \*After completion of preliminary matters, usually the agency will present its side, including witnesses.
- \*Listen carefully and write down anything said that you want to question.
- \*After the agency representative has finished, it will be your turn to ask the agency representative or its witnesses questions.

### **C. Your Presentation**

A chance to tell your side:

- \*You should explain what you think happened, step by step, so that the Hearing Authority understands your position.
- \*In presenting your argument, you will be allowed to present witnesses and admit documents relevant to the issue in dispute.
- \*You may wish to testify and/or call witnesses.
- \*After you and your witnesses testify, the agency's representative will have an opportunity to cross-examine (ask questions).
- \*The Hearing Authority may also have questions for you and your witnesses.
- \*You should also identify all documents you have offered as evidence and explain why you think they are important to the issue.

### **6. Important Points to Remember When You Testify at a Hearing.**

- \*Be completely honest.
- \*Be courteous.
- \*Answer only the questions asked.
- \*Keep answers simple and on point.
- \*Before answering a question, make sure you understand the meaning of the question.

- \*Do not guess, if you do not know the answer to a question, say so.
- \* If you don't remember something, simply say, "I do not remember."
- \*If asked to make an estimate, make sure everyone understands that it is ONLY an estimate.
- \*You can usually explain your answer to make certain the Hearing Authority understands you.
- \*If you are present in-person, look at the Hearing Authority when answering questions.
- \*If there is an objection by either side, stop talking immediately.
- \* Remain calm.

### ***7. Important Points to Remember Throughout the Hearing.***

- \*If you are taken by surprise or confused about what to do next, ask the Hearing Authority for direction.
- \*The Hearing Authority will control the hearing to prevent intimidation or discourtesy.
- \*During breaks or after the hearing is adjourned, please do not talk to the Hearing Authority about the issue.

### ***8. Ways to Prepare For a Fair Hearing.***

Before your hearing, you should:

- \*Review the agency's position statement for accuracy, laws, regulations and policies the agency relied on to make its decision, and witness list.
- \*Prepare a list of points you intend to make at the hearing.
- \*Collect all the documents relevant to the issue in dispute and submit copies as soon as possible to the agency representative and hearing office.
- \*Ask anyone you think could provide information relevant to the issue in dispute to appear as a witness and testify on your behalf at the hearing. You must make these arrangements.
- \*Review with your witnesses for the hearing the questions you will ask at the hearing.
- \*Prepare a list of questions to ask the agency representative, the agency's witnesses, and your witnesses.
- \*Prepare an opening statement, which is a short presentation given to the Hearing Authority regarding what you believe the relevant facts and issues are in the case. Keep in mind this is just an introduction; your statement should be brief.

### ***9. Important Terms to Remember.***

Agency's Position Statement: A packet of material which includes the facts as the agency sees them; documents the agency wishes to be admitted to the record; and the laws, regulations, policies, and court cases the agency believes supports its action.

Agency Representative: The person who represents the agency during the fair hearing process.

Argument: In your words, why you think the action the agency took is wrong. You can briefly describe the witness testimony and documents supporting your position.

Client Representative: You or a person who you wish to represent you during the fair hearing process.

Closing Statement: A short presentation given to the Hearing Authority which includes anything you wish to say that has not been said and a short summary of why you believe the Hearing Authority should find in your favor.

Documents: Written materials. Examples of documents are medical documentation; rental agreements; paycheck stubs; phone records; utility receipts; written correspondence with the agency; agency's case file information; etc.

Evidence: Testimony or documents relating to the issue or issues to be decided by the Hearing Authority.

Hearing Authority: A Department of Health and Social Services employee who is impartial and does not work for the agency. This person conducts the hearing and makes the decision.

Hearing Record: The record includes all admitted documents and the recorded hearing.

Issue: The matter in dispute between yourself and the agency.

Objection: You and the agency have the right to object to any of the evidence that is being offered. A reason will have to be given for objection. Examples of reasons for the objections are not having seen the evidence before the hearing; not knowing that it would be used; evidence is not related to the issue in dispute; etc.

Opening Statement: A short presentation given to the Hearing Authority regarding what you think the relevant facts and issues are in the case.

Testimony: Sworn statement given by you, the agency, or a witness at the hearing.

Witness: A person, including yourself, who testifies regarding facts pertaining to the issue in dispute.