

# WHAT HAPPENS AFTER THE NOTICE OF ACTION?



Disability  
Rights  
California



February 2022

# TRAINING OVERVIEW



The Notice of Action and  
appeal



Preparing for the  
hearing



At the hearing



After the  
hearing



## EMILIO

Mrs. Macias gets a Notice of Action (NOA) dated April 1, 2022 terminating IHSS protective supervision for her 12 year-old son Emilio who has autism and auditory processing disorder because:

- He is self-directing
- Does not need 24/7 supervision.



## NOTICE OF ACTION



Explains eligibility and/or services for any CA public benefit

Used to notify a recipient of a denial, change, or termination of services or eligibility



## NOTICE OF ACTION

Adequate notice – what does this mean?

1. Intended action
2. Reason(s) for the action
3. The specific regulations or laws supporting the action
4. An explanation of the right to request a hearing
  - Appeal within 90 calendar days of the decision
  - Aid-paid-pending



## NOTICE OF ACTION

Aid Paid Pending (Front page of IHSS NOA)

Date of NOA: 4/1/2022

As of May 1, 2022 the services you can get and/or the amount of time you can get for services has changed. Here's why:

Total HRS:MINS of IHSS you can get each month is now:\_\_\_\_\_. This is a/an increase/decrease of \_\_\_\_\_.

You will now get the services shown below for the amount of time shown in the column...



## NOTICE OF ACTION

5. Deadline to request hearing and how to request it
6. Information the county still needs

Needs to be language compliant





## NOTICE OF ACTION

What is timely notice?

A written notice that is mailed to the person affected at least 10 days before the effective date of the action.





## NOTICE OF ACTION

Additional information in IHSS NOA:

- A description of each task for which need is assessed
- The number of hours authorized to complete the task
- The hours for tasks increased or decreased and the difference from previous hours authorized



## NOTICE OF ACTION

Things to consider:

- Interpreter?
- Reasonable Accommodation?
- Subpena?
- Continue the hearing?: See [https://www.cdss.ca.gov/shd/res/pdf/SHD\\_PostponementProcedures.pdf](https://www.cdss.ca.gov/shd/res/pdf/SHD_PostponementProcedures.pdf)
- In-person, by phone, video, home, other?
- Expedited hearing?
- Length of hearing





## NOTICE OF ACTION

What will the state fair hearing office do?

- Letter confirming receipt of appeal, hear from appeals specialist
- Letter from appeals specialist/representative
- Letter with date, time, place of hearing



## NOTICE OF ACTION

Where to find info on SFH procedures:

**CDSS:** <https://www.cdss.ca.gov/reporting/hearings-and-appeals>

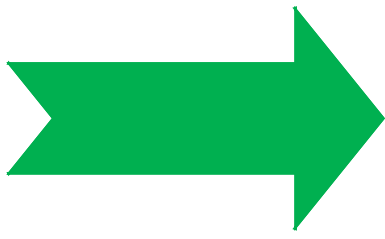
**MPP 20-000:**  
<https://cdss.ca.gov/ord/entres/getinfo/pdf/4cfcman.pdf>

**ALJ BENCH BOOK:**  
<HTTPS://IHSSADVOCATE.COM/WORDPRESS/WP-CONTENT/UPLOADS/ADMINISTRATIVE-LAW-JUDGE-MANUAL.PDF>



# PREPARING FOR THE HEARING





## PREPARING FOR THE HEARING

### 1. Identifying the issue(s):

- NOA
- Conversation with Appeals Specialist/Representative
- Review your file MPP 20-051.1
- County's position statement



# PREPARING FOR THE HEARING

## 2. Understanding the law

Manual of Policies and Procedures (MPP):

[https://cdss.Ca.Gov/inforesources/letters-regulations/legislation-and-regulations/adult-services-regulations\\_\(30-700...\)](https://cdss.Ca.Gov/inforesources/letters-regulations/legislation-and-regulations/adult-services-regulations_(30-700...))

All County Letter 15-25:

<https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-25.pdf>

DRC:

<https://www.disabilityrightsca.org/publications/in-home-supportive-services-ihss>



## PREPARING FOR THE HEARING

Understanding the law (cont.) - criteria for protective supervision:

- Non self-directing due to mental impairment/mental illness?
- Likely to engage in potentially dangerous activities
- Need more supervision than minor same age who is not mentally disabled? (for minors only)
- 24/7 need





## PREPARING FOR THE HEARING

### 3. Identify and gather evidence

- IEP ? Triennial?/ IPP?: accurate and current needs. *Important that all documents be consistent!*
- Doctor/specialist records and/or letter





## PREPARING FOR THE HEARING

Identify and gather evidence (cont.)

SOC 821 – shall not be determinative: MPP 30-757.173 (a)

- Memory – recall learned behaviors and information, short and long term
- Orientation – awareness of time, place, self and other individuals in one's environment
- Judgment – make decisions so as to not put self in danger; understands risks and consequences of actions



## PREPARING FOR THE HEARING

Identify and gather evidence (cont.)

- ABA provider
- Witnesses

Declarations, by phone, in-person?

- What happened at the home evaluation?

Practice tip: have someone present to write down what was asked, answered, length of evaluation...





## PREPARING FOR TE HEARING

Identify and gather evidence (cont.)

- Hazard log
- Regional Center (age and equivalent functioning level, describe how the person has poor memory or judgment; confusion; or disorientation). C-Der?
- Other?



## PREPARING FOR THE HEARING

### 4. Preparing your position statement



1. Not required but helpful

2. Usually provide on the day of the hearing  
or provide sooner?



# PREPARING FOR A HEARING

## 5. Preparing your questions for witnesses

- Social worker
- Your witness(s)
- Other(s)?





## PREPARING FOR A HEARING

Things to consider:

- Invite your regional center service coordinator to attend and help advocate/explain the person's needs.
- Make notes of what you want to say to the ALJ (if no position statement)



## PREPARING FOR A HEARING

What is a Conditional Withdrawal?

- Appeals Specialist may offer this before the hearing to try to settle the case: If agree – no hearing, if don't agree – go to hearing
- Make sure understand what agreeing to (ask the Appeals Specialist to explain it)
- You can change your mind after you signed and proceed with the fair hearing



# AT THE HEARING



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)



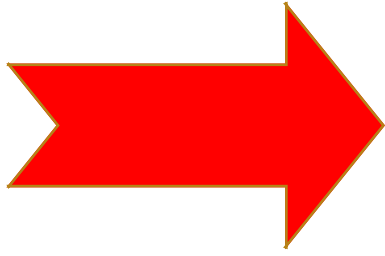
## AT THE HEARING

Who will be at the hearing?

- Administrative Law Judge (ALJ)
- Appeals specialist/representative
- Social worker
- You (Claimant)
- Your Authorized Representative
- Form:

<https://www.Cdss.Ca.Gov/cdssweb/entres/forms/english/dpa19.Pdf>

- Witnesses
- Interpreter

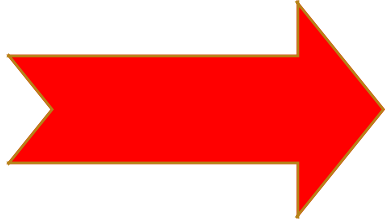


## AT THE HEARING

What is “the record”?

Leaving the record open

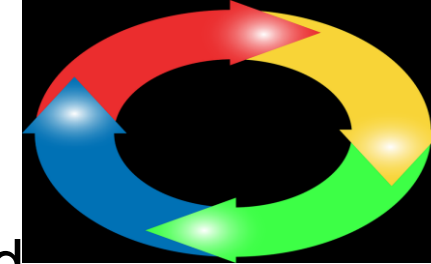




## AT THE HEARING

General sequence of events:

- ALJ swears in witnesses
- ALJ reviews the evidence parties have submitted
- ALJ asks the County to explain its position



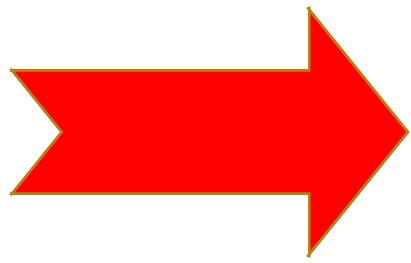
Appeals Specialist may question the social worker (others)

You can ask questions too (called cross-examine)

- ALJ asks you about your position (why do you disagree, what do you want, your evidence to support what you want )

You can question your witnesses

Appeals Specialist can ask them questions too (cross-examine)



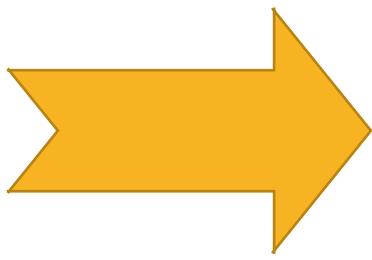
## AT THE HEARING

What happens after all witnesses have testified?

ALJ will give instructions as to next steps,  
timeline for decision.



(If ALJ left the record open – make sure you comply!)



## AFTER THE HEARING

### The Decision

- What the ALJ decided

### Alternated Decision

- Appeal rights

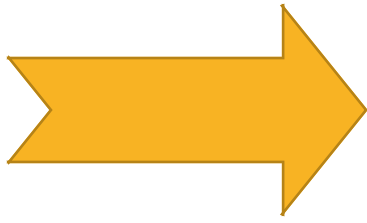
### Rehearing

### Writ of Administrative Mandamus (writ) – Superior Court

### Attorney Fees

- Requesting the recording





## AFTER THE HEARING

Rehearing (MPP 22-065)

- 30 days after receipt of decision

- State why asking for rehearing

- State date the decision was received

- If new evidence:

- Describe and submit new evidence (if not submitted explain why)

  - State why not submitted earlier

  - Explain why material

  - Explain how could have changed the decision



## AFTER THE HEARING

### Complying with the Decision (MPP 22-078)

- Immediately upon receipt of a decision, the county shall initiate action to comply.
- If the Decision of the Director is wholly or partially in your favor, the county shall, within 30 days of receipt of the Decision, submit a compliance report to the State Hearings Division.
- You may contact CDSS, orally or in writing, if dissatisfied with the compliance.
- Upon notification that the County has failed to comply with a Decision, CDSS can take appropriate action to ensure compliance.



# QUESTIONS?

Contact Maria F. Iriarte, Esq.

[maria.iriarte@disabilityrightsca.org](mailto:maria.iriarte@disabilityrightsca.org)

or (619) 814-8505

