



Advocacy Center
for Persons with Disabilities, Inc.

***“WHEN THEY DON’T PLAY FAIR,
LEVEL THE PLAYING FIELD”***

Presenting Your Case Before the
Division of Administrative Hearings

New: Special Section on Tiers

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REV. 12/08

DISCLAIMER

PLEASE NOTE:

THE INFORMATION PRESENTED IN THIS MANUAL IS GENERAL AND IS INTENDED TO COVER THE USUAL SITUATION. THE INFORMATION DOES NOT COVER ALL OF THE POSSIBLE SITUATIONS WHICH MAY ARISE IN A CASE, NOR IS IT INTENDED TO RESOLVE THE ISSUES IN ANY PARTICULAR CASE. THE MANUAL AND ITS CONTENTS IN NO WAY IS INTENDED TO SERVE AS LEGAL ADVICE OR TO ESTABLISH AN ATTORNEY CLIENT RELATIONSHIP WITH THE ATTORNEYS AT THE ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, INC.

YOU SHOULD CONSULT THE RULES OF THE DIVISION OF ADMINISTRATIVE HEARINGS (DOAH) (CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE). THE MANUAL PROVISIONS SHOULD NOT BE SUBSTITUTED FOR THE RULES AND IN THE EVENT THERE IS A CONFLICT BETWEEN THE RULES AND THE MANUAL, THE RULE PROVISIONS APPLY.

ALTHOUGH A COPY OF THE RULES IS INCLUDED IN THE APPENDIX, THE RULES ARE SUBJECT TO CHANGE. THE LATEST COPY OF THE RULES ARE FOUND AT THE DOAH WEBSITE: www.doah.state.fl.us

IF YOU NEED LEGAL ADVICE ON HOW TO HANDLE A PARTICULAR HEARING OR ISSUE, PLEASE CONTACT AN ATTORNEY.

ALTERNATIVE FORMAT

THIS MANUAL CAN BE PROVIDED IN AN ALTERNATIVE FORMAT UPON REQUEST. PLEASE CALL TOLL FREE 800-342-0823 or TDD ONLY 800-346-4127.

WHAT IS THE FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS?

- If you disagree with an APD decision to reduce or deny your services, you have the right to an administrative hearing before the Florida Division of Administrative Hearings.
- The Florida Division of Administrative Hearings (DOAH) is a state agency that employs full-time Administrative Law Judges to conduct hearings in most cases where a state agency, such as APD, makes a decision that affects a person's rights unfavorably.
- The Administrative Law Judges are impartial judges and do not work for the same agency that took the action.
- DOAH Judges handle the hearings that involve a "disputed issue of material fact." (This means that you do not agree with the facts that APD used to make its decision.)
- At the hearing you have the right to:
 - present evidence,
 - to bring witnesses,
 - argue your position,
 - cross examine the APD witnesses, and
 - to submit proposed findings of fact and conclusions of law.
- You have the right to be represented by counsel or by a qualified representative. You also have a right to represent yourself, if you wish.
- DOAH Judges have a lot of experience handling cases where the person does not have an attorney or a qualified representative.
- DOAH's website is www.doah.state.fl.us.
- The statute and rules on administrative hearings are included in the appendix to this manual.
- DOAH'S contact information is:

State of Florida
Division of Administrative Hearings
The Desoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675; Fax Filing (850) 921-6847

QUALIFIED REPRESENTATIVE

- You have the right to be represented, at your own expense, during the hearing process by an attorney or a qualified representative.
- A qualified representative is not an attorney. Anyone who meets the qualifications may serve.
- The requirements to become a qualified representative are governed by Florida Administrative Code Rule 28-106. A copy of the rule is in the appendix.
- A Support Coordinator may be a qualified representative.
- If you wish to appear on behalf of a petitioner as a qualified representative, you should follow the rule to list your credentials.
- After you file a petition for hearing and are given a DOAH case number you may file a written request to the judge specifying the name, address, and phone number of the representative and indicate that the petitioner is aware of the services the representative can provide and that he/she has elected to utilize the qualified representative. Include the qualified representative's credentials in an affidavit form.
- The judge will make a determination that the qualified representative has the proper credentials.

REQUESTING A FORMAL HEARING

- Requests for fair hearings on denial or reduction of services are now referred to the Florida Division of Administrative Hearings (DOAH).
- When you get your denial letter, it will include a statement of your rights with instructions on requesting a hearing.
- The denial package contains instructions on how to request a hearing and the timelines. Follow the instructions.
- **You must send your Request for hearing in writing directly to APD at the address in the denial letter.**
- As soon as APD receives your request for a hearing, it sends your request to DOAH for the appointment of an Administrative Law Judge (judge) to hear the case.

TIME TO REQUEST A HEARING

- You must request a hearing no later than **30 DAYS** from the date you receive the notice that services have been reduced or denied.
- If you are receiving the services that were reduced or denied, you must request a hearing within **10 DAYS** from the date you receive the notice to continue to receive the services that have been reduced or denied.
- If you request a hearing within the **10 DAYS**, the services will not be reduced or terminated until after the hearing process is over.
- The 10 day deadline applies to services you have been receiving. If you have been denied a request for a new service, you will not receive the service until and unless there is an order in your favor after the hearing.
- If you miss the 10 day deadline, you can still request a hearing within **30 DAYS** from the date you receive the notice.

HOW TO REQUEST A HEARING –THE PETITION

- You must request a hearing in writing. The written request is called a Petition for Formal Hearing.
- The person whose services have been denied is called the Petitioner. APD is called the Respondent.
- Rule 28-106.201 FAC describes the information you should put in your petition:
 - The name and address of APD as found in the denial notice and your case or identification number, if known;
 - The name, address, and telephone number of the petitioner;
 - The name, address, and telephone number of the petitioner's representative if it is different from the petitioner;
 - An explanation of how the petitioner's interests will be affected by the agency determination;
 - A statement of when and how the petitioner received notice of the agency decision;
 - A statement that you are requesting an administrative hearing;

- A statement of all disputed issues of material fact (these are facts alleged by APD in making its decision that you disagree with);
- A statement of all the facts that you believe will show that APD's decision is incorrect;
- A statement of the specific rules or statutes if known; and
- A statement of the relief sought by the petitioner, which is a description of the action you want the judge to order.
- You **must** include a copy of the denial notice and its attachments.

HOW TO PREPARE YOUR PETITION

- Look at the Notice of Denial/Reduction of services. Does it state the reason for denial and is the rationale attached?
- Look at the support plan and the documentation submitted with the plan.
- Once you have studied these two documents:
 - Make a list of the items you disagree with and the reasons;
 - Make a list of the items APD failed to consider; and
 - Make a list of any additional information that you want to present.
- Provide an explanation of how the petitioner's interests will be affected by the agency determination, for example:
 - "The reduction of the personal assistance service hours from 9 to 3 hours a day will harm John because he will have no one to assist him with feeding, transfer from wheelchair to bed or commode, and he will ultimately have to be institutionalized to prevent his health from deteriorating."
- Describe the reasons you disagree with the facts APD used to make its decision. You should describe the petitioner's present condition, why he/she needs the services and why APD was wrong in denying the services. Use your list. For example:

- “The notice states that John can ambulate but he cannot. John has cerebral palsy. He uses a wheelchair and is dependent on others to transfer from chair to bed.”
- State all the facts that you believe will show that APD’s decision is incorrect, for example:
 - “Maximus did not follow the recommendation of the medical professionals that treat John. John’s doctor’s evaluation states that John needs assistance with activities of daily living, specifically assistance with bathing and transferring from wheelchair to bed.”
 - “John has been receiving this service for 9 hours a day since 2003. The service is included in the support plans that have consistently been approved each year. His condition has not changed to justify the reduction of hours.”
- In your statement of the specific rules or statutes you can say, for example:
 - Under the definition on medical necessity in Rule 59 FL Admin. Code Ann. R. 59G-1.010 (166) (2006), APD was wrong in finding that the service was not medically necessary.
 - Section 393.0651, Florida Statutes provides that the ultimate goal of each support plan shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community. The APD decision is wrong because reduction of the service would deny John the right to be in the least restrictive setting and would result in his institutionalization.

NOTE: The Appendix contains copies of relevant sections of Chapter 393, Florida Statutes and useful websites. You can find information about services, manuals and waiver requirements on the APD website.

- Include a statement of the relief sought by the petitioner, for example:
 - “The decision to reduce the hours from 9 to 3 should be reversed and the full amount of 9 hours of PCA service should be approved.”

PRACTICAL HINTS FOR WRITING YOUR PETITION

- You only need to attach the notice of denial with the petition. Save your other supporting documents for the hearing.
- Number each item in the petition separately.
- The petition does not have to be in a particular form. A sample petition is included in the Appendix.
- A letter stating all the information is appropriate.
- If the petitioner has a representative, the address of the representative is the address where all documents and orders will be sent during the course of the proceeding.
- It is extremely important that you notify DOAH and APD immediately if your address changes.
- Keep a copy of the petition and the notice. Place all your documents in a file so they do not get lost.
- Use the APD website to find the manual provisions which apply to your case and the services that are the subject of the case. Helpful websites are included in the Appendix.
- Mail your petition to APD at the address in the notice of denial/reduction.

ASSIGNMENT OF A DOAH JUDGE AND THE INITIAL ORDER

- When APD receives the petition, they will send the petition to DOAH.
- A DOAH judge will be assigned. DOAH judges are called ALJ's which is an acronym for administrative law judges. Every judge has an assistant.
- You will get a letter containing the judge's name and contact number, your DOAH case number and the name of the APD attorney assigned to the case (if known at the time).
- Keep the letter in your file for easy reference.

- The judge will send an initial order to both sides with instructions to respond to the judge within 7 days.
- The order will ask that you provide the judge in writing the following information:
 - the suggested location of the hearing;
 - the estimated time it will take you to present your case;
 - whether there are any related cases before DOAH (usually none); and
 - all dates you are available for the hearing.
- Check your calendar for dates you will be able to attend the hearing. Give several dates. The dates must be within the time stated in the initial order (e.g.: 14 – 70 days from the date of the order).
- A sample Initial Order and Response is included in the Appendix.
- Pick a date far enough in advance to give you time to prepare (at least 30 days).
- Pick the location for the hearing. The best location is near the petitioner and the witnesses.
- Write the response to the initial order and include all the information.
- Send the original response to DOAH and a copy to APD's attorney.
- Keep a copy for your file.
- Note on your calendar the proposed dates.
- Learn the name of the Judicial Assistant assigned to your Judge. She can be invaluable in helping you with simple questions.
- **LIST THE DOAH CASE NUMBER ON ALL YOUR CORRESPONDENCE TO THE JUDGE.**
- **YOU MUST COPY THE APD ATTORNEY ON ALL YOUR CORRESPONDENCE WITH THE JUDGE. The APD attorney's name, address and telephone should be listed in the initial order. If you do not see the name, call the judicial assistant.**

PREPARING YOUR CASE: WHAT TO DO BEFORE THE HEARING AND DISCOVERY

- DO NOT WAIT UNTIL YOU GET THE HEARING NOTICE TO BEGIN COLLECTING INFORMATION TO PRESENT AT THE HEARING.

STEP ONE: COLLECT YOUR INFORMATION

- Take a look at the denial notice, the explanation for the reduction/denial of services, the support plan and supporting documentation.
- Look at your petition and the list of facts that you are disputing and the list of facts you want the judge to consider.
- Both sets of documents will give you the matters you need to put into evidence. Use them to determine the documents you will be introducing at the hearing and the witnesses that you will want to testify.

YOUR DOCUMENTS

- Obtain and list the documents you will present at the hearing.
- Obtain information and documents from the service provider and the support coordinator.
- Obtain medical records and statements from doctors or other medical professionals.
- Obtain copies of the support plan, supporting documentation and copies of prior years' support plans showing the services were previously approved.
- Make extra copies of the documents for the judge and the APD's attorney to bring to the hearing. Keep a set of copies for yourself.

YOUR WITNESSES

- Make a list of witnesses who will testify at the hearing.
- Include the names, addresses and contact information for each witness.
- There are 3 types of witnesses:
 - a. Treating professionals who have direct contact with the petitioner and can testify firsthand as to petitioner's disability and need for

services. These persons include the support coordinator, doctors, medical professionals (therapists, nurses), group home operators, direct service staff, and personal attendants.

- b. Family and other persons in the community who know the petitioner and can testify as to petitioner's daily activities, routines, and needs.
- c. Experts on petitioner's particular disability.

- Talk to the witnesses, explain what the hearing is about, and make sure they will be available to attend the hearing.

HINT: Witnesses can appear at the hearing by phone if there is a notary public at the location from where they will be calling. You must make arrangements with the judge prior to the hearing.

HINT: Persons and professionals who have first hand knowledge of petitioner and petitioner's needs are your best witnesses. You may not need many witnesses. Witnesses who will testify to the same set of facts will generally not be allowed.

STEP TWO: OBTAIN APD'S INFORMATION

The exchange of information between a petitioner and a respondent in preparation for hearing is called **DISCOVERY**. The theory behind **DISCOVERY** is that there should be no surprises at the hearing for either party.

REQUEST APD'S DOCUMENTS

- You have a right to obtain and examine the documents in APD's files that are or may be useful to your case. Normally, the APD attorney will send the APD file on the petitioner upon request.
- Send a request for documents to the APD attorney, and send a copy to the judge.
- Documents you want to request include:
 - The petitioner's entire APD file;
 - All documents considered by Maximus or APS in making its determination;

- All documents that will be introduced at the final hearing; and
- Policies or manuals that were used to make the decision.

INTERROGATORIES TO APD

- Interrogatories are another name for questions you want APD to answer before the hearing.
- You have the right to ask APD questions to obtain information prior to the hearing.
- You cannot ask more than 30 questions.
- Send the interrogatories to the APD attorney.
- Send the judge a notice that you sent APD interrogatories and the date they were sent to APD. You don't file the interrogatories with the judge.
- In the interrogatories, you may ask how the determination was made and the facts that they took into consideration.
- Always ask for:
 - The names, titles and contact information of APD's witnesses and a summary of their testimony;
 - A list of all the documents APD will introduce at the hearing; and
 - The names, titles and contact information of all persons who have any knowledge of Petitioner's case.

NOTE: The APD attorney has 30 days to respond to your requests for discovery. If you do not get the documents or the answers in 30 days, you may ask the judge, in writing, to order APD to respond. This is called a motion to compel. The Judge will make a ruling in the matter after the other party has responded in writing to the motion. If a hearing is held on the motion, it will generally be by telephone conference call.

APD'S REQUESTS FOR INFORMATION

- APD has the right to obtain discovery from the petitioner.
- The APD attorney may send you interrogatories and/or request for admissions. These are written requests for discovery. You **must** answer these to the best of your ability within 30 days. However, if you don't know the answer, you can state that.
- If you receive a request for discovery from APD that you believe is unfair, you may ask the judge to determine the appropriateness of the discovery request.
- These documents have instructions.
- Answer the discovery truthfully and to the best of your ability.
- Do not conceal facts or hide "surprise" witnesses. You may be barred from presenting them at the hearing.
- Request for admissions are yes or no statements. If you don't know, say so. Don't guess and don't admit to facts that you do not believe to be true.
- Requests for production ask for documents in the possession of the petitioner.
- Discovery must be completed 5 days before the date of the final hearing unless an extension of time for good cause is granted to either side.
- Depositions are live sessions consisting of questions by the attorney or representative of potential witnesses who testify under oath.
- The questions and answers are recorded by a court reporter present at the deposition.
- Either side can take the deposition of a witness. Both sides have to be present at the deposition.
- The APD attorney may ask to take the deposition of your witnesses, and has to contact you to obtain dates you will be available. He/she will send a notice of taking deposition once the final arrangements are made.
- Witnesses, except the petitioner, are subpoenaed to appear at depositions.
- In the depositions of your witnesses, you are **not** responsible for making sure they attend the deposition, unless it is the deposition of the Petitioner.

- Depositions are taken prior to the hearing and a transcript may be introduced at the hearing.
- The judge is not present at the deposition.

THE NOTICE OF HEARING

- The judge will send you a notice of hearing telling you the date, time, duration and location of the hearing.
- The notice may be accompanied by an Order of Pre-Hearing Instructions.
- Read the notice and instructions carefully.
- Record the date of the hearing so you will not forget.
- Tell all your witnesses the date of the hearing.

NOTE: IN MOST CASES THE NOTICE OF HEARING WILL BE ISSUED APPROXIMATELY 14 DAYS PRIOR TO THE HEARING.

PRE-HEARING ORDER AND CONFERENCE

- You will get a pre-hearing order with the notice of hearing.
- The order generally requires that you and the APD attorney:
 - discuss the possibility of a settlement,
 - exchange exhibits and witness lists prior to the hearing; and
 - discuss the possibility of agreeing to certain facts.
- You do not have to agree to settlement or agree to certain facts. You have the right to have the judge hear your case.
- It is important to follow the instructions on the pre-hearing order by the deadline stated on the order.
- You may write a letter to the judge that you complied with the pre-hearing order.

CONTINUANCES

- If you cannot attend the hearing due to an emergency, you may request a continuance. Note that a continuance is not granted for just any reason. The reason must be important.
- You must make your request for a continuance as soon as you discover that you cannot attend the hearing.
- The request for a continuance must be made in writing to the judge with a copy to the APD attorney.
- You must contact the APD attorney to get mutually agreeable dates for the rescheduled hearing and to see if he/she objects to the continuance. Put the information in your written request.
- The request must be made at least 5 days prior to the date of the hearing, except in cases of extreme emergency. If the judge grants the continuance, he/she will issue an order setting a new date and time for the hearing.
- If time is short before the scheduled hearing, you may make your request by telephone to the judge who may schedule a telephone conference call with the other parties to see if they have any objection and whether you have good cause for a continuance.

NOTE: You cannot assume that the continuance will be granted, until and unless you get an order granting the continuance. If you have not received an order, it is proper to contact the judicial assistant to find out the status.

- You must notify all your witnesses that the case has been continued.
- It is a good idea to send your witnesses a copy of the order setting a new date and time to make sure they attend the hearing at the new time.

PREPARING THE HEARING

ORGANIZATION AND PREPARATION IS KEY TO A SUCCESSFUL HEARING

IF YOU ARE ORGANIZED YOU WILL BE LESS APPREHENSIVE

EXHIBITS

- Exhibits generally consist of documents, charts, photos, and records.
- Make a list of all your exhibits in the order that you plan to use them.
- Make copies of all your exhibits for the judge and the APD attorney.
- Identify each exhibit by number on the originals and all the copies.
- Keep a copy of all your exhibits for yourself.
- Give a copy of the exhibits to the witness who will be referring to them.

WITNESSES

- Make a list of the witnesses who will be testifying at the hearing in the order you want them to appear.
- Next to the name of each witness, list any exhibits that you want the witness to address.
- Write your questions for each witness.
- Keep a separate folder for each witness with a copy of the exhibits you want them to discuss.
- Visit or call each witness, explain the purpose of the hearing and go over your questions and their answer.
- **MAKE SURE YOU GIVE YOUR WITNESSES THE DATE, TIME AND LOCATION OF THE HEARING.**

SUBPOENAS

- A subpoena is a legal document which orders a person to appear at the hearing and to give testimony.
- Any witness should be subpoenaed unless you are sure they will come to the hearing. Otherwise you are not assured you can question them on direct examination. This is very important, as cross-examination (if they are also a witness for the other side) is limited in the scope of questions you can ask if you did not call them.
- Subpoenas are used to command persons to appear at either a deposition or at the hearing. There are two types:
 - Subpoena Ad Testificandum which requests the person to appear and give testimony
 - Subpoena Duces Tecum which requests them to bring certain documents with them.
- Subpoenas are obtained by calling the Deputy Clerk to request a subpoena at (850) 488-9675, extension 111 (Cathi Lindsley), or request your subpoena by mail.

NOTE: It is a good practice to go ahead and request a number of subpoenas at the start of the case so they will be available as witnesses are added.

- The judge will sign the subpoena. You type in the person's name, address, date, time and place of the hearing.
- On the Subpoena Duces Tecum you also indicate the type of the documents you want them to bring. Example: "All e-mails exchanged with any other party concerning petitioner's case."
- Fill out each form as instructed and then have the subpoenas served either by a disinterested person or by the Sheriff's Office. The subpoena should be served immediately in order to give the witness time to get ready for the hearing. You must include a witness fee with the subpoena. If the witness lives in the county where the hearing will be held, the fee is \$5 per day plus 6 cents a mile for actual mileage.
- No fees need be tendered to subpoenaed witnesses who are employees of state agencies. Read the instructions on the back of the subpoena and make sure that the person who serves the subpoena executes the affidavit on the reverse side.

BURDEN OF PROOF

- The burden of proof sets the order in which the case must be heard.
- In the case of a reduction of benefits or denial of services the petitioner has been receiving, APD has the burden of proving that they made the right decision.
- When APD has the burden of proof, their case goes on first.
- In the case of a denial of a request for new services, the petitioner has the burden of proving that he/she is entitled to receive the services and will go first.
- The judge will ultimately decide whether the party has met its burden.

PRESENTING NEW INFORMATION AT THE HEARING

- “**De novo**” means that the judge may consider evidence that was not initially presented to APD and can make a decision based on all the evidence presented at the hearing.
- You can present evidence of facts that occurred after the denial notice, such as a change in the Petitioner’s condition or a new medical evaluation.
- In the event that the APD attorney objects to testimony or exhibits on the basis that were not considered by the APD reviewers, you should respond that the hearing is de novo and wait for the judge to rule.
- NOTE: You must give to the APD attorney a copy of any documents you plan to use that pertain to new evidence.

AMERICANS WITH DISABILITIES ACT

- DOAH complies with the Americans with Disabilities Act. In the notice of hearing and on DOAH’s website there are instructions for persons needing special accommodations. The special accommodations are provided for all persons attending the hearing, including witnesses. Persons needing a special accommodation at the hearing should contact the judge's assistant no later than **seven** days prior to the hearing. The judge's assistant may be contacted at the DOAH address or telephone numbers, via 1-800-955-8771 (TDD), or 1-800-955-8770 (Voice) Florida Relay Service.

THE HEARING

- The hearing is usually held in a conference room. Regardless of the location of the hearing, administrative hearings are less formal than court trials. DOAH judges have experience in cases where persons who are not lawyers appear to present their case. Although the judge must remain impartial and cannot assist you with your case or offer legal advice, he or she will assist you with the **procedure** of the hearing. If you are confused about the procedures or other matters, you should let the judge know at any appropriate time during the hearing
- The judge sits at the head of the room with the court reporter nearby. The judge will explain the procedures which will be followed.
- There is a seat for witnesses near the judge.
- The petitioner and his/her representative/attorney sit on one side of the room and the APD attorney and staff on the other.
- The witnesses and observers sit in the back, unless the witnesses are asked to sit outside until they are called.
- APD will have their attorney and witnesses.
- You will have your witnesses.
- You should bring the petitioner to the hearing if at all possible.
- There will probably be a court reporter to record the hearing. APD is responsible for paying the court reporter, but if you request a transcript of the hearing, you have to pay for your copy.
- The judge will have everyone introduce themselves.
- The judge will begin the hearing by setting the stage for how exhibits will be handled (all at once to get them into the record or as they are entered by the attorneys).
- The judge must agree to admit the exhibits and may not if the other side raises an objection that the judge agrees with.

NOTE: If you do not appear at the time and place of the hearing, you must call the judge immediately to explain why. If you do not contact the judge, or if you do not have an adequate explanation for not attending the hearing, the judge may decide against you in the case.

NOTE: If an emergency arises on your hearing date and you will be late for the hearing, you should attempt to telephone the judge at the hearing location and explain the problem. If you cannot reach the judge at that location, call the judge's assistant in Tallahassee and explain the problem.

PROCEDURE AND ORDER OF PRESENTATION DURING THE HEARING

- There is a code of conduct for these hearings. It is not a good idea to become combative, make insulting remarks, argue with witnesses, the APD attorney or the judge. You may argue your point but you should be respectful at all times.
- The code of conduct applies both ways. If the APD attorney becomes offensive or badgers a witness, the judge will be quick to stop him/her.
- Each side may give an opening statement describing their case.
- APD goes first and presents their witnesses and exhibits.
- APD asks their witnesses questions (direct examination). Listen carefully to the questions and answers, making notes if needed. Once APD is through asking that witness questions, you may ask questions of their witness (cross examination). The questions in your cross examination of the witness should be limited to what the witness said in direct examination.
- At the end of APD's case, you may present your case.
- You call each of your witnesses, one at a time.
- You ask each of your witnesses questions and introduce the exhibits to the judge with a copy to APD attorney.
- The APD attorney then asks your witness questions.
- You may then ask your witness additional questions if there is a need to clarify something the witness said during the cross examination.
- At any time the judge may ask the witnesses questions. Remember, the judge will need to evaluate the evidence and have all the facts needed to make his/her ruling.
- Either side can object to the question being asked by the other side.

- The judge will determine if the witness has to answer the question. If the objection is overruled, the witness must answer. If sustained, the witness does not answer. The judge will give the witness the instructions.
- After both parties have finished presenting their case, each party may give a closing statement arguing their position on the case.
- The judge will not decide the case at the end of the hearing.
- The judge will ask the parties if they want to submit a proposed order and set the time when the proposed order is due. Make sure you calendar the date the proposed order is due, or any other deadlines the judge sets.
- A proposed order is not required.

<p>PROCEDURE AFTER THE HEARING: RECOMMENDED AND FINAL ORDERS</p>

- In approximately 30 days, the judge will issue a written decision called a Recommended Order with findings of fact and conclusions of law along with a recommendation to APD to either approve the service reduction or provide the services. The 30 day period will begin either after the judge receives the parties' proposed orders, or after receipt of the transcript if one is ordered. The timing will be discussed at the hearing.
- You may order a transcript of the hearing at your own expense. If the hearing was videotaped or tape-recorded, you must write to APD and request a transcript. If the hearing was recorded by a court reporter and APD ordered a transcript, you must contact the APD or DOAH and arrange for a transcript. If APD did not order a transcript, you must contact the court reporting firm or the DOAH court reporting office and you will be sent a copy upon payment.
- After you receive the Recommended Order from the judge, you may send written objections to APD within 15 days after the date of the recommended order. Such objections are called "exceptions" and must be sent to the agency head (not DOAH or the Judge).
- The objections may be in a letter and should explain the particular portions of the Recommended Order with which you disagree and the specific reasons for your disagreement.
- If you believe that the Judge made a mistake concerning the facts in your case, you should point out those parts of the transcript which support your argument.

- If you cannot meet the deadline for submitting exceptions, you should write to the agency head and ask for an extension before the 15-day deadline.
- APD has 90 days to issue a Final Order after it receives the Recommended Order.
- If the final decision is not in your favor, you have the right to appeal to an appropriate District Court of Appeal within 30 days of the date of the final order. The final order will explain the procedure for filing an appeal.

CONTACTING COUNSEL FOR ASSISTANCE

- While administrative hearings are user friendly to persons who are not represented by an attorney, there may be a time when you wish to have attorney representation.
- The time for contacting an attorney to represent you in the case is ***not*** right before, during or after the hearing.
- Upon receipt of the **notice of denial/reduction of services**, you should evaluate whether you wish to have an attorney present the case. If you decide you want an attorney, then contact one immediately.
- You should not wait to receive the notice of hearing before you contact an attorney. The attorney needs time to prepare and it may be too late.
- There is no right to the free services of an attorney in these cases. If you cannot afford an attorney, you could contact Legal Services organizations in your area, The Florida Bar for reduced fee consultation with an attorney who is knowledgeable in the field, or the Advocacy Center for Persons with Disabilities, Inc.
- These resources may or may not be available depending on matters such as caseload, whether the organization handles these types of cases and whether staff is available.

APPENDIX

1. **FORMS**

Petition
Initial Order
Joint Response
Notice of Hearing
Motion for Continuance
Order of Pre Hearing Instructions
Request for Witness' Telephonic Appearance
Sample Public Records Request
Sample Interrogatories
Sample Request for Production
Sample Request for Admissions
Sample Questions for Doctor/Therapist

2. **RULES – FLA. ADMINISTRATIVE CODE**

28-106 - DOAH Rules of Procedure
59G-1 – General Medicaid Definitions
59G-13.080 – Home & Community Based Waivers

3. **FLORIDA STATUTES**

§120.569 & §120.57 – Administrative Procedure Act
§393 – Developmental Disabilities (selected excerpts)

4. **CASES**

Hunter v. Chiles
C.F. v. DCF
Kennedy v. AHCA

5. **WEBSITE FOR FURTHER RESOURCES**