

Representing the Pro Bono Client: Advocacy Skills for Administrative Hearings

October 3, 2013

9:00 a.m. – 12:30 p.m.

Why You Should Attend

The need for pro bono assistance with administrative hearings has never been higher. The increase trend of employers challenging all Unemployment Benefits claims has been combined with the explosion of UI claims during the recession. The recession and aging of the workforce has resulted in an increase in disability-based Social Security claims. Budget cuts and program changes have created a “perfect storm” for public assistance recipients, and delays in obtaining much needed benefits. Several significant changes to key benefits programs have occurred in recent years, imposing new complex rules. At the same time, county staff has shrunk, and experienced workers retired, increasing the occurrence of administrative errors and problems with client’s receipt of the benefits to which they are entitled. Legal Services also suffered staffing cuts, with reduced ability to represent clients in these cases. Unfortunately, many individuals who are owed desperately needed funds, or who have had their benefits improperly lowered or terminated, cannot make it through the appeals system without the benefit of legal counsel to guide them through the process or to vigorously defend against unlawful actions. As a result, families face the very real possibility of loss of income, hunger, homelessness, and overall family instability.

This training is designed to help mitigate the crisis by providing attorneys with a basic understanding of common issues and strategies in providing assistance with administrative appeals.

What You Will Learn

- The types of administrative hearings low income clients most frequently need
 - Special focus on SSI, Unemployment, and Social Services (“welfare”) claims; Labor Commissioner wage claims, occupational licenses
- Common advocacy strategies and procedures for administrative hearings
- Obtaining evidence
- Position statements/hearing briefs
- Presenting your case
- Rehearings and Appeals

Who Should Attend

All attorneys interested in or currently assisting pro bono clients with public benefits matters through representation or in clinical settings, law firm pro bono coordinators, managers and partners, law clinic students and faculty, and public interest and non-profit organization attorneys and staff would benefit from attending this program.

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Program Schedule

9:00

Program Overview and Introductions

Jodie Berger

9:15

I. Overview of Administrative Hearing

A. Approach to Training

- Much in common, each agency has special aspects
- Brief introduction to common benefit programs and common situations why/when hearings may occur
- Review of basics

B. Key Differences From Court

- Aid Paid Pending or Benefits Continuation
- Evidence Rules
- Appeals based on admin record
- “Discovery”
- More informal setting, tone, rules
 - APA hearings more formal
- ALJ’s accustomed to Lay (or no) representation
- Office of Administrative Law Hearings/APA rules

Jodie Berger

II. Requesting and Preparing for Hearing

A. Jurisdictional & Aid Paid Pending (APP) Limits

- Varies by program
 - County programs (like GA, County Health) can be as short as 1 week
 - Some programs include additional time for good cause or equity (e.g. WIC 10951, lack of notice)
 - Some have different APP from jurisdictional limits
 - Some require confirmation of issues (APA hearings) with deadline to submit
 - Can be different w/in program (e.g. SSA initial claims; Continuing Disability Reviews (CDRs); age 18 redeterminations)
 - Asking for the hearing: what to say
 - Various program examples
- Issues
 - Date of notice vs. date of mailing (keep envelope); agency presumption of 5 days for mailing
 - Default for APA hearings

B. Requesting Format of Hearing and Special Services

- In person vs. video vs. phone hearings (SSA regs include right to in-person hearing)
- Interpreters and Accommodations
- Various program examples

C. Discovery

- Varies by program
 - Often informal
 - File review
 - Access issues (privilege/confidentiality; Fraud reports)
 - Some (APA) hearings have more formal process and strict timelines
- Statutory and regulatory rules re: charging fees to access record copies
- Issues with/availability of electronic review
- Various program examples

D. Witnesses and Subpoenas

- Varies by program
 - Often informal
 - May accept affidavit, even w/o foundation for absence or penalty of perjury
 - Often allow witnesses (including complainant) to call in
 - Most have subpoenas, not all websites/regs tell you how to get it
 - Many subpoenas are not enforceable, but can reference issued
 - Service issues for clients
 - SSA ALJ may issue subpoena for records or testimony or interrogatories to a treating clinician or medical expert
 - Client and witness preparation
- Various program examples

E. Position Statements

- Notice of Hearing may list issues/experts (e.g. SSA Notice of Hearing)
- Some (e.g. CDSS) require, and have deadline, for agency position
 - Some require listing relevant rules; witnesses to be called
 - State / County generally have burden to prove basis for county/state action
 - SSA burden on claimant to provide evidence of disability; burden shifts to SSA to provide evidence of ability to perform work
- Claimant's position: generally no requirement but helpful (Samples in materials)

F. Postponements

Jodie Berger, Lisa Lunsford, Carole Vigne, Dian Vorters, Steven Weiss

10:45

Networking Break

11:00

III. Hearing and Post-Hearing Issues

A. Hearings

- ALJ “intro”
- Recorded, under oath
 - Representative as witness
- Burden of Proof
- Order of hearing
- Amount of representative input ALJ wants varies
- ALJ duty to develop the record; “engaged neutrality”
- Cross examination of witnesses, medical and vocational experts
- Evidentiary objections/formalities vary
- Various program examples

B. Post-Hearing

- Reconsiderations
- Intermediate admin appeals (e.g. CUIAB/SSA to an Appeals Board/Council)
- Appeals (Writ to Superior Court)
 - Note: Can include 1085/policy challenges on appeal

Jodie Berger, Lisa Lunsford, Carole Vigne, Dian Vorters, Steven Weiss

12:30

Adjourn

Faculty

Chairperson

Jodie Berger

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