**Department of Human Services’ Administrative Hearings Frequently Asked Questions**

This guide is to help you understand administrative hearings with the Department of Human Services. If you have questions about appeals with the Department of Social Services, information is available at: <https://dss.sd.gov/keyresources/adminhearings/fairhearing.aspx>. Neither document is intended to give legal advice.

You should speak with a lawyer if you have any questions about your case or the administrative hearing process. The Department will not provide you with an attorney or give you legal advice.

This guide has examples of what happens with an administrative hearing. It does not include everything you may experience. Your administrative hearing may be different from these examples.

**What is an Administrative Hearing?**

You may request a hearing if you think the Department or a Provider did not follow the laws or rules. A hearing is the way for you to present why you think something was done incorrectly based on the facts of your case. The hearing is a formal process. The hearing will follow the steps outlined in [South Dakota Codified Laws Chapter 1-26](https://sdlegislature.gov/Statutes/1-26).

A hearing officer is assigned to oversee the hearing. The hearing officer listens to you and all the people or other parties involved in your case. **Parties** is another name for the other people involved in your case. The hearing officer then decides if the Department or the Provider followed the laws or rules. A proposed decision is given to the Department for consideration.

**Witnesses** are people who have information, called **evidence**, that may be useful in a case. When witnesses give evidence, it is called testimony. To give testimony, witnesses must be sworn by the hearing officer and promise to tell the truth. The hearing officer chooses the order in which each side gives testimony. Your side may then ask the witnesses questions. If you testify, others can ask you questions. Based on the [rules of evidence](https://sdlegislature.gov/Statutes/1-26-19), supporting documents can be used.

The hearings are recorded. If the hearing is held via Zoom or Teams, you should prepare to be on video.

The hearing is very important. It is the only way you can present the facts of your case.

**How Do I Get an Administrative Hearing?**

When you get a Notice that says you have a right to an appeal, the Notice will tell you the timeline and where to send your appeal.

When the Department receives your appeal, it will assign a hearing officer to oversee the matter. The hearing officer will mail you a Notice of Hearing. The Notice of Hearing will be mailed at least seven days before the hearing. You should inform the hearing officer if you changed your address. If you do not update your address and do not receive the information, your appeal might be dismissed. Some hearing officers may use email. They will provide that information to you.

Read the Notice of Hearing and any papers attached to it. The Notice has important information about your hearing. It contains the hearing time, date, location, what the hearing is about, and the laws or rules involved.

Some hearings are not in-person. This means you attend through your computer or smartphone. You will join the hearing by the Teams or Zoom applications. When a hearing is not being held in-person, the Notice of Hearing will contain a Zoom or Teams link or phone number to use at the time of your hearing.

**Can I Change My Mind?**

Yes. You may withdraw your appeal request any time before the scheduled hearing. A withdrawal cancels your hearing.

Tell the hearing officer you would like to withdraw by email or mail. The hearing officer will then inform all parties about the hearing cancellation.

**Do I Have to Use an Attorney (Lawyer)?**

No. As an individual, you may attend your hearing without an attorney. This is called representing yourself.

You may choose to have an attorney represent you at the hearing. If you have limited income and resources, you may apply for legal help through the state's legal services programs. To learn more, call the South Dakota Lawyer Referral Service at 1-800-952-2333. You can also contact South Dakota’s protection and advocacy agency, Disability Rights South Dakota.

The Department will not cover the cost of your attorney. The Department does not represent you and will not provide an attorney for you. Please have your attorney contact the hearing officer as soon as possible.

Note: Businesses must be represented by an attorney at the hearing.

**What Can I Expect at the Hearing?**

Hearings begin at the time shown on the Notice of Hearing. It is important you attend the hearing and that you are on time. If you do not appear at the hearing, your case may be dismissed, or the hearing officer may only review evidence from the opposing side in reaching a decision.

When the hearing starts, the hearing officer talks about the process. This includes the issues to be decided and the order of testimony. **Testimony** is when a witness gives evidence. Witnesses are people who know something about your case. Witnesses are sworn under oath by the hearing officer. This means the witness swears to tell the truth. Evidence is facts and information that helps the hearing officer understand the case.

Next the parties present their testimony and evidence to the hearing officer. The parties present their case by giving testimony, calling other witnesses, and presenting documents or other evidence.

After each witness testifies, the other side can ask them questions. Do not argue with the witness or talk about the testimony. You may ask questions to check on what they said or gather information for your case. The hearing officer can ask questions of anyone during the hearing.

Each side can make a final statement or a closing argument. This happens after each party has shared their information and asked questions. The hearing officer will end the hearing after closing arguments are made. No more information may be added to the case once the hearing is over.

**What Happens After the Hearing?**

Each case is different. Under South Dakota law, the Department Secretary makes the final decision, or can appoint someone else to make the final decision. In most cases, the hearing officer writes a proposed decision to the Department. The Department Secretary by law then reviews the information and makes the final decision which adopts, rejects, or modifies the proposed decision. **Adopt** means the Department Secretary agrees with the hearing officer. **Reject** means the Department Secretary disagrees with the hearing officer’s decision. **Modify** means the Department Secretary is making a change to the hearing officer’s decision. If the Department Secretary rejects or modifies the decision, the reasons must be in writing.

The Department Secretary may appoint the hearing officer to make the final decision.

The Department of Human Services does not manage all hearings. The Department of Social Services manages some hearings.

All parties will receive the Final Decision, Order, and a Notice of Entry in the mail. The Final Decision explains if it adopts, rejects, or modifies the proposed decision from the hearing officer. The Order states the result of the decision. The Notice of Entry starts the official time for further appeal.

**Can I Appeal the Final Decision?**

Yes. If you think the final decision is wrong, you may appeal to circuit court. You must do this within 30 days after the Notice of Entry. You should ask a private attorney any questions you have about filing an appeal to circuit court. The Department cannot help you file an appeal to circuit court.