

## **REHEARING REVIEW PROTOCOLS**

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### **Introduction**

The rehearing review process is an integral component of the work and mission of the California Department of Social Services (CDSS) and the State Hearings Division (SHD) and an expression of their commitment to quality control and fairness.

Whenever a claimant or a county requests a rehearing, they are taking the first step to appeal the state hearing decision they have received, as they are alleging that their hearing was unfair or inadequate, the written decision rendered in their case was legally and/or factually incorrect, or both.

The rehearing process is designed to operate as an internal appeal mechanism that provides the parties to a state hearing with a relatively simple and efficient way of addressing such concerns by reviewing the decisions written by Administrative Law Judges (ALJs).

Rehearings, when merited, are required by Welfare and Institutions Code<sup>1</sup>, Section 10960. CDSS's Manual of Policies and Procedures (MPP) Division 22 regulations, specifically, section 22-065, track the statute and set forth additional procedural rules and requirements that apply specifically to rehearings. As the regulations clarify, the ultimate decision as to whether a rehearing is granted rests with the Director, acting through the Chief Administrative Law Judge (CALJ) as his/her designee. ALJ Specialists assigned to the rehearing unit conduct reviews of rehearing requests on behalf of the Department, implementing the Department's legal interpretations and policies. SHD's proceedings also have a constitutional dimension, rooted in the need to afford the parties with fundamental due process. (*Goldberg v. Kelly* (1970) 397 U.S. 254.)

This document provides rehearing reviewers and other ALJs, as well as state-hearing parties and stakeholders, with an overview of the law governing the rehearing review process. It provides clarification of the legal concepts rehearing reviewers should consider when evaluating the merits of rehearing requests, and it offers a step-by-step guide to the process. Although this document contains citations to statutes, regulations and court cases, it is designed to be accessible to a general audience.

### **The Legal Framework: Deadlines and Criteria**

The general time frames for requesting and acting on rehearing requests are defined by Section 10960, subdivision (a):

*Within 30 days after receiving the decision of the director, which is the proposed decision of an administrative law judge adopted by the director as final, a final decision rendered by an administrative law judge, or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and that other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no later than the 35th*

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise stated.

## REHEARING REVIEW PROTOCOLS

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*working day after the request is made to ensure the prompt and efficient administration of the hearing process. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing.<sup>2</sup>*

The grounds for granting a rehearing are set forth in Section 10960, subdivision (b):

- (1) The adopted decision is inconsistent with the law.*
- (2) The adopted decision is not supported by the evidence in the record.*
- (3) The adopted decision is not supported by the findings.*
- (4) The adopted decision does not address all of the claims or issues raised by the parties.*
- (5) The adopted decision does not address all of the claims or issues supported by the record or evidence.*
- (6) The adopted decision does not set forth sufficient information to determine the basis for its legal conclusion.*
- (7) Newly discovered evidence, that was not in custody or available to the party requesting rehearing at the time of the hearing, is now available and the new evidence, had it been introduced, could have changed the hearing decision.*
- (8) For any other reason necessary to prevent the abuse of discretion or an error of law, or for any other reason consistent with §1094.5 of the Code of Civil Procedure.*

The bases for denying a rehearing request were developed by the SHD to provide meaningful notice to those whose requests for rehearing are denied. They include:

- No Good Cause for Failure to Submit Evidence*
- Untimely Filing Without Good Cause or Equitable Reason*
- No Rehearing Available for Compliance Issues*
- No New Unavailable Evidence*
- No Abuse of Discretion on Fact Finding*
- The Findings Are Supported by Substantial Evidence*
- No Mistake of Law or Policy*
- No Prejudicial ALJ Error in Conduct*
- No Failure to Consider Evidence*

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<sup>2</sup> All County Information Notice (ACIN) I-66-08 (issued November 19, 2008) informed that, effective January 1, 2008, the time frame for granting or denying rehearing requests has been extended from 15 working days to 35 working days. In addition, the ACIN informed that the reference to a rehearing request being deemed denied if not acted upon by the Director of the Department had been deleted.

**REHEARING REVIEW PROTOCOLS**

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- *No Right to a Rehearing in an Administrative Disqualification Hearing/Intentional Program Violation (ADH/IPV) Decision in CalFresh (Title 7 Code Fed. Regs., § 273.16, subd. (e)(8)(ii))*

**Mandamus**

Whether or not SHD decides to grant a rehearing, state hearing decisions are part of a larger legal system and are thus also subject to additional judicial appeals. As the cover page of each state hearing decision instructs under “Appeal Rights,” direct Superior Court review of hearing decisions is available via administrative mandamus under Code of Civil Procedure, Section 1094.5.

Although Section 1094.5 of the Code of Civil Procedure applies only to the Superior Court, which has far broader legal authority to review and correct administrative hearing decisions than the SHD’s Rehearing Unit, subsections (b), (c), (e) and (f) of that statute are cited below to call attention to the standards the Superior Court utilizes in mandamus proceedings to determine whether to uphold or reverse the orders adopted in state hearing decisions:

*(b)The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any **prejudicial abuse of discretion**. **Abuse of discretion is established** if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.*

*(c)Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its **independent judgment** on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by **substantial evidence** in the light of the whole record.*

*(e)Where the court finds that there is **relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing** before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.*

*(f)The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside or may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.*

*(Code Civ. Proc., §1094.5, subds. (b), (c), (e) and (f); emphasis added)*

## **REHEARING REVIEW PROTOCOLS**

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### **A Six-Step Guide to Rehearing Review**

The rehearing review process begins when a request for rehearing is received in Sacramento by SHD's Rehearing Unit.<sup>3</sup> A non-ALJ Rehearing Unit analyst reviews the request, notifies the parties in writing that the request has been received, enters the request into the rehearing database, and adds the request and any rebuttal received to the file previously assembled for the case. To ensure that the claimant receives the rehearing determination, the notice indicates that the claimant must inform the Rehearing Unit if his/her contact information changes before he/she receives the determination. The file is then sent to an ALJ Specialist for review.

MPP section 22-065.2 explains the initiation of the rehearing review process. It provides the following:

*Upon receipt of a timely rehearing request, the Director shall mail a copy of the request to the other party to the hearing.*

*.21 This party shall be permitted to file a statement supporting or opposing the rehearing request.*

*.211 Such statement shall be in writing and shall be filed with the Director not later than five days after service.*

*(a) The filing date shall be determined in accordance with the provisions of .14 above<sup>4</sup>*

MPP sections 22-065.8 and .9 provides:

*.8 A rehearing request shall be permitted to be withdrawn any time before the Department has acted upon the request.*

*.9 After a rehearing request has been granted, it shall be permitted to be withdrawn by the requesting party subject to the approval of the Chief Administrative Law Judge, his/her designee or the Administrative Law Judge.*

### **Step One: Is there Substantive Jurisdiction to Review the Issue?**

As a substantive matter, some types of state hearing decisions are not subject to rehearings. Thus, the rehearing reviewers must first determine whether the hearing decision at issue falls outside the scope of rehearing review.

MPP section 22-065.6 provides:

*.6 The following shall not be subject to a rehearing:*

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<sup>3</sup> An on-line rehearing request form that will be available on the CDSS website is currently under development.

<sup>4</sup> The postmark on the envelope containing the rehearing request shall be the filing date. (MPP § 22-065.14)

**REHEARING REVIEW PROTOCOLS**

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*.61 A rehearing decision, except on an issue that was decided for the first time on the merits in the rehearing decision.<sup>5</sup>*

*.62 A hearing request that has been dismissed pursuant to Section 22-054.4.<sup>6</sup>*

*.63 A compliance issue as defined in Section 22-001(c) (3).<sup>7</sup>*

Regarding Intentional Program Violations (IPVs), MPP section 22-230 provides:

*.15 An administrative disqualification decision is not subject to the provisions of Section 22-065.*

*.151 There is no right to a rehearing regarding a finding of intentional Program violation.*

*.152 A decision finding intentional Program violation shall inform the respondent concerning the right to judicial review.*

Notwithstanding the above, rehearings are available in CalWORKs IPV cases<sup>8</sup>. MPP section 22-340.6 pertaining to CalWORKs IPVs provides:

*.6 The CWD may not disqualify a respondent unless the decision of the ALJ finds that the respondent has committed an IPV or the respondent fails to request a state level de novo hearing within 25 days of the notice of an adverse local level hearing decision that proposes to disqualify the respondent has been sent to the respondent.*

**Step Two: Is the Rehearing Request Timely?**

Like the substantive considerations discussed in step one, the rehearing review process lacks jurisdiction to consider untimely rehearing requests. However, good cause for filing a late rehearing request can be considered under the statutory criteria discussed below.

Section 10960 gives a party 30 days after the receipt of a state hearing decision to file a written request for rehearing.

MPP section 22-065 provides:

*.1 The claimant or the county may file a request for a rehearing.*

*.11 Such request shall be in writing and shall be filed with the State Hearings Division not more than 30 days after receipt of the hearing decision.*

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<sup>5</sup> If a party is dissatisfied with a decision that was rendered in a rehearing of this kind of case, the only remedy is to file a writ of mandamus.

<sup>6</sup> The types of cases that the CALJ, or his/her designee, has the authority to dismiss without a hearing and written decision. They are the following: 1. The issue is not within the jurisdiction of a state hearing; 2. The claimant filed an untimely hearing request; and 3. The request for hearing raises a compliance issue.

<sup>7</sup> A rehearing request that raises a compliance issue related to the state hearing decision.

<sup>8</sup> Pursuant to §20-351, subd. (i)(1), a CalWORKs IPV is a determination that an individual has intentionally made a false or misleading statement or misrepresented, concealed or withheld facts; or committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity; and committed these acts to establish or maintain CalWORKs eligibility, or to increase or prevent a reduction in the amount of the CalWORKs grant.

**REHEARING REVIEW PROTOCOLS**

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- .111 The request shall not be required to be in any particular form.*
- .112 For requests involving a decision issued by the California Department of Health Services, the request shall be mailed to the California Department of Social Services.*
- .113 Such request shall specify the reasons for the rehearing request.*
- .12 If the request is to permit presentation of additional evidence, the request shall:*
  - .121 Describe the additional evidence;*
  - .122 State why it was not previously introduced; and*
  - .123 Explain its materiality.*
  - .124 Explain how the additional evidence will change the outcome of the hearing decision.*
- .13 The request shall state the date the decision was received.*
- .131 In the absence of such statement, the date of receipt shall be either three days after the date of the postmark on the envelope containing the decision or three days after the date the decision was released by the Department, whichever is later.*
- .14 The postmark on the envelope containing the rehearing request shall be the filing date.*
  - .141 If the postmark on the envelope is unreadable, the filing date shall be the date the request for rehearing is signed.*
  - .142 If the postmark is unreadable and the request for rehearing is undated, the filing date shall be three days prior to the date the rehearing request is stamped "received" by the Department.*
- . 2 Upon receipt of a timely rehearing request, the Director shall mail a copy of the request to the other party to the hearing.*
  - .21 This party shall be permitted to file a statement supporting or opposing the rehearing request.*
    - .211 Such statement shall be in writing and shall be filed with the Director not later than five days after service.*
      - (a) The filing date shall be determined in accordance with the provisions of .14 above.*

Effective January 1, 2008, Section 10960 was amended to say that a person may be entitled to a rehearing even if s/he requests one beyond the 30 day time period, if his/her reason for filing late is either because s/he did not receive the decision, or s/he received it but has good cause for filing late.

Specifically, 10960(f)(2) provides:

(2) For purposes of this subdivision, "good cause" means a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language-compliant notice, in and of itself, shall not constitute good cause. The department shall not grant a request for a rehearing for good cause if the request is filed more than 180 days after the order or action complained of.

Also, identical to 10951(b)(3), 10960(f)(3) provides:

**REHEARING REVIEW PROTOCOLS**

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(3) This section shall not preclude the application of the principles of equity jurisdiction as otherwise provided by law.

**Step Three: Substantive Errors: Errors of Law Versus Errors of Fact**

Assuming that the rehearing request is timely and should be evaluated on the merits, rehearing reviewers must next decide whether the decision under review contains a substantive error related to the request.

The first place to look, once again, in making this determination is the rehearing request itself.

The decision cover page reminds all parties, as follows:

*In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision.*

Once the alleged error or errors described in a rehearing request are identified, the rehearing reviewer will decide whether what is being alleged are errors of law, errors of fact-finding, or both.

In some cases, such as when a party argues that the decision is inconsistent with the law and cites Section 10960, subdivision (b)(1), it will be clear that the asserted error is one of law, involving an allegation that the ALJ cited the wrong law or regulation to decide a claim or misunderstood the meaning and application of law or regulation.

In other cases, such as when a party contends the decision is not supported by the evidence and cites Section 10960, subdivision (b)(2), it will be clear that the asserted error concerns the ALJ's fact finding.

In still other cases, the rehearing request will raise mixed questions of law and fact.

Whatever error is specifically alleged in a rehearing request, the reviewer will keep in mind the distinction between errors of law and errors in fact finding because different legal tests are used to review each kind of mistake.

Errors of Law:

Generally, alleged errors of law and/or policy are reviewed under what is called a *de novo* standard. Under this standard, the rehearing reviewer conducts a fresh analysis *from the perspective of the Director* of the applicable law and reaches a fresh conclusion as to whether the ALJ who presided over the hearing applied the law incorrectly. Alleged mistakes of fact finding, on the other hand, are subject to more deferential scrutiny on review.<sup>9</sup>

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<sup>9</sup> By contrast, Superior Courts are authorized and required by §1094.5 of the Code Civ. Proc. to conduct independent reviews of factual findings contained in state hearing decisions, subject to a strong presumption that the findings are correct. (*Fukuda v. City of Angels* (1999) 20 Cal.4<sup>th</sup> 805, 818).

## **REHEARING REVIEW PROTOCOLS**

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The types of factual findings made by ALJs in state hearing decisions are as widely varied as the types of state hearings conducted by SHD. They encompass everything from mental impairment determinations, to assessments of the credibility of witnesses, to benefit and overpayment computations.

Errors of Fact:

The following standards can be used in a rehearing review:

- [A] finding is “clearly erroneous” when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed; (Anderson v. City of Bessemer City (1985) 470 U.S. 564, 573; See also, San Mateo City School Dist. v. PERB (1983) 33 Cal.3d 850.)
- Substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” (Universal Camera Corp. v. NLRB (1951) 340 U.S. 474, 477; Braewood Convalescent Hospital v. Workers’ Comp. Appeals Bd. (1983) 34 Cal.3d 159, 164.)
- Abuse of discretion may be found (as to factual findings and sometimes as to legal holdings as well) when: (1) the tribunal’s decision is clearly unreasonable, arbitrary, or fanciful; (2) the decision was based on an erroneous conclusion of law; (3) the tribunal’s findings are clearly erroneous; or (4) the record contains no evidence upon which the tribunal rationally could have based its decision. (Citizens to Preserve Overton Park, Inc. v. Volpe, (1971) 401 U.S. 402, 416; see also, Fort Mojave Indian Tribe v. DHS (1995) 38 Cal.App.4<sup>th</sup> 1574, defining abuse of discretion as occurring when the decision’s factual findings are not supported by substantial evidence.) An abuse of discretion may also occur when the trier fails to exercise discretion. (See, e.g., Dickson, Carlson & Campillo v. Pole (2000) 83 Cal.App.4<sup>th</sup> 436, 449; In re Jesua V. (2004) 32 Cal.4<sup>th</sup> 588). For a good general overview of the abuse of discretion test, see the *en banc* opinion in United States v Hinkson, (9<sup>th</sup> Cir. 2009) 585 F. 3d 1247, 1251

### **Addressing Issues Beyond the Rehearing Request:**

10960(b)(5) states: (5) The adopted decision does not address all of the claims or issues supported by the record or evidence.

Therefore, if in the course of reviewing the case record, the rehearing reviewer determines that the decision doesn’t address an issue raised by either party that has a bearing on the outcome of the case, the reviewer may, on his/her own, recommend a rehearing to consider the issue.

### **Listening to the Recording:**

## **REHEARING REVIEW PROTOCOLS**

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Rehearing reviewers have discretion to decide whether it is necessary to listen to the recording of the hearing in order to render a rehearing recommendation. Listening to the recording would be especially appropriate when a rehearing request raises serious allegations of factual error, such as a contention that key testimony was provided but not considered by the ALJ or summarized in the decision's factual findings, and that such testimony would change the outcome of the case.

If, in the process of reviewing a recording, the rehearing reviewer discovers the recording is either missing or not sufficiently complete or is inaudible, SHD's policy is to grant an automatic rehearing subject to exceptions when the rehearing determination would not be affected by the content of the recording. Examples of when a rehearing request may be denied in the absence of a fully preserved recording are:

- Where a rehearing request only alleges legal errors, and the decision is legally correct on its face.
- Where the rehearing request is filed late without either good cause or reasons that would excuse the filing delay on the basis of equity.

### **Step Four: Harmless Error Analysis**

When errors in decisions are identified, rehearing reviewers must undertake a fourth step, and decide whether the errors are sufficiently important to warrant a rehearing.

Not all errors require reversal of a judgment or decision. Reversal is mandated only for those errors deemed prejudicial to the outcome of a case. (See, e.g., with reference to California writs of mandate, Steele v. L.A. County Civil Service Com. (1958) 166 Cal.App.2d 126; Russ v. Unemployment Ins. Bd (1981) 125 Cal. App. 3<sup>rd</sup> 834; Constancio v. State Personnel Bd. (1986) 179 Cal.App.3<sup>rd</sup> 980.)

In Rose v. Clark (1986) 478 U.S. 570, the Supreme Court announced that even as to constitutional errors, most are subject to what is called "harmless error" analysis. The sole exception to this rule applies to those errors which are deemed "structural" in nature and affect the basic framework of a trial itself rather than a mistake that simply occurs during a trial. These kinds of errors are considered reversible *per se*.

Under Article VI, section 13 of the California Constitution, a judgment may not be reversed on appeal absent a showing that an error resulted "in a miscarriage of justice." As interpreted by the California Supreme Court, this provision means that a judgment may not be reversed without a showing "that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." Otherwise, the error is deemed harmless. (People v. Watson (1956) 46 Cal.2d 818, 836.)

California Civil Code, Section 475, using similar language, provides for reversal or modification of a judgment only when the record as a whole demonstrates "prejudicial" error that caused

**REHEARING REVIEW PROTOCOLS**

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“substantial injury” to the appealing party and without which a “different result would have been probable.”

The burden of establishing prejudice under the harmless error rule in civil cases is on the party appealing the judgment. (*Brecht v. Abrahamson* (1993) 507 US 619; *Fukuda v. City of Angels* (1999) 20 Cal.4<sup>th</sup> 805, 817.) For rehearing purposes, this means that the burden of showing that a rehearing is warranted lies with the requesting party; an error is prejudicial, and therefore not harmless, if it is reasonably probable a more favorable result would occur absent the error. (*Cassin v. Allstate Ins.* (2002) 33 Cal.4<sup>th</sup> 780, 806.) A reasonable chance of a different decision is sufficient to make the error prejudicial. (*Id.*)

To sum up, before recommending that a rehearing be granted, an ALJ reviewer must conclude that (a) the decision contains an error, (b) the error is serious or substantial, and (c) in the absence of the error, it is reasonably probable the outcome of the hearing would have been different.

**Rehearing Requests Alleging Newly Discovered Evidence Under Section 10960, subdivision (b)(7)**

As noted above, Section 10960, subdivision (b), sets forth the grounds for granting rehearings. While the first six sub-sections of this statute concerns errors contained in the established evidentiary record (oral and documentary) of a hearing, subsection (7) presents a special situation that asks the rehearing reviewer to consider the relevance and importance of evidence that is not contained in the record.

To apply the language of the subsection in such cases, SHD requires the party requesting the rehearing and proffering new evidence to (a) explain why the evidence was not in the party’s custody or available to the party at the time of the hearing, (b) attach a copy of the proffered new evidence and (c) explain how the new evidence, had it been introduced, reasonably could have changed the result of the decision. Even if requirements (a) and (b) are met, if a different outcome does not appear reasonably probable after consideration of the new evidence, the hearing request will be denied.

**Program Contacts**

As discussed above, the rehearing reviewer is required to implement the Department’s legal interpretations and policies. Therefore, as part of the deliberative process, the reviewer may have to consult with Program on an “as needed basis” when the Department’s position is not already clear.

**SHD Contacts**

To protect the integrity and impartiality of the review process, the rehearing reviewer should have no contact about a case with the ALJ who wrote the initial decision, either during the

## **REHEARING REVIEW PROTOCOLS**

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review or after a rehearing determination has been made. The Presiding Judge, however, may contact the rehearing reviewer if s/he has a question about the review recommendation.

### **Step Five: Putting the Analysis in Writing**

After a rehearing reviewer decides whether to recommend a rehearing, as part of the deliberative process, the reviewer's analysis and recommendation is put in writing and entered into the rehearing database.

Based on the analysis, the Chief Administrative Law Judge or his/her designee determines whether to grant or deny the requested rehearing.

If the rehearing recommendation is to grant the rehearing, the analysis should clearly and completely identify all issues that must be addressed at the rehearing, including any specific evidence that the rehearing reviewer determined must be obtained in the rehearing in order to render a legally and factually correct decision.

### **Recommending a Rehearing on the Record or In Person/By Telephone**

Rehearings on the record are conducted on the basis of the record compiled in the state hearing under review. Generally, they are recommended only in cases where there are no disputes of material fact.

In some rare cases, a rehearing on the record may also be recommended to correct a mistake in the decision, even if the rehearing reviewer concludes that the error is harmless.

Generally, a rehearing, either in person or on the record, will not be assigned to the same judge who conducted the original hearing. The CALJ or his/her designee has the discretion to assign a rehearing to an ALJ in a regional office different from the office in which the original case was heard if the CALJ or his/her designee believes that it would protect the integrity and due process of the rehearing procedure to do so. Depending on the case, the rehearing reviewer may also make a recommendation for this to be done.

### **Expedited Rehearing Review and Expedited Rehearing Requests**

Requests for expedited rehearing reviews and expedited rehearings are to be considered as soon as administratively possible.

If it is determined that an expedited review should be granted, a letter is sent to the parties notifying them of this and allowing the non-requesting party five days to respond. It will then be determined if an expedited rehearing should be granted.

### **Limited Issues**

## **REHEARING REVIEW PROTOCOLS**

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Sometimes a rehearing request will contain multiple allegations of error, but only a limited number will have merit. In such cases, rehearing grants will be issued, limited to specific issues.

### **Step Six- Notifying Parties of the Rehearing Determination**

The final step in the review process involves drafting the letter to the parties, notifying them of the disposition of the rehearing request.

As required by Section 10960, subdivision (c): “The notice granting or denying the rehearing request shall explain the reasons and legal basis for granting or denying the request for rehearing.”

The pertinent sections of MPP sections 22-065.4 through 22-065.5 provide the following:

*.4 If a request for rehearing is granted, the Director may order the Administrative Law Judge to review one, several, or all issues which were presented for review at the original state hearing. The Director may:*

*.41 Order a rehearing on the record to consider the evidence in the record and any additional written or documentary evidence which may be submitted by the claimant or the county. Any evidence obtained shall be submitted to the opposing party for rebuttal.*

*.42 Order an oral rehearing.*

*.5 Where the Director orders a rehearing on the record, the claimant and the county shall be informed that either party may request that the rehearing be conducted as an oral rehearing.*

MPP section 22-065.7 provides:

*When a request for rehearing is denied, the Notice of Denial shall contain a statement concerning a right to judicial review and shall advise the claimant that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of the suit.*

The SHD rehearing database contains a variety of sample form letters that are mailed to the parties after being tailored to the specific circumstances of each case. Although the letters are designed to be brief, it is SHD’s policy to provide readable and informative explanations of the action taken on all rehearing requests. Toward that end, all rehearing letters are required to explain the reasons why the rehearing request has been granted or denied, whether a rehearing is being ordered on the record or in person/by telephone, and whether only limited issues will be the subject of the rehearing. If a rehearing determination is based on departmental policy, the letter shall reflect that policy.

### **Rehearing Decision Deadlines**

**REHEARING REVIEW PROTOCOLS**

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In order for a rehearing decision to be timely, it must be adopted within 60 or 90 days, depending on the Program involved, from the date that the grant letter is mailed to the parties and to the claimant's authorized representative.