



Wisconsin
Department of Health Services

IMAC Conference Fair Hearing Support

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Basic Civics

- Branches of Government
 - Legislative – sets public policy, controls finances
 - Executive – executes and enforces the laws
 - Judicial – resolves disputes



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Basic Civics

- “4th Branch” – Administrative Agencies
 - Generally part of the Executive Branch
 - Consider DPI and DOJ



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Functions of Administrative Agencies

- Perform all 3 functions of government
 - Set policy
 - Execute functions
 - Resolve disputes



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Unique Features of Agencies

- Because “three” roles in one agency, actions viewed with some skepticism
- Enhances need for transparency
- Enhances need for effective Due Process



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Division of Hearings & Appeals

- Affiliated with DOA
- Provides services to multiple departments
- Agent of the departments (Quasi)
- Impartial tribunal



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Similarities with Judicial Branch

- Pleadings are required, but less formal
- Notice of Action by the Agency plus written request for hearing



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Similarities with Judicial Branch

- May have an attorney represent them
- Administrative Law Judges (ALJs) provide scheduling
- ALJs resolve discovery issues



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Similarities with Judicial Branch

- ALJ controls the flow of the hearing
- ALJ resolves credibility issues
- ALJ issues a decision/proposed decision



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Key Differences from Judicial Branch

- Jurisdiction and subject matter competency is restricted
- Relaxed rules of evidence



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Key Differences from Judicial Branch

- No equitable authority
- Enhanced responsibility to ensure that pro se litigants receive fair treatment



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DHA's General Authority

- Fair Hearings
 - Fair Hearings are where an agency is attempting to take away an INDIVIDUAL's benefits
 - For example - FS/MA



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DHA's General Authority

- Miscellaneous Litigation
 - Contested action against others in the system
 - For example - MA providers for recoupment, decertification, and Caregiver Misconduct



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DHA's General Authority

- Hearings governed by
 - Wis. Stat. ch. 227
 - Wis. Admin. Code chs. HA 1 to HA 3



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Similar Procedures for Both

- Differing levels of sophistication of participants
- Subpoena witnesses
- Present oral and documentary evidence



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Similar Procedures for Both

- Cross-examine witnesses
- Opening Statement
- Closing Statement



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Case Presentation

- Who
- Where
- Who says so
- And Why should we believe them
- Did What
- Why
- When
- How



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Common Problems

- Not having the correct witnesses present
- Lack of proper documentation
- Lack of authentication of documentary evidence



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Preparing your Case

Ask yourself; “What am I trying to prove?”

When reviewing potential evidence ask yourself;
“Does this make it more likely that”



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Common Problems

- Failure to eliminate common defenses
 - I did it, but what I did was not illegal
 - Some other dude did it
- Improper or insufficient notice



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Best Practices

- Show up with –
 - Appropriate witnesses
 - Prepared witnesses
- Have all the documents necessary to establish prima facie case



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Best Practices

- Be prepared to offer rebuttal documentation (remember that ALJs can take administrative notice of some things.)
- Anticipate defenses
- Subpoena witnesses



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Concepts to Remember

- Burden of Proof
 - Preponderance of the evidence (overpayment determinations)
 - Clear and Convincing (fraud or IPV)



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Concepts to Remember

- Rules of Evidence
 - Less formal than Court actions
 - Evidence must still be relevant and material
 - Hearsay is admissible



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Concepts to Remember

- Witness Preparation



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Overpayments

- Hearing provides an explanation
- Process affords the opportunity to understand the rationale for the agency action



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Rules of Evidence

- Objections:
 - Allowed, but the rules of evidence are not generally applicable.
 - Proper for relevancy, materiality, or if the evidence is unduly repetitious.



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Rules of Evidence

- Hearsay is admissible **BUT** uncorroborated hearsay cannot be sole basis for the decision.



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What is Hearsay?

- An out of court statement
- Offered in evidence
- To prove the truth of the matter



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Not Hearsay

- Prior inconsistent statements
- Admission by a party opponent



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Hearsay Exceptions

- Statements of medical diagnosis or treatment
- Recorded recollection
- Patient health care records



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Hearsay Exceptions

- Public records
- Records of regularly conducted activity
- Judgment of previous conviction



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Witness Preparation

- See the “Preparing to Testify” hand out.