

CCWRO STATE HEARING PRACTICE GUIDE FOR ARGUING NOTICE AT ISSUE & SUGGESTION FOR CDSS STATE HEARING DIVISION

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This reference can be used by advocates during CDSS public social services administrative hearings when arguing “Notice at Issue” pursuant to W&IC §§10950, 10967, MPP § 22-009 and 22-049.52

Why raise notice at issue at the beginning of the hearing?

- It affords the claimant jurisdiction if the hearing was not filed within the jurisdictional time limit as provided in Welf. & Inst. Code § 10951 and MPP § 22-009.
- If the claimant’s benefits were reduced with an inadequate or language non-compliant NOA, and the NOA is found to be inadequate, the benefits will be restored retroactively, and aid paid pending would be restored prospectively.

When can you raise notice at issue?

The notice at issue can be raised by the claimant: “At the time of the hearing the recipient has a right to raise the adequacy of the county's notice of action as an issue.” Welf. & Inst. Code § 10967. This is a fundamental right and the statute is not ambiguous or unclear. It is unlawful to add or subtract to the statute when the statute is unambiguous or clear.

The statute imposes no limits on when the NOA’s adequacy can be raised. Some ALJs have unlawfully tried to create exceptions to this mandate which has not been adjudicated in a higher court. **CCWRO recommends that CDSS State Hearings Division (SHD) would provide for some statewide guidance to ALJ to have statewide consistent implementation of Welf. & Inst. Code § 10967 and MPP §22-049.521.**

Welfare & Institutions Code § 10967.

At the time of the hearing the recipient has a right to raise the adequacy of the county's notice of action as an issue. If the administrative law judge determines that adequate notice was provided, the recipient shall agree to discuss the substantive issue or issues, or the case shall be dismissed. If the administrative law judge determines that adequate notice was not provided, the case will be postponed unless the recipient waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid, retroactive action shall be taken by the county to reinstate aid pending.

What constitutes an adequate NOA? A

written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing. In addition, the notice of action must inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid and shall include information concerning the recipient's circumstances that was used to make the determination and shall cite the regulations which support the action. (M.P.P. §§10-116.42, 22-071.1, 22-071.13 and 22-071.6)

The notice also must be language compliant to be adequate.

The NOA and the back of the NOA, must be in the primary language of the claimant, if such a [translated notice of actions](#) available in the claimant's primary language on CDSS webpage.

Language compliant NOA is defined in MPP § 22-001.(1)(1):

(l) (1) Language-Compliant Notice - A notice of action that meets the applicable requirement in (a) or (b) below:

(a) For notices of action provided by CDSS in the claimant's primary language:

A written notice of action that complies with the requirements of Section 21-115.2 for a claimant who chose to receive written communications offered in his or her primary language pursuant to Section 21-116.21. There shall be a rebuttable presumption that a claimant chose to receive written communications offered in the claimant's primary language if the claimant identified a primary language other than English to the county pursuant to Section 21-201.211.

MPP §22-049.52 If the claimant contends that he or she is not adequately prepared to discuss the issues because he or she did not receive the notice required by Section 21-115.2 or 22-071.1, this issue shall be resolved by the Administrative Law Judge at the hearing.

.521 If the Administrative Law Judge determines that adequate and language-compliant notice was provided, the claimant shall agree to discuss the substantive issues or the case will be dismissed.

.522 If the Administrative Law Judge determines that adequate and/or language-compliant notice was required but not provided, the case shall be postponed unless the claimant waives the adequate and language-compliant notice requirements, as applicable, for purposes of proceeding with the hearing, and agrees to discuss the substantive issues at the hearing.

(a) A postponement for this reason shall be deemed a postponement for good cause.

(b) When the Administrative Law Judge has determined that adequate and/or language-compliant notice was not provided but the claimant waives those requirements, as applicable, the Administrative Law Judge shall conduct the hearing on the substantive issues and submit a decision on those issues.

.523 If adequate and/or language-compliant notice was required but not provided and involved a discontinuance, suspension, cancellation, termination or reduction of aid, other than those referred to in Sections 22-072.1 through .13, aid shall be reinstated retroactively and the provisions of Section 22-072.5 shall apply.

Section 21-115.2 provides as follows:

"Forms and other written material required for the provision of aid or services shall be available and offered to the applicant/recipient in the individual's primary language when such forms and other written material are provided by CDSS. When such forms and other written material contain spaces (other than "for agency use only") in which the CWD is to insert information, this inserted information shall also be in the individual's primary language."

NOTE: Even if the front of the NOA has not been translated and posted by DSS, but the NOA back, the NA9 has been, thus the NA 9 must be in the primary language of the claimant if it is available on the DSS webpage. If the language compliant NA-9 back is not attached, then the NOA is inadequate – it fails to inform claimants of their constitutional hearing rights.

Q&AS

When must the Judge rule on the adequacy of the NOA?

The law states at the time of the hearing.
The regulation also states at the hearing.

Does the law give the ALJ the discretion to take the adequacy of the NOA under submission?

Refusing to rule on the adequacy of the NOA at the hearing is a violation of the laws and regulations governing the state hearing process.

Is a person estopped from raising NOA at issues if it was not raised at a previous hearing?

No. The statute provides “at any time” which does not mean “sometimes.”

Is a person estopped from raising NOA at issues if it was not raised at the beginning of the hearing?

No. The statute provides “at any time” which does not mean “sometimes.”

PRACTICE NOTE: The state regulation 22-049.52 states: “If the claimant contends that he or she is not adequately prepared to discuss the issues because he or she did not receive the notice required by Section 21-115.2 or 22-071.1”, then the regulation allow the claimant to raise notice at issue. This regulation conflicts with the law and it comes from the previous century. As a practice we suggest that advocates assert that they are not adequately prepared because the NOA in not adequate.

SUMMARY OF STEPS FOR RAISING NOTICE AT ISSUE

STEPS		ACTION
Is the NOA in the primary language of the claimant?	No.	Next Step
Is a NOA translated and on the DSS web page?	No	Next Step
Is a NOA translated and on the DSS web page?	Yes	Raise NOA at issue as the NOA is inadequate because it is not in the claimants’ primary language.
Is there NA -9 back translated on the CDSS web page in the primary language of the claimant?	Yes	
Is there NA -9 back translated on the CDSS web page in the primary language of the claimant?	No.	Raise NOA at issue as the NOA is inadequate because the NA-9 back is not in the claimants’ primary language.
Does the NOA explain the exact reasons for the negative action? Example: “You failed to participate in Job Club on 1-4-17.”	Yes	
Does the NOA explain the exact reasons for the negative action? Example: “You failed to participate in your assigned WtW activity.”	No	Raise NOA at issue for the NOA does not even specify what activity. There is also an issue of when?
Does the NOA explain the exact reasons for the negative action? Example: “You failed to submit verification of earned income.”	Yes	
Does the NOA explain the exact reasons for the negative action? Example: “You failed to provide requested verification .”	No	Raise NOA at issue for the NOA does not even specify what verification? There is also an issue of when?

CCWRO Proposed Checklist for Adequacy of NOA ALJ CHECKLIST AFTER DOING THE OATH

Case # _____

ALJ # _____

County _____

Filing Date: _____

Hearing Date: _____

- | | | | | |
|---|-----|--------------------------|----|--------------------------|
| 1. Is this a county error OP? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 2. If “yes” will equitable estoppel analysis be done? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 3. Was APP Authorized? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 4. Date APP was issued? _____ | | | | |
| 5. Was the hearing filed timely? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 6. If APP has been issued or Jurisdiction is not an issue – STOP HERE. | | | | |
| 7. Does the NOA show the effective date of the action? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 8. Is the NOA timely? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 9. Is the description of the proposed action complete? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 10. Is the amount of previous and new aid shown? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 11. Is the reason for the action given? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 12. Are all of the regulations for the action cited? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 13. Are the family circumstances that caused the action shown in the NOA? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 14. Are all pertinent computations provided in adequate detail and specifically identified with the persons to whom they pertain? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 15. Does the NOA contain a statement of what information is needed to reestablish eligibility or determine the correct amount of aid? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 16. Does the NOA contain complete adequate details? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 17. Does the NOA contain language that was clear, understandable and free from jargon? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 18. Is the NOA language compliant? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 19. Does the NOA have a language compliant NA-9? | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

ALJ ACTION: This form must be part of the hearing record. A copy must be given the claimant at the end of the hearing

ADVOCATE PRACTICE TIP: This checklist can also be used by advocates accessing the adequacy of the notice of action.