CDSS STATE HEARINGS DIVISION
PROTOCOL ON "BIFURCATIONS"
HEARINGS LIMITED TO JURISDICTIONAL ISSUES

--- I. ---
Introduction and Scope of the Protocol

The mission of the State Hearings Division (SHD) is to resolve disputes of applicants and recipients of public social service programs in an impartial, independent, fair and timely manner, ensuring that due process is met in accordance with federal and state law.

Whenever an issue arises regarding SHD's jurisdiction to hear an appeal prior to the hearing, SHD has three options:

1) To allow the scheduled hearing to proceed on both jurisdiction and substantive issues;

2) To limit the scheduled hearing to jurisdiction issues only; or,

3) In limited circumstances, to dismiss the appeal administratively, without a hearing or written decision.

This protocol provides guidance to Presiding Administrative Judges (PALJ) or the PALJ's designee and to Administrative Law Judges (ALJ) in evaluating a request to bifurcate a case. "Bifurcating a case" means that that appeal is separated, with an initial hearing held that is limited to reviewing the jurisdictional issue(s) as provided under Division 22 of the Manual of Policies and Procedures (MPP)[1], section 22-049.53. A hearing "on the merits" to review the actual issues for appeal will only occur if the SHD finds jurisdiction (power to hear) the case. This guidance also clarifies the process for cases in which there may be an improper requestor or unauthorized representative requesting a hearing.

Bifurcations can occur in two ways:

- prior to the hearing: a bifurcation may be granted by authority of the PALJ where a party submits a written request to a regional PALJ (see § 22-049.531); or,

- at a non-bifurcated hearing: the hearing judge can accept the agreement of the parties (made prior to or during the hearing), to limit the initial hearing to a review of only whether the SHD jurisdiction to hear the appeal issue, or the hearing ALJ may decide, on his or her own, to bifurcate a case to hear only the jurisdictional challenges. (See § 22-049.532.)

The SHD Appeals Case Management System (ACMS) has a single task for both a request for Bifurcation and a request for Administrative Dismissal. Section II discusses Bifurcations; Section III discusses Administrative Dismissals.

--- II. ---
Prehearing Request for Bifurcation

Under normal circumstances, unless bifurcation has been granted **prior** to the hearing, and even in those situations where an agency challenges jurisdiction for a case or issue to be heard, all parties must be prepared to provide evidence on both the jurisdictional issues and

[1] All regulatory references are to Division 22 of the CDSS Manual of Policies and Procedures unless otherwise stated.

substantive matter of the case. (MPP § 22-049.53; this includes the mandate that agencies timely make available their Statement of Position (SOP); see Welf. & Inst. Code, §10952.5, MPP § 22-073.25, .252.)

For protocols related to when someone who is not a claimant (as defined by MPP 22-001(c)(2)) or who requests a hearing on behalf of a claimant without submitting authorization to be the Authorized Representative, see Section C.2 below.

A. Requesting the Bifurcation

Prior to a hearing, any party may request bifurcation. The request must be in writing and submitted to the PALJ; the requesting party must send a copy of the request to the other party. (MPP § 22-049.531.)

1. When the claimant has an ACMS account and elected a preference for email communications, the agency is considered to have provided a copy to the claimant upon uploading the document into ACMS. The claimant will receive an email notification that new document is available in ACMS.

2. When the claimant does not have an ACMS account or has elected postal communication preference in ACMS, the agency must indicate on or with its request for bifurcation that it sent a copy of the request to the claimant. This can be an indication that the claimant was copied on the email, fax cover or cover letter to a postal mailing.

As a best practice, the party making the bifurcation request should submit it 5 business days or more prior to the hearing for the PALJ to determine whether to grant or deny the request. Otherwise, the PALJ won't be able to act on the request, and hearing will not be pre-designated as bifurcated. The requesting party may renew the request at the hearing, and the Administrative Law Judge will determine whether to bifurcate the matter. The agency shall prepare its Statement of Position (SOP) on the merits unless it receives a response from SHD granting the bifurcation. See Section C.(2)(b) below regarding preparing SOPs when the case is flagged as having an "Improper Requestor."

The bifurcation request should include detailed reasons with supporting evidence for why the case should bifurcated to address the jurisdictional issues separately, and for any opposition to the request, why the case should be heard all at once.

Without clear, demonstrated and documented support for the need to bifurcate, the case will proceed to hearing on both the jurisdictional issues and issues on the merits. The burden is on the requesting party to show why the judge should not hear all issues together.

The considerations involved in the PALJ's decision to grant or deny a prehearing bifurcation request involve ensuring fairness to the parties and the efficient use of resources. The following bases and considerations are guidelines for the PALJ's exercise of discretion in ruling on prehearing requests for bifurcation.

B. Potential Bases and Factors Supporting Granting the Request for Bifurcation

1. **Late Filings**: SHD may grant a bifurcation request when the jurisdictional issue is whether the claimant filed the appeal or the request for hearing too late. A claimant must file a

timely hearing request for SHD to have jurisdiction over the claim on the merits. (See Welf. & Inst. Code, §10951(a), for Affordable Care Act, 10, Cal. Code Reg, § 6606(c).) The time the claimant took to file a request for hearing can greatly exceed the 90 days, if the claimant did not receive an adequate and language-compliant Notice of Action (NOA) (see § 22-009.1, .11)[2]. Also, the time to file a request for hearing following receipt of an adequate and language-compliant NOA may be extended up to (but not to exceed) 180 days[3] if the judge finds good cause for the late filing.

At the prehearing stage of the proceedings, the strictest standards must be applied prior to depriving the claimant of the opportunity to present their case to an ALJ at a hearing on the merits. PALJs therefore may wish to only consider granting a request for bifurcation for filings that are within180 days from the date of the notice of action only where there is a high likelihood that the Notice of action will be found to be adequate, to avoid an extra hearing when good cause can be asserted and to more quickly resolve cases. PALJs may wish to act immediately on CalFresh tax intercepts, as the intercept will remain "active" for filings made more than 90 days after the notice until there is a ruling finding jurisdiction, or for filings more than 180 days after notice, upon a ruling on the merits favorable to the claimant. For bifurcation requests based on late filing, the PALJ will also take into consideration the factors listed in #8 below (complexity and multiplicity of issues), to ensure judicial economy while preserving due process. (See basis for dismissing on a late filed request for hearing in § 22-054.32.)

a. For Medi-Cal Scope of Benefit Cases: Due to changes to federal regulations issued from the Centers for Medicare and Medicaid Services (CMS), SHD and DHCS revised statutes to provide that Medi-Cal managed care enrollees who receive a notice of adverse benefit determination must first internally appeal to the managed care plan; the plan has 30 days to respond. After the plan issues its notice of appeal resolution, the claimant has 120 days to request a state hearing. Generally, a claimant's right to a state hearing arises only after the in-plan appeal process is exhausted and the premature filing of a state hearing does not toll the timeframe for filing that in -plan appeal. As such, depending on the specific facts, bifurcation (or dismissal) may occur on the basis that the claim is not yet "ripe" so that the claimant does not inadvertently wait for the state hearing only to learn that the window to file the in plan appeal has closed. However, if an in plan appeal was filed and the plan fails to respond to the in-plan appeal within 30 days, or if the plan failed to meet any of the requisite notice and timeliness requirements (see "Exhaustion" processes below in II.C.6.a. below), the claimant may be deemed to have exhausted the plan appeal process and may immediately proceed to a state hearing. (See Welf. & Inst. Code, § 10951((b), as amended Stats. 2017, ch. 738, §3, (A.B. 205), eff. Jan. 1, 2018.) If the claimant is found to have a state hearing right under the above standards, the same bifurcation considerations would apply. For example, an agency may consider requesting bifurcation if a person has exhausted the in-plan grievance rights but then did not timely ask for a state hearing.

2. **Lack of Claimant Standing**: Section 22-003.1 provides that a state hearing shall be available to a claimant who is dissatisfied with a county action and requests a state hearing.

[2] If a caregiver requests an informal hearing on a foster care overpayment claim, the 90-day period to request a formal hearing is suspended until a formal denial is issued (see § 45-306.3).

[3] Subdivision (d) also provides that: "This section shall not preclude the application of the principles of equity jurisdiction as otherwise provided by law." This provision provides equitable relief for unconscionable acts by agency staff that reasonably delay a claimant from filing their appeal timely, even beyond 180 days.

Bifurcation can occur if there is sufficient concern that the person filing the request for hearing does not have standing (the power to present a claim) as a "claimant"[4] in SHD's forum.

SHD's "Improper Requestor" process is used to flag a hearing request for follow up when SHD could not determine, through the appeal validation process, whether an individual is a proper "claimant" for the CDSS hearing (see Section A, below), or whether the person requesting the hearing is an individual who has not yet been authorized to be a claimant's representative (see Section B, below). If the person who asked for the hearing is neither a claimant nor an authorized AR, there is a "standing" question that must be resolved before that person can have a hearing on the merits of the appealed issue. (§ 22-049.54.). This is necessary to prevent the inadvertent disclosure of confidential information to unauthorized persons.

a**.** When person who asked for hearing is not an applicant or recipient of aid**:**
SHD must dismiss appeals if the person requesting the hearing does not have "Standing" (the power to present an appeal). (MPP § 22-054.35.)

Anyone who meets the definition of claimant set forth in MPP § 22-001(c)(2) has standing. Some individuals are defined as claimants, although not the actual applicant or recipient of benefits or service. This includes:

- Unaided parents, caretaker relatives, or foster parents for children in their care
- Conservators and Guardians of individuals
- Executor/executrix or administrator/administratrix of a deceased claimant's estate, or, if the estate is not in probate, an intestate heir
- The sponsor of an immigrant

Some individuals or entities may have benefits at issue but not be within CDSS SHD jurisdiction. For example, in Medi-Cal Scope of Benefit Cases, health care providers may file appeals for a variety of reasons, including lack of Medi-Cal provider payments. These are treated as standing challenges, as the person/entity requesting the hearing is not a proper claimant for the CDSS SHD hearings, even though they may be a claimant for provider hearings/billing disputes heard by another hearing entity.

If it is not clear that the person who asked for a hearing is a CDSS state hearings claimant, such as when SHD/the county cannot verify the person as an applicant/recipient of aid/services, SHD will flag the case as an "improper requestor."

Agencies may also request that the case be flagged for standing. This is done when creating an appeal by selecting the "Improper Requestor"/"Yes" option and entering the reason. For existing appeals, this is done through "New Task" and selecting Task Type/Improper Requestor and completing the required information (task notes and task reason) for improper claimants.

All cases initially flagged as a potential Improper Requester are sent for review by the Improper Requestor unit for review. After SHD review by the Improper Requestor Unit staff, if the Improper Requestor status is confirmed, staff will enter the Improper Requestor flag. ACMS then will generate a letter stating that SHD "does not have proof allowing you to represent the

[4] For the Affordable Care Act, claimants are "appellants"; for the Resource Family Approval program, claimants are "respondents"; the rules on having standing apply to all three groups of individuals. For this protocol, all these individuals will continue to be referred to as "claimants."

person who applied for or gets benefits (the claimant). Also, the claimant has not told us that they want a hearing." The letter asks the claimant to call or to send in written authorization appointing the AR. If not confirmed, no case flag will be entered in ACMS.

When SHD has resolved the standing issue, the agency hearing representative will receive an email notification stating, "As the identified hearing representative, this is to notify you that the improper claimant issue for (case number) has been resolved."

b. If SHD has not been able to resolve the standing issue: The hearing will be scheduled with the appeal flagged for "Improper Requestor." If the matter is not resolved prior to hearing, the judge will need to determine whether the claimant has "standing" as a claimant, or the AR properly appointed, to have a hearing on the merits of the appeal.

Since the agency cannot release confidential information, if the "improper requestor" flag is still in the ACMS appeal 10 days prior to hearing, the agency is only required to prepare an SOP that addresses standing since it cannot reveal confidential information. As always, however, counties must be prepared to present why they took the challenged action. Agencies may wish to prepare two SOPs, one only on standing and one on the merits if the standing issue is resolved less than 10 days prior to the hearing. This is particularly recommended when the person who requested the hearing is a relative or is someone familiar with the facts of the case and who has completed the statement of facts to apply for benefits and the applicant/beneficiary is not competent. (See MPP § 22-085.23 permitting a judge to determine such individuals may be the AR.)

If the judge is able to make a determination during the hearing that a proper claimant made the request for hearing, and the claimant waives an SOP on the merits (if one was not available), the full hearing can occur on that date if the parties agree and are prepared to proceed, or at a later time. Regular postponement, open record and continued hearing processes apply. Otherwise, the hearing on the merits will be scheduled after the ruling on the claimant's standing.

If the ruling on standing is not made on the record at the initial bifurcated hearing, within 10 days of the standing hearing, the judge must issue either issue a decision dismissing the case for lack of standing, or issue a written determination regarding the finding on jurisdiction. (MPP § 22-049.532.) If the judge finds jurisdiction, the judge will request a continued hearing through ACMS; ACMS will generate the notice of hearing.

c. When person who asked for hearing is an unconfirmed representative: A different type of standing issue is raised when a person *other than* someone defined as a claimant asks for a hearing on behalf of the person who meets the definition of a claimant, and SHD has no written authorization appointing that person as someone who the claimant has authorized to act on their behalf.

State Hearings cannot accept hearing requests made by a person acting on a claimant's behalf when SHD doesn't have written authorization (which includes telephonic signatures) from the proper claimant. Also, without written authorization agencies are not allowed to share case records with an individual who does not appear to have valid authority to represent a claimant. (See MPP §19-004 for who may have access to confidential information; §19-005.1 addressing

eligibility information provided by applicant/recipient; and Welf. & Inst. Code §10850.2 providing the right to access for applicants/recipients).

MPP Section 19-005.2 provides that authorization to represent an individual must be written, signed by the applicant or recipient; the authorization expires in one year unless they are expressly limited to a shorter period or revoked. In cases involving pending appeals, the time period, unless the authorization is expressly limited or revoked, shall extend to the final disposition of the issue involved in the fair hearing. Note that for Medi-Cal and Covered California cases, people can designate an Authorized Representative (AR) on the application[5], and it will remain in effect until the expiration date or until canceled. State law provides for electronic and telephonic signatures (see Code Civ. Proc., §1633.1, et seq.), which will meet the requirement for written authorization. In ACMS, people can appoint (and delete) their authorized representative from their appeal.

d. "Improper Requestor" processing: When SHD or the county believes a person who is not a claimant (as defined by MPP § 22-001(c)(2)) requests a hearing on someone else's behalf without proper designation to be the representative, the case will be flagged as an Improper Requestor. This will generate a reminder letter to the person who requested the hearing. The letter includes the current state Appointment of AR form, the DPA 19. The DPA 19 is not required to be returned; the letter sets out other examples of acceptable documentation of appointment. This can include a written statement by a law firm regarding their appointment, as they may be subject to bar discipline if they misrepresent their status. This can also include the Department of Health Care Services' MC 382 or MC 383 forms. Designation of an AR through the ACMS appeal filing is considered a written authorization. A signed and dated written authorization is presumed to be valid, but this presumption is rebuttable (see § 22-085.11). The authorization need not be executed subsequent to an agency's adverse action which has led to the filing of the hearing request or appeal.

Once flagged, all the same processes described in Section A above will apply.

SHD now has a telephonic signature process, applicable any time a claimant wishes to appoint an AR. After confirming the claimant's identity, SHD will read a script regarding the appointment and obtain the person's telephonic signature. The telephonic signature is the equivalent of a written document. SHD will upload the recorded telephonic signature into ACMS within 24-48 hours.

Once the telephonic signature recording or any other document appointing the AR is provided to SHD and uploaded to ACMS, the agencies will be notified that the Improper Requestor flag was removed, and can view the written authorization appointing the AR.

e. Bifurcation requests on standing or representation challenges: Although the Improper Requestor process is available to agencies to request that SHD flag a case for standing, agencies may also follow the bifurcation process. (See MPP § 22-049.531; 22-054.31 and .37.) Agencies may wish to seek bifurcation when issues in addition to the standing issues are present.

[5] Telephonic signatures are now being used by Covered California in our ACA cases, and under the PPACA, Medicaid applications may now be signed telephonically (see 42 CFR, § 435.907(f)).

An administrative dismissal may be available where the standing issue includes substantive claims that are not within CDSS SHD jurisdiction.

1) If SHD denies an agency's request for bifurcation based on lack of standing, the agency shall prepare a SOP that addresses the substantive merits of the claim. The agency can still challenge jurisdiction due to standing at hearing by including that issue in the SOP.

2) If SHD grants a bifurcation request due to lack of claimant standing, the agency shall prepare a limited SOP on jurisdiction that excludes potentially privileged/confidential information. If the ALJ determines jurisdiction to hear the matter, if the claimant waives the SOP on the merits (if one was not prepared), and the parties agree the hearing on the merits may go forward. (See MPP a § 22-049.5.) Otherwise, the matter will be set for a continued hearing, for which the agency shall prepare a substantive merits SOP.

3) If SHD has already granted the bifurcation due to lack of claimant standing but either SHD or the agency receives sufficient documentation that negates the reason for the bifurcation, such as evidence that a claimant or a claimant-authorized representative indeed filed the hearing request, SHD shall notify the parties and the scheduled hearing will proceed as though it had not been bifurcated. Agencies must be prepared to present the case on the merits, and if able, prepare a written SOP on the merits. An SOP on the merits is required if the agency receives SHD notification that the standing issue resolved at least 10 day prior to the hearing, and otherwise should make best efforts to prepare one. The standard process for a claimant postponement if there is no SOP on the merits available two business days prior to hearing applies.

3. Identical Issue and Parties Previously Decided on the Merits[6]

An agency may request a bifurcated hearing when there is sufficient concern that the claimant has filed on identical issue that had already been heard and where there has been a previous state hearing decision on the merits involving the same parties (see § 22-054.34).

a. Distinguished from Non-Appearance Dismissals: If the first request for hearing was dismissed by decision due to the claimant's nonappearance (see § 22-054.22, .221), it is not a dismissal on the merits of the claimant's claim. The claimant thus may have their claim heard, if the claimant shows good cause for not appearing at the previous hearing, **and**, if applicable, establishes good cause for not making a request to have the first dismissal set aside within 30 days[7] of receipt of the dismissal decision (see § 22-054.22, .222).

If, however, the claimant files a new appeal or hearing request on the same issue as the one dismissed for non-appearance within the time limits set out in Welfare and Institutions Code Section 10951, the request is treated as timely and scheduled for a hearing. Since there was no prior decision on the merits, there is no bar on a new/timely hearing request. In this circumstance, the claimant does not need to request relief from the non-appearance dismissal, unless the claimant wishes to reestablish aid paid pending.

[6] Section 22-054.34 has been revised and now states: "The Administrative Law Judge determines that the identical issue has been the subject of a previous state hearing decision on the merits involving the same claimant."

[7] Section 22-054.222 has been amended to increase the time from 15 to 30 days for a non-appearance dismissed claimant to request setting aside the dismissal and setting a new hearing by providing good cause for the claimant's non-appearance.

To reestablish aid pending the hearing, the claimant would need request to reopen the appeal and establish good cause for setting aside the non-appearance dismissal. (See 22-054.222(a)(1) and §§ 22-054.222(a)(2) cross-referencing § 22-053.113; also see Notes from the Training Bureau, Item 07-11-2 (issued Nov. 28, 2007), "Division 22 Questions and Answers".)

However, if a claimant initially had appealed an issue where the notice was inadequate or not language compliant and then did not timely request to reopen a non-appearance dismissal, the claimant already had access to due process to challenge the action. If the claimant does not appear at that hearing and does not request (and receive) a reopening of the appeal, the lack of adequate notice will not be a basis for a new hearing that is otherwise not timely.

4. Compliance Issue[8]

An agency may request bifurcation when the agency has sufficient concern that the claimant filed a hearing request regarding an assertion that the agency failed to comply with an order in a prior state hearing decision (see § 22-001(c)(3)). A hearing request raising an issue of compliance with a prior hearing order is subject to dismissal (see § 22-054.37), and thus can be the basis for a bifurcation hearing. When a PALJ or designee determines that the issue raised on a new request for hearing is a compliance issue, the PALJ or designee will review the county's compliance report and follow up with the county on the status of the county's compliance.

This is distinguished from a "compliance-related issue," where the hearing request is regarding an action taken by the agency after further determination as ordered in the prior decision. (See MPP § 22-001(c)(4).) The claimant has regular hearing rights on any new notice of action issued as a result of this further determination by the agency, and therefore such an appeal would not be the basis for a bifurcation hearing.

5. Resource Family Approval Bifurcation Issues

The Resource Family Approval (RFA) appeals are governed by the Written Directives (WD) and the MPP. WD Section 12-O6A(a) requires all Requests for Hearing (RFH) to be in writing. A verbal RFH is subject to a bifurcation request.

The counties retain authority to make the initial jurisdiction choice. There are RFA hearings that are necessarily subject to the Office of Administrative Hearing jurisdiction, and others subject to SHD jurisdiction. The county (through counsel) may request a bifurcation and dismissal to remove the case from SHD and remand the same to OAH. (WD Section 12-10.)

6. Lack of Substance Matter Jurisdiction[9]

An agency may request bifurcation (and/or administrative dismissal) when the issue raised in a state hearing is not a substantive issue that is within SHD's jurisdiction (see §§ 22-003.1 and 22-054.31). Generally, the issues over which the SHD has jurisdiction are listed in Welfare and Institutions Code, Section 10950, Government Code, Section 100506.1, subdivision (a), and for the ACA, title 10 of the California Code of Regulations, Section 6602.

[8] Compliance issues are also potentially subject to an administrative dismissal (§22-054.4).

[9] Substantive issues that are not within SHD's jurisdiction may also be subject to an administrative dismissal (§ 22-054.4).

a. Challenges to Substantive Jurisdiction in Scope Cases:

A Scope of Benefits case may be bifurcated (or dismissed prior to a hearing) where there is no subject matter jurisdiction; this is a different basis for bifurcation than the exhaustion of in-plan appeal processes listed above.

For example, claimants may file appeals in which the grievance is regarding their primary physicians, other state agencies acting in their legislative and policy promulgation functions, managed care issues falling under the jurisdiction of the Department of Managed Health Care, Social Security relating to Part B premiums or reductions in Part D prescription drug benefits, informational notices that have no impact on a claimant's rights, a perceived procedural denial before a TAR is submitted and denied, Medi-Cal lien issues or the Estate Recovery Program, changes in state law such as for Medi-Cal Optional Benefits, or DHCS' Third-Party Liability Branch, only to mention a few. All these are the types of claims over which CDSS SHD has no jurisdiction, and about which an agency may wish to request bifurcation and/or administrative dismissals. SHD would have jurisdiction over Letters of Authority, which can address retroactive medical bills, and *Conlan* claims, however, even though these relate to provider issues, they are Medi-Cal issues held by the beneficiary.

6. **Pre-Hearing Full Agency Resolution[10] of Claim**

Administrative Law Judges may dismiss an appeal by written decision when the issue is no longer in dispute if the claimant files a hearing request, but at hearing, there is proof presented that the issue has been fully resolved by a final agency action (see § 22-054.38). This would not be subject to an administrative dismissal, as it involves a factual finding. The exception is for "Rivera" cases (failure to timely process Medi-Cal applications) which will be administratively dismissed if the county submits a notice of action addressing the application determination with its request for dismissal. When more than one person is applying, the county should submit a notice(s) of action addressing the eligibility of all applicants. Claimants may request rehearing on such a dismissal but are instructed to request a new hearing if they disagree with the notice of eligibility determination. If the notice of the application eligibility determination issued close to the hearing date, and the parties can agree to discuss the merits at the hearing scheduled for a "Rivera" appeal, the judge will issue a decision on the merits of the county's eligibility finding.

7. **Complexity and/or Multiplicity of Issues**

Where there is a potential jurisdictional concern as discussed above, judicial economy may be best served in granting a request for bifurcation where the issues are sufficiently complex, or where there are numerous issues, which would potentially take an inordinate amount of time in hearing.

8. **Appeals from Managed Care Plan Determinations**

Due to changes to federal regulations issued from the Centers for Medicare and Medicaid Services (CMS) made effective July 1, 2017, the legislature revised statutes to provide that Medi-Cal managed care enrollees who receive a notice of adverse benefit determination must first internally appeal to the managed care plan within 60 days; the plan has 30 days to respond or 72 hours in an expedited case. (See Stats. 2017, ch. 738, §3, (A.B. 205), eff. Jan. 1, 2018.)

[10] MPP § 22-054.38 states: "The Administrative Law Judge determines that the issue is moot based on evidence that it has been fully resolved by a final action." ORD 0716-10 Reg Package, anticipated effective date is June 13, 2018.

If the plan fails to respond or provide adequate notice of its determination (NOABD) as required (see "Exhaustion" processes below in II.C.6.a. below), or if the plan fails to meet any of its notice or timeliness requirements (this is "deemed exhaustion"), the judge may hear the issue on the merits. In addition, if the plan upholds the plan's denial, the claimant has an additional 90 days to file an appeal with SHD (see Welf. & Inst. Code, § 10951((b), as amended Stats. 2017, ch. 738, §3, (A.B. 205), eff. Jan. 1, 2018

If the claimant is required to exhaust an appeal process with the managed care plan before SHD has jurisdiction, the other party (the plan) may request a bifurcation to address this jurisdictional issue, on the allegation that the claimant prematurely appealed to the SHD and is presently in the wrong forum. If there is sufficient evidence that the claimant has not exhausted the plan appeal process, SHD may dismiss the appeal before the hearing with 15-day notice. Otherwise, the plans' 30-day window to respond to the plan appeal will likely have closed by the time a non-expedited case is being set for hearing.

The plan may also request an administrative dismissal (see § 22-054.4), but to preserve the claimant's due process rights to a review of exhaustion and deemed exhaustion by the judge as delineated in state and federal law, SHD will generally address requests for administrative dismissal as requests for bifurcation.

For example, where a claimant is required to appeal to a Medi-Cal managed care health plan or have a basis for deemed exhaustion before SHD has jurisdiction over the merits for of the claim (see Welf. & Inst. Code, § 10951(b)), the hearing ALJ will address the jurisdictional issues and the merits in the same hearing unless a motion for bifurcation is granted. The agency should prepare a full SOP on both the jurisdictional and merits issues unless a motion for bifurcation is granted.

D. The PALJ's Determination to Deny or Grant A Request to Bifurcate

If the PALJ denies the request to bifurcate, a full hearing on the jurisdictional and substantive issues shall proceed (MPP § 22-049.531(b)), and the agency's SOP may continue to raise the jurisdictional claim and must address the substantive issues in the case as discussed above.

If the PALJ grants the bifurcation request, ACMS will generate a letter that informs the parties that the hearing shall only be held to determine whether jurisdiction exists to hear the merits of the case (§ 22-049.531(a)). The burden of proof is on the moving party to provide sufficient reason and evidence that the case should not proceed on both the jurisdictional issues and issues on the merits. If bifurcation is granted, the agency shall only be required to submit an SOP addressing the jurisdictional issues as discussed above.

If the PALJ grants the request for bifurcation, the case is then set to commence before a hearing ALJ solely to determine whether jurisdiction exists to hear the merits of the case.

1. Treasury Offset Program (TOP) Cases:

If the request to bifurcate based on an untimely filing was regarding a request for hearing about a tax intercept under the federal Treasury Offset Program (TOP), it is a best practice to deny the bifurcation request so that the claimant can have a resolution on both the late filing and the merits of the case. For filings between 90-180 days, FNS will not allow the tax intercept to be stopped until there is a finding of jurisdiction to hear the merits; for cases filed more than 180

days the notice of overissuance, FNS will not allow the tax intercept to be stopped until there is a ruling in favor of the claimant on the merits. (See ACL 19-22.) The exception is that SHD does not have jurisdiction if the request for hearing asks for a review of the county Administrative Review determination; SHD has certain limitations on whether a judge can order suspension of a TOP intercept. Only the FNS has jurisdiction to review an Administrative Review. (See ACL 19-22, Attachment 5 to ACL 16-108.)

--- IIII. ---
Administrative Dismissals

Agencies can opt to request an Administrative Dismissal, or to raise the issue at a bifurcated hearing or at hearing. To request an Administrative dismissal, the agency (or SHD staff) enters a new task, selecting "Bifurcation/Admin Dismissal Request" from the drop-down menu.

If the agency requests an Administrative Dismissal (or the SHD proceeds on its own), the SHD will issue a letter informing the claimant that it intends to dismiss the appeal and why. The claimant has 15 days to respond. If SHD receives a satisfactory response showing jurisdiction, the matter will be set for hearing; otherwise, the claimant will receive a letter dismissing the claim and stating why.

--- IV. ---
Documents Reviewed in Assessing Whether to Bifurcate

A. Documents a Party Should Provide with The Request for Bifurcation

1. Burden in requesting bifurcations: The moving party must state the reasons for the bifurcation request and provide all supporting documents and evidence that support the bifurcation, including explanation of why the case should not proceed on both the jurisdictional issues and the issues on the merits. The burden of proof is on the moving party. If there is insufficient evidence that the case needs to be bifurcated, the case will proceed in a unified manner and the hearing ALJ will hear all issues.

2. Potential documents with bifurcation requests: Depending on the basis for the request, additional documents may include:

   a. Request for Hearing (RFH)
      The RFH may be written or oral, and will be located in the Documents tab. Written RFHs may be on the back of the Notice of Action (NOA); written on a separate piece of paper; or, a printout of an RFH made online. Oral requests received by the SHD are transcribed and placed in the Documents tab of the ACMS.
   b. Prior RFHs about the same claim and the prior SOPs addressing those claims
   c. Pertinent Notices of Action (NOA)
   d. AR Authorization Forms (such as the DPA 19) or other written appointment
   e. Information release forms (HIPAA releases, privilege waivers)
   f. Prior Decisions about the same claim

B. Documents Reviewed for Separate Bases to Dismiss

1. Late Filings

a. Review of the Request for Hearing (RFH) should include:

- Is the claimant the person[11] named in the NOA to establish notice?
- Does the claimant's address match both the RFH and the NOA, and is the address current?
- In a CalWORKs or CalFresh matter, a determination of the issue if an overpayment/overissuance is involved. Is the claimant disputing the underlying cause and amount of a debt (which would require the original notice of action), and/or is it regarding the legal enforceability of the debt against the claimant, the collection method, or the remaining balance? (SHD always jurisdiction to review these latter issues.)

a. Review of the NOA: Review of the NOA should include:

- Is the NOA adequate? – reviewing the "four corners" of the NOA.

Generally, adequacy requires the agency to list the action to be taken, reasons for the action, specific regulations supporting the action, explanation of rights for hearing, if appropriate, when aid paid pending continues or must be repaid, etc. Judges are to look at the specific program requirements for an adequate notice. (See § 22-001(a)(1); § 22-071; MPP §10-116 and §30-759.7 [IHSS]; ACL 17-110 [IHSS PS NOAs]; tit. 10 CCR §6454 [ACA]; §12-05(b) RFA Writ. Dir., Vers. 6.1, ACIN I-02-14 and ACIN I-151-82 [CalWORKs only]; § 63-801.431 (CalFresh overissuance demand notices); *Morales v. McMahon* (1990) 223 Cal.App.3d 184, 186;45 CFR, § 205.10.) If the notice does not meet the program requirements for adequacy, the time to request a hearing has not started (22-009), and the PALJ/designee reviewing the bifurcation request can stop here, unless there are other bases than an untimely request.

If the NOA is in a foreign language, the agency should send an English version of the notice of action if a State translated notice was used. The SHD may need to use interpretative services available to the division to establish what the NOA states in English for the PALJ to assess the bifurcation request. If an interpretation or translation cannot be done swiftly enough, an in-person interpreter should be arranged, so that the judge can receive an interpretation of the notice during hearing (either bifurcated or not). Many Notices have a form number designation that can assist in locating the English form notice. Language services then would only have to translate any free form/drop down additions.

- Is the NOA language-compliant (See § 22-001(l)(1), § 21-115.2, and § 21-116.21, and for Medi-Cal, see ACWDL 10-03).

The agency should include evidence of the claimant's language preference if the bifurcation request is based on an untimely appeal. The agency or county has a duty to obtain this form, executed by the claimant with the assistance of a bilingual worker or an interpreter if applicable, establishing the claimant's preferred written language (see MPP § 21-116 and ACL 08-65). If the agency did not present evidence of the claimant's language preference, the PALJ/designee

[11] For CalFresh, the NOA is issued to the head of household, but collection may be against any household member, so whether the claimant is named may not be relevant to this assessment.

reviewing the bifurcation request can stop here, unless there are other bases than an untimely request.

If the NOAs were not issued in the claimant's language, is the NOA translated by CDSS Language Services? (CDSS translations of notices can be found at https://www.cdss.ca.gov/inforesources/Translated-Forms-and-Publications.) If not, the agency must provide information on how it informed the claimant how to obtain interpretive services (such as issuance of the GEN 1365 or equivalent to inform the claimant of how to get interpretive services). If the agency does not present this evidence, the PALJ/designee reviewing the bifurcation request can stop here, unless there are other bases than an untimely request.

- Is there evidence that the claimant received the NOA?

Agencies may have journal notes, repayment agreements, or other evidence that the claimant acknowledged receipt of the notice.

- Is the address on the NOA the claimant's correct address at the time the NOA issued?

The agency can submit verification of the address of record, such as the last application or a SAR 7 reporting a change of address.

- Did the claimant take over 180 days to file the RFH or appeal following the date the NOA was mailed or given to the claimant? (See § 22-009.11; Welf. & Inst. Code, §10951(a)).

Because evidence of justifiable "good cause" (see Welf. & Inst. Code, §10951(a)(2)) for filing the RFH after 90 days is rarely going to be available to the PALJ in assessing the bifurcation request, many regional PALJs may wish to deny the request for bifurcation unless a full 180 days has passed on a late filing claim. PALJs, however, may already have statements of good cause or equity in the documentation for consideration of the bifurcation request.

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SHD's Bifurcation Process

A. Request for Bifurcation Sent to the PALJ (§ 22-049.531)

1. Upon receipt of a request to bifurcate sent to a regional PALJ, the request will be assessed under the PALJ's authority. The assessment will be based on the information provided in the request and in documents that accompany the request and will reflect SHD's mission to provide the best practices in maintaining due process for both parties.

2. SHD will notify both parties as to whether the request to bifurcate has been granted or denied.

3. If SHD granted the request to bifurcate and the agency has been notified of the grant prior to two working days before the scheduled hearing, the agency will only be required to issue an SOP on the jurisdictional issue of the case, or the issue at-hand, and will not be required to address the merits of the case, or the merits of the specific issue under review.

a. If the request to bifurcate is denied, or the agency has not received a response and needs to prepare an SOP so that it is available to the claimant within two business days of the scheduled hearing, the agency must issue a full SOP addressing jurisdictional and substantive issues (see MPP §§ 22-049.53 and 22-073.252). Parties may re-raise the issue of jurisdiction at hearing, and if dissatisfied with the decision, in a request for rehearing.

5. If the request for bifurcation was granted, the ALJ at the hearing will limit the issues to jurisdictional issues for the case or the issue under review that was ordered bifurcated. The ALJ at the hearing, on their own motion or at the request of a party at the hearing, may limit any other issue to a jurisdictional review only, in the exercise of her or his discretion as provided in section 22-049.532.

6. Orally at the jurisdictional hearing, or in writing within ten days after the jurisdictional hearing, the ALJ will provide a ruling on the jurisdictional issue(s). This will either be a written decision dismissing the for lack of jurisdiction, or a finding regarding jurisdiction. If finding jurisdiction, a~~n~~ continued hearing will be scheduled and held to hear the substantive issues. (MPP § 22-049.532(a), (b)).

a. If the ALJ determines at the bifurcated hearing that there is no jurisdiction to hear the merits of the case or bifurcated issue(s), the ALJ will issue a decision dismissing the case or bifurcated issue(s). If other (non-bifurcated) issues were heard at the initial hearing, the ALJ will issue a decision on the merits of those remaining issues. Regular processes regarding open records and continued hearings apply to any portion of the hearing heard on the merits. Upon closure of the record, the ALJ will issue a decision.

b. If the ALJ determines jurisdiction exists to hear the merits of the case, the ALJ will continue the case unless the parties both indicate readiness to participate in a hearing on the merits.

7. Any party has the right to request a rehearing on any final decision dismissing a case (see MPP § 22-065, Welf. & Inst. Code, §10960), or file a petition for an administrative writ of mandate in Superior Court with or without requesting a rehearing. (See Welf. & Inst. Code, §10962; Code Civ. Proc. §§1094.5 or 1085.) There is no right to a rehearing on a case that has been administratively dismissed without a decision prior to a hearing (MPP 22-065.62)

B. Bifurcations Before the Hearing ALJ (22-049.552, .553)

Even if the PALJ had denied bifurcation, bifurcation can occur at hearing. This can happen if the parties, either prior to or at the hearing, have agreed to have only jurisdiction heard on the case or an issue. In addition, the ALJ may decide on their own that the hearing should be bifurcated. In either of these case, only jurisdictional issues will be heard, and not the merits of the case or issue under review.

The agency should have already drafted and made available a full SOP on both jurisdictional concerns and the merits of the case at least two business days prior to the initial hearing.

At this jurisdictional hearing, or if the record is kept open pursuant to MPP section 22-085.221, within ten days after the close of the bifurcated hearing record, the ALJ will either provide a written decision dismissing the case for no jurisdiction or issue a written determination regarding the finding on jurisdiction. (MPP § 22-049.532.) If the judge finds jurisdiction, the judge will request a continued hearing through ACMS; ACMS will generate the notice of hearing.

1. Lack of Standing or Authorized Representation

a. Review of the RFH and NOA should include:

- Does the individual filing the RFH or appeal match the name[12] on the NOA?
- Do the individual's comments on the RFH appear to address an issue that potentially establishes the individual may not be a claimant? (*For example, does the individual appear to be an IHSS provider instead of a recipient, and parent/child provider issues are not raised. Does the RFH state the problem is a driver's license or General Assistance?*)

b. Review of an AR Authorization form (e.g., DPA 19, MC 382 or 383, or other written appointment) should include:

- Is the person/organization filing a hearing the individual/organization purporting to be the authorized representative for the case's subject claimant, and has this claimant signed this form?

c. Additional Documents may include document(s) supporting the representative to be an attorney, relative status of the representative, a statement of facts, probate court, conservator, or guardianship orders for incompetent or comatose claimants, trusts for establishing trustee authority, etc.

2. Identical Issue Previously Heard on the Merits

a. Review of the new RFH and Prior Decision should establish whether the prior decision was issued on the merits of the identical issue now reflected in the new RFH – identical as to program issue, the time frames addressed in the prior decision, the identical parties, and that the decision was issued for this claimant. A review of the prior RFH and the prior decision may indicate that an issue for hearing was not addressed in the prior decision.

The PALJ may wish to defer the decision to bifurcate, allowing the hearing ALJ to decide whether to bifurcate, if the prior decision was not made available with the request to bifurcate.

3. Compliance Issue

a. Review of the RFH and Prior Decision should establish whether the RFH or appeal raises the exact issue that was the subject of a prior decision's final order, and which would be subject to a dismissal per § 22-001(c)(3) and § 22-054.37; or whether the prior decision's order remanded the case to the county and mandated the agency to make a further

[12] Again – caution in CalFresh cases – NOA is addressed to head of household.

determination, e.g., a reassessment in an IHSS case, or recomputation of an overpayment or overissuance, which would not be subject to dismissal. (See § 22-001(c)(4).)

4. Lack of Substance Matter Jurisdiction

a. Review of the RFH should establish whether the issue raised by the filer is not a subject that may be heard by SHD in determining whether to grant a bifurcated hearing.

5. Full Agency Resolution of Claim Prior to Hearing

a. Review of RFH and agency documents sufficiently establishes the claim is, in fact, resolved by the agency's final action.

6. Exhaustion in Medi-Cal Managed Care Claims

A bifurcation request by the plan shall fully document the reasons that the claimant has not exhausted the in-plan appeal and has no basis for deemed exhaustion, with evidence that the plan has met all of its timeliness and notice requirements with respect to the adverse benefit determination and the appeal.

The request for bifurcation must include, at a minimum:

a) Copy of appeal to the plan, if any;
b) Copy of the adverse benefit determination
c) "Your Rights" or other appeal rights documents and any attachments to the notice with evidence that these documents went to claimant
d) Any evidence that showing timeliness and notice requirements met
e) Any other documentation necessary for the ALJ to adequately review and decide the request for dismissal.