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February 2, 2022

TO: House Appropriations Committee
Subcommittee on Public Safety and Administration
Virtual Hearing - Hearing Date: February 2, 2022
Annapolis, Maryland 21401

Senate Budget and Taxation Committee
Subcommittee on Public Safety, Transportation,
and Environment
Virtual Hearing – Hearing Date: February 3, 2022
Annapolis, Maryland 21401

FROM: Chung K. Pak, Chief Administrative Law Judge
Office of Administrative Hearings

REF: Agency Code D99A11
Fiscal Year 2023 Budget

Issue:

DLS recommends that OAH comment on the accessibility of virtual hearings and the actions being taken to ensure that all Marylanders have access to OAH hearings.

OAH Response

- MVA cases are scheduled as remote hearings to be conducted on the Webex platform. We have found this platform to be well-received by both licensees and counsel for licensees. It also saves money by cutting down on travel time for ALJs. If a licensee wants an in-person hearing, the licensee can request an in-person hearing, and the assigned ALJ will make a prompt ruling on any

request. Under the Maryland Administrative Procedure Act, a party has a right to an in-person hearing if good cause is shown.

- IVA/NCR/Clinical Review Panel dockets (which involve individuals in behavioral health units) are also scheduled for remote hearings using the Webex platform. Stakeholders have found this platform to be an acceptable way to conduct these hearings in light of COVID restrictions.
- OAH also schedules LABOR and Personnel cases for Webex hearings. Parties may request an in-person hearing or a hybrid hearing (i.e. one party appears in person and the other appears remotely.) OAH has outfitted several hearing rooms to accommodate hybrid hearings and for members of the public who do not have appropriate computer equipment. The public is able to use computers supplied by OAH at its Hunt Valley office.
- Medical Assistance and Entitlement cases (Food Stamps, Temporary Cash Assistance, and Temporary Disability Assistance) were transitioned to remote hearings in the summer of 2020, back to in-person hearings in 2021, and then back to remote hearings starting in late December 2021. These remote hearings are generally conducted by telephone or Google Meet. These shifts were made in consideration of feedback from local departments and appellants. If a case is scheduled for a remote hearing, a party may have the hearing held in person upon a showing of good cause.
- Other case types are scheduled for in-person hearings. Parties may request to convert an in-person hearing to a remote hearing. The OAH website provides a form for parties to submit joint requests for remote hearing. If a party wishes to make a unilateral request for a remote hearing, the party can submit the request and it will be directed to the assigned ALJ who will make a prompt ruling on the request.
- As this narrative demonstrates, OAH has been flexible and nimble in responding to a wide variety of situations. Many of the hearing participants we see are members of vulnerable populations, and OAH has processes in place to give individualized attention to the needs of each hearing participant.

Issue:

DLS recommends that OAH comment on what is driving rising case processing times and the actions being taken to bring these rates back down to pre-2021 levels.

OAH Response:

- All case types reflect increases in processing times. In fiscal 2021, the number of days between when an appeal is filed and when it is dispensed with, or the case processing time, has increased for all the agencies for which OAH handles hearings, as shown in Exhibit 5.
- MDH cases rose by a modest 1.1% in fiscal 2021.
- DHS cases rose 30.8%. The cases that OAH receives from DHS include public assistance cases and child abuse and neglect cases. DHS cases are conducted at local departments of social services (LDSS) throughout the State. In response to COVID-19, many of these LDSS offices were closed, and hearings had to be postponed. While hearings were eventually shifted online using virtual hearings, some delays are still involved due to the time necessary to ensure that participants have access to the hearing process.
- MVA cases rose 64.4%. For MVA cases, the time of disposition began to increase in May and June and began to level out after September. The pandemic expanded the time of disposition and when OAH fully instituted remote hearings, and the MVA and public became accustomed to virtual hearings, the time began to decrease.
- OAH expects that broadened access to remote hearings and the eventual decrease in scheduling disruptions caused by the pandemic will assist in returning time of disposition to pre-2021 levels. OAH is committed to decreasing case processing time and remains dedicated to ensuring access to our proceedings to all Maryland citizens while maintaining our mission to provide flexible due process.

Issue:

DLS recommends that OAH comment on the decline in hearing satisfaction rates across all three measures in fiscal year 2021 and the action being taken to address declining satisfaction rates.

OAH Response:

- In any disputed case, only one side prevails. OAH is proud that, even though half of the people who appear at hearings will not prevail, the satisfaction rate in every category has never fallen below 87%. Although statistical data is not available, OAH believes that the transition to remote hearings may have had a negative effect on satisfaction ratings solely due to the need for hearing participants to acquire new skills to participate in remote hearings. Even so,

OAH has been careful to consider and balance the needs of those who need hearings for disputes with State Agencies, and the ability to conduct hearings at all in a pandemic environment, even if remote, heavily outweighs the prospect of postponing all hearings indefinitely or not conducting them at all.

- OAH remains vigilant of its statutorily defined role to provide "flexible due process" to the citizens of Maryland. Over the past two years while COVID has persisted, the Clerks Office and OAH Management have fielded hundreds of questions from hearing participants and have instituted dozens of operational policy changes to best meet the needs of citizens who have disputes with State agencies.