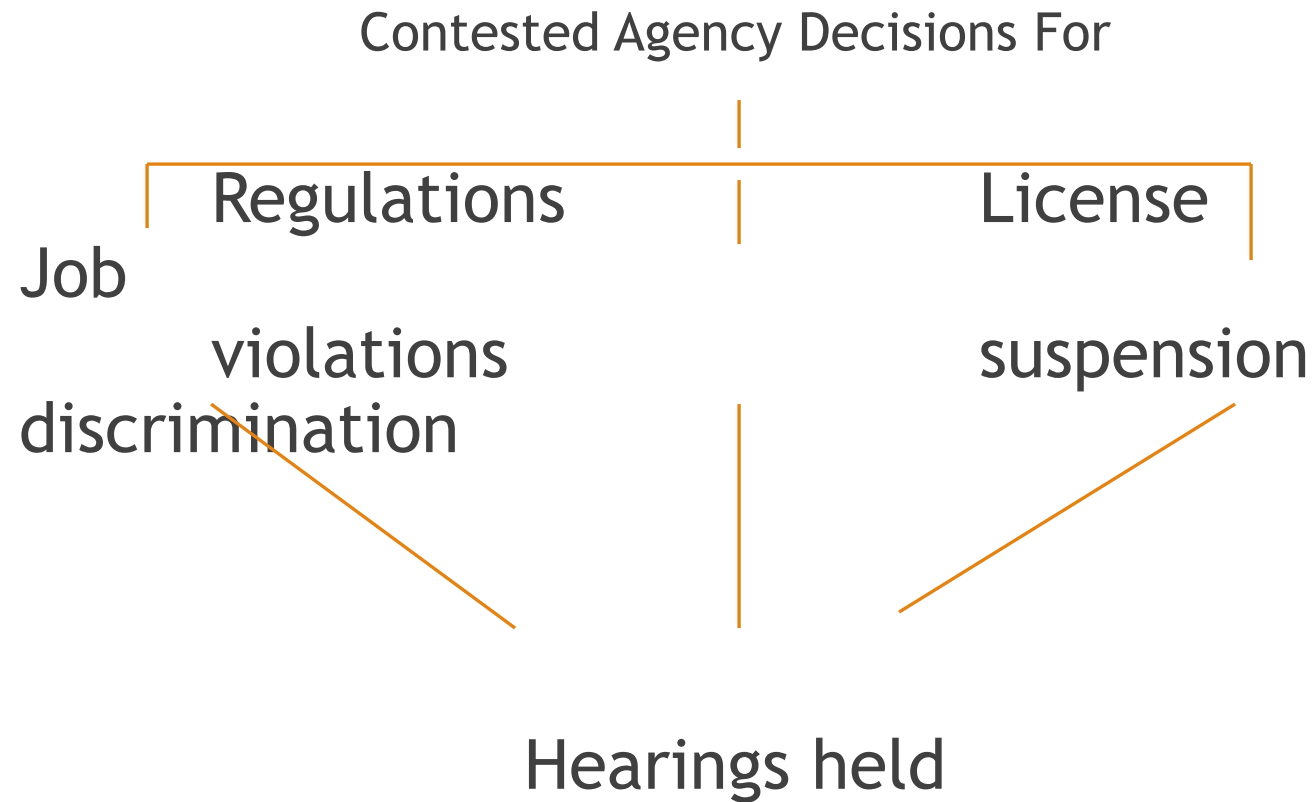


Chapter 8. Administrative Agency Hearings

In this chapter, you will learn:

- When a hearing may be requested
- How agencies determine valid reasons for hearings
- How agency decisions may be appealed
- What procedures are enforced
- The duties of administrative law judges
- Which pre-hearing steps are encouraged
- How decisions are rendered

When Hearings are Needed



A Look at Social Security Disability Hearings

Procedure

- File claim - denied 95% of the time
- Ask for reconsideration - file reviewed by another SSD person - denied again
- Request for Hearing - done in front of an Administrative Law Judge (fancy name for a hearing officer)

Administrative Law Judges

Administrative law judges are empowered by the agency to:

- Conduct the hearing and preside at the hearing
- Make decisions on evidence, procedural requests, and findings
- Make the decision at the conclusion of the hearing
- Perform other actions authorized by the agency

A Look at Social Security Disability Hearings

Typically a small room with ALJ at a raised table in front.

In front of ALJ is a large table with the claimant, his/her representative, the clerk and witnesses

A Look at Social Security Disability Hearings

Witnesses

- Claimant
- Claimant's spouse, parent or child - generally very short and corroborative - observations about claimants daily activities.
- Vocational Expert

Medical Advisor for ALJ if ALJ thinks it necessary

A Look at Social Security Disability Hearings

Procedure

- Questioning by representative or ALJ
- Claimant asked to describe work experience, medical problems and limitations
- Voc Expert asked to describe the exertion level of past work and what jobs are available for persons with claimants skills and limitations
- Representative can cross-examine Voc Expert
- No SSA attorney attend
- “Non adversarial”
- Representative makes brief closing statement

Common Elements at Administrative Hearings

Elements common to most agencies because of common sources

- APA (MAPL)
- Enabling Acts
- Constitution

Common Elements at Administrative Hearings

Notice

- Time, place and nature of the hearing
- Legal authority and jurisdiction under which the hearing is held
- The matters of fact and law asserted
- Most agencies use standardized forms

www.disabilitysecrets.com/letter-hearing-notice.html

Common Elements at Administrative Hearings

Right to Representation

- APA: “attorney or other qualified representative”
- Some agencies allow paralegals as representative
- Agency does not pay for representation
- Some agencies provide rules for payment, e.g., in SSD fee is 25% of past due benefits contingent on approval of application

Common Elements at Administrative Hearings

An Impartial Decision Maker

- Watch for personal conflicts of interest, not issue conflicts, e.g., member of FCC who previously spoke against allowing advertising alcohol to minors ruling on whether a particular add violates a rule. Legal authority and jurisdiction under which the hearing is held

Common Elements at Administrative Hearings

Powers of Decision Makers set

- Administer oath to witnesses
- Rule on admissibility of evidence
- Receive relevant evidence
- Regulate course of hearing
- Hold settlement conferences
- Subject to “published rules of the agency”

Common Elements at Administrative Hearings

A Written Decision

- Decision makers must explain in writing
 - The decision they reach
 - The basis for the decision

Must address every issue of fact, law or discretion presented on the record AND state the rules, order, sanction, relief or denial of each such issue.

INITIAL DECISIONS: Become final without review if not challenged

RECOMMENDED DECISIONS: Become final after review

Common Elements at Administrative Hearings

Prohibition of *Ex Parte* Contacts Decision (Earwigging)

All decisions must be based on “record” - in SSD example:

- Claimant’s application
- Claimant’s medical records
- Claimant’s work records
- Testimony of claimant, witnesses, voc expert, medical advisor

Common Elements at Administrative Hearings

Remember to consult each agency's enabling act, relevant statutes and rules

Remember to be mindful of case law

Remember to be mindful of Constitutional requirements

Differences between AA Hearings and Court Trials

Rules of Civil Procedure *DO NOT APPLY*

Rules of Evidence *DO NOT APPLY*

Fairly informal

Often “Non-adversarial”

Evidence in AA Hearings

Hearsay evidence frequently admitted

Written evidence rather than oral testimony is common.

Irrelevant, immaterial or unduly repetitious evidence is excluded

Credibility assessed by decision maker

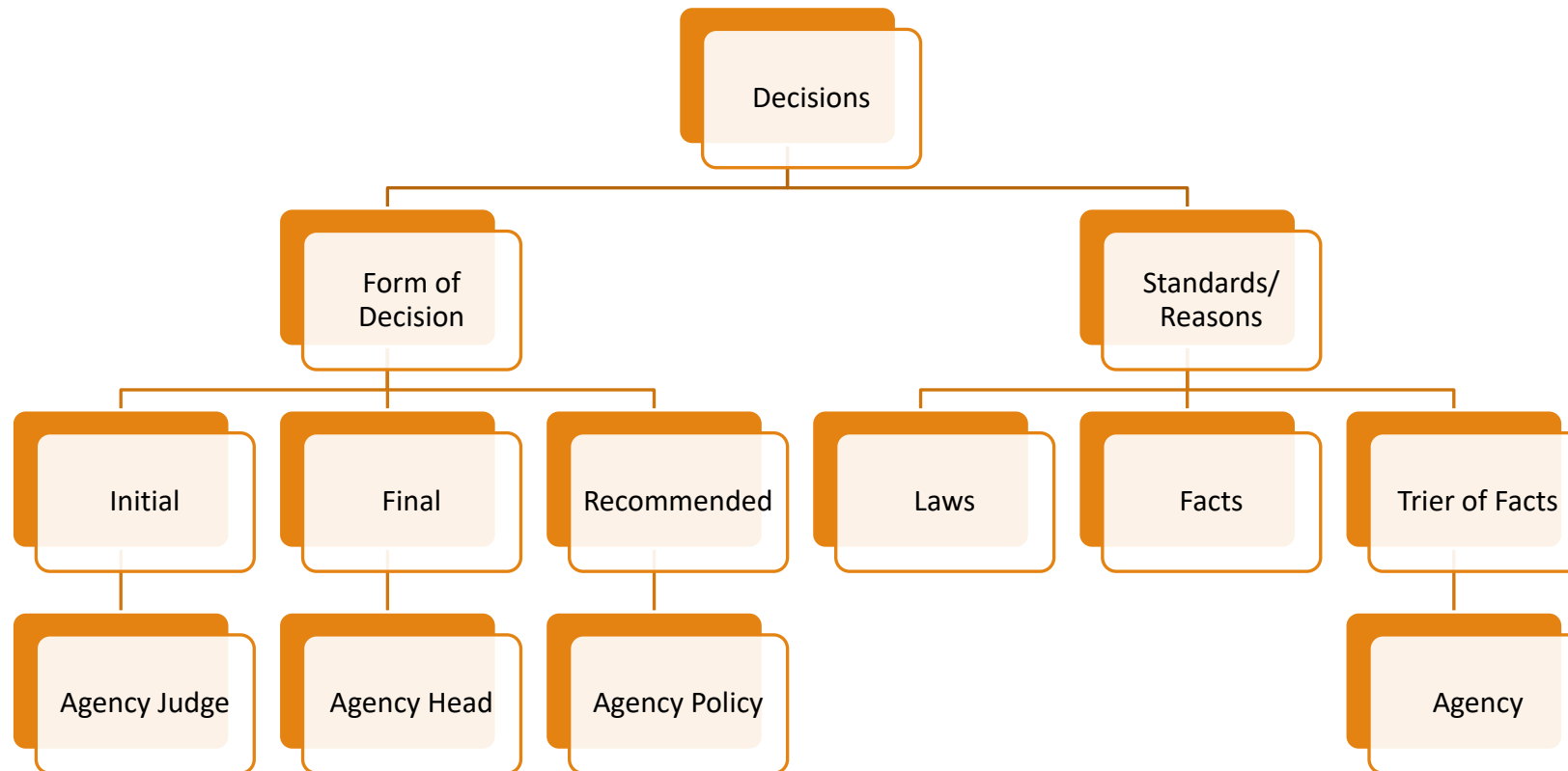
Witnesses present are subject to cross examination

Preparing for AA Hearings

Gather and organize facts

- Be aware of procedures and deadlines for hearing
- For each fact have necessary testimony and/or documentation
- Interview all witnesses
- Prepare witnesses
- Prepare written arguments
- Written question guides (question trees)
- Be aware of appeal process

Administrative Hearing Decisions



Harpooned Sharks for Chapter 8: Last Two Sharks Gone!

The seas were so rough, the last two sharks swam away. Let's hope they stay away!

