

Home and Community Based Services Manual

6.00

APPENDIX 2

HOME AND COMMUNITY BASED SERVICES WITNESS INFORMATION

Preparing the Case

In any hearing, the decision will be based on the evidence presented. The Department of Health and Senior Services (DHSS), Division of Senior and Disability Services (DSDS) must prepare the case by selecting the documents from the case record and the necessary references from the Home and Community Based Services Manual, Code of State Regulation (CSR), Code of Federal Regulation (CFR), or State Statute as evidence to develop the case.

For a telephone hearing conducted by the Department of Social Services (DSS), Division of Legal Services (DLS), the DSDS HCBS Hearings Representative will provide DLS with the contact numbers for all agency witnesses prior to the hearing.

Hearings are held at the affected participant's local Family Support Division's (FSD) Resource Center. In instances where DSDS does not go to the FSD Resource Center where the participant resides, or other state office where the administrative hearing is scheduled, DSDS shall ensure the FSD Resource Center is aware of the pending hearing and that a connection to the hearing via telephone conference call is available for the participant.

Qualifying Statement

Hearing testimony should lay a proper foundation that includes qualifying DSDS staff, qualifying the case record documents as a business record, establishing relevance to the issue, explaining state policy, and authenticating exhibits. Therefore, at each hearing, DSDS must qualify themselves as a witness and the case record documents as part of a business record. It is necessary to establish that entries are made in the case record in the regular course of business.

In order to qualify themselves at the start of their testimony, DSDS shall recite the information contained in the Qualifying Witness Statement ([Appendix 3](#)).

Evidence/Exhibits

To establish the case, the DSDS HCBS Hearings Representative shall present evidence necessary to sustain the adverse action. The DSDS HCBS Hearings Representative shall testify and introduce various forms and documents as evidence for the record so that the case is presented in chronological order. The specific evidence needed from the case record will include documents and case notes available to support the decision of DSDS. It should be established that the exhibit is relevant by a brief statement about what the document contains and how it pertains to the decision made. In addition, when copies are presented, it must be established through testimony that it is authentic ([Appendix 3](#)). Additional DSDS staff or agency witnesses may be present to provide testimony on their interactions with the participant.

Rebuttal Testimony

After testimony by the current or potential participant and/or witnesses, the hearing officer should provide DSDS an opportunity to make rebuttal testimony. If the hearing officer does not offer this opportunity, DSDS may make this request, if necessary. During rebuttal testimony, DSDS shall offer additional testimony regarding the facts presented by the current or potential participant and/or his/her witnesses.

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DSDS may request to examine exhibits that the current or potential participant or his/her witnesses enter as evidence.

A non-attorney cannot perform actions that are normally done by an attorney who is acting in a representative capacity. Therefore, DSDS employees must act as a witness rather than as a representative and cannot:

- Cross examine;
- Conduct direct examination; or
- Object.