



# Administrative Hearings

☞ Jodi Benvie and Staci Converse, Esq.

Disability Rights Center

P.O. Box 2007

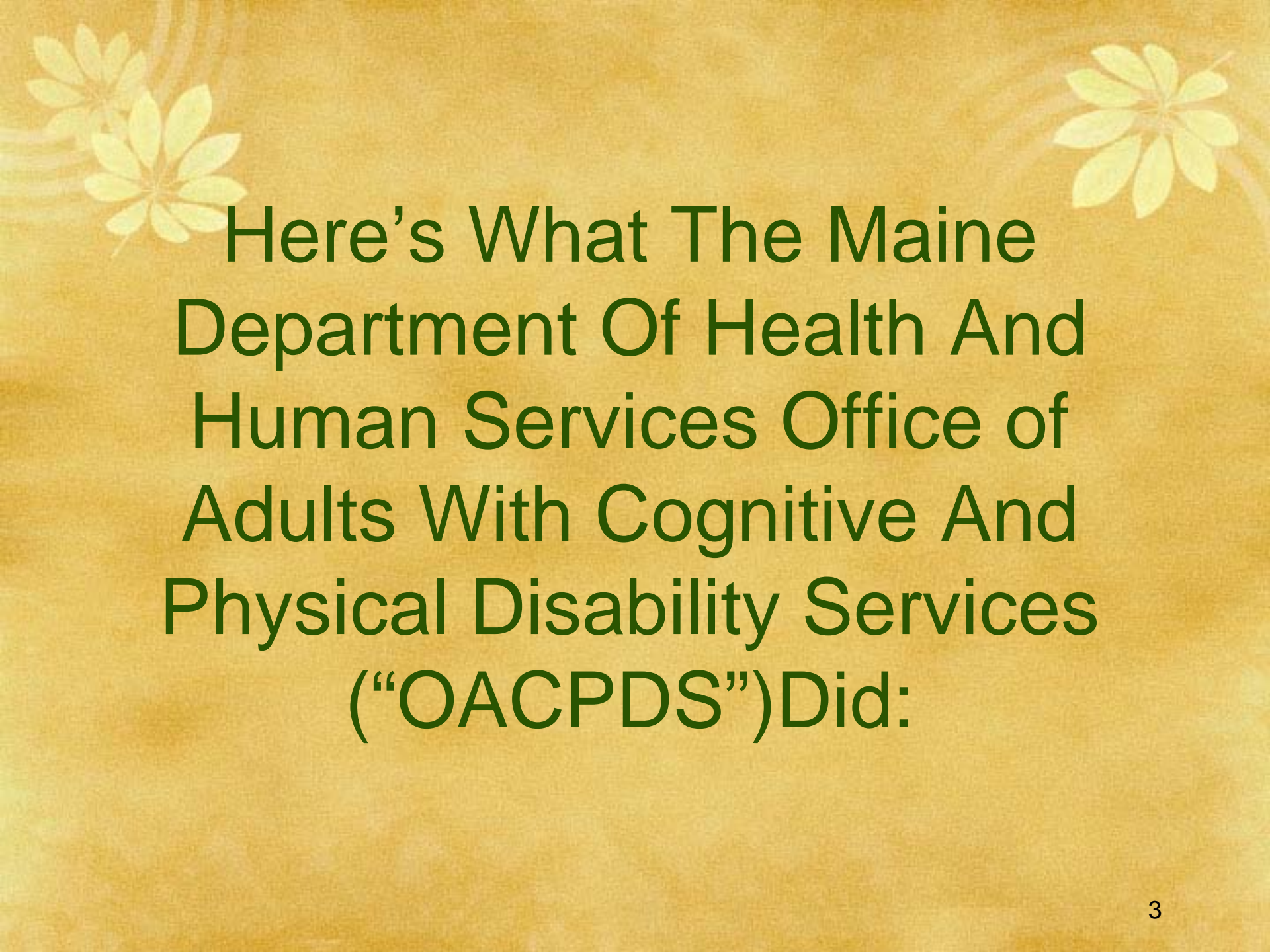
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***PLEASE NOTE:***


***We provide this information as a public service. It is not legal advice. By presenting/providing you this information, we are not acting as your lawyer. Always consult a lawyer, if you can, before taking legal action.***

The slide features a light beige background with two decorative floral motifs in the top corners. The text is centered and reads: 

Here's What The Maine  
Department Of Health And  
Human Services Office of  
Adults With Cognitive And  
Physical Disability Services  
("OACPDS") Did:



FIRST:  
OACPDS Worked with Provider  
Agencies To Determine the  
Median Staffing Patterns  
Throughout the State

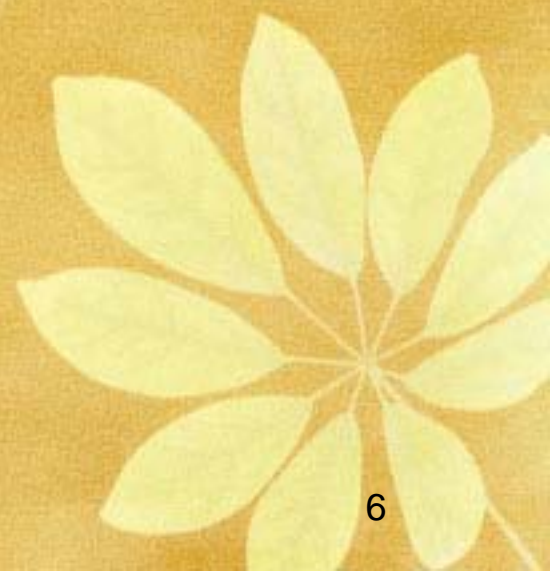


The Median Is The Half Way  
Point: There Are An Equal  
Number Of Staffing Patterns  
Above And Below The Median



# Median Staffing Patterns Per Week

- 1 person: 153 hours
- 2 person: 203 hours
- 3 person: 246 hours
- 4 person: 318 hours
- 5 person: 312 hours
- 6 person: 366 hours





# Second, For Homes Over the Median:

DHHS Required Providers Whose Residents Were Seeking Staffing Above the Median to Submit a Frequency Tool.





# FREQUENCY TOOL



☞ Handout #1

☞ Can Be Found At

<http://www.maine.gov/dhhs/OACPDSD/S/budget-waiver/index.html>



☞ Along With Frequency Tool OACPDS  
Required Providers to Include Staffing  
Pattern For the Home.





❧ Providers Could Also Include:

- PCP
- Medical Information
- Clinical Information
- Physician's Orders
- Behavior Plan and Copies of Data Collection for Last 12 Months
- Community Supports/ Employment information
- Other Information

The slide features a light beige background with a subtle floral pattern. Two stylized, light-colored flowers are positioned in the upper left and upper right corners, framing the central text.

Third:  
OACPDS Reviewed The  
Frequency Tool To Determine  
Whether Above-Median  
Staffing Patterns Were  
Justified



❧ Reviewed by OACPDS staff –  
Management and Team Leaders.

❧ Considered The Total Staffing Pattern  
For Each Home.

# FOCUS OF OACPD'S REVIEW


- ☞ Whether a Cut In Hours Would Impact The Individual's:
  - \* Health,
  - \* Safety, and/or
  - \* The Implementation Of The Individual's PCP




# Review Team Document OACPDS Used



Handout #2



# Review Team Document Examines:



☞ Behavioral Information

☞ Health & Medical Information

☞ Community Supports & Employment

# Ratings Contained In The Review Team Document:

- ❧ Low
- ❧ Medium-Low
- ❧ Medium
- ❧ Medium-High
- ❧ High



# Results:

- ⌘ Approximately 680 individuals applied for over-median staffing.
- ⌘ Approximately 300 had their numbers of hours reduced.
- ⌘ Approximately 75 had their hours reduced to the median level of hours.

# Notice Letter If Services Were Reduced

∞ Handout #3


# Why Appeal?

☞ If The Reduction In Hours Would:

- \* Pose a Risk to the Individual's Health,
- \* Pose a Risk to the Individual's Safety, and/or
- \* Mean the Individual Will Not Receive Services In His/Her PCP.

# How To Appeal/Key Information In Notice Letter:

- ☞ Call the Number Listed On the Second Page Of the Letter To Ask For an Appeal. It Is Also a Good Idea To Confirm Your Call In Writing.
- ☞ Do This Within Ten Days To Invoke Stay Put: This Means That the Current Level Of Services Will Stay In Place Until the Appeal Is Decided.
- ☞ In Total, You Have Sixty Days To Appeal (But There Are No Stay Put Rights After 10 Days).



Once An Appeal Is  
Requested, OACPDS Will  
Send the Individual Or  
Guardian (1) A Hearing Letter  
& Fair Hearing Report Form  
and (2) The Packet Of  
Information OACPDS  
Reviewed



# Hearing Letter

∞ Handout #4

# Key Information In the Hearing Letter:

- ☞ Page 1: When & Where The Hearing Is Taking Place.
- ☞ Page 2: How To Ask For An Extension.
- ☞ Page 2: cc: Line Will Tell You Who From OACPDS Will Be Conducting The Hearing. The Name Of the Person Who Is Not The Regional Team Leader.

# Why Consider Asking For An Extension?

- ☞ To give you time to prepare your case, gather documents, talk to witnesses.
- ☞ To give you time to negotiate an agreement with the Department.

# How To Ask For An Extension

- Call the Person On the Second Page Of the Letter To Determine Whether They Will Agree To An Extension. This Person Is The Regional Team Leader – So, The Number Will Vary Depending On Where In the State You Are Located.
- Tell the Person Why You Need An Extension. Examples: Time To Review Documents, Time To Prepare Witnesses, You Have a Time Conflict, Etc.
- Whether Or Not OACPDS Agrees To The Extension, Call The Administrative Hearings Office And Ask For An Extension. Also, Tell Them Why You Need An Extension. It Is a Good Idea To Follow This Request Up In Writing.

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# Fair Hearing Report Form

∞ Handout #5



# Key Information In the Fair Hearing Report Form



❧ The Issue For Hearing (Page 2):

Was the Department Correct when it reduced [Individual's] staffing level for the per diem coverage under the Home & Community Benefits for Members with Mental Retardation or Autistic Disorder Program?

# Information Contained In the Packet:

- Frequency Tool Submitted By the Provider, Including The Documentation Provided With It.
- The Review Team Document OACPDS Used.



# How & When To Attempt To Negotiate With OACPDs.

☞ For February – Most Hearings Were Turned Into Pre-Hearings.

☞ In the Future?




# Building Your Case



- ❧ Goal: Show That the Reduction In Hours Will:
- ❧ Pose a Risk To the Individual's Health or Safety; and/or
- ❧ That It Will Interfere With the Implementation Of the Individual's PCP.



# How To Build Your Case: Documents and Witnesses



☞ The Hearing Officer Will Consider All Evidence That Is:

The kind upon which reasonable people rely in the conduct of serious affairs. 5 M.R.S.A. sec. 9057(2)

# Step 1: Review Packet Of Information Sent By The Department

- ☞ Is There Anything Missing That Would Show That the Reduction In Hours Would Pose a Risk To the Individual's Health, Safety, or Implementation Of His/Her PCP?
- ☞ Example: 2 Individuals Live In A Home And Need Two-On-One Staffing Overnight, As Part Of A Licensing Requirement Or Fire Marshall's, - There Is Nothing In The Information Submitted To OACPDs To Show This.

## Step 2: Look For Any Obvious Errors In the Review Team Document.

- Examples: The Information Provided Show That the Information Submitted Shows That the Individual Needs a “High” Level Of Behavioral Support But the Review Team Document Indicates the Level Of Support Is “Low” .

# Step 3: Develop The Story Of The Case

- ❧ Ask Yourself Why the Individual Needs Additional Hours: Health, Safety, and/or To Implement The PCP.
- ❧ How Many Hours Does the Person Need? The Hours Initially Requested By The Provider or Something Less.
- ❧ Why Didn't OACPDS Understand That The Person Needed More Hours (Examples: Mistake, Information Not Provided).



# Story Of Your Case

☞ Based On Your Story Of the Case –  
Find Documents and Witnesses That  
Will Support Your Story.



## Step 4: Collect Documents

- Request Documents That You Could Use To Prove Your Case.
- Examples Of Sources For Documents: Provider and DHHS.

# What If There Is Insufficient Documentation?

- ❧ Consider Convening A New PCP Meeting Or Getting New Evaluations, Etc. To Document Needs.
- ❧ Be Sure That The “New” Document Indicates That The Individual’s Needs Are The Same Now As When The Agency Submitted The Frequency Tool.

# Potential Issue With New Documents

- ❧ Some Hearing Officers May Not Consider “New Documents” Because They Were Drafted After The OACPDS Made Their Decision.
- ❧ Have Someone At Hearing To Testify To The Individual’s Needs At The Time The Frequency Tool Was Submitted.

# Step 5: Interview Potential Witnesses

- ❧ Find People Who Agree With You That Additional Hours Are Needed.
- ❧ Potential Sources: Case Managers, Service Providers, Etc.
- ❧ Ask The Person(s) If He Or She Is Willing To Testify At Hearing. Let The Person Know The Date Of The Hearing. A Person Can Testify In Person Or Over The Phone.



# Witnesses Continued: Subpoenaing Witnesses



- ❧ If a Witness Can't or Won't Testify You Can Request The Offices Of Administrative Hearings Issue A Subpoena.
- ❧ Please See **Handout #6** on Subpoenaing A Witness. If This Comes Up And You Need Additional Help Please Contact The Office Of Administrative Hearings Or The DRC.
- ❧ You Need To Do This Immediately After You Know The Hearing Date.
- ❧ After You Get A Subpoena – You Will Need To Serve It On The Person.

The background is a textured, light brown or tan color. In the top-left and top-right corners, there are decorative floral motifs. Each motif consists of a central point with several pointed, leaf-like shapes radiating outwards, resembling a stylized flower or a cluster of leaves. The colors of these motifs are a mix of light green and yellow, with some darker green outlines.

# The Hearing



# The Hearing

- ❧ Informal – Will Sit Around a Table.
- ❧ Will Be Recorded.
- ❧ Impartial Hearing Officer.
- ❧ OACPDS's Representative.
- ❧ You, Your Witnesses, and Anyone You Want For Support.
- ❧ OCAPD's Estimated Time: 2 Hours.

The background is a textured, light brown color. In the top-left and top-right corners, there are decorative floral motifs consisting of several light green leaves arranged in a circular pattern.

**You May Be Assisted At  
Hearing By A Representative  
Of Your Choice**



# The Hearing



- ❧ Is Not A Time To Negotiate Or Fight With The OACPDS Representative.
- ❧ You Want To Present A Good Image To The Hearing Officer.
- ❧ You Want To Focus Entirely On Your Story Of The Case – Not How The Individual Is Entitled To Services Because S/He Has Always Had Them And Not On Past Disagreements You May Have Had With The Department.

# Burden Of Persuasion – What Is It And Who Has It?

- ❧ Which Party Has To “Prove” It Is Correct With More Than 50% Of Evidence.
- ❧ In These Cases, OACPDs Has It Because It Is A Cut In Services.



# How To Tell Your Story



- ❧ There Are A Number Of Ways To Do This.
- ❧ Through Documents.
- ❧ Through Cross Examination Of The OACPDS Representative.
- ❧ Through Your Testimony Or the Testimony Of Your Witnesses.

# The Hearing: Documents

- ❧ Provide the Hearing Officer and the OACPDS Representative Of All Documents You Want the Hearing Officer To Consider (The Hearing Officer Should Already Have The Documentation Contained In The Packet). So, Bring Three Copies To the Hearing (One For You, One For the Hearing Officer, and One For OACPDS).

# The Hearing: Witnesses

- ⌘ All Testimony Will Be Under Oath.
- ⌘ The Individual/Guardian and Persons Not Testifying Can Be In The Hearing the Whole Time.
- ⌘ Other Witnesses May Have To Wait Outside The Hearing Until They Testify.



# The Hearing: OACPDS



- ❧ OACPDS's Representative Will Present His/Her Case First.
- ❧ Will Explain How S/he Reached His/Her Decision.



# The Hearing: OACPDS

- ❧ After OACPDS's Representative Presents His/Her Case, You Can Ask Him Or Her Questions. This Part Of The Hearing Is Called Cross Examination.
- ❧ The Hearing Officer Can Ask OACPDS's Representative Questions, Too.

# Tips On Cross Examination

- ❧ This Is Not the Time To Fight With The OACPDS Representative About His/Her Decision.
- ❧ Avoid Open Ended, General Question Questions.
- ❧ Don't Ask Something Like "The Department Made A Mistake, Right?"

# Goals Of Cross Examination

- ❧ To Point OACPDS'S Error And Have Them Admit That It Was A Mistake Or Fails To Take Into Consideration The Person's Plan Or Other Documentation.

# Cross Examination Examples Of Types Of Questions To Ask

- ❧ It Will Depend On the Specifics Of Your Case.
- ❧ If There Is a Mistake In the Evaluation Tool . . . Ask About That.
- ❧ If There Is Information That Wasn't Provided To OACPDs, Show the Representative the Document With the New Information and Ask About the "New" Information.

# Example Of A Question


- ❧ Example: OACPDS Rated The Individual's Medical Needs As "Low" Even Though The Individual's Medical Needs Are "High" Because It Didn't Have All the Documentation.
- ❧ Questions: Have The OACPDS Representative Look At The Evaluation Tool. "You Rated The Individual's Medical Needs As Low, Is That Correct?" **Yes.** Then Show Them The Additional Document. Ask Them To Read The Important Parts. Then Ask Them "Did You Have This Document When You Found That The Individual's Medical Needs Were Low?" **NO.** Then If They Had This Document When They Made The Determination. **STOP HERE.**



# The Hearing: Your Case




- ❧ After You & the Hearing Officer Finish Questioning OACPDS's representative, It Is Your Turn.
- ❧ Remember the Story of Your Case and Focus Your Testimony and/or Your Witnesses' Questions On This Story. How the Reduction Of Hours Would Impact the Individual's Health, Safety, Or Services Under His/Her PCP.



# The Hearing: Your Case


## Direct Examination




- ❧ You Get To Testify Or Ask Questions Of Your Witness. Your Questions Can Be Open Ended.
- ❧ The Hearing Officer Can Ask You Or Your Witness Questions At Any Time.

# Example Of Direct Questions


- ❧ Same Example: OACPDS Rated The Individual's Medical Needs As "Low" Even Though The Individual's Medical Needs Are "High" Because It Didn't Have All the Documentation.
- ❧ Questions (This Time To Provider): How Long Have You Worked With Individual? Show the Person the Documentation. Does This Describe The Individual's Medical Needs? Can You Elaborate On The Individual's Medical Needs?




# The Hearing: Your Case Cross Examination



- ❧ After You Finish Asking Your Witness Questions, the OACPDS Representative Can Ask You Or Your Witness Questions.
- ❧ Always Answer These Questions Truthfully Or Advise Your Witnesses To Do So.
- ❧ Don't Elaborate. Give Your Answer and Don't Add Any Justifications, Etc. You Will Have Time To Address Any "Issues" On Re-Direct.



# The Hearing: Your Case Re-Direct Examination.



- ❧ Use This As An Opportunity To Clarify Anything the OACPDS Representative Asked On Cross Examination Or the Hearing Officer Raised.
- ❧ Usually, This Is Where the “Examination” Stops. Sometimes, There Is Further Back-and-Forth Between the Parties.



# The Hearing: Your Case



- ❧ This Direct Examination, Cross Examination, Re-Direct Examination Process Will Continue For All Of Your Witnesses.
- ❧ After You Have Presented All Of Your Witnesses, the Hearing Will End.

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# After the Hearing




# The Hearing Officer's Recommended Decision




The Hearing Officer Will Make A  
“Recommended Decision” To The  
Commissioner.

# Right To Object To the Hearing Officer's Recommended Decision

As The Recommended Decision Will Indicate, Either Party May File “Written Responses” Or “Exceptions” Within A Designated Time Period.



# Commissioner's Final Decision



☞ After The Parties Exceptions And Responses (If Any), The Commissioner Will Issue The Final Decision In The Case.



# Appeal To Court



☞ As The Final Decision Will Say, Either Party Can File An Appeal To The Court Within A Designated Period Of Time.

# DHHS Administrative Hearing Regulations Can Be Found At

- ⌘ <http://www.maine.gov/sos/cec/rules/10/144/144c001.doc>
- ⌘ Contains Much Of The Information Presented In This Hearing In More Detail



# THE END

- ❧ Open To General Questions.
- ❧ Case Specific Questions: Please See Us After The Presentation.
- ❧ We Are Taking Cases: Priorities
  - \* Individuals Without Guardians
  - \* Individuals With Public Guardians
  - \* Individuals Whose Guardian Needs Additional Help To Prepare For Hearing.