



**Washington State  
Office of Administrative Hearings**

DATE: January 6, 2020

TO: Lorraine Lee, Chief ALJ, and Advisory Group

FROM: Johnette Sullivan, Assistant Chief ALJ

SUBJECT: Reflections on implementation of WAC 10-24-010

Parties' expectations: Many parties seeking ADA accommodations state a diagnosis as if that is enough. They express surprise when the ADA coordinator asks for additional information. They assert a right to accommodations under the ADA, but rarely specify accommodations they need to participate in the hearing. The exception is a request for a representative. They may not know enough about the hearing process to consider how their particular disability may affect their access to or participation in the hearing. The most common accommodation parties say they received in school or at work is extra time to complete a project.

A few parties continued to ask the ALJ for a representative referral during each stage of the hearing process, despite the initial determination that they were not eligible because alternative accommodations would suffice. In addition, they request a representative each time they file a new appeal, despite having represented themselves with alternative accommodations. In such cases, the ADA Coordinator listens to the audio recordings of prior hearings and/or speaks to the ALJ who held the prior hearing(s).

Determination process: The ADA coordinator tried to avoid assumptions by asking objective questions. Some examples of questions asked of parties include:

- Have you had a hearing at OAH?
  - Yes: Did you represent yourself? Can you tell me about the experience?
- What concerns do you have about participating in the hearing?
- What is this appeal about? What is at stake for you?
- Do you have a protective payee?
  - No: Do you pay your own bills, handle your own money?
- Are you able to keep track of appointments and important events?
  - No: Give me examples of how that is a challenge.
- Would you say you are forgetful?
  - Yes: Can you give me some examples?
- How comfortable are you using the internet? Tell you more.
- Have you had accommodations at school or on the job? What were they, and how did they help you?

## Appendix F

- Do you know how to drive?
  - Yes: Do you need accommodations to drive?
  - No: Is there a reason you have not learned to drive?
- Have you negotiated a major purchase, like a car or a house?
  - Yes: Tell me about the experience.
- What do you do if you do not understand your doctor's instructions?

Eligible Parties: Each party that I determined was eligible for a representational accommodation had unique needs. No two were alike, except that nearly all received Supplemental Security Income (SSI) and/or Social Security Disability Income (SSDI). The data on SSI/SSDI recipients follows:

- 10 of the 11 persons who were appointed a SR
- 3 of the 4 persons who were accepted as community referrals by legal aid organizations (the 4<sup>th</sup> was receiving workers' compensation)
- 3 who accepted a SR or a client relationship with a legal aid organization who later rejected or failed to meet the attorney (probably due to the parties' serious mental illness)
- 3 persons for whom OAH was unable to find an individual to serve as a SR

All but one party found eligible for a SR had significant mental or cognitive diseases or disorders. One party was eligible for a representational accommodation solely because of multiple deteriorating physical impairments.

Process: The ADA Coordinator often needed one conversation with a party to identify alternative accommodations that the party agreed would meet their needs. In other cases, the ADA Coordinator needed to read a nursing assessment by the Department of Social and Health Services, or medical recommendations by the party's providers. In several cases, a party with a good education appeared to need only alternative accommodations. It was only after the ADA coordinator had several conversations or email communications that the extent of a party's paranoia, depth of misunderstanding or inability to follow instructions, or other mental health impacts were evident.

Timing: It took less than two weeks to finalize several appointments or legal aid referrals. OAH completed most appointments in less than two months from the date the request was received. A few appointments took several months to finalize, due to challenges determining the necessity of an appointment, delays in the party's availability or response time, complications identifying an individual to serve, or rejection of initial representatives. At least one referral has taken over six months to finalize, mostly due to the party's inability to participate in the process for medical reasons.

Training: New OAH employees arrange with supervisors to complete initial training within 60 days of hire. OAH developed the internal training in March 2018. It is online, self-paced, accessed on Inside OAH. The rule requires annual training update, which the ADA Coordinator presented to all staff in fall 2019. The online, self-paced external training for suitable representatives has been available on OAH's public website since October 2018. After a recent WSBA Lunchbox CLE, six attorneys made inquiries and three completed training.

Summary: Parties with disabilities that necessitated a representational accommodation usually have been recipients of SSI and/or SSDI for many years. Their appeals arose from several caseloads: unemployment insurance, child support, Medicaid, public benefits, licensing or regulation (like child protective or adult protective services), and, special education. Every OAH office was involved in delaying the scheduling of a hearing pending a referral to the ADA Coordinator. The party's disabilities sometimes impaired their ability to timely and meaningfully communicate with the ADA Coordinator.

## Appendix F

Parties are aware of the rule and about half the requests are directly to the ADA Coordinator, and not as ALJ referrals under the rule. The eligibility process has developed fairly well, while the development of a network of suitable representative is a work-in-progress.