

## Participating in Administrative Law Judge (ALJ) Hearings

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## Introduction

### If you have participated in one hearing.....

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## Introduction

### What and why

- ALJ hearings are the 3<sup>rd</sup> level of appeal
  - First level (Redetermination) - FI/Carrier level
  - Second level (Reconsideration) – Qualified Independent Contractor (QIC) level
- Providers typically bring their attorney and statistical consultant (with a PhD) to the hearing
- In the past, our “side” was not always represented
- This year: 4-5 hearings, Next year - ??

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## Introduction

### How are they held?

- Conference Call
- Video conference
- In-Person
- Some combination of the above

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## Introduction

### How are they run?

- Judge swears you in
- Judge explains the process and tries to put you at ease
- Sometimes you can ask questions, sometimes not

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## Before the Hearing

- The Pre-Hearing – it sets the stage (Maybe)
- Double check the calculations
- Coordinate with the investigator
- Make sure the ALJ and the Provider's attorney have up to date copies of your methodology and calculations
- How much information do you share?
- Can you send too much?

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## At the Hearing

### What do you do?

- Be respectful – you might see this judge again
- Use “Your Honor”
- Maintain your composure – IT’S NOT PERSONAL!
- Maintain your composure – IT’S NOT PERSONAL!
- Take good notes – follow up with a letter addressing main issues – reiterate your position

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## Hearing #1

### What happened? (Issues raised)

- PSC Lacked statutory authority for using extrapolation
- Methodology employed did not conform to generally accepted statistical principles and procedures
- Sample size too small (BIG SURPRISE)
- Lack of documentation

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## Hearing #1 (Continued)

### What happened? (Issues raised - continued)

- Statistical Sampling for Overpayment Estimation (SSOE) not warranted
- Extrapolation not warranted (Documentation - COV)
- “Did we follow the PIM?”
- Judge was prepared and asked good questions

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## Hearing #1 – (Continued)

### Have good, simple examples/explanations

- **The Basketball Team Example**
  - If we were estimating height of high school boys/girls.
    - Basketball team is taller than general population.
    - If our sample picked all basketball players, we would not get a valid answer.
    - Hence, our sampling plan is flawed.
  - Turn it to your advantage
    - We stratified!
    - We specifically picked samples from different strata.
    - Our plan helped us avoid a situation like the basketball team.

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## Hearing #1 – (Continued)

### Have good, simple examples/explanations (cont.)

- What are Ancillaries?
  - 500 cars in a parking lot – sample 50 to check for low tire pressure, then extrapolate
  - Observed 3 broken windshields (ancillaries). NOT extrapolated, just reported as is.
- What is a Certainty Stratum?

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## Hearing #2

- Documentation issues – different versions at different locations (QIC decision not relayed to ALJ)
- Trail of information (various people) – good documentation essential – include **reason for review**
- Attorney issues (attack) – **It's NOT PERSONAL**
- Video/teleconference

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### Hearing #3

- Absurd "observations"
- PhD. vs. M.S.
- Don't assume the ALJ understands your documentation. Make it as clear as possible.
- Provider appeared in person at ALJ
- We used consultant with a PhD.

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### Hearing #4

- Sampling issues were not brought up
- Extrapolation was not challenged, only medical decisions
- However,
  - Coordination with investigator before the hearing is critical
  - Train your investigators on the basics: review basic ideas like ancillaries and stratifying

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### What's next? (After the hearing)

- Follow up with a document
- Address anything that you did not address at the hearing
- Address anything that you want to re-emphasize
- Wait – it may take a while
- Follow up, if necessary, to get results
- Practice Continuous Improvement (Review your notes and the judge's decision, learn from them, and be better prepared for the next time)

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## Documentation Suggestions

### Do it right the first time

- Document, document, document
- Use standard templates (Consistency)
- Don't leave anything to chance – pay attention to details
- Why did you start Statistical Sampling Overpayment Estimation (SSOE) in the first place?
- Why did you proceed to an extrapolation?

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## Documentation Suggestions (2)

### The best defense is a good offense

- What is the Error Rate?
- What is the Coefficient of Variation (COV)
  - What was the actual value?
  - Good, bad, fair?
- Document what was reviewed/considered

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## Common Challenges to our SSOE's

- Demonstration that extrapolation was warranted/lack of statutory authority to extrapolate
- Lack of documentation (cannot follow our steps)
- Inadequate sample size
- Inappropriate stratification of sample
- Estimated relative error is too large
- Consideration of non-sampling errors
- Validity of the computer program used for sampling and extrapolation

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Finally

**Remember –  
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Questions?



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