



Notice of Processes for Department of Child Services Proceedings: Adoption Assistance

Effective: July 1, 2020

Director: Matthew A. Brown, _____

A handwritten signature in black ink, appearing to read "Matt Brown", is written over a horizontal line.

Purpose and Scope

This notice outlines the processes and practices of the Department of Child Services (DCS) and the Office of Administrative Law Proceedings (OALP) pertaining to Adoption Assistance proceedings.

Processes and Practices

OALP will assign an Administrative Law Judge (ALJ) to preside over administrative hearing requests received from DCS for an Administrative Appeal Hearing concerning an administrative review decision made by DCS under policy [10.20 Administrative Review for Adoption Assistance](#).

DCS will send notice of an administrative review decision to the adoptive parent, along with the [Request for Administrative Hearing \(SF 54349\)](#) form. If the parent is dissatisfied with the results of the administrative review, the parent may complete and submit the [Request for Administrative Hearing \(SF 54349\)](#) form to DCS Hearings and Appeals, in the manner specified in the form, within 30 calendar days of the date on the Notice of Administrative Review Decision. The request for administrative appeal MUST also include a copy of the DCS Final Offer Letter or other notice, letter, or communication which the parent is appealing. See DCS policy [10.21 Administrative Appeals for Adoption Assistance](#) for further guidance.

When a complete request for an Administrative Appeal Hearing is received timely by DCS Hearings and Appeals, DCS will forward the request to OALP and request the appointment of an ALJ to preside over the Administrative Appeal Hearing. A request for an Administrative Appeal Hearing must be based on the same issues, facts, and documentation presented in the request for administrative review.

In any administrative hearing conducted regarding eligibility for adoption assistance, the appellant has the burden to prove the child meets all applicable eligibility requirements. See DCS policy [10.15 Eligibility Requirements for Adoption Assistance](#) for further guidance.

In an Administrative Appeal Hearing regarding continuation of Title IV-E Adoption Assistance for a youth past 18 years of age, the appellant has the burden to show that the youth has a medical or mental condition that results in a disability, as supported by sufficient medical documentation. For purposes of Title IV-E Adoption Assistance continuation, a disability is determined in accordance with the guidelines of the US



Social Security Administration. Accordingly, a disability is a condition that is so severe that even with medication, counseling, or other treatment, the condition has a serious impact on the person's daily functioning and limits his or her self-supporting capabilities, given his or her age.

In any Administrative Appeal Hearing conducted regarding a periodic payment amount, the appellant has the burden to prove one (1) or more of the following:

1. DCS did not substantially follow the procedures specified in DCS policy [10.17 Negotiations for Adoption Assistance](#) or any other applicable policy, procedure, rule, or statute relating to determination of adoption assistance periodic payments in conducting negotiations with the prospective adoptive parent or his or her attorney;
2. DCS did not consider relevant information or documentation while conducting the negotiations that the prospective adoptive parent or adoptive parent submitted in the Payment Request Information (PRI) form (this form is available through the DCS Central Eligibility Unit); or
3. The periodic payment DCS agreed to pay, as stated in the Final Offer Letter, is clearly unreasonable and not supported by substantial and relevant evidence presented by the prospective adoptive parent or adoptive parent.

A prospective adoptive parent may utilize the administrative procedures for a review and hearing before obtaining a final decree of adoption of the child. Both the prospective adoptive parent and DCS must sign an Adoption Assistance Agreement before entry of the final adoption decree. The prospective adoptive parent may elect to sign the Adoption Assistance Agreement for the amount of the periodic payment offered in the DCS Final Offer Letter and reserve the right to pursue the administrative review and hearing process in accordance with DCS policy [10.17 Negotiations for Adoption Assistance](#). In this circumstance, if a prospective adoptive parent with a current Adoption Assistance Agreement pursues the administrative review and hearing process, any change in the periodic payment that is subsequently approved or ordered in an administrative hearing decision will be retroactive to the date of entry of the final decree of adoption.

When an Administrative Appeal Hearing concerns the periodic payment amount for a signed Adoption Assistance Agreement, and the prospective adoptive parent did not pursue the administrative review and hearing process within 15 calendar days of the DCS Final Offer Letter date, the hearing request will be considered a request for a modification of the current agreement. Modifications will proceed in accordance with DCS policy [10.18 Modifications for Adoption Assistance](#). For hearing requests to modify the existing Adoption Assistance Agreement to increase the periodic payment amount, the adoptive parent must prove one (1) of the three (3) factors listed above that are required for any administrative hearing conducted regarding a periodic payment amount. The adoptive parent must also show both of the following:



1. A change in the child's needs or family's circumstances occurred after the original Adoption Assistance Agreement or the most recent amendment was signed. This change was not known or identified at the time the Adoption Assistance Agreement or most recent amendment was signed, and it justifies an increase in the periodic payment; and
2. The adoptive parent has not submitted any other written request for modification of the Adoption Assistance Agreement to increase the periodic payment amount within 12 months of the request for modification, which is the subject of the administrative hearing request.

If a hearing on a modification request does not include an issue concerning the periodic payment amount, the appellant has the burden to prove a change of circumstances occurred that supports the requested modification. This change of circumstances must have occurred after the original Adoption Assistance Agreement or any subsequent modification or amendment of the agreement was signed.

In any Administrative Appeal Hearing regarding the termination of an Adoption Assistance Agreement or administrative suspension of periodic payments under an Adoption Assistance Agreement, before the child reaches 18 years of age, the appellant has the burden to prove the termination or suspension does not comply with DCS policy or any applicable procedure, rule, or statute. See DCS policy [10.19 Continuations, Terminations, and Suspensions of Adoption Assistance](#) for requirements.

If an Administrative Appeal Hearing is regarding an appropriate periodic payment amount, and the Final Agency Authority decision concludes the appellant met the burden of proof that the amount approved by DCS should be changed, the appellant and DCS must execute an Amendment to Adoption Agreement (SF 54895) (this form is available through the DCS Central Eligibility Unit) before the change of periodic payment may be processed. Any approved change in the periodic payment shall be documented by an amendment to the agreement, which states the effective date for the change.

Note: The effective date will be retroactive to the date of entry of the final adoption decree or the date of the request for modification when:

1. The prospective adoptive parent requests an administrative review and a hearing within 15 days of the Final Offer Letter:
2. The appeal concerns the periodic payment amount stated in the Adoption Assistance Agreement or amendment; and
3. The Adoption Assistance Agreement was signed before entry of the final decree of adoption.



Unless the assigned ALJ continues the hearing date by agreement of the parties or upon motion for good cause, an Administrative Appeal Hearing that is requested and granted under this notice will be scheduled and held within 120 calendar days after receipt of the hearing request by OALP. The parties will be notified by OALP as to the specific time, date and place for each hearing. The hearing will be conducted under applicable rules and policies of OALP and DCS pertaining to administrative hearings.

The ALJ will issue a written administrative hearing recommendation within 90 calendar days of completion of the hearing unless additional time is requested and approved by all parties and the ALJ, as stated in the hearing record. However, a recommendation issued more than 90 calendar days after completion of the Administrative Appeal Hearing will not be void or voidable on the ground of untimeliness. The ALJ recommendation will be mailed to the parties and to the DCS Final Agency Authority.

The ALJ's recommendation shall not be construed to be a decision on the case. Upon receipt of the written recommendation, the DCS Office of General Counsel (OGC) will automatically conduct a Final Agency Review of the ALJ recommendation. While conducting the review, the DCS Final Agency Authority will consider the facts of case and the ALJ recommendation.

Upon completion of the review, the DCS Final Agency Authority will issue a decision upholding, reversing, or remanding the initial DCS decision, which underlies the administrative appeal. The DCS Final Agency Authority may schedule status conferences or briefing deadlines during his or her review, however, failure to attend these status conferences or respond to briefing deadlines will not result in a dismissal of the case or a failure of the DCS Final Agency Authority to issue a decision on the case. DCS will notify the parties of the Final Agency Authority decision. If the parent is dissatisfied with the results of the review, he or she may seek judicial review in accordance with [IC 4-21.5-5 et. seq.](#)

If the administrative review decision is upheld, the amount of the periodic payment will remain the amount that is stated in the original Adoption Assistance Agreement or currently effective amendment, unless or until the periodic payment is changed. This change must be in accordance with the modification procedures in DCS policy [10.18 Modifications for Adoption Assistance](#), which is subject to Final Agency Review and judicial review (if applicable), as outlined below.

An Administrative Appeal Hearing recommendation issued by the assigned ALJ is not the Final Agency Action of DCS unless the decision remands the case for further consideration by DCS, which allows the appellant another chance to request an Administrative Appeal Hearing should the appellant remain dissatisfied after action is taken in accordance with the remand. Upon issuance of the ALJ's written recommendation, it will be provided to the DCS OGC for Final Agency Action. The DCS



Final Agency Action is the final decision. If the appellant is dissatisfied with the results of the Final Agency Action, the appellant may seek judicial review under the applicable provisions of [IC 4-21.5-5](#).

An Administrative Appeal Hearing will not be provided for the following decisions:

1. Approval or disapproval of any requested change in the language or format of the Adoption Assistance Agreement from DCS submitted for completion and signature;
2. Determinations relating to percentage reductions in current State Adoption Subsidy (SAS) periodic payments; or
3. Any other decision or determination of DCS relating to the administration of the Indiana Adoption Program under [IC 31-19-26.5](#) that is not described in this notice.

Code References

1. [IC 4-15-10.5: Office of Administrative Law Proceedings](#)
2. [IC 4-21.5-5 Judicial Review](#)
3. [IC 31-27-4-23: Administrative hearings](#)
4. [IC 31-27-4-24: Procedure for administrative hearings](#)
5. [42 USC 671 \(a\)\(12\) State Plan for foster care and adoption assistance](#)
6. [45 C.F.R. 205.10 Hearings](#)
7. [45 C.F.R. 1355.30 Other applicable regulations](#)
8. [465 IAC 2-15.1-16 Administrative review](#)
9. [465 IAC 3 Administrative Reviews and Hearings](#)
10. [465 IAC 3-3-3\(g\) Request for hearing](#)
11. [465 IAC 4 Indiana Adoption Assistance and Guardianship Assistance Programs](#)