



Notice of Processes for Department of Child Services Proceedings: Guardianship Assistance Program

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 proceedings involving the Guardianship Assistance Program.

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 [14.4 Administrative Review for Guardianship Assistance Program](#).

Individuals seeking an Administrative Appeal Hearing regarding a DCS decision on the Guardianship Assistance Program (GAP) after an administrative review must send their request for a hearing to DCS Hearings and Appeals, in accordance with the [DCS Chapter 14 GAP Policies](#).

DCS will send notice of the administrative review decision to the guardian or prospective guardian, along with the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form. If the guardian or prospective guardian is dissatisfied with the results of the administrative review, he or she may submit the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form along with the Notice of Administrative Review decision to DCS Hearings and Appeals. The [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) form must be submitted within 30 calendar days of the date on the Notice of Administrative Review decision, as provided in policy [14.4 Administrative Review for Guardianship Assistance Program](#).

When a complete request for 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 that were presented in the request for administrative review. The Administrative Appeal Hearing will not consider any issues or facts that were not presented in the administrative review request submitted by the guardian.

When an Administrative Appeal Hearing is conducted regarding eligibility for GAP, the



prospective guardian shall have the burden to prove the child meets all applicable eligibility requirements, as described in DCS policy [14.01 Guardianship Assistance Program \(GAP\)](#)

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

1. DCS did not substantially follow the procedures specified in DCS policy [14.02 Negotiations for Guardianship Assistance Program](#) or any other applicable policy, procedure, rule, or statute relating to determination of GAP payments when negotiations were conducted with the prospective guardian or his or her attorney;
2. DCS did not consider relevant information or documentation that the guardian or prospective guardian submitted in the Payment Request Information (PRI) form (this form is available through the DCS Central Eligibility Unit) while conducting the negotiations or when the DCS Final Offer Letter was submitted, as outlined in DCS policy [14.02 Negotiations for Guardianship Assistance Program](#); or
3. The periodic payment that DCS agreed to pay, as stated in the DCS Final Offer Letter, is clearly unreasonable and not supported by substantial and relevant evidence presented by the guardian or prospective guardian or otherwise considered by DCS.

The guardian may elect to sign the Guardianship 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 [14.4 Administrative Review for Guardianship Assistance Program](#).

For Administrative Appeal Hearings concerning the initial periodic payment amount for a current Guardianship Assistance Agreement, and the guardian did not pursue the administrative review and hearing process following the DCS Final Offer Letter, the hearing request will be considered a request for a modification of the current agreement. For Administrative Appeal Hearings involving a request for modification to increase the amount of a periodic payment of an existing Guardianship Assistance Agreement, the guardian must prove the following:

1. DCS did not substantially follow the procedures specified in DCS policy [14.02 Negotiations for Guardianship Assistance Program](#) or any other applicable policy, procedure, rule, or statute relating the determination of guardianship assistance periodic payments in conducting negotiations with the prospective guardian or his or her attorney; or
2. The following:
 - a. DCS did not consider relevant information or documentation that the guardian or prospective guardian submitted in the Payment Request



Information (PRI) form (this form is available through the DCS Central Eligibility Unit) when negotiations were conducted or its Final Offer Letter was submitted, as outlined in DCS policy [14.02 Negotiations for Guardianship Assistance Program](#);

- b. A change of circumstances concerning the child or family occurred after the original Guardianship Assistance Agreement for periodic payments or the most recent amendment was signed. The change of circumstances was not known or anticipated at the time the agreement or most recent amendment was signed, and the change justifies an increase in the periodic payment; and
- c. The guardian has not submitted any other written request for modification of the Guardianship Assistance Agreement to increase the periodic payment amount within 12 months of the request for modification, and a request for modification of the periodic payment is the subject of the administrative hearing request.

If an Administrative Appeal Hearing on a modification request does not include an issue concerning the periodic payment amount, the guardian has the burden to prove that a change of circumstances occurred after the original Guardianship Assistance Agreement or any subsequent modification or amendment of the agreement was signed and that the change of circumstances supports the requested modification.

In any Administrative Appeal Hearing regarding termination of the Guardianship Assistance Agreement or administrative suspension of periodic payments under an agreement before the child reaches 18 years of age, the guardian shall have the burden of proving the termination or administrative suspension does not comply with DCS policy [14.3 Modification and Continuation of a Guardianship Assistance Agreement](#) or other applicable procedures, rules, or statutes.

Unless the assigned ALJ continues the hearing date by agreement of the parties or upon motion for good cause, an Administrative Appeal Hearing requested and granted under this notice must 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 location of 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 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 recommendation. 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 Final Agency Authority to issue a decision on the case. 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. DCS will then notify the parties of the Final Agency Authority decision. If the prospective guardian is dissatisfied with the results of the review, the prospective guardian may seek judicial review in accordance with [IC 4-21.5-5 et. seq.](#)

If an Administrative Appeal Hearing recommendation regarding periodic payment amount concludes the guardian met the burden of proof and the amount approved by DCS should be changed, the ALJ will not determine the new amount of a periodic payment. If the DCS Final Agency Authority is in agreement with the ALJ recommendation, the case will be sent back to DCS for further consideration of the periodic payment amount, based on the findings and conclusions stated in the decision. If subsequent negotiations do not result in agreement concerning the periodic payment amount, a second Administrative Appeal Hearing will not be provided to re-argue the same disputed issues. In this event, the administrative review determination concerning the post-remand Final Offer Letter will be the Final Agency Action of DCS.

Note: Any approved change in the periodic payment shall be documented by an amendment to the Guardianship Assistance Agreement and will state the effective date for the change. If the appeal concerns the periodic payment amount stated in the Guardianship Assistance Agreement that was signed before entry of the order establishing guardianship, the effective date will be retroactive to the date of the order establishing guardianship.

If the administrative review decision is upheld by the Final Agency Authority, the amount of the periodic payment, as stated in the signed original Guardianship Assistance Agreement or currently effective amendment, will remain in effect unless or until the periodic payment is changed in accordance with the modification procedures in DCS policy [14.3 Modification and Continuation of a Guardianship Assistance Agreement](#).

After exhaustion of available administrative review and appeal procedures, if the guardian does not agree with the decision of the DCS Final Agency Authority, the decision is subject to 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



Guardianship Assistance Agreement form that DCS submitted for completion and signature; or

2. Any other decision or determination of DCS relating to administration of the GAP under this notice 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 29-3-8-9\(f\) Guardian support obligation for assisted guardianship](#)
4. [IC 29-3-12-6\(b\) Continuation of assisted guardianship after age 18](#)
5. [IC 31-9-2-17.8\(1\)\(E\) Guardianship assistance included in child services](#)
6. [IC 31-27-4-23: Administrative hearings](#)
7. [IC 31-27-4-24: Procedure for administrative hearings](#)
8. [45 C.F.R. 1355.30 Other applicable regulations](#)
9. [45 C.F.R. 205.10 Title IV-E Fair Hearings](#)
10. [465 IAC 2-15.1-16 Administrative review](#)
11. [465 IAC 3-2 Administrative Reviews and Hearings](#)
12. [465 IAC 3-3-3\(g\) Request for hearing](#)
13. [465 IAC 4 Indiana Adoption Assistance and Guardianship Assistance Programs](#)
14. [42 U.S.C. 673\(d\) Kinship Guardianship Assistance Program](#)