

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 10: Adoption	Effective Date: January 1, 2020
	Section 21: Administrative Appeals for Adoption Assistance	Version: 3

STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) will process requests for an administrative appeal hearing received from a parent or prospective adoptive parent 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 instructions and a [Request for Administrative Hearing \(SF 54349\)](#) form. If the parent is dissatisfied with the results of the administrative review, the parent may submit the [Request for Administrative Hearing \(SF 54349\)](#) form to the DCS Hearings and Appeals, in the manner specified in the form, within 30 calendar days after service of the [Notice of Final Administrative Review Decision](#), as provided in policy [10.20 Administrative Review for Adoption Assistance](#).

A request for an administrative hearing must be based on the same issues, facts, and documentation presented in the request for administrative review. The administrative hearing will not consider any issues or facts that were not presented in the administrative review request submitted by the parent.

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 policy [10.15 Eligibility Requirements for Adoption Assistance](#) for further guidance.

In any administrative 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 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; 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 agreement before entry of the final adoption decree.

The prospective adoptive parent may elect to sign the 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 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 hearing concerns the periodic payment amount for a fully signed 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 hearings involving a request for a modification of an existing agreement to increase the periodic payment amount, the adoptive parent must prove one (1) of the three (3) factors listed above to challenge a periodic payment amount, while also meeting both of the following:

1. A change in the child's needs or family's circumstances occurred after the original agreement or most recent amendment was signed. This change was not known or identified at the time the 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 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 agreement or any subsequent modification or amendment of the agreement was signed.

In any administrative 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 termination or suspension does not comply with DCS policy or any applicable procedure, rule, or statute. See policy, [10.19 Continuations, Terminations, and Suspensions of Adoption Assistance](#) for requirements.

If an administrative hearing is about an appropriate periodic payment amount, and the hearing 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 \(SF 54895\)](#) before the change may be processed. Any approved change in the periodic payment shall be documented by an amendment to the agreement that 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.

If the administrative review decision is upheld, the amount of the periodic payment, as stated in the signed original agreement or currently effective amendment, will remain in effect unless or until the periodic payment is changed in accordance with the modification procedures in policy [10.18 Modifications for Adoption Assistance](#).

An administrative hearing decision issued by the assigned Administrative Law Judge (ALJ) and is the final agency action of DCS unless the decision remands the case for further consideration by DCS. The final DCS agency action, after exhaustion of available administrative review and appeal procedures, is subject to judicial review under the applicable provisions of [IC 4-21.5-5](#).

An administrative hearing will not be provided for the following decisions:

1. Approval or disapproval of any requested change in the language or format of the agreement from DCS submitted for completion and signature;
2. Determinations relating to percentage reductions in current 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](#) or this policy that is not described in this policy.

Code References

1. [IC 4-21.5-5 Judicial Review](#)
2. [IC 31-19-26.5 Adoption Subsidies](#)
3. [45 C.F.R. 205.10 Hearings](#)
4. [45 C.F.R. 1355.30 Other applicable regulations](#)
5. [465 IAC 3 Administrative Reviews and Hearings](#)
6. [465 IAC 4 Indiana Adoption Assistance and Guardianship Assistance Programs](#)
7. [42 USC 671 \(a\)\(12\) State Plan for foster care and adoption assistance](#)

PROCEDURE

The DCS Local Office Director (LOD) or designee will provide technical assistance, including testimony, to support the position of DCS for administrative hearings concerning the periodic payment amount or modifications of periodic payment amounts based on a change of circumstances.

The DCS CEU will provide technical assistance including testimony, to support the position of DCS for administrative hearings concerning the eligibility for continuation of adoption assistance beyond the child's 18th birthday, termination of Adoption Assistance Agreements, or administrative suspension of adoption assistance payments.

DCS Central Office staff will represent DCS in administrative appeal hearings. A DCS Staff Attorney may assist the DCS Central Office Attorney, as requested, in presenting the DCS position at the hearing. Following an ALJ decision to uphold, reverse, or remand the administrative review decision, the DCS Central Office Attorney will notify DCS staff as to appropriate procedures to comply with the decision.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

1. [Final Adoption Program Eligibility Determination](#) – Available via CEU
2. [Payment Request Information \(PRI\)](#) – Available via CEU
3. [Amendment To Adoption Agreement](#) – Available via CEU
4. [Request for Administrative Hearing](#) – Available via CEU

RELATED INFORMATION

Appellant

For the purposes of administrative appeals for adoption assistance, an [appellant](#) is a person aggrieved by the decision made in an administrative review by DCS who is either:

1. A prospective adoptive parent, including the parent who has applied for adoption assistance; or
2. An adoptive parent who is a party to an Adoption Assistance Agreement.

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