

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 10: Adoption	Effective Date: May 1, 2012
	Section 21: Administrative Appeals for Adoption Assistance	Version: 1

POLICY	[NEW]
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The Indiana Department of Child Services (DCS) will process requests for an administrative appeal hearing received from a parent(s) concerning an administrative review decision made by DCS under policy [10.20 Administrative Review for Adoption Assistance](#). See Related Information for the definition of parent(s).

DCS will send notice of an administrative review decision to the parent(s), along with instructions and a [Request for Administrative Hearing \(SF54349\)](#) form. If the parent(s) is dissatisfied with the results of the administrative review, the parent(s) may submit the [Request for Administrative Hearing \(SF54349\)](#) form to the DCS Hearings and Appeals 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 that were 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(s).

In any administrative hearing conducted regarding eligibility for adoption assistance, the parent(s) shall have the burden to prove that the child meets all applicable eligibility requirements. See policy [10.15 Eligibility Requirements for Adoption Assistance](#).

In any administrative hearing conducted regarding a periodic payment amount, the parent(s) shall have the burden to prove one (1) or more of the following:

1. In conducting negotiations with the prospective adoptive parent(s) or their Attorney, 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;
2. DCS did not consider relevant information or documentation that the prospective adoptive parent(s) or adoptive parent(s) submitted in the [Payment Request Information \(PRI\)](#) form, in conducting the negotiation or submitting its Final Offer letter based on the factors and information outlined in DCS policy [10.17 Negotiations for Adoption Assistance](#);
- or
3. The periodic payment that 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(s) or adoptive parent(s) or otherwise considered by DCS.

A prospective adoptive parent(s) may utilize the administrative procedures for a review and hearing before obtaining a Final Decree of Adoption of the child. Both the prospective parent(s) and DCS must sign an agreement before entry of the Final Adoption Decree.

The parent(s) 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](#). If a parent(s) 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 current agreement and the parent(s) did not pursue the administrative review and hearing process within 30 calendar days of the DCS Final Offer letter, 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 modification of an existing agreement to increase the periodic payment amount, the parent(s) must prove one (1) of the three (3) factors listed above to challenge a periodic payment amount, and both of the following:

1. A change of circumstances concerning the child or family occurred after the original agreement or most recent amendment was signed that was not known or anticipated at the time the agreement or most recent amendment was signed that justifies an increase in the periodic payment; and
2. The parent(s) 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 parent(s) has the burden to prove that a change of circumstances occurred after signature of the original agreement, or any subsequent modification or amendment of the agreement, that supports the requested modification.

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 parent(s) shall have the burden of proving that termination or suspension does not comply with DCS policy or any applicable procedure, rule, or statute. See policy [10.14 Continuations, Terminations and Suspensions of Adoption Assistance](#) for requirements.

An administrative hearing requested and granted under this policy will be scheduled and held within 90 calendar days after receipt of the hearing request by DCS Hearings and Appeals, unless the assigned Administrative Law Judge (ALJ) continues the hearing date by agreement of the parties or upon motion for good cause. All administrative hearings will be heard at a hearing site in Indianapolis, Indiana, unless all parties and the ALJ agree to hold a hearing at another location, for convenience of the parties and witnesses. The parties will be notified by DCS Hearings and Appeals as to the specific time, date and place for each hearing. The hearing will be conducted under applicable rules and policies of DCS pertaining to administrative hearings.

A written administrative hearing decision will be issued and mailed to the parties within 90 calendar days of the hearing, unless additional time is requested and approved by all parties and the ALJ, as stated in the hearing record. However, a decision issued more than 90 calendar days after completion of the hearing will not be void or voidable on the ground of untimeliness.

If an administrative hearing decision involves an appropriate periodic payment amount and concludes that the parent(s) met the burden of proof that the amount approved by DCS should be changed, the ALJ will not determine the proper amount of a periodic payment. If the administrative review decision is not affirmed, the ALJ will send the case back to DCS for further consideration 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 that 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 agreement that states the effective date(s) for the change. If the appeal concerns the periodic payment amount stated in the adoption assistance agreement that was signed before entry of the Final Decree of Adoption, the effective date will be retroactive to the date of entry of the Final Adoption Decree.

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](#). DCS will not consider the failure of the adoptive parent(s) to obtain a requested periodic payment amount to be a ground for revoking or setting aside their adoption of the child.

An administrative hearing decision issued by the assigned ALJ 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 form that DCS submitted for completion and signature;
2. Determinations concerning the availability of funds in the Adoption Assistance Account for payments under State Adoption Subsidy (SAS) agreements or continuations of County Adoption Subsidy (CAS) agreements based on funding priorities identified in policy [10.16 Funding for Adoption Assistance](#);
3. Determinations relating to percentage reductions in current SAS periodic payments; or
4. Any other decision or determination of DCS relating to 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 Title IV-E Fair Hearings
4. 45 C.F.R. 1355.30 Referenced Rules for Title IV-E

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 original periodic payment amount or modifications of periodic payment amounts based on change of circumstances.

DCS CEU will provide assistance, including testimony, to support the position of DCS for administrative hearings concerning eligibility, continuation of adoption assistance beyond the child's 18th birthday, termination of adoption assistance agreements, administrative suspension of adoption assistance payments, or decisions concerning modification requests other than changes in periodic payment amounts.

DCS Permanency and Practice Support will provide assistance, including testimony, to support the position of DCS for administrative hearings concerning the result of administrative reviews under policy [10.20 Administrative Review for Adoption Assistance](#).

DCS will be represented in administrative appeal hearings by a DCS Central Office Attorney. A DCS Local Office Attorney who was involved in negotiation and determination of a periodic payment amount or modification that is the subject of an administrative appeal hearing will 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, DCS Counsel 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](#) – Available via CEU
3. [Request for Administrative Hearing \(SF54349\)](#)
4. [Notice of Administrative Review Decision](#)- Available via CEU

RELATED INFORMATION

Parent (Definition)

A person aggrieved by the decision made in an administrative review by DCS who is either:

1. A prospective adoptive parent(s), including the parent(s) who has applied for adoption assistance; or
2. An adoptive parent(s), who is a party to an adoption assistance agreement; and
3. Includes an attorney who represents the aggrieved person for purposes of the administrative appeal hearing.