

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 14: Guardianship</b>	<b>Effective Date:</b> October 1, 2012
	<b>Section 4: Administrative Review for Guardianship Assistance Program</b>	<b>Version:</b> 2

**POLICY [REVISED]**

**[REVISED] General Conditions**

The Indiana Department of Child Services (DCS) will process a request for administrative review when a prospective guardian or guardian disagrees with a decision made by DCS under policy sections 14.1 Guardianship Assistance Program (GAP), 14.2 Negotiations for Guardianship Assistance Program, and 14.3 Modification of a Guardianship Assistance Agreement or when the guardian or prospective guardian alleges that their claim for Guardianship Assistance benefits under 14.1 Guardianship Assistance Program (GAP), 14.2 Negotiations for Guardianship Assistance Program, and 14.3 Modification of a Guardianship Assistance Agreement is not acted upon with reasonable promptness. DCS will also process a request for administrative review of a decision concerning the amount payable for nonrecurring expenses (NRE).

A prospective guardian must submit a written Request for Administrative Review Indiana GAP within 15 calendar days of service of notice by mail or hand delivery of any of the following decisions:

1. Final guardianship assistance program determination denying eligibility;
2. The DCS periodic payment Final Offer letter;
3. Determination of the amount allowed and payable for NRE;
4. Determination of a request for modification of the payment provisions of a Guardianship Assistance Agreement, if the DCS local office and guardian have not reached agreement on the modification request;
5. Denial of a request for continuation of a Guardianship Assistance Agreement after the child becomes age 18; or
6. Termination or administrative suspension of payments under a Guardianship Assistance Agreement for any reason other than the age of the child, death of the child or guardian, or termination of the guardianship.

**[NEW]** For a Request for Administrative Review based on an allegation of a claim not being acted upon with reasonable promptness, the guardian or prospective guardian must submit a written Request for Administrative Review Indiana GAP form no sooner than 60 calendar days from the date on which the completed claim for benefits was submitted to DCS.

The Request for Administrative Review Indiana GAP must be submitted to the DCS Permanency and Practice Support Division, in the manner specified in the request form. The Permanency and Practice Support Division will conduct the administrative review based on the reasons stated in the request, the documentation included to support the request, and any documentation submitted by DCS staff. Any person who was involved in making the decision or determination that is the subject of the administrative review request will not participate in the administrative review.

### **Eligibility Determinations**

DCS will process a Request for Administrative Review Indiana GAP from a prospective guardian or guardian who has an application pending for GAP assistance concerning a determination made by DCS under policy sections 14.1 Guardianship Assistance Program (GAP), 14.2 Negotiations for Guardianship Assistance Program, or 14.3 Modification of a Guardianship Assistance Agreement.

To overturn a DCS determination denying eligibility, the guardian must establish that the determination was contrary to applicable federal or state law, rule, or policy as applied to the facts.

### **Initial Periodic Payment Amount**

Following a final determination approving eligibility for the GAP assistance program, DCS will provide the determination, proposed Guardianship Assistance Agreement, and a Payment Request Information form (PRI) to the prospective guardian or the attorney who represents the prospective guardian.

If negotiation of the periodic payment has not resulted in an approved Guardianship Assistance Agreement, DCS will send a Final Offer letter to the prospective guardian or the guardian's attorney, stating the amount that DCS agrees to pay as the periodic payment for the Guardianship Assistance Agreement. The letter will include information about the availability of an administrative review process and the Request for Administrative Review Indiana GAP form. See separate policy 14.2 Negotiations for Guardianship Assistance Program.

An eligible prospective guardian who has not agreed with DCS concerning the amount of the periodic payment, and has received a Final Offer letter stating the amount that DCS has agreed to pay, may do any of the following:

1. Accept the amount stated in the Final Offer letter by signing and returning to DCS the Guardianship Assistance Agreement that includes that amount.
2. Sign the Guardianship Assistance Agreement with a condition added or attached to the Guardianship Assistance Agreement stating the prospective guardian's disagreement with the periodic payment amount, and return the signed Guardianship Assistance Agreement to DCS with a completed Request for Administrative Review form.
3. Submit to DCS a completed Request for Administrative Review form without an accompanying signed Guardianship Assistance Agreement.

If the prospective guardian signs and returns the completed Guardianship Assistance Agreement, as provided in option (1) or (2) above, DCS will begin payment of the amount as stated in the Guardianship Assistance Agreement, effective on the date of entry of the order establishing guardianship of the child. If the amount of the periodic payment is subsequently changed as a result of the administrative review or an administrative hearing (see separate policy 14.5 Administrative Appeals for Guardianship Assistance Program), the final approved payment amount will be implemented by an amended Guardianship Assistance Agreement, effective retroactive to the date of the order establishing guardianship.

A prospective guardian who does not elect to sign the Guardianship Assistance Agreement may utilize the administrative review procedure provided in this policy. That process, and any available administrative hearing under policy 14.5 Administrative Appeals for Guardianship

Assistance Program, should be exhausted before an order establishing guardianship of the child is entered. The Guardianship Assistance Agreement between DCS and the guardian must be signed by both the guardian and DCS on or before the date that the court enters the order establishing guardianship of the child. If the order establishing guardianship of the child is entered before both DCS and the prospective guardian have signed the Guardianship Assistance Agreement, the child will not be eligible for any GAP assistance.

**Note:** If the Guardianship Assistance Agreement is not signed prior to the order establishing guardianship, the child may not be eligible for Medicaid.

The Request for Administrative Review Indiana GAP must be submitted to DCS Permanency and Practice Support. The request must be in the format specified in the Request for Administrative Review Indiana GAP form. The prospective guardian must state the reason(s) for requesting a review and should include documentation to support the basis for the request. DCS Permanency and Practice Support will conduct the administrative review based on the request submitted by the prospective guardian, the documentation included to support the request and any documentation submitted by DCS staff. The administrative review will not include any person who was involved in the original order finalizing guardianship or the negotiation that resulted in the DCS Final Offer letter.

To overturn a DCS determination concerning the periodic payment in an administrative review, a prospective guardian must show one (1) or more of the following:

1. DCS did not substantially follow the procedures specified in this policy or any other applicable policy, rule, or statute relating to the determination of GAP assistance periodic payments;
2. DCS did not consider relevant information or documentation that the prospective guardian submitted in the PRI in conducting the negotiation; or submitting its Final Offer letter based on the factors and information outlined in DCS policy 14.2 Negotiations for Guardianship Assistance Program, in conducting the negotiation or submitting its Final Offer letter; or
3. The periodic payment that DCS agreed to pay as stated in the Final Offer letter is clearly unreasonable and not supported by relevant evidence presented by the prospective guardian or otherwise considered by DCS.

DCS will begin payment based on the signed Guardianship Assistance Agreement, effective upon entry of order establishing guardianship. A change in the periodic payment may only be made through the administrative review process or in accordance with the modification procedures in policies 14.2 Negotiations for Guardianship Assistance Program and 14.3 Modification of a Guardianship Assistance Agreement. DCS will not consider the failure of the guardian to obtain from DCS the requested periodic payment amount as grounds for revoking or setting aside their guardianship of the child.

#### **Modification of Periodic Payment Amount**

After a Guardianship Assistance Agreement and an order establishing guardianship of the child has been entered, the guardian may request a modification of the periodic payment amount or term stated in an existing Guardianship Assistance Agreement under policy 14.3 Modification of a Guardianship Assistance Agreement.

If the decision by the DCS local office is unsatisfactory to the guardian, a Request for Administrative Review Indiana GAP must be submitted to DCS Permanency and Practice Support within the timeframe and in the manner specified in this policy.

To justify the increase of a periodic payment, the guardian must show that a change of circumstances concerning the child or family occurred after the original Guardianship Assistance Agreement was signed, and that those circumstances were not known or anticipated at the time the Guardianship Assistance Agreement was signed.

**Note:** A request for modification may not be submitted more frequently than once in a consecutive 12 month period. See separate policy, 14.3 Modification of a Guardianship Assistance Agreement.

#### **Termination or Suspension before the child turns 18 years of age**

If DCS determines that a Guardianship Assistance Agreement should be terminated or periodic payments under the Guardianship Assistance Agreement should be administratively suspended, DCS may terminate the Guardianship Assistance Agreement. In that event, DCS will send the guardian a Notice of Termination of Guardianship Assistance Agreement, or administratively suspend payments by sending the guardian a Notice of Administrative Suspension of Guardianship Assistance Periodic Payments.

If the guardian is receiving a periodic payment and the child has been removed from the home of the guardian pursuant to a court order, DCS may administratively suspend payments effective during the time the child is in the out-of-home placement. In that event, DCS will send the guardian a Notice of Suspension of Guardianship Assistance Periodic Payments. If DCS determines that the child is not returning to the home of the guardian prior to the Guardianship Assistance Agreement terminating, DCS will send a Notice of Termination of Guardianship Assistance Agreement.

If the decision of DCS CEU concerning termination or administrative suspension of assistance under this section is unsatisfactory to the guardian and is subject to administrative review under the General Conditions section of this policy, a Request for Administrative Review Indiana GAP must be submitted to DCS Permanency and Practice Support.

For DCS to alter its decision at the administrative review concerning the administrative suspension or termination of the Guardianship Assistance Agreement, a guardian must show that the determination of DCS was based on a material error of fact or was contrary to applicable law or DCS policy.

#### **Continuation after the child turns 18 years of age**

DCS CEU will process all continuation request applications.

**Note:** For GAP the only allowable continuations are for those children that finalized the guardianship on or after the child's 16<sup>th</sup> birthday and meet the school, work, training, or disability requirements outlined in federal law. See 14.3 Modification of a Guardianship Assistance Agreement.

If the decision of DCS CEU concerning continuation of the Guardianship Assistance Agreement after the child turns 18 years of age is unsatisfactory to the guardian, a Request for Administrative Review Indiana GAP must be submitted to the DCS Permanency and Practice Support. The continuation will terminate when the child turns 20 years of age.

For DCS to alter its decision at the administrative review concerning an Application for Continuation of Guardianship Assistance Agreement Beyond Age Eighteen, the guardian must show, that at least one (1) of the following factors applies:

1. The DCS CEU failed to consider relevant documentation submitted with the application;  
or
2. The DCS decision was contrary to currently applicable law or DCS policy.

### **Administrative Review Decision**

Administrative review will be completed within 60 calendar days of DCS Permanency and Practice Support's receipt of the request. DCS will send notice of the administrative review decision to the prospective guardian, the guardian, or attorney for the guardian or prospective guardian, with instructions and any appropriate forms so that a Request for Administrative Hearing/Indiana Guardianship Assistance Program (GAP) (SF55041) may be pursued. Any review decisions regarding periodic payment amounts will be approved by both the DCS Deputy Director of Permanency and Practice Support and the DCS General Counsel or designee.

If the prospective guardian or guardian is dissatisfied with the results of the administrative review, the individual may submit a written Request for Administrative Hearing/Indiana Guardianship Assistance Program (GAP) (SF55041) to the DCS Hearings and Appeals unit. The Request for Administrative Hearing/Indiana Guardianship Assistance Program (GAP) (SF55041) form must be filed with DCS Hearings and Appeals unit within 30 calendar days of service by mail or hand delivery to the prospective guardian or guardian of the written notice of final administrative review decision. See separate policy 14.5 Administrative Appeals for Guardianship Assistance Program.

An administrative review will not be provided concerning:

1. 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 guardianship program under this policy that is not described in this policy.

### Code References

1. 42 USC 673(d) Kinship guardianship assistance payments
2. IC 31-9-2-17.8(1)(E) Authorization for guardianship assistance program
3. IC 29-3-12-6(b) Continuation of assisted guardianship after age 18
4. IC 29-3-8-9(f) Support obligation of guardian receiving GAP payments
5. 465 IAC 3-2 Administrative Reviews and Hearings

## **PROCEDURE**

The DCS LOD will:

1. Request the most recent PRI (if applicable), and supporting documentation that was submitted by the prospective guardian or guardian; and
2. Send a copy of the Request for Administrative Review Indiana GAP to DCS CEU for issues involving eligibility, continuation, or termination.

The DCS Deputy Director of Permanency and Practice Support, or designee will:

1. Determine if requests were made in a timely manner. If not, the request will be denied;

2. Appoint a qualified person in Permanency and Practice Support division who has no previous knowledge or involvement in the case to conduct the administrative review;
3. Review and approve the completed administrative review decision within 60 calendar days of the receipt of the review request. The review will be based on documentation submitted by the DCS LOD, DCS CEU and the information submitted by the prospective guardian or the guardian; and
4. Send a copy of the administrative review decision letter to the DCS LOD, DCS CEU and the prospective guardian or guardian.
5. Send written notification to the prospective guardian, the guardian, or their attorney of the administrative review decision, once approval has been obtained.

**Note:** The written notification will include instructions concerning the administrative appeal process and will include a Request for Administrative Hearing/Indiana Guardianship Assistance Program (GAP) (SF55041) form, if applicable.

DCS CEU will send a revised Guardianship Assistance Agreement for signature by the parties, if applicable.

#### **PRACTICE GUIDANCE**

N/A

#### **FORMS AND TOOLS**

1. Final Guardianship Assistance Eligibility Determination – Available via CEU
2. Notice of the Termination of Guardianship Assistance Agreement- Available via CEU
3. Notice of Suspension of Guardianship Assistance Periodic Payments – Available via CEU
4. Request for Administrative Review Indiana GAP
5. Request for Administrative Hearing/Indiana Guardianship Assistance Program (GAP) (SF55041)
6. Application for Continuation of Guardianship Assistance Agreement Beyond Age Eighteen

#### **RELATED INFORMATION**

N/A