



## INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY

<b>Chapter 14:</b> Adoption Assistance and Guardianship Assistance	<b>Effective Date:</b> July 1, 2021
<b>Section 12:</b> Administrative Appeals for Adoption Assistance	<b>Version:</b> 5

### POLICY OVERVIEW

An adoptive parent has the right to request an Administrative Appeal Hearing for adoption assistance. A request for an Administrative Appeal Hearing must be based on the same issues, facts, and documentation presented in the request for administrative review. Any issues or facts that were not presented in the administrative review request will not be considered at the Administrative Appeal Hearing.

### PROCEDURE

The Indiana Department of Child Services (DCS) will process requests for an Administrative Appeal Hearing received from an adoptive parent or prospective adoptive parent concerning an administrative review decision made by DCS under policy 14.11 Administrative Review for Adoption Assistance. When a complete and timely request is received by DCS, DCS will forward the request to the Office of Administrative Law Proceedings (OALP) and request the appointment of an Administrative Law Judge (ALJ) (also sometimes referred to Administrative Hearing Officer) to preside over the Administrative Appeal Hearing.

An Administrative Appeal Hearing requested and granted under this policy will be scheduled and held within 120 calendar days after receipt of the hearing request by OALP, unless the assigned ALJ continues the hearing date by agreement of the parties or upon motion for good cause. 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's recommendation shall not be construed to be a decision on the case.

The ALJ will issue a written Administrative Appeal 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 (FAA).

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 the Adoption Assistance Agreement before entry of the final adoption decree.

A 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 policy 14.08 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 Appeal Hearing concerns the periodic payment amount for a fully 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 policy 10.18 Modifications for Adoption Assistance.

### **Initiation of Administrative Appeal for Adoption Assistance**

DCS will:

1. Send notice of an administrative review decision to the adoptive parent, along with the Request for Administrative Hearing;
2. Review the Request for Administrative Hearing; and
3. Forward the completed Request for Administrative Hearing to OALP in a timely manner, and request the appointment of an ALJ to preside over the Administrative Appeal Hearing.

### **During an Administrative Appeal Hearing for Adoption Assistance**

1. A DCS Attorney will represent DCS;

**Note:** An Attorney for DCS who was involved in the negotiation and determination of periodic payment amount or modification that is the subject of an Administrative Appeal Hearing will assist the DCS Attorney litigating the case, as requested, in presenting the DCS position at the hearing.

2. The DCS Local Office Director (LOD) or designee will provide technical assistance, including testimony, to support the position of DCS for Administrative Appeal Hearings concerning the periodic payment amount or modifications of periodic payment amounts based on a change of circumstances;
3. DCS Centralized Eligibility Unit (CEU) will provide technical assistance, including testimony, to support the position of DCS for Administrative Appeal Hearings concerning the eligibility for continuation of adoption assistance beyond the child's 18<sup>th</sup> birthday, termination of Adoption Assistance Agreements, or administrative suspension of adoption assistance payments; and
4. DCS Legal Operations will provide assistance, including testimony, to support the position of DCS for an Administrative Appeal Hearing concerning the result of an administrative review under policy 10.21 Administrative Review for Adoption Assistance.

### **DCS Final Agency Authority (FAA)**

The DCS FAA will:

1. Review the ALJ's recommendation, consider the facts of the case, and issue a decision of the case. The DCS FAA shall utilize their experience and training in the relevant subject matter when conducting their final agency review; and

**Note:** The DCS FAA may schedule status conferences or briefing deadlines during the 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 FAA to issue a decision on the case.

2. Notify the parties and OALP of the decision, including any applicable right to seek judicial review as provided in IC 4-21.5-5.

Following the decision of the DCS FAA to uphold, reverse, or remand the administrative review decision, the DCS Attorney will notify DCS staff as to the appropriate procedures to comply with the decision.

The appellant and DCS must execute an Amendment to the Adoption Agreement when the FAA decision concludes the appellant met the burden of proof that the periodic payment amount approved by DCS should be changed, before the change to the periodic payment may be processed.

**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 (whichever is later) 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.

Upon issuance of the written recommendation by the ALJ, the FAA will automatically conduct a Final Agency Review of the recommendation. In conducting the review, the DCS FAA will consider the facts of case and the ALJ recommendation. Upon completion of the review, the DCS FAA 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 decision. If the prospective guardian is dissatisfied with the results of the review, he or she may seek judicial review in accordance with IC 4-21.5-5.

If the administrative review decision is upheld by the DCS FAA, the amount of the periodic payment, as stated in the signed original Adoption 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 policy 10.18 Modifications for Adoption Assistance.

The final DCS agency action, after exhaustion of available administrative review and appeal procedures, is subject to judicial review under applicable provisions of IC 4-21.5-5.

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 will allow 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 FAA for Final Agency Action. The FAA's final agency decision is the Final Agency Action by DCS. If the appellant is dissatisfied with the results of the Final Agency Action, he or she 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 Adoption Assistance Program (AAP) under IC 31-19-26.5 or this policy that is not described in this policy.

## **LEGAL REFERENCES**

- [IC 4-15-10.5: Office of Administrative Law Proceedings](#)
- [IC 4-21.5-5: Judicial Review](#)
- [IC 31-19-26.5: Adoption Subsidies](#)
- [45 C.F.R. 205.10 Hearings](#)
- [45 C.F.R. 1355.30 Other applicable regulations](#)
- [465 IAC 3 Administrative Reviews and Hearings](#)
- [465 IAC 4 Indiana Adoption Assistance and Guardianship Assistance Programs](#)
- [42 USC 671 \(a\)\(12\) State Plan for foster care and adoption assistance](#)

## **RELEVANT INFORMATION**

### **Definitions**

#### Administrative Hearing Officer

Administrative Hearing Officer refers to an individual who presides over an administrative hearing. An Administrative Hearing Officer is also commonly referred to as an Administrative Law Judge (ALJ).

#### 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 AAP; or
2. An adoptive parent who is a party to an Adoption Assistance Agreement.

#### Disability for Adoption Assistance Continuation

For purposes of 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, has a serious impact on the person's daily functioning, so as to limit self-supporting capabilities, given their age.

#### Final Agency Action

Final agency action means, with respect to an administrative action taken by the department, the issuance of an order by the ultimate authority of the department that:

1. Disposes of all issues for all parties to an administrative proceeding regarding the action after the parties to the administrative proceeding have exhausted all administrative remedies concerning the action; and
2. Is designated as a final order by the ultimate authority of the department.

#### Final Agency Authority (FAA)

For purposes of an administrative proceeding regarding an action taken by DCS, the director or the director's designee is the FAA (referred to in Indiana Code as the ultimate authority) of DCS. A designee of the director must be:

1. A deputy director of DCS; or
2. An individual who:

- a. Is an attorney in good standing who is admitted to the practice of law in Indiana; and
- b. Is an employee of DCS, except as otherwise allowed under state and federal law.

#### **Forms and Tools**

- [Amendment To Adoption Agreement](#) – Available via CEU
- [Final Adoption Program Eligibility Determination](#) – Available via CEU
- [Request for Administrative Hearing \(SF 54349\)](#)
- [Payment Request Information \(PRI\)](#) – Available via CEU

#### **Related Policies**

- [14.08 Negotiations for Adoption Assistance](#)
- [14.09 Modification of an Adoption Assistance Agreement](#)
- [14.11 Administrative Review for Adoption Assistance](#)