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GUIDE TO FAIR HEARINGS

The fair hearing process at the Department of Children and Families is governed by regulation at 110 CMR 10.00, *et. seq.* as well as Massachusetts law, M.G.L. c. 30A. The following is a guide to assist those requesting or participating in a fair hearing to better understand the process and to answer commonly asked questions.

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GENERAL QUESTIONS ABOUT THE FAIR HEARING PROCESS

What is the purpose of a fair hearing?

It allows a person who disagrees with certain decisions made by DCF to appeal the decision to an impartial hearing officer.

What types of decisions can be appealed through the fair hearing process?

The most common is the decision to support abuse or neglect of a child by a caregiver. Additional decisions include: listing a person on the registry of alleged perpetrators at the end of a response, the Department's decision to deny or revoke a license to provide foster or pre-adoptive care, a decision to remove a child from a foster or pre-adoptive home in some situations, a decision to close a foster or pre-adoptive home, a decision to end or reduce services to a person, and a decision to end services and close a clinical case.

What type of decisions cannot be appealed?

The most common are:

- ✓ If you have submitted an application to become a foster or pre-adoptive parent and you are notified that you are ineligible to apply pursuant to 110 CMR 7.100.
- ✓ If the Department discontinues the license study for a foster or pre-adoptive parent because new information is obtained during the license study which, if known when determining eligibility, would have excluded the foster or pre-adoptive parent from applying in the first place pursuant to 110 CMR 7.100.
- ✓ The removal of a child from a child specific or kinship family, if the child was placed on an emergency basis and the child specific/kinship license study is not approved pursuant to 110 CMR 7.108.
- ✓ The termination of services to a young adult if they have reached the age of 22 at the time the appeal is filed.

For a complete listing of decisions that cannot be appealed, see the regulations governing fair hearings: <https://www.mass.gov/fair-hearing-unit>

How do I communicate with the fair hearing unit?

All communications with the fair hearing unit must be made in writing, by U.S. Mail, fax, or email. Our mailing address is 600 Washington Street, 5th Floor, Boston, MA 02111. The fax number is 617-748-2062. Our email address is: DCFFairHearingUnit@state.ma.us.

How do I ask for a fair hearing?

You may Efile your request online at <https://www.mass.gov/fair-hearing-unit> or send, fax, or email a written request which includes your name, address, phone number, name of the child, name and address of the DCF office, the decision you want to appeal and the date of the decision to the address, fax or e-mail address listed below. You must also send a copy of your request to the Area Director of the DCF Office where the decision was made. Keep a copy of the request for yourself as well. It is also helpful to include a copy of any written notice of the decision that DCF provided to you.

How long do I have to request a fair hearing (is there a deadline?)

You must file your request for hearing within 30 calendar days of the decision with which you disagree or within 30 days of receiving written notice of the Department's decision.

What if the deadline for filing an appeal has passed? Can I still request a hearing?

Yes, you can efile, send, fax or email a written request which must include the reason(s) why your request is late, and the Director/Supervisor of the Unit will decide whether there is "good and sufficient cause" to allow the late request.

Does the hearing officer work for DCF as well?

Yes, the hearing officer works for DCF, out of the Office of the General Counsel located in the Central Office, 600 Washington Street, Boston, Massachusetts 02111.

If the hearing officer works for DCF, and is reviewing decisions made by DCF, how is the hearing officer impartial?

The fair hearing regulations require the hearing officer to certify at the beginning of the hearing and also in their written decision that they do not have any direct or indirect interest, personal involvement or bias in the matter that they are hearing. The fair hearing office takes this responsibility very seriously. The Unit is not physically co-located with any of the 29 area offices. In addition, the fair hearing regulations require that the hearing officer cannot discuss the appeal with the person who filed the appeal OR any department staff involved in the appeal except during the actual hearing, to ensure that the hearing officer remains impartial.

How will I be notified whether a hearing has been scheduled?

You will be notified in writing by U.S. Mail to the address that you list on your request for a fair hearing within 20 business days (this is approximately one month in calendar days). You will either receive a

scheduling notice with the date, time and location of your hearing, or you will receive a letter that explains why you are ineligible for a hearing.

How long does DCF have to schedule the hearing?

The fair hearing unit has 65 business days from the date that DCF receives the hearing request to schedule it. In calendar days, this equates to approximately 3 months to schedule the hearing.

How quickly can the hearing be scheduled?

When the fair hearing unit receives a request for hearing, it is scheduled on the next available date.

Can my hearing be expedited (prioritized)?

Appeals from certain decisions are prioritized, including a decision to remove a child from a foster or pre-adoptive home, loss of licensure to provide foster or pre-adoptive care, employment related-issues, and termination of services. Appeals that are expedited are scheduled within 45 business days.

How is the location of the hearing chosen?

The hearing is scheduled in the DCF office or contract agency that made the decision which is being appealed.

Can the Department's decision be stopped (stayed) if I request a fair hearing?

In some situations, yes:

- ✓ If you are a foster or pre-adoptive parent and file your fair hearing request within 10 days of receiving notice of the removal, and the request for hearing is allowed, the removal of the foster child from your home shall be stayed. The child will remain in your home until the final agency decision is rendered *unless* the Area Director who oversees the office assigned to the child's case determines that the foster child's physical, mental or emotional well-being would be endangered by leaving the foster child in the home while the fair hearing process proceeds.
- ✓ If you have received notice from the Department that your case is closing and/or that services being provided to you will be reduced or discontinued, if you have the right to a fair hearing and file your fair hearing request within 14 days of receiving notice of the case closure or within 30 days of the service reduction or discontinuation, the closing of your case or service reduction or termination shall be stayed until the final agency decision is rendered, and the services that you are receiving will also continue.
- ✓ If you are a foster or pre-adoptive parent and are appealing the revocation of a license, your license remains intact until the final agency decision is rendered.

HOW TO PREPARE FOR THE HEARING

How do I submit documents to the fair hearing unit?

All communications with the fair hearing unit must be made in writing, by U.S. Mail, fax, or e-mail. Our mailing address is: 600 Washington Street, 5th Floor, Boston, Massachusetts 02111. Our fax number is: (617) 748-2062. Our e-mail address is DCFFairHearingUnit@state.ma.us.

How do I find out what the rules are for the fair hearing?

The regulations that govern the actions of the Fair Hearing Unit are located at 110 CMR 10.00 *et seq.* There is a link to the regulations on the fair hearing page: <https://www.mass.gov/fair-hearing-unit>

Do I need an attorney?

While it is not a requirement, feedback from appellants has been that having an attorney to represent them at hearing has been helpful. If you plan on getting an attorney, locate one as soon as possible after you receive your hearing date so that you have time to prepare your case with your attorney. If you wait to retain an attorney, and the attorney has a conflict with the fair hearing date, this is NOT considered "good and sufficient cause" by the Fair Hearing Unit to continue the scheduled hearing date.

How do I find an attorney to represent me?

If you already have an attorney appointed to represent you in a Care and Protection Petition, you can ask them to assist you with your fair hearing. In addition, here is a link to assist you with finding an attorney: <https://www.mass.gov/legal-assistance>

Can I request a copy of my DCF file?

Yes - it is best to request your file as soon as your hearing is scheduled, so you receive it as far in advance of the hearing as possible. Some area offices will mail your file to you, while others require that you appear in person with photo identification to receive your file.

How do I request my DCF file?

Your file should be requested from the area office that made the decision which you are appealing. The request must be made in writing to the Area Director, listing your name, address, email or telephone number, and date of birth. Make sure you save a copy of the request for your file when you send it to the area office.

What documents do I have the right to receive from DCF?

- ✓ If you are appealing a decision supporting abuse or neglect, you have the right to receive the 51A report(s) and 51B response that the decision is about.
- ✓ In addition, if you had an open clinical case with the Department currently or in the past, you have the right to receive documents about you (and any minor children that you have custody of), such as the assessment that was done on your family, action plans (formerly called service plans), prior 51A reports and 51B responses, notes (called dictation) that the social worker writes about the communication that he or she made with you.
- ✓ If you are a foster or adoptive parent, you have the right to receive your family resource file.

The area office is required to redact the name of (and any other reasonably identifying data concerning) the reporter of a 51A. Other information may be redacted if it is privileged (e.g. attorney-client communication) or if the release of information would be contrary to the best interest of the child.

What is the timeframe for request and receipt of the documents?

The fair hearing regulations require that you make the request for documents at least 30 calendar days in advance of the scheduled hearing date. The area office is required to provide your records to you within 30 calendar days from the receipt of the request OR 10 calendar days prior to the hearing, whichever is earlier.

What if I have requested my file and I still haven't received it from the area office?

Follow up with the area office early and often, in writing, to document your requests for the file. If it is 4 weeks before the hearing, you have made a timely request for documents, and you still haven't received those documents, contact the fair hearing unit for help, by emailing, faxing or sending copies of your requests for the file to the fair hearing unit. We will then follow up with the area office, and may issue an order that requires the area office to produce the documents that you requested by a specific date.

Can I request people (Witnesses) to attend the hearing?

Yes. This request is called a *subpoena*. You can subpoena people who work at DCF, or people outside of DCF in the community who you think have information that is important for the hearing officer to hear from.

How do I subpoena witnesses?

There are two ways to subpoena witnesses:

- ✓ Fax, send or email a subpoena request to the fair hearing unit. The request must list the names and addresses of the people that you want to subpoena. The subpoena request must be given to the fair hearing unit no later than 15 calendar days before the hearing.
- ✓ You can subpoena people through a person who is authorized to serve a subpoena, such as a sheriff's office or through a person called a constable.

Can I request other documents, videos (discovery) to be produced at the hearing?

Yes. This is called a discovery request. Submit a request for discovery to the fair hearing unit any time after a request for fair hearing has been filed and no later than 30 calendar days before the hearing that lists the documents/videos/information that you want produced and the name and address of the person or agency who has the document. The Director, designee, or fair hearing officer will review the request and send out an order that details the fair hearing unit's decision regarding the request.

What should I do if I cannot come to the hearing on the date that it was scheduled?

If you have a conflict with the date and time that the hearing is scheduled, first try to get rid of the conflict. Second, contact the fair hearing office as soon as you know that you cannot come to the hearing, in writing, with a detailed explanation regarding why you cannot attend, and what efforts you have made to get rid of the conflict. **Any requests to reschedule a hearing that are made less than 15 days before the hearing will not be considered unless the party requesting the continuance can demonstrate that emergency circumstances are present such that a continuance is necessary and appropriate.**

What information will the fair hearing office consider when they decide whether to continue/postpone my hearing?

The fair hearing unit is required to schedule the hearing within 65 business days (approximately 3 months) from the appellants' request for hearing. Therefore, requests to reschedule are only granted for good and sufficient cause, so that the Department can adhere to the required regulatory timeframe, and to ensure that Appellants are afforded their right to appeal in a timely manner. The hearing unit will notify you of its decision to allow or deny your continuance in writing if time allows, or if not, by telephone.

If your request for a continuance is allowed, it is your responsibility or your Attorney's responsibility to notify any witnesses that you have subpoenaed, or that you have asked the Department to subpoena on your behalf. You are also required to notify the witnesses of the new date once you have received notice of that date.

Is there any other way to have a hearing other than coming to a DCF office in person?

Yes. You can request a "paper review" or to have your hearing conducted by conference call. A request for either type of hearing must be made in writing to the fair hearing office, in advance of the hearing date.

What is a "paper review"?

You may request to waive an "in-person" hearing and have a decision issued based on the review of any documents/written argument that you submit. If your request for a "paper review" is allowed, the Director of Fair Hearings, designee or hearing officer will issue an order that sets a deadline for the submission of documents to both the hearing officer and to the area office that made the decision you are appealing. The area office is also allowed to submit documents to the fair hearing office and to the appellant, in support of their argument that the decision they made was reasonable/complied with policy/regulations/statute.

What if English is not my first language?

If you cannot fluently speak or read English, you may request an interpreter provided by the Department at the time you make your request for fair hearing, or you may bring an interpreter of your own choosing with you to the hearing. In addition, the Department can access an interpreter by telephone, in the event that an interpreter cannot be present in person.

How do I request an interpreter?

Request an interpreter with the fair hearing office when you send in your request for a fair hearing, or as soon as possible after the hearing is scheduled.

I have a disability and need a reasonable accommodation - what should I do?

Let the fair hearing office know what type of reasonable accommodation you need for the hearing and we will work with you.

Who should I contact if I have questions about the hearing process?

Call or e-mail the fair hearing unit and our staff will answer your questions. Our telephone number is: (617) 748-2030 and our e-mail address is: DCFFairHearingUnit@state.ma.us.

What should I do if I change my mind and decide I do not want a hearing after it has been scheduled?

Contact the fair hearing unit in writing, by e-mail, fax or U.S. Mail and let us know that you want to withdraw your appeal.

Is there any opportunity for the area office to review the decision I am appealing either before or after the fair hearing?

Yes. The Area Director has the authority to review the request for fair hearing and the decision upon which it is based. The Director may do so within 15 business days from receipt of a request for fair hearing, and has the authority to overturn the decision of the area office that is the subject of the hearing.

In addition, if an allegation of abuse or neglect is supported and a clinical case is opened to complete a family assessment, an administrative review must be conducted following the completion of the Department’s assessment to determine whether the “supported” decision should be upheld, or should be changed to a “substantiated concern” or “unsupported” because either (a) based on information available during the response, the decision at the time it was made was not in accordance with 110 CMR or policies, or was not reasonable; or (b) based upon new information not available during the response, the decision is not in accordance with 110 CMR or policies, or is not reasonable.

How do I find out whether an administrative review has been conducted at the conclusion of my family assessment?

If your case is still open with the Department, ask the social worker assigned to you. In addition, you may request a copy of the completed assessment to see whether a review has been documented.

THE HEARING

Who will be at the hearing?

In addition to the hearing officer, there are two parties to the fair hearing - the person who requested the hearing to challenge the Department’s decision (who is called the appellant) and the DCF staff who were involved in making the decision under appeal.

How do I know who from DCF is coming to the hearing?

DCF policy states that at least one person who was involved in making the decision being appealed should be present at the hearing. For example, if it was an appeal from a decision to support abuse or neglect of a child, the DCF employee who conducted the response would likely be at the hearing.

If there are certain DCF employees that you want at the hearing, you must request that the fair hearing office subpoena them at least 15 calendar days in advance of the hearing, or you can subpoena them yourself.

How long is the hearing?

The fair hearing is scheduled to last two hours. If you cannot tell the hearing officer all that you need to in two hours, you can ask for an additional date to present more evidence, and the hearing officer will decide if it's necessary to allow that request. It is within the discretion of the hearing officer to hold the parties beyond the two hours in the interest of administrative economy, to finish a hearing on a single date, or to require the parties to attend hearing dates from one day to the next, to complete a hearing in a reasonable period of time.

What does the hearing officer do at the hearing?

The hearing officer makes sure that you, the appellant, are able to tell your side of the story. He or she hears the evidence which can be in the form of witness testimony, submitting documents or even video testimony.

Before you or the Department present your evidence, the hearing officer will explain that a fair hearing is a process by which individuals can appeal certain actions or decisions made by the Department and that the hearing is being recorded. The hearing officer will administer an oath asking that each person testifying promises to tell the truth, and the hearing officer will also summarize what the decision is that is being appealed.

The hearing is digitally recorded. There may also be a stenographer present if either party provides one. The appellant may digitally record (audio only) the hearing if they choose to do so, and must let all persons at the hearing know that they have chosen to record the hearing, but this recording is not the official recording of the proceeding.

What does the appellant have to prove?

The fair hearing regulations require that you must prove your case by a "preponderance of the evidence." This means that you have to present enough evidence to show that it is more likely than not that the facts you are seeking to prove are true.

You have to prove that the Department did not follow their regulations and/or policies or if there is no policy that applies, that the Department did not act reasonably in making their decision.

If you are appealing a support decision for abuse or neglect, you need to prove that there was not reasonable cause to believe that the child was abused or neglected, based upon the definitions of abuse or neglect contained in the Department's regulations and policy, which can be found here: <https://www.mass.gov/dcf-policies> .

What type of evidence is presented?

You can provide documents to the hearing officer – examples might include documents from your DCF file, police reports, medical reports, affidavits from individuals. You can also provide testimony from witnesses that is given under oath and recorded. Any evidence that is provided is given to both parties that participate in the hearing (the appellant and the staff from DCF that participate).

How is the evidence presented?

The fair hearing regulations require that the Department present its case first, in order to explain what information the decision was based on, and to explain the applicable policy, regulation, statute or case law that the decision was based on. After each party or witness presents evidence, then the other party is allowed to ask questions of that witness (this is called cross examination). The hearing officer may also ask questions. When testifying, the hearing officer may allow you to testify in narrative form without the question or answer format. If attorneys are present to represent either party, they may ask questions. When the Department is finished presenting all its witnesses and submitting any documents that it may have into evidence, then the Appellant presents their witnesses and any documents that they may have in the same manner described above.

The hearing officer has the discretion to decide whether the evidence that is being presented is relevant. In other words, he or she determines whether that facts and information that is being presented is related to the decision being appealed. If the hearing officer determines that the evidence is not relevant, he or she has the discretion to exclude information from being presented.

Can each party make a closing argument or statement?

Yes, each party can summarize what their argument is in favor or against the Department's decision, either orally or in writing at the end of the hearing.

What if I believe that I wasn't able to present all of my evidence at the hearing?

If you weren't able to gather all of your evidence in time for the hearing, prior to the conclusion of the hearing you can ask the hearing officer to give you more time to be able to submit additional documentary evidence, which must be given to all the parties. It is within the discretion of the hearing officer to either allow or deny this request. If it is allowed, the hearing officer will give you a deadline in which to submit the additional evidence. This is called "keeping the record open" for a period of time to submit the additional evidence.

What happens if I do not show up to the hearing?

If you do not show up at the hearing and you haven't contacted the fair hearing office before the hearing to request that it be postponed (continued) your case will be dismissed. This means your appeal is closed.

Will I know what the hearing officer's decision is on the day of the hearing?

No. The hearing officer reviews all the documents submitted into evidence, listens to the recording of the hearing and then prepares a written decision after the hearing ends, which is reviewed by their supervisor or the director of the unit.

ONCE THE HEARING HAPPENS, THEN WHAT?

What are the possible outcomes of the hearing?

The hearing officer may affirm/uphold a decision, which means, based on the evidence presented, the hearing officer finds that Department complied with the Department's regulations, policy, statutes or caselaw in making the decision. The hearing officer may reverse the decision, which means, based on the evidence presented, the hearing officer finds that the decision violated the Department's regulations and/or policy, statutes, or caselaw and resulted in substantial prejudice to you. Lastly, the hearing officer can remand the decision, which means he or she sends it back to the Area Office to take further action.

The hearing officer will not recommend reversal if there is a reasonable basis for the questioned decision.

How long will it take for me to get the written decision?

The hearing officer will give their supervisor or the director of the fair hearing unit a written decision that contains a recommendation regarding the outcome of the hearing within 60 business days from the close of the record, unless notice was given to you that a longer period of time is needed. 60 business days is equal to approximately 90 calendar days (3 months).

Who do I call to find out the status of my decision?

You may call the hearing officer who conducted your hearing or you may call or email the Fair Hearing Unit.

What is the process for the fair hearing decision to be written and reviewed?

Once the hearing is held, all evidence is submitted and the record has closed, the hearing officer will write a decision for review by a supervisor or the director. If the decision is an affirm/uphold, the decision will be approved and signed by the fair hearing supervisor or director and mailed out to the address that is contained in the fair hearing file, certified mail, return receipt requested.

If the decision is a reversal, the supervisor or director of the fair hearing unit will submit the decision to the Commissioner of the Department. You will get a letter letting you know the decision has gone to the Commissioner. The Commissioner has 21 business days to issue a decision. (21 business days equals approximately 30 calendar days). The Commissioner can either approve the Hearing Officer's reversal decision, take no action, or overturn it. If the Commissioner approves the reversal decision or takes no action within 21 business days, the reversal decision will be sent to you upon approval/no action taken. If he or she overturns it, the Commissioner or designee will write the reasons why he or she does not agree with the reversal, and both the hearing officer's decision as well as the reasons that the

Commissioner does not agree will be sent to you. Once the Commissioner has made a decision, or takes no action after 21 days, the final decision of the agency is issued to you by the Fair Hearing Unit, certified mail, return receipt requested.

How will I receive the decision?

The decision is sent by first class mail, certified, return receipt requested to you (the appellant) or to your attorney, if an attorney appeared on your behalf at the hearing. Notice that the decision has issued is also emailed to the Area Director in the Area Office that made the decision which was appealed.

How is the decision made by the Fair Hearing Unit recorded in the DCF record?

The fair hearing decision is entered into the Department's i-family net system in the Department's database by a member of the fair hearing staff which reflects that the decision appealed was either upheld or reversed. If it is an appeal from a supported 51B response, and/or registry of alleged perpetrator listing, the decision is also reflected in the Department's database in the response itself and on the registry of alleged perpetrators.

Can I get a copy of the recording of the hearing?

Yes. Make a request for the recording in writing to the Fair Hearing Unit, and you will be provided with a copy of the digital recording.

Can I get a written transcript of the hearing?

Yes. The request must be made in writing to the Fair Hearing Unit. Whichever party requests the transcript must pay for the transcript.

What if I am unhappy with the Department's Fair Hearing decision?

If the fair hearing unit upholds a decision made by the Department, you have an additional right of appeal in Superior Court, pursuant to M.G.L. c. 30A, unless it is an appeal regarding a goal change at a foster care review.

How do I do file an appeal in Superior Court?

Here is a link on the Superior Court website that provides information on how to file a civil appeal:
<https://www.mass.gov/appeals-from-state-agency-decisions>

If the Area Office decision that I'm unhappy with cannot be appealed by a fair hearing, what other options do I have?

Any decision that cannot be appealed through the fair hearing process can be appealed by filing a grievance with the Area Office that made the decision. Information about how to file a grievance is contained in the DCF fair hearing regulations which can be found here: <https://www.mass.gov/fair-hearing-unit>

Are there any other options when I am unhappy with a decision of the Department?

The Department also has the Office of the Ombudsman, who can help you communicate with the area office, if you are having trouble communicating with area office staff.

What does the Ombudsman office do?

The DCF Ombudsman's office serves DCF consumers, foster and adoptive parents who need help communicating with the area office that is providing services to them. If you have tried to resolve a conflict with the area office directly and are still dissatisfied, you can contact the staff at the Ombudsman's office to help you resolve the conflict with the area office.

How do I get in touch with the Ombudsman's Office?

You can call them at (617) 748-2444, write to them at 600 Washington Street, 6th Floor, Boston, Massachusetts 02111, or e-mail the office at DCFOmbudsman@state.ma.us.