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LEGISLATIVE REPORT ON FAIR HEARINGS IN THE MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES

The Fair Hearing process fills a vital role within the Department of Children and Families (DCF): to ensure that a consumer who disagrees with certain actions or clinical decisions by the Department is able to present their appeal to an impartial Hearing Officer and ensure the agency's compliance with DCF policy, regulations, and statutory obligations.

This report includes information on all Fair Hearing requests open at any time during Fiscal Year (FY) 23, which spans July 1, 2022 through June 30, 2023.¹

For any Fair Hearing request open at any time during FY23, the following is reported:

- the subject matter of the appeal
- outcomes of cases resolved prior to a Fair Hearing decision
- number of days between the hearing request and first day of hearing
- number of days between the close of evidence and the Hearing Officer's decision
- number of days of continuance granted at the appellant's request
- number of days of continuance granted at the request of DCF or the Hearing Officer
- the outcome of the hearing: reversal or affirm

The report also includes information on hearing requests pending more than 180 days at any time during FY23, except Fair Hearing requests that have been stayed by the District Attorney, as follows:

- the number of cases
- how many have been heard but not decided

¹This report reflects the recommendations of the Data Work Group relative to DCF legislative report requirements:
<https://www.mass.gov/child-welfare-data-work-group>

- how many have been decided by a hearing officer but not finalized

The Fair Hearing process is governed by M.G.L. c.30A, and by 110 CMR 10.00 et. seq. of the Department's regulations. Appellants may employ an attorney to assist them during this process, but it is not required as a function of a Fair Hearing and most individuals do not retain an attorney in the defense of their claim. These hearings are not as formal as a court proceeding and do not follow the Massachusetts Rules of Evidence; therefore, the rules regarding what can or cannot be admitted are more flexible. Upon issuance of the Fair Hearing decision, the Appellants also have an additional right of appellate review to the Superior Court pursuant to M.G.L. c.30A.

It is important to note that while the Fair Hearing process is occurring, there may be a separate, distinct process occurring in the Juvenile or Probate and Family Court which relates to the custody of the child or children. The Juvenile or Probate and Family Court judge is the arbiter of all custody and placement decisions relative to a child, based upon a finding regarding the parental fitness of the child's parents, as well as a determination as to what is in the best interest of the child. The scope of a Fair Hearing decision is limited; it does not supersede the court's authority in determining whether placement is in the best interest of a child, whether that placement is at home with parents or in a foster or adoptive home.

To assist consumers seeking an appeal through the Fair Hearing process, the Fair Hearing Office uses an online appeal request form located on the DCF website at <https://www.mass.gov/fair-hearing-unit>. This allows an Appellant to "e-file" an appeal request directly to the Fair Hearing Office. The "e-file" requests are reviewed on the business day filed or on the next business day if filed during non-working hours. In FY23, the Fair Hearing Office received 921 "e-file" submissions, with the majority of the remaining appeal requests emailed directly to the Fair Hearing Office mailbox. The option to electronically file appeal requests has made the filing and scheduling process more efficient.

The Fair Hearing Office continues to explore ways to increase the number of electronic filings, including tailored communications for consumers with limited English proficiency. During FY23, the Fair Hearing Office updated its "e-file" form to allow consumers to identify a preferred language when filing a request, enabling DCF to arrange for an interpreter and translate correspondence for the Appellant. The Fair Hearing Office is actively working to create additional "e-file" request forms in alternate languages to increase access for limited or non-English speaking consumers seeking an appeal.

Standard documents, including initial scheduling letters used by the Fair Hearing Office are available in five (5) different languages: Spanish, Haitian Creole, Brazilian Portuguese, Traditional Chinese, and Cape Verdean Creole. The Fair Hearing Unit works in conjunction with the DCF area offices and Central Office to collaborate with the Massachusetts Commission for the Deaf and Hard of Hearing to authorize and arrange ASL and CART interpreters for individuals who are Deaf, Hard of Hearing, or Deafblind and request accommodations. Additionally, DCF contracts with video remote interpretation services arranged in advance of hearings and telephonic interpretation services which can be utilized in hearings at a moment's notice. As such, if an interpreter has not been arranged in advance or was arranged and becomes unavailable, the

Appellant can proceed with the hearing on the scheduled date. The Fair Hearing Office remains committed to developing and incorporating language access aids and tools (i.e., translation of the Fair Hearing Guide) to effectively serve the needs of all consumers seeking an appeal.

The Fair Hearing Office continues to schedule Fair Hearings on a timely basis. Currently, a Fair Hearing date is scheduled manually by the Fair Hearing Office and notice is sent to the Appellants. On average, hearings are scheduled ten business days before what is allowed by regulation. The Fair Hearing Office is in the process of modernizing the scheduling process and plans to shift to an electronic scheduling system. Fair Hearings occur four days a week with most conducted by videoconference via the Microsoft Teams platform. In-person hearings occur at a designated DCF office when requested by the Appellant. Appellants are also offered the ability to have the hearing conducted via “paper review” where parties submit documentary evidence and written arguments in support of their case to the assigned Hearing Officer. The submitted evidence is considered by the Hearing Officer, without testimony, in rendering a decision. The Fair Hearing Office’s ability to offer hearings through a virtual platform, in-person, or by “paper review,” provides an inclusive approach for Department consumers requesting an appeal through the Fair Hearing process.

Table 1 (below) details the number of Fair Hearing requests filed by fiscal year. The number of requests in FY23 decreased by 47 from those filed in the prior year. The number of filings is expected to increase in FY24 because, beginning May 30, 2023, the Fair Hearing Office began accepting appeal requests for decisions that made a finding of substantiated concern of neglect. Through June 30, 2023, the Office received 15 requests to appeal a decision involving a substantiated concern finding.

Table 1: Number of Fair Hearing Requests by Fiscal Year

Fiscal Year	Number of Filings
2017	1,639
2018	1,666
2019	1,733
2020	1,594
2021	1,532
2022	1,731
2023	1,684

Summary of Data:

(i) Subject matter of the appeal

The overwhelming majority of Fair Hearings open during FY23 are appeals of supported abuse and/or neglect findings (a combined 2,521² requests, or 94%). [See Table 2 (below) and Columns AB through AT on the attached spreadsheet]

The second most common subject matters for appeal were case closing (43 requests),³ foster care review goal determination (31 requests), and the removal of a child from a foster parent (31 requests). A full listing of the allowable grounds for appeal can be found in 110 CMR 10.06.

**Table 2: Subject of DCF Fair Hearing Request – Supported Report of Abuse or Neglect
All Cases Open During FY23**

Type of Supported Report of Abuse or Neglect	Number of Appeals
Support on a caregiver	2,380
Support in an institutional facility	113
Support on a foster parent	28
Total	2,521

² This is the total of supported abuse/neglect findings for a caregiver, an institution, and foster parents.

³ Requests of both case closing and case closing young adult, combined.

**Table 3: Subject of DCF Fair Hearing Request – All other request types
All Cases Open During FY23**

Request Type	Number of Appeals
Case closing	31
Removal of a child from a foster parent	31
Foster care review goal determination	31
Denial of foster parent license study	28
Revocation of license to provide foster care	19
Case closing of a young adult	12
Denial of an adoptive parent license study	6
Removal of child from pre-adoptive home	3
Closing of foster home	3
Termination of service	2
Reduction of service	2
Interstate compact	1
Adoption subsidy	1
Alleged perpetrator listing	0
Denial of childcare services	0
Failure by DCF to follow regulations	0
Total	170

(ii) Outcomes of cases resolved prior to a Fair Hearing decision

Table 4 summarizes the 631 appeals resolved before a Fair Hearing took place. [See Column V on attached spreadsheet]

**Table 4: Pre-Hearing Outcomes
All Cases Open During FY23**

Outcome	Number of Cases
Settled Cases where the underlying decision on appeal is overturned prior to hearing, after an administrative review by an area office manager	26
Withdrawal Withdrawn by the appellant as documented in the Fair Hearing file via a written request by the appellant	137
Closed for Other Reason Including, but not limited to, appellant failed to appear at the hearing, Fair Hearing request as filed was not a proper subject for appeal and therefore was dismissed at the outset, or the Fair Hearing request as filed was well beyond the regulatory 30-day timeframe in which to file an appeal and therefore was dismissed	468

See

Columns K and L on the attached spreadsheet]

**Table 5: Number of Days between Fair Hearing Request and Fair Hearing
All Cases Open During FY23**

	Average Number of Business Days (all cases open)	Business Days Allowed under Regulations
Number of days between the Fair Hearing request and the first <i>scheduled</i> hearing date	55	65
Number of days between the Fair Hearing request and the date of the <i>actual</i> first hearing date	77*	

*Continuances account for most cases that extend beyond the 65 days outlined in the regulations. As shown in Table 7, the majority of the continuance requests allowed by the Fair Hearing Office are at the request of the Appellant. In most of those cases, the Appellant is seeking additional time to prepare for the Hearing or to hire counsel.

Table 6: Close of Evidence to Hearing Officer's Decision

	Average Number of Business Days (between close of evidence and hearing officer's decision)	Business Days Allowed under Regulations
Cases filed in FY23	54	60
All cases open during FY23	92	60

The Fair Hearing regulations require the Hearing Officer to write a decision within 60 business days from the close of evidence. During FY23, the Department remained in compliance with regulatory time standards for any cases filed during the fiscal year. For all cases open at any time in FY23, the average number of days between the close of evidence and the Hearing Officer's decision has improved but reflects the continued impact of prior years when the Fair Hearing Office operated with less staff and backlogged cases.

(v) The number of days of continuance granted at the Appellant's request

Table 7 provides a summary of the continuances granted on Fair Hearings for all cases open in

attached spreadsheet] *See Columns N, O, P on the*

**Table 7: Number of Continuances Granted
All Cases Open in FY23**

	Number of Continuances Granted	Average Length of Continuance (business days)
Granted at Appellant's Request	358	64
Granted at Fair Hearing Officer's Request	76	30
Granted at Area Office's Request	95	38

F H The Department's ability to offer hearings using videoconferencing and teleconferencing allows the Appellants greater accessibility and the Fair Hearing Office more flexibility when scheduling hearings and assigning Hearing Officers.

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ersed [See Columns Y, Z, AA of attached spreadsheet]

⁴ This reflects requests made by an Appellant or by an Attorney, on behalf of an Appellant.

⁵ A request for a continuance directly correlates to the amount of time that a case remains open. The Fair Hearing Office carefully considers each request, on a case-by-case basis, taking into account the impact of the delay and its relation to the timeliness of rendering the Fair Hearing decision, while also balancing the Appellant's right to due process.

Of the cases open in FY23, the Fair Hearing Office issued 673 decisions which affirmed the Department’s decision, 41 decisions which partially reversed⁶ the Department’s decision, and 455 decisions that reversed the Department’s decision. In FY23, two new hearing officers were onboarded. The increase in staff, coupled with a change in scheduling cadence, has allowed for additional writing time. As a result, the Fair Hearing Office issued an additional 246 decisions compared to FY22, which has contributed to a reduction in backlogged cases.

**Table 8: Status of Fair Hearing Requests Pending More than 180 days
All Cases Open During FY23**

[See Columns E, I, J, U, W, X on the attached spreadsheet]

Status	Number of Cases
Fair Hearing Requests heard but not decided by a hearing officer	246 ⁷
Fair Hearing Requests decided by a hearing officer but no final decision	189
Fair Hearing Requests scheduled but not heard	29
Total number of open cases pending more than 180 days	496
Number of closed cases pending more than 180 days	1060
Total number cases pending more than 180 days, excluding DA stays	1,375
Requests stayed by the District Attorney	121 open requests, 60 closed requests

Specific attention is given to any case pending for more than 180 days because the required regulatory timelines from the filing of the Fair Hearing request to issuance of the decision totals approximately 180 calendar days. Even one continuance request, allowed for justifiable cause, can result in a case remaining open beyond 180 days. Often a continuance requested by the Appellant is determined necessary to accommodate their scheduling needs, and if so, the continuance is allowed. Similarly, when a hearing that has a pending criminal court matter is delayed, or “stayed”, at the District Attorney’s (DA) request, for the required minimum 6-month regulatory time period, the additional time extends the appeal process beyond 180 days where it remains until the DA stay expires. According to DCF regulations, the DA’s office can request an extension of the DA stay in six-month intervals.

In FY23, the Fair Hearing Office continued its efforts to reduce the number of cases pending for more than 180 days and closed 1060 cases, more than three-quarters (77%) of the 1,375⁸ pending cases in that category. To accomplish this, the Fair Hearing Office recently expanded staffing from

⁶ Partial reversal decisions include both an affirm and a reversal.

⁷ 110 of these cases were heard, but the decision was not due as of the end of FY23.

⁸ This number excludes 181 DA stays, as the Fair Hearing has no control over the outcome until the expiration of the stay.

five to eight paralegals and from fourteen to sixteen Fair Hearing Officers. The increased staffing allowed for a reorganization of the Fair Hearing Office and a restructuring of duties, with an intended goal of streamlining the hearing process and decreasing the remaining pending cases open for more than 180 days. The reorganization includes a dedicated paralegal unit that manages the pre-hearing process and the related activities from beginning to end, including working with the Appellants and the Area Offices to reduce the number of continuances requested due to lack of discovery, which can translate to fewer days that a case remains open. Additionally, the reorganization allows the hearing officers additional time to prepare for hearings and write decisions and is intended to maintain timelines for pending decisions and ultimately reduce the pending cases open for more than 180 days.

In its continuing effort to target areas of need, the Fair Hearing Office uses monthly data reports to monitor the productivity of the Hearing Office staff and to identify those Hearing Officers in need of increased supervision and training. Monthly supervision between the Fair Hearing Supervisor and the Fair Hearing Officers focuses on review of fair hearing decisions due and timeliness. Beginning in April 2022, the frequency of the Hearing Officers' dedicated writing time increased to every 4th week and increased again in April 2023 to every 3rd week. For at least 15 years prior to 2022, Hearing Officers had a writing week every 5th week. The new cadence has provided hearing officers with additional dedicated writing time on a more frequent basis and has increased productivity in the Fair Hearing Office.

During FY24, the Fair Hearing Office will continue its commitment to schedule, convene and issue current decisions in a timely fashion, while also continuing its focus on reducing the number of pending cases open for more than 180 days.

Attachments:

- Spreadsheet/docket