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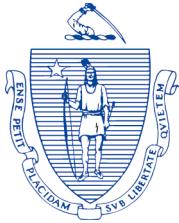
Legislative Report on Fair Hearings in the Department of Children and Families

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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 is dissatisfied with certain actions or clinical decisions by the Department is able to present their appeal to an impartial hearing officer ensuring the agency's compliance with DCF policy, regulations, and statutory obligations.

This report is provided to supplement the statutorily required report contained in the DCF FY20 Annual Report¹ (pages ix, 37-39), filed on October 1, 2020. It reflects the recommendations of the Data Work Group relative to DCF legislative report requirements. The Data Work Group membership includes key staff from DCF, Cambridge Family & Children's Service, Children's League of Massachusetts, the Committee for Public Counsel Services, Harvard Kennedy School, Massachusetts Law Reform Institute, Massachusetts Society for the Prevention of Cruelty to Children, the Office of the Child Advocate, and the Joint Committee on Children, Families & Persons with Disabilities.

For any fair hearing request open at any time during FY20, 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 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

In addition, for hearing requests pending more than 180 days at any time during FY20, except fair hearing requests that have been stayed by the District Attorney:

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

¹ <https://www.mass.gov/doc/dcf-annual-reportfy2020/download>

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

This report includes information on all fair hearing requests open at any time during FY2020, which spans July 1, 2019 through June 30, 2020.

In contrast, in all prior legislative reports, the data has only focused on a static number: a portion of cases filed in the reported fiscal year.

In addition, the reporting requirement for a “backlogged case”² is more inclusive, reporting on all backlog, open and closed during the fiscal year, except for cases stayed at the request of the district attorney. Prior reports included only open backlog for cases filed before the current fiscal year.

The fair hearing process is governed by M.G.L. c.30A, similar to administrative appeals within other state agencies, and also 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 informal hearings do not follow the Massachusetts Rules of Evidence so the rules regarding what can or cannot be admitted are more flexible. The hearings are not as formal as a court proceeding.

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, in some cases there may be a parallel but separate process occurring in the Juvenile or Probate and Family Court which relates to the custody of the child or children. The two processes are separate and distinct. 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 what placement is in the best interest of a child, whether that placement is at home with parents or in a foster or adoptive home.

In FY19, the Fair Hearing Office launched 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” their request directly to the Fair Hearing Office. The Department also prioritized the translation of standard documents used by the Fair Hearing Office, which are now available in five (5) different languages: Spanish, Haitian Creole, Brazilian Portuguese, Traditional Chinese and Cape Verdean Creole. DCF has worked 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. DCF has also contracted with

² Backlog is defined as a case that is open beyond 180 days from filing, as 180 days is the average length of time a case is open, if all regulatory timelines are met.

telephonic interpretation services which are now utilized in hearings at a moment's notice, if an interpreter has not been requested to appear in person prior to the hearing.

During the COVID-19 pandemic, fair hearings have continued to occur by both teleconference and videoconference via the WebEx platform. Appellants have also been offered the ability to have the hearing conducted via "paper review" where parties submit documentary evidence and argument in support of their case which is reviewed by the hearing officer and the decision is then issued based upon the documentary submissions.

Table 1 (below) details the number of fair hearing requests filed by fiscal year. The number of fair hearing requests FY20 was 8% lower than the prior year. It is believed that the decrease in fair hearing filings correlates directly to the decrease in reports of abuse or neglect received by the Department during the COVID-19 pandemic, as the majority of fair hearing filings are appeals of supported reports of abuse or neglect.

Table 1: Number of Fair Hearing Requests by Fiscal Year

Fiscal Year	Number of Filings
2015	1850
2016	2019
2017	1639
2018	1666
2019	1733
2020	1594

Part IV. Summary of Data

(i) Subject matter of the appeal

The overwhelming majority of requests for fair hearings open in FY20 are appeals of supported abuse and/or neglect findings, (a combined 2,290³ requests, or 93%). [See Table 2 (below) and Columns AB through AU on attached spreadsheet]

The next most common subject matter for appeal is the case closing (55 requests)⁴ followed by the removal of a child from a foster home (33 requests). A full listing of the allowable grounds for appeal can be found in 110 CMR 10.06.

³ This is the total of supported abuse/neglect findings for a caretaker, an institution and foster parents.

⁴ Requests of both case closing and case closing young adult, combined.

**Table 2: Subject of DCF Fair Hearing Request – Supported Report of Abuse or Neglect
All Cases Open During FY20**

Type of Supported Report of Abuse or Neglect	Number of Appeals
Support on a caretaker	2151
Support in an institutional facility	106
Support on a foster parent	33

**Table 3: Subject of DCF Fair Hearing Request – All other request types
All Cases Open During FY20**

Request Type	Number of Appeals
Case closing	44
Case closing of a young adult	11
Removal of a child from a foster parent	33
Revocation of license to provide foster care	29
Denial of foster parent license study	26
Foster care review goal determination	21
Alleged perpetrator listing	5
Denial of an adoptive parent license study	3
Termination of service	3
Reduction of service	2
Interstate compact	2
Removal of child from pre-adoptive home	1
Closing of foster home	0
Adoption subsidy	0
Denial of childcare services	0
Failure by DCF to follow regulations	0
Appeal of Sliding Fee	0

(ii) Outcomes of cases resolved prior to a fair hearing decision

Table 4 summarizes that 610 appeals were resolved before a fair hearing took place. [See Column V on attached spreadsheet]

**Table 4: Pre-Hearing Outcomes
All Cases Open During FY20**

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	34
Withdrawal Withdrawn by the appellant as documented in the fair hearing file via a written request by the appellant	100
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 that the fair hearing request as filed was well beyond the regulatory 30 day timeframe in which to file an appeal and therefore was dismissed	476

(iii) The number of days between the hearing request and the first day of the hearing

[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 FY 2020**

	Average Number of Business Days all cases reported	Business Days Allowed under Regulations
Number of days between the fair hearing request and the first <i>scheduled</i> hearing	62	65
Number of days between the fair hearing request and the date of the <i>actual</i> first hearing	75*	

*Continuances account for most cases that extend beyond the 65 days outlined in the regulations.

The Department schedules hearings in a timely manner. On average, hearings are scheduled three business days less than what is allowed by regulation.

(iv) The number of days between the close of evidence and the hearing officer's decision

[See Column T on the attached spreadsheet]

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 FY20	54	60
All cases open during FY20	87	60

This data point is new, as of FY20. The fair hearing regulations require a decision to be written within 60 business days from the close of evidence. Therefore, reporting on number of days between the first day of hearing and the hearing officer's decision had little value in measuring whether decisions are timely written.

(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 FY20, based upon who requested the continuance.)

(vi) The number of days of continuance granted at the request of the Department of Children and Families or the hearing officer's request, specifying which party made the request

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

**Table 7: Number of Continuances Granted
All Cases Open in FY20**

	Number of Continuances Granted	Average Length of Continuance (business days)
Granted at Appellant's Request	409	67
Granted at Fair Hearing Officer's Request	146	54
Granted at Area Office's Request	41	47

In 2020, fair hearings convened on the first hearing date at a higher rate than before the public health emergency. This may be because teleconference and videoconference have made it easier for parties to attend, offering the convenience of participating without having to travel. Additionally, these virtual communications have been normalized for many residents of the

Commonwealth due to the number of individuals teleworking during the pandemic and a transition to virtual services in health care and human services. Following the Governor's State of Emergency Order issued March 10, 2020 for the COVID-19 pandemic, several weeks of fair hearings were continued until the Office operationalized hearings to occur by teleconference and video conference. Many Appellants also requested continuances at the outset of the pandemic, not realizing the length of time that the pandemic was going to impact the offices' ability to conduct in-person hearings. When a continuance is allowed, the matter is then scheduled on the next available date. In general, continuances requested by the Appellant are due to scheduling conflicts of the Appellant or their Attorney on the scheduled hearing date or because documents requested by the Appellant have not been received prior to the hearing. A hearing officer will request a continuance due to illness, unanticipated medical leave or weather events.

(vii) Whether the Department's decision that was the subject of the appeal was affirmed or reversed

[See Column Y of attached spreadsheet]

Of the cases open in FY20, the Fair Hearing Office issued 407 decisions which affirmed the Department's decision, 31 decisions which partially reversed the Department's decision and 505 decisions that reversed the Department's decision.

**Table 8: Status of Fair Hearing requests pending more than 180 days
All Cases Open During FY20**

[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	212 ⁵
Fair Hearing Requests Decided by a hearing officer but no final decision	92
Fair Hearing Requests scheduled but not heard	133
Total number of open cases pending more than 180 days	437
Number of closed cases pending more than 180 days during FY 2020	872
Total number cases pending more than 180 days, excluding DA stays	1,309
Requests stayed by the District Attorney	101 open requests, 53 closed requests

From FY16 when the backlog of fair hearing cases was at its highest, to FY20, backlog has decreased by 91%. Backlog is defined as any case pending for more than 180 days, because the required regulatory timelines from filing of the fair hearing request to issuance of the decision totals approximately 180 calendar days. This means that even one continuance request, allowed for good and sufficient cause, can qualify a case as "backlog."

⁵ 30 of these cases had been heard, but the decision was not due as of the end of FY20.

Of the 2,416 cases pending during FY20, 18% of open cases were in backlog. The hearing office closed 36% of backlogged cases. The members of the Office continue to work tirelessly to eradicate the fair hearing backlog and acknowledge that having even a small number of backlogged cases is not desirable. FY19 was the first year the fair hearing office began receiving monthly data regarding the fair hearing process. In FY20, the hearing office supervisors prioritized the use of monthly data to monitor both the workload and productivity of the supervisors and hearing officers within the Office. Supervisors provide targeted supervision to hearing officers who are underperforming when it comes to submitting decisions in a timely manner. As supervisors have identified which hearing officers need assistance in increasing their timeliness, increased supervision, training where necessary, and the use of the employee performance review system (EPRS) is being utilized. In the coming year through continued use of data analytics, fair hearing staff will continue to use this data to analyze what factors contribute to a case remaining open beyond the 180 day timeframe.

Attachments:

- Spreadsheet/docket