

THE OFFICE OF
GOVERNOR MAURA T. HEALEY

LT. GOVERNOR KIMBERLEY DRISCOLL

Kathleen E. Walsh

SECRETARY OF THE EXECUTIVE OFFICE
OF HEALTH AND HUMAN SERVICES

Staverne Miller

Commissioner of the Department
of Children and Families

FY2024 Fair Hearing Report

March 2025

**DEPARTMENT OF
CHILDREN AND
FAMILIES**

The Fair Hearing is a vital process within the Department of Children and Families (DCF) to ensure that a consumer who disagrees with certain actions or clinical decisions by the Department can present their appeal to an impartial Hearing Officer and ensure the agency's compliance with DCF policy, regulations, and statutory obligations. DCF is filing this report pursuant to reporting requirements included in Item 4800-0015 of section 2 of chapter 28 of the acts of 2023.

This report includes information on all Fair Hearing requests open at any time during Fiscal Year (FY) 24, which spans July 1, 2023, through June 30, 2024.¹

For any Fair Hearing request open at any time during FY24, 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 FY24, including 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
- 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

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>

determining whether an out-of-home 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 FY24, of the 2,055 requests submitted, the Fair Hearing Office received 1,200 “e-file” submissions, which is over fifty percent of all requests made, and almost 300 more than in FY23, demonstrating increased accessibility to the Hearing process and allowing more efficiency in scheduling. The majority of the remaining appeal requests were emailed directly to the Fair Hearing Office mailbox.

The Fair Hearing Office has been successful in increasing the number of electronic filings and includes tailored communications for consumers with limited English proficiency. The “e-file” form allows 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 Office 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 updated Fair Hearing Guide) to serve the needs of all consumers seeking an appeal effectively.

Fair Hearings are scheduled on a timely basis. Fair Hearings are scheduled manually by the Fair Hearing Office, with notice sent either electronically or by regular mail to the Appellants. The Fair Hearing Office is in the process of modernizing the scheduling process and plans to begin transitioning to an electronic scheduling system in FY25. Fair Hearings can occur five 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 Fair Hearings requested in FY24 increased by 371, of which 295 were for Fair Hearings related to substantiated concern decisions. The increase in Fair Hearing requests was anticipated once the Fair Hearing Office began accepting requests for substantiated concern decisions in May 2023. The Fair Hearing Office has been successful in scheduling timely hearings, even with the increased number of requests,

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
2024	2,055

Summary of Data:

(i) Subject matter of the appeal

The overwhelming majority of Fair Hearings that remained open during FY24 were appeals of supported/substantiated abuse and/or neglect findings (a combined 2,837² requests or 94%). [See Table 2 (below) and Columns AB through AT on the attached spreadsheet]

The second most common subject matter for appeal was the denial of a foster parent license study (43). 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 FY24**

Type of Supported Report of Abuse or Neglect	Number of Appeals
Support/substantiated concern on a caregiver	2,667
Support/substantiated concern in an institutional facility	135
Support on a foster parent	35
Total	2,837

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

**Table 3: Subject of DCF Fair Hearing Request – All other request types
All Cases Open During FY24**

Request Type	Number of Appeals
Case closing	30
Removal of a child from a foster parent	31
Foster care review goal determination	20
Denial of foster parent license study	43
Revocation of license to provide foster care	28
Case closing of a young adult	6
Denial of an adoptive parent license study	8
Removal of child from pre-adoptive home	2
Closing of foster home	4
Termination of service	7
Reduction of service	0
Interstate compact	1
Adoption subsidy	1
Alleged perpetrator listing	0
Denial of childcare services	0
Failure by DCF to follow regulations	1
Total	182

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

Table 4 summarizes the 715 appeals resolved before a Fair Hearing took place. [See Column V on attached spreadsheet]

**Table 4: Pre-Hearing Outcomes
All Cases Open During FY24**

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	24
Withdrawal Withdrawn by the appellant as documented in the Fair Hearing file via a written request by the appellant	177
Closed for Other Reasons 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	514

(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 FY24**

	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	62	65
Number of days between the Fair Hearing request and the date of the first hearing date	86*	

*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, to hire counsel and/or to obtain case files.

(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 the close of evidence and hearing officer's decision)	Business Days Allowed under Regulations
Cases filed in FY24	50	60
All cases open during FY24	73	60

The Fair Hearing regulations require the Hearing Officer to write a decision within 60 business days from the close of evidence. During FY24, 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 FY24, the average number of days between the close of evidence and the Hearing Officer's decision has improved with staffing, decreasing by 19 days.

(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 FY24, based upon who requested the continuance.

(vi) The number of days of continuance granted at the request of DCF 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 FY24**

	Number of Continuances Granted	Average Length of Continuance (business days)
Granted at Appellant's Request	360	67
Granted at Fair Hearing Officer's Request	88	39
Granted at Area Office's Request	112	36

The Fair Hearing Office strives to reduce the number of continuances granted in an effort to resolve all pending Fair Hearing cases within a 180-day time frame. 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. The number of allowed requests to continue a scheduled Fair Hearing remained highest among the Appellants but remain steady from FY23. In FY24, 360 continuance requests³ were allowed due to Appellant scheduling conflicts, because they had recently hired counsel who needed time to prepare or had a scheduling conflict, and/or because they awaited requested documents from the Area Office. When a continuance is allowed, the matter is scheduled on the next available date, and when possible, with consideration given to dates offered by Appellant's counsel to avoid future scheduling conflicts therefore reducing the time that the case remains open.⁴ In FY24, 64% of the allowed requests for continuances were made by the Appellants or their attorneys.

(vii) Whether the Department's decision that was the subject of the appeal was affirmed or reversed [See Columns Y, Z, AA of attached spreadsheet]

Of the cases open in FY24, the Fair Hearing Office issued 692 decisions affirmed the Department's decision, 44 decisions partially reversed⁵ the Department's decision, and 472 decisions that

³ This reflects requests made by an Appellant or by an Attorney, on behalf of an Appellant.

⁴ 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.

⁵ Partial reversal decisions include both an affirm and a reversal.

reversed the Department’s decision. The Fair Hearing Office issued 39 more decisions in FY24 compared to FY23. The increase in Fair Hearing Office staff over time, coupled with a change in scheduling cadence and dedicated writing time, has contributed to the successful increase in the number of decisions issued in FY24.

**Table 8: Status of Fair Hearing Requests Pending More than 180 days
All Cases Open During FY24**

[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	222 ⁶
Fair Hearing Requests decided by a hearing officer but no final decision	206
Fair Hearing Requests scheduled but not heard	79
Total number of open cases pending more than 180 days	518
Number of closed cases pending more than 180 days	1,138
Total number of cases pending more than 180 days, excluding DA stays	1,482
Requests stayed by the District Attorney	106 open requests, 68 closed requests

Specific attention is given to any case pending for more than 180 days because of the regulatory timelines from the filing of the Fair Hearing request to issuance of the decision total approximately 180 calendar days. However, even one continuance request allowed for justifiable cause, in most cases, results in a case remaining open beyond 180 days. When a continuance requested by the Appellant is determined necessary to accommodate their scheduling needs, the continuance is allowed. Similarly, when a hearing involves a pending criminal court matter is “stayed”, at the District Attorney’s (DA) request for the required minimum six-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 for an unlimited period of time.

In FY24, the Fair Hearing Office was successful in reducing the number of cases pending for more than 180 days. Of the 1,482⁷ pending cases in this category, 1,138 (77%) were closed. The success can be attributed to the current staffing and the 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.

⁶ 126 of these cases were heard, but the decision was not due as of the end of FY24.

⁷ This number excludes 174 DA stays, as the Fair Hearing has no control over the outcome until the expiration of the stay.

In its continuing effort to target areas of need within the unit, the Fair Hearing Office uses monthly data reports to monitor the productivity of the Hearing Office staff and to identify those in need of increased supervision and training. Dedicated paralegal supervision focuses on pre-hearing activities and dedicated Fair Hearing Officer supervision focuses on the review of draft Fair Hearing decisions and the timeliness of submission, review, and issuance. Currently, the Hearing Officers have dedicated writing time every 3rd week, which has contributed to increased productivity in the Fair Hearing Office, as evidenced by the additional number of decisions issued in FY24.

During FY25, 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