

# **FAIR HEARINGS BEFORE THE MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES: REQUESTING A HEARING**

**Prepared by the Mental Health Legal Advisors Committee  
September 2015**

The Massachusetts Department of Children and Families (DCF) has a fair hearing process available to certain parties involved with the agency. A fair hearing is a formal administrative process before an impartial decision-maker resulting in a written decision based on evidence presented.

## **What matters may be appealed at a DCF fair hearing?**

A DCF fair hearing offers an opportunity to dispute certain decisions or actions made by DCF. The decisions or actions that one may appeal through the fair hearing process are listed in DCF regulations.<sup>1</sup> One allowable ground for appeal is a DCF decision to support a report of abuse or neglect of a child, known as “a 51A report.”<sup>2</sup> Specific grounds for appeal are detailed in the regulations. Once DCF has concluded an initial investigation and supported a 51A report of neglect and/or abuse against a party, that party may dispute the finding by pursuing a fair hearing before an impartial hearing officer.

## **How does one request a fair hearing?**

To request a hearing, the appellant (the person filing the appeal) must submit a written request to the DCF Fair Hearing Office and to the Director of the involved DCF Area Office within 30 calendar days of the decision or of receipt of the decision if notice of decision is required.<sup>3</sup>

Contact information for the DCF Fair Hearing Office (which is located in the DCF Central Office in Boston) and the Area Offices is available at <http://www.mass.gov/eohhs/gov/newsroom/dcf/contact-us/>.

The Hearing Office has forms to request a hearing. You may write your own request without the form,<sup>4</sup> but use of the form is encouraged.<sup>5</sup> The request must include:

- the appellant’s name, address and telephone number;
- the date the action occurred;
- the name and address of the office where the decision was made;
- the decision being appealed;
- a request for review of the decision; and
- a copy of the request sent to the Director of the DCF Area Office where the decision was made.<sup>6</sup>

For additional information on requesting a fair hearing, contact the DCF Office of Fair Hearings at (617) 748-2030.

### **Who presides over the Fair hearing?**

An impartial Hearing Officer presides. The Hearing Officer reviews the evidence presented at the hearing and makes a ruling to either uphold or reverse the initial agency decision.<sup>7</sup> The Hearing Officer's role is to manage the hearing and ensure that all parties have a full and fair opportunity to present their case and make a full and free statement of all facts necessary to decide the disputed issue.<sup>8</sup>

### **Who may request a fair hearing in an appeal of a DCF decision to support a report of abuse or neglect?**

Any of several parties may request a fair hearing in an appeal of a DCF decision to support a report of abuse or neglect including:

- the child's parent;
- any caregiver identified in DCF's Central Registry believed to be responsible for the abuse or neglect;
- any caregiver of the child; or
- the adolescent who is the subject of the report.<sup>9</sup>

DCF needs to notify the parties that they possess the right to appeal through this process.<sup>10</sup>

If an individual is listed on the Registry of the DCF's Alleged Perpetrators, that individual can appeal that listing as one of the Alleged Perpetrators. In the review of the listing decision which has previously been made, the Area Office and the Hearing officer must review related support decisions, which are whether the Department "supports" a report of abuse or neglect.<sup>11</sup> The Area Office will notify the Hearing Officer of support decisions and any determinations that arise from the same action that have been challenged. If the underlying support is reversed, the listing determination would then be changed to show that the reasonable cause no longer exists.<sup>12</sup>

### **Is appointed counsel ever available to parents at a fair hearing?**

An Appellant may appear on his or her own behalf or choose to be represented by an authorized representative.<sup>13</sup> The authorized representative of a child may be an attorney assigned to that child.<sup>14</sup>

If a parent has already been appointed an attorney to represent the parent in a care and protection case in the Juvenile Court or a child protection proceeding in the Probate Court, that attorney may be able to represent the parent at the fair hearing as well. This representation is considered a "collateral" matter.

Otherwise, counsel is not appointed, but a parent may want to seek legal advice nonetheless.

### **Within what time frame must a fair hearing be held?**

Within 20 business days of receiving a request for a hearing, the Hearing Officer must send notification of the scheduled hearing date to the aggrieved party and to the appropriate DCF Area Office.<sup>15</sup> The hearing must be held within 65 business days of receipt of the hearing request.<sup>16</sup>

The Director of Fair Hearings may also expedite a hearing upon request.<sup>17</sup> DCF must use its best efforts to schedule a hearing within 45 days of an expedited request.<sup>18</sup> A hearing may be expedited if, for example, there is a loss of licensure, employment-related issues or other good cause shown. DCF will also expedite those requests involving:

- the removal of a child from a Foster/Pre-adoptive home or kinship home;
- the reduction or termination of services;
- the denial of subsidy; or
- the closure of a Department case.<sup>19</sup>

At the same time that the Hearing Office is scheduling the fair hearing, the Area Director has 15 business days from the receipt of the hearing request, or from the completion of an assessment following an initial support decision, whichever is later, to review the hearing request.<sup>20</sup> The Area Director may hold a meeting with the aggrieved party before the fair hearing to try to resolve the dispute or to clarify goals for the hearing.<sup>21</sup> If the issues are resolved, the party may no longer need a hearing.<sup>22</sup>

The appellant also may request a rescheduling for good cause. The Department needs to schedule a new hearing within 45 days, unless the appellant requested more time.<sup>23</sup>

*If you need more time to obtain documents, witnesses or affidavits, ask that the hearing date be rescheduled.*

## ENDNOTES

---

<sup>1</sup> 110 CMR 10.06 (allowable grounds for appeal) and 110 CMR 10.07 (disallowed grounds for appeal), available at <http://www.mass.gov/courts/docs/lawlib/106-110cmr/110cmr10.pdf> and <http://www.mass.gov/eohhs/docs/dcf/regs/110cmr10.pdf>. For issues which are not appealable through the fair hearing process, one may file a grievance with DCF in much the same way. For more information on filing a grievance, contact the DCF Office of Fair Hearings at (617) 748-2030.

<sup>2</sup> 110 CMR 10.06(11).

<sup>3</sup> 110 CMR 10.08(1).

<sup>4</sup> 110 CMR 10.08(1)(b).

<sup>5</sup> 110 CMR 10.08(1)(b).

<sup>6</sup> 110 CMR 10.08(1)(b).

<sup>7</sup> See 110 CMR 10.03, 10.06, 10.07.

<sup>8</sup> See 110 CMR 10.20

<sup>9</sup> 110 CMR 10.06.

<sup>10</sup> 110 CMR 10.06(11).

<sup>11</sup> 110 CMR 10.21(6), 10.06(12).

<sup>12</sup> 110 CMR 10.06(12).

<sup>13</sup> 110 CMR 10.11(1).

<sup>14</sup> 110 CMR 10.11(1).

<sup>15</sup> 110 CMR 10.10(2).

<sup>16</sup> 110 CMR 10.10(1).

<sup>17</sup> 110 CMR 10.10(3).

<sup>18</sup> 110 CMR 10.10(3).

<sup>19</sup> 110 CMR 10.10(3).

<sup>20</sup> 110 CMR 10.08(2)(a).

<sup>21</sup> 110 CMR 10.08(2)(b).

<sup>22</sup> 110 CMR 10.08(2)(c).

<sup>23</sup> 110 CMR 10.10(4)(f).