

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 14: Guardianship	Effective Date: July 1, 2020
	Section 5: Administrative Appeals for Guardianship Assistance Program (GAP)	Version: 4

STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) will process requests for an Administrative Appeal Hearing received from a prospective guardian or guardian concerning an administrative review decision made by DCS under policy [14.4 Administrative Review for Guardianship Assistance Program \(GAP\)](#). When a complete and timely request is received by DCS, DCS will forward the request to the Office of Administrative Law Proceedings (OALP) and request the appointment of an Administrative Law Judge (ALJ) to preside over the Administrative Appeal Hearing.

Note: A request for Administrative Appeal Hearing must be based on the same issues, facts, and documentation that were presented in the request for administrative review. Any issues or facts that were not presented in the administrative review request will not be considered at the Administrative Appeal Hearing.

A prospective guardian may utilize the administrative procedures for review and hearing before obtaining an order establishing guardianship of the child. Both the prospective guardian and DCS **must** sign a Guardianship Assistance Agreement before entry of an order establishing guardianship.

A prospective guardian may elect to sign the Guardianship Assistance Agreement for the amount of the periodic payment offered in the DCS Final Offer Letter and reserve the right to pursue the administrative review and hearing process, in accordance with policy [14.4 Administrative Review for Guardianship Assistance Program](#). In this circumstance, if a prospective guardian with a current Guardianship Assistance Agreement pursues the administrative review and hearing process, any change in the periodic payment that is subsequently approved or ordered in an Administrative Appeal Hearing decision will be retroactive to the date of order finalizing guardianship of the child.

In any Administrative Appeal Hearing, the [appellant](#) has the burden of proof. See [Related Information](#) for additional information regarding requirements.

When an Administrative Appeal Hearing concerns the initial periodic payment amount for a fully signed Guardianship Assistance Agreement and the prospective guardian did not pursue the administrative review and hearing process within 15 calendar days of the DCS Final Offer Letter date, the Administrative Appeal Hearing request will be considered a request for a modification of the current Guardianship Assistance Agreement. Modification will proceed in accordance with policy [14.3 Modification and Continuation of a Guardianship Assistance Agreement](#).

Upon issuance of the written recommendation by the ALJ, the DCS Office of General Counsel (OGC) will automatically conduct a Final Agency Review of the recommendation. In conducting the review, the DCS Final Agency Authority will consider the facts of case and the ALJ

recommendation. Upon completion of the Final Agency Review, the DCS Final Agency Authority will issue a decision upholding, reversing, or remanding the initial DCS decision which underlies the administrative appeal. DCS will then notify the parties of the decision. If the prospective guardian is dissatisfied with the results of the Final Agency Review, he or she may seek judicial review in accordance with [IC 4-21.5-5](#).

If an Administrative Appeal Hearing recommendation involves periodic payment amount and concludes that the guardian met the [burden of proof](#) that the amount approved by DCS should be changed, the ALJ will not determine the proper amount of a periodic payment. If the DCS Final Agency Authority finds in congruence with such an ALJ recommendation, the case will be sent back to DCS for further consideration based on the findings and conclusions stated in the decision. If subsequent negotiations do not result in agreement concerning the periodic payment amount, a second Administrative Appeal Hearing will not be provided to re-argue the same disputed issues. In that event the administrative review determination concerning the post-remand Final Offer Letter will be the final agency action of DCS.

Note: Any approved change in the periodic payment shall be documented by an amendment to the agreement that states the effective date for the change. If the appeal concerns the periodic payment amount stated in the Guardianship Assistance Agreement that was signed before entry of the order establishing guardianship, the effective date will be retroactive to the date of the order establishing guardianship.

If the administrative review decision is upheld by the DCS Final Agency Authority, the amount of the periodic payment, as stated in the signed original Guardianship Assistance Agreement, or currently effective amendment, will remain in effect unless or until the periodic payment is changed in accordance with the modification procedures in policy [14.3 Modification and Continuation of a Guardianship Assistance Agreement](#).

The final DCS agency action, after exhaustion of available administrative review and appeal procedures, is subject to judicial review under the applicable provisions of [IC 4-21.5-5](#).

An Administrative Appeal Hearing will not be provided for the following decisions:

1. Approval or disapproval of any requested change in the language or format of the agreement form that DCS submitted for completion and signature; or
2. Any other decision or determination of DCS relating to administration of the Guardianship Assistance Program (GAP) under this policy that is not described in this policy.

Code References

1. [IC 4-21.5-5: Judicial Review](#)
2. [IC 29-3-8-9\(f\): Guardian support obligation for assisted guardianship](#)
3. [IC 29-3-12-6\(b\): Continuation of assisted guardianship after age 18](#)
4. [IC 31-9-2-17.8\(1\)\(E\): Guardianship assistance included in child services](#)
5. [45 C.F.R. 1355.30 Referenced Rules for Title IV-E](#)
6. [45 C.F.R. 205.10 Title IV-E Fair Hearings](#)
7. [465 IAC 3-2 Administrative Reviews and Hearings](#)
8. [42 U.S.C. 673\(d\) Kinship Guardianship Assistance Program](#)
9. [IC 4-15-10.5: Office of Administrative Law Proceedings](#)

PROCEDURE

Initiation of Administrative Appeal for GAP

DCS will:

1. Send notice of the administrative review decision to the guardian or prospective guardian, along with the [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#);
2. Review any [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) received; and
3. Forward the completed [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#) to OALP in a timely manner and request the appointment of an ALJ to preside over the Administrative Appeal Hearing.

During an Administrative Appeal Hearing for GAP

1. A DCS Attorney will represent DCS;

Note: An Attorney for DCS who was involved in the negotiation and determination of periodic payment amount or modification that is the subject of an Administrative Appeal Hearing will assist the DCS Attorney litigating the case, as requested, in presenting the DCS position at the hearing.

2. DCS Local Office Director (LOD) or designee will provide technical assistance, including testimony, to support the position of DCS at an Administrative Appeal Hearing concerning original periodic payment amount or modification of periodic payment amount based on change of circumstances;
3. DCS CEU will provide technical assistance, including testimony, to support the position of DCS for an Administrative Appeal Hearing concerning eligibility, continuation of guardianship assistance beyond the child's 18th birthday, termination of a Guardianship Assistance Agreement, administrative suspension of guardianship assistance payments, or decisions concerning modification requests other than changes in periodic payment amounts; and
4. DCS Legal Operations will provide assistance, including testimony, to support the position of DCS for an Administrative Appeal Hearing concerning the result of an administrative review under policy [14.4 Administrative Review for Guardianship Assistance Program](#).

DCS Final Agency Review

The DCS Final Agency Authority will:

1. Review the ALJ's recommendation, consider the facts of the case, and issue a decision on the case. The DCS Final Agency Authority may also consider his or her own experience and training in the relevant subject matter;

Note: The DCS Final Agency Authority may schedule status conferences or briefing deadlines during his/her review, however, failure to attend these status conferences or respond to briefing deadlines will not result in a dismissal of the case or a failure of the Final Agency Authority to issue a decision on the case.

2. Notify the parties and OALP of the decision, including any applicable right to seek judicial review as provided in [IC 4-21.5-5](#).

Following the decision of the OGC to uphold, reverse, or remand the administrative review decision, a DCS attorney will notify DCS staff as to appropriate procedures to comply with the decision.

PRACTICE GUIDANCE

Timeline for an Administrative Appeal Hearing

An Administrative Appeal Hearing requested and granted under this policy will be scheduled and held within 120 calendar days after receipt of the hearing request by OALP, unless the assigned ALJ continues the hearing date by agreement of the parties or upon motion for good cause. The parties will be notified by OALP as to the specific time, date, and place for each hearing. The hearing will be conducted under applicable rules and policies of OALP pertaining to Administrative Appeal Hearings. The ALJ's recommendation shall not be construed to be a decision on the case.

The ALJ will issue a written Administrative Appeal Hearing recommendation within 90 calendar days of completion of the hearing, unless additional time is requested and approved by all parties and the ALJ, as stated in the hearing record. However, a recommendation issued more than 90 calendar days after completion of the hearing will not be void or voidable on the ground of untimeliness. The ALJ recommendation will be mailed to the parties and to the DCS Final Agency Authority.

FORMS AND TOOLS

1. [Final Guardianship Assistance Program Eligibility Determination](#) – Available via CEU
2. [Payment Request Information \(PRI\) Indiana GAP \(SF 55040\)](#) – Available via CEU
3. [Request for Administrative Hearing/Indiana GAP \(SF 55041\)](#)

RELATED INFORMATION

Appellant

For the purposes of administrative appeals for GAP, an appellant is a person aggrieved by the decision made in an administrative review by DCS who is either:

1. A prospective guardian, including the individual who has applied for GAP; or
2. An individual who is a party to a Guardianship Assistance Agreement.

Burden of Proof during Administrative Appeal Hearing

Eligibility for GAP: In any Administrative Appeal Hearing conducted regarding eligibility for the Guardianship Assistance Program (GAP), the appellant has the burden to prove the child meets all applicable eligibility requirements. See policy [14.1 Guardianship Assistance Program \(GAP\)](#) for additional information.

Negotiation of Periodic Payment Amount: In conducting negotiations with the prospective guardian or his or her attorney, the [appellant](#) has the burden to prove one (1) or more of the following:

1. DCS did not substantially follow the procedures specified in policy [14.02 Negotiations for Guardianship Assistance Program](#), or any other applicable policy, procedure, rule, or statute relating to determination of guardianship assistance periodic payments;
2. DCS did not consider relevant information or documentation that the prospective guardian or guardian submitted in the [Payment Request Information \(PRI\) \(SF 55040\)](#) form, in conducting the negotiation or submitting its Final Offer Letter based on the factors and information outlined in policy [14.02 Negotiations for Guardianship Assistance Program](#); or
3. The periodic payment that DCS agreed to pay as stated in the Final Offer Letter is clearly unreasonable and not supported by substantial and relevant evidence presented by the prospective guardian or guardian, or otherwise considered by DCS.

Modification of Periodic Payment Amount: For an Administrative Appeal Hearing involving a request for modification of an existing agreement to increase the periodic payment amount, the guardian must prove each of the following two (2) factors:

1. A change in the child's needs or family's circumstance occurred after the original Guardianship Assistance Agreement or most recent amendment was signed. This change was not known or identified at the time the agreement or most recent amendment was signed and it justifies an increase in the periodic payment; and
2. The guardian has not submitted any other written request for modification of the Guardianship Assistance Agreement to increase the periodic payment amount within 12 months of the request for modification, which is the subject of the Administrative Appeal Hearing request.

Modification Request that does not include an Issue Concerning the Periodic Payment Amount: The [appellant](#) has the burden to prove that a change of circumstances occurred after signature of the original Guardianship Assistance Agreement, or any subsequent modification or amendment of the agreement, that supports the requested modification.

Termination of the Guardianship Assistance Agreement or Administrative Suspension of Periodic Payments under an Agreement before the Child Reaches 18 Years of Age: The appellant has the burden to prove that the termination of the Guardianship Assistance Agreement or administrative suspension of periodic payments under an agreement does not comply with DCS policy or any applicable procedure, rule, or statute. See policy [14.3 Modification and Continuation of a Guardianship Assistance Agreement](#) for more information.