

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 14: Guardianship</b>	<b>Effective Date: October 1, 2012</b>
	<b>Section 5: Administrative Appeals for Guardianship Assistance Program</b>	<b>Version: 2</b>

<b>POLICY</b>	<b>[NEW]</b>
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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.

DCS will send notice of the administrative review decision to the guardian or prospective guardian, along with instructions and the Request for Administrative Hearing/Indiana GAP (SF 55041) form. If the guardian or prospective guardian is dissatisfied with the results of the administrative review, he or she may submit the Request for Administrative Hearing/Indiana GAP (SF 55041) form to the DCS Hearings and Appeals unit within 30 calendar days after service of the Notice of Final Administrative Review decision, as provided in policy 14.4 Administrative Review for Guardianship Assistance Program.

A request for administrative hearing must be based on the same issues, facts, and documentation that were presented in the request for administrative review. The administrative hearing will not consider any issues or facts that were not presented in the administrative review request submitted by the guardian.

In any administrative hearing conducted regarding eligibility for GAP, the prospective guardian shall have the burden to prove that the child meets all applicable eligibility requirements. See policy 14.1 Guardianship Assistance Program (GAP).

In any administrative hearing conducted regarding a periodic payment amount, the guardian or prospective guardian shall have the burden to prove one (1) or more of the following:

1. In conducting negotiations with the prospective guardian or their Attorney, DCS did not substantially follow the procedures specified in policy 14.2 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) (SF55040) form, in conducting the negotiation or submitting its Final Offer letter based on the factors and information outlined in DCS policy 14.2 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.

Prospective guardians 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 an agreement before entry of an order establishing guardianship.

The guardian may elect to sign the 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 DCS policy 14.4 Administrative Review for Guardianship Assistance Program. If a guardian with a current agreement pursues the administrative review and hearing process, any change in the periodic payment that is subsequently approved or ordered in an administrative hearing decision will be retroactive to the date of order finalizing guardianship of the child.

When an administrative hearing concerns the initial periodic payment amount for a current agreement and the guardian did not pursue the administrative review and hearing process following the DCS Final Offer letter, the hearing request will be considered a request for a modification of the current agreement. For hearings involving a request for modification of an existing agreement to increase the periodic payment amount, the guardian must prove the following two (2) factors:

1. In conducting negotiations with the prospective guardian or their Attorney, DCS did not substantially follow the procedures specified in policy 14.2 Negotiations for Guardianship Assistance Program, or any other applicable policy, procedure, rule, or statute relating to determination of guardianship assistance periodic payments; OR
2. DCS did not consider relevant information or documentation that the prospective guardian or guardian submitted in the Payment Request Information (PRI) form, in conducting the negotiation or submitting its Final Offer letter based on the factors and information outlined in DCS policy 14.2 Negotiations for Guardianship Assistance Program; AND
3. A change of circumstances concerning the child or family occurred after the original agreement, or most recent amendment was signed that was not known or anticipated at the time the agreement or most recent amendment was signed and that justifies an increase in the periodic payment; AND
4. The guardian has not submitted any other written request for modification of the agreement to increase the periodic payment amount, within 12 months of the request for modification which is the subject of the administrative hearing request.

If a hearing on a modification request does not include an issue concerning the periodic payment amount, the guardian has the burden to prove that a change of circumstances occurred after signature of the original agreement, or any subsequent modification or amendment of the agreement, that supports the requested modification.

In any administrative hearing regarding termination of the guardianship assistance agreement or administrative suspension of periodic payments under an agreement before the child reaches 18 years of age, the guardian shall have the burden of proving that the termination or administrative suspension does not comply with DCS policy or any applicable procedure, rule, or statute.

An administrative hearing requested and granted under this policy will be scheduled and held within 90 calendar days after receipt of the hearing request by Hearings and Appeals, unless the assigned Administrative Law Judge (ALJ) continues the hearing date by agreement of the parties or upon motion for good cause. All administrative hearings will be heard at a hearing site in Indianapolis, Indiana, unless all parties and the ALJ agree to hold a hearing at another location, for convenience of the parties and witnesses. The parties will be notified by Hearings and Appeals as to the specific time, date and place for each hearing. The hearing will be conducted under applicable rules and policies of DCS pertaining to administrative hearings.

A written administrative hearing decision will be issued and mailed to the parties 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 decision issued more than 90 calendar days after completion of the hearing will not be void or voidable on the ground of untimeliness.

If an administrative hearing decision 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 administrative review decision is not affirmed, the ALJ will send the case 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, the amount of the periodic payment, as stated in the signed original 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. DCS will not consider the failure of the guardian to obtain a requested periodic payment amount to be a ground for terminating the guardianship of the child.

An administrative hearing decision issued by the assigned ALJ is the final agency action of DCS.

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 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 under this policy that is not described in this policy.

#### Code References

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

## PROCEDURE

DCS Local Office Director (LOD) or designee will provide technical assistance, including testimony, to support the position of DCS for administrative hearings concerning original periodic payment amount or modifications of periodic payment amounts based on change of circumstances.

DCS CEU will provide assistance, including testimony, to support the position of DCS for administrative hearings concerning eligibility, continuation of guardianship assistance beyond the child's 18<sup>th</sup> birthday, termination of guardianship assistance agreements, administrative suspension of guardianship assistance payments, or decisions concerning modification requests other than changes in periodic payment amounts.

DCS Permanency and Practice Support will provide assistance, including testimony, to support the position of DCS for administrative hearings concerning the result of administrative reviews under policy 14.4 Administrative Review for Guardianship Assistance Program.

DCS will be represented in administrative appeal hearings by a DCS Central Office Attorney. A DCS Local Office Attorney who was involved in negotiation and determination of periodic payment amount or modification that is the subject of an administrative appeal hearing will assist the DCS Central Office Attorney, as requested, in presenting the DCS position at the hearing. Following an ALJ decision to uphold, reverse or remand the administrative review decision, DCS Counsel will notify DCS staff as to appropriate procedures to comply with the decision.

## PRACTICE GUIDANCE

N/A

## FORMS AND TOOLS

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

## RELATED INFORMATION

N/A