

DEPARTMENT OF HUMAN SERVICES

Social Services Rules

REFERRAL AND ASSESSMENT

12 CCR 2509-2

7.111 STATE LEVEL APPEAL PROCESS [Eff. 1/1/15]

- A. Persons found responsible for an incident of child abuse or neglect by the county department shall have the right to a state level appeal to contest the finding. The request for appeal of the decision shall first be submitted to the State Department unit designated to handle such appeals. If the State Department and the Appellant are unable or unwilling to resolve the appeal in accordance with the provisions set forth below in this section, the State Department shall forward the appeal to the Office of Administrative Courts (OAC) to proceed to a fair hearing before an Administrative Law Judge (ALJ).
- B. The grounds for appeal shall consist of the following:
 - 1. The findings are not supported by a preponderance of credible evidence; or,
 - 2. The actions ultimately found to be abusive or neglectful do not meet the statutory or regulatory definitions of child abuse or neglect.
- C. The person found to be responsible for child abuse or neglect shall have ninety (90) calendar days from the date of the notice of founded finding to appeal the finding in writing to the State Department. The written appeal shall be submitted ~~on~~ VIA the State approved ONLINE form OR USING THE HARD COPY APPEAL FORM provided TO THE PERSON FOUND RESPONSIBLE FOR CHILD ABUSE OR NEGLECT by the county DEPARTMENT and shall include:
 - 1. The contact information for the Appellant;
 - 2. A statement detailing the basis for the appeal; and,
 - 3. The county department notice of finding of responsibility for child abuse or neglect.
- D. The state level appeal process must be initiated by the person responsible for child abuse or neglect or his/her legal representative. The Appellant need not hire an attorney to appeal the county determination. If the individual is a minor child, the appeal may be initiated by his/her parents, legal custodian, or legal representative.
- E. The appeal must be submitted to the State Department within ninety (90) calendar days of the date of the notice of founded finding. If the appeal is filed more than ninety (90) calendar days from the date of the notice of founded finding, the Appellant must show good cause for not appealing within the prescribed period as set forth in Section 7.000.2, A. Failure to request State review within this ninety-day (90) period without good cause shall be grounds for the State Department to not accept the appeal.
- F. The founded finding shall be utilized for safety and risk assessment, employment, and background screening by the State Department while the administrative appeal process is pending.
- G. The Appellant shall have the right to appeal even if a dependency and neglect action or a criminal prosecution for child abuse is pending arising out of the same report. The State Department shall hold in abeyance the administrative process pending the outcome of the dependency and neglect

or criminal action if requested by the Appellant or if the State Department determines that awaiting the outcome of the court case is in the best interest of the parties. If the Appellant objects to the continuance, the continuance shall not exceed one hundred eighty (180) days without the Appellant having the opportunity to seek review of the extended continuance by an Administrative Law Judge. The pendency of other court proceeding(s) shall be considered to be good cause to continue the appeal past the one hundred eighty (180) day timeframe.

- H. The following circumstances shall be considered to be admissions to the factual basis of the finding of responsibility for child abuse or neglect entered into the state automated case management system and shall be considered to be conclusive evidence of the person's responsibility for child abuse or neglect to support a motion for summary judgment submitted to the Office of Administrative Courts:
1. When a Dependency and Neglect Petition has been adjudicated against or a deferred adjudication entered against the Appellant on the basis of Sections 19-3-103 or 19-3-102 (1)(a), (b), or (c), C.R.S., arising out of the same factual basis as the founded finding in the state automated case management system;
 2. The Appellant has been found guilty of child abuse, or has pled guilty or nolo contendere to child abuse as part of any plea agreement including, but not limited to, a deferred judgment agreement, arising out of the same factual basis as the founded finding in the state automated case management system; or,
 3. The Appellant has been found guilty or has pled guilty or nolo contendere to a domestic violence related or alcohol traffic related offense arising out of the same factual basis as the founded report in the state automated case management system.
- I. When an Appellant requests an appeal, the State Department shall request the records relied upon in making the finding from the county department responsible for entering the finding, which has been appealed. The county department shall submit the record to the State Department as soon as practicable within the time frame requested by the Department.
- J. After the Appellant requests an appeal, the State Department shall inform the Appellant regarding the details of the appeal process, including timeframes and contact information.
1. The Appellant, as the party in interest, shall have access to the county record in order to proceed with the appeal. Appellant's use of the county file for any other purpose is prohibited unless otherwise authorized by law.
 2. Prior to providing access to the Appellant, the State Department shall redact identifying information contained in the county file to comply with state and federal law regarding the confidentiality of child abuse or neglect records or other protected information including, but not limited to, reporting party name(s) and addresses, Social Security Number, foster parent identifying information, and information pertaining to other parties in the case that the appellant does not have a legal right to access.
- K. The State Department is authorized to enter into settlement negotiations with the Appellant as part of the litigation process. The State Department is authorized to enter into settlement agreements that modify, overturn or expunge the reports as reflected in the state portion of the state automated case management system. The State Department is not authorized to make any changes in the county portion of the state automated case management system. In exercising its discretion, the State Department shall take into consideration the best interests of children, the weight of the evidence, the severity of the abuse or neglect, any pattern of abuse or neglect reflected in the record, the results of any local court processes, the rehabilitation of the Appellant, and any other pertinent information.

- L. The State Department and the Appellant shall have one hundred twenty (120) days from the date that the State Department receives the appeal to resolve the issue(s) on appeal. The 120 day time limit may be extended by agreement of both the Appellant and the State Department if it is likely that the additional time will result in a fully executed settlement agreement or resolution of the appeal.
- M. As soon as it is evident within the 120 days that the Appellant and the State Department will not resolve the issue(s) on appeal, the State Department shall forward a copy of the Appellant's original appeal document(s) to the Office of Administrative Courts in order to initiate the Office of Administrative Courts fair hearing process.
- N. If, by the end of the 120 day period, the State Department has been unable to contact the Appellant using the information submitted by the Appellant, including by first class mail, and the Appellant has not contacted the State Department, the appeal shall be deemed abandoned. The finding entered by the county department shall be upheld in the state automated case management system without further right of appeal. The State Department shall notify the Appellant of this result by first class mail to the address submitted by the Appellant.

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "All Caps", and changes made between initial review and final adoption are in [brackets] or highlighted yellow]