

## Chapter DCF 40

### REVIEW OF A DETERMINATION OF CHILD ABUSE OR NEGLECT

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**Note:** Chapter DCF 40 was created by emergency rule, EmR1427, eff. 1-1-15.

**DCF 40.01 Purpose.** This chapter specifies the procedures for review of a determination that a specific person has abused or neglected a child under s. 48.981 (3) (c) 5m., and 5p., Stats., and for ensuring that authorized information is available for background checks as provided in s. 48.981 (3) (c) 5r., Stats.

**History:** EmR1427: emerg. cr., eff. 1-1-15; CR 14-072: cr. Register June 2015 No. 714, eff. 7-1-15.

**DCF 40.02 Definitions.** In this chapter:

(1) "Abuse" has the meaning given in s. 48.02 (1), Stats., and as further defined in the standards established by the department for conducting child abuse and neglect investigations under s. 48.981 (3) (c) 1. a., Stats.

**Note:** The department's *Child Protective Services Access and Initial Assessment Standards* are available on the department's website, <http://dcf.wisconsin.gov>, by clicking on Child and Family Safety/Wisconsin's Statewide Automated Child Welfare Information System (WiSACWIS)/Frequently Used Links/CPS, Safety, Ongoing Standards.

(2) "Administrative law judge" means an administrative hearing examiner employed by the division of hearings and appeals.

(3) "Agency" means a county department under s. 46.22 or 46.23, Stats., or in a county having a population of 500,000 or more, the department or a licensed child welfare agency that is under contract with the department to fulfill the department's duties specified under s. 48.981 (3) (c) 5m., Stats.

(4) "Department" means the department of children and families.

(5) "Division of hearings and appeals" means the division of hearings and appeals within the department of administration.

(6) "Final determination" means an agency determination made under s. 48.981 (3) (c) 5m., Stats., that a specific person has abused or neglected a child.

(7) "Initial determination" means an agency determination made under s. 48.981 (3) (c) 4., Stats., that a specific person has abused or neglected a child.

(8) "Licensed child welfare agency" means a person licensed as required under s. 48.60, Stats.

(9) "Neglect" has the meaning given in s. 48.02 (12g), Stats., and as further defined in the standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations under s. 48.981 (3) (c) 1. a., Stats.

**Note:** The department's *Child Protective Services Access and Initial Assessment Standards* are available on the department's website, <http://dcf.wisconsin.gov>, by clicking on Child and Family Safety/Wisconsin's Statewide Automated Child Welfare Information System (WiSACWIS)/Frequently Used Links/CPS, Safety, Ongoing Standards.

**History:** EmR1427: emerg. cr., eff. 1-1-15; CR 14-072: cr. Register June 2015 No. 714, eff. 7-1-15; correction in (9) made under s. 13.92 (4) (b) 7., Stats., Register June 2015 No. 714.

**DCF 40.03 Review of an initial determination.**

(1) NOTICE. If an agency makes an initial determination that a specific person has abused or neglected a child, the agency shall send by first class mail all of the following information to the person by the next working day:

(a) A summary of the initial determination that includes the name of the child involved in the alleged incident and the reasons

for the agency's determination that the person who is the subject of the initial determination has abused or neglected the child.

(b) Information on the administrative appeal process, including the procedures for review of an initial determination and a contested case hearing before the division of hearings and appeals if the final determination upholds the initial determination.

(c) Information on the effect of a final determination on background checks under ss. 48.685 and 50.065, Stats.

(2) PROCEDURES FOR REVIEW OF AN INITIAL DETERMINATION.

(a) A person who is the subject of an initial determination may request a review of the initial determination by submitting a written request for review to the agency within 15 days after the date of the notice of initial determination.

(b) Within 15 days after receiving the review request, the agency shall send a written notice to the person who is the subject of the initial determination with the review date, time, and place. The notice shall be sent at least 7 days before the review.

(c) The agency shall appoint an individual or panel to conduct the review of the initial determination. A panel shall be comprised of at least 3 members, and the final determination shall be the decision of the majority of the panel. The individual or panel conducting the review of the initial determination shall have authority to make the final determination.

(d) Any person who conducts the review of the initial determination shall have knowledge of child protective services in Wisconsin.

(e) No person who conducts the review of the initial determination may have had any prior involvement in the investigation or determination for the case that is being reviewed.

(f) The review of the initial determination shall be held within 45 days after the agency receives a request for review from the person who is the subject of the initial determination.

(g) An agency may not hold the review of the initial determination in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 or 938.12, Stats., based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or petition under s. 48.13 or 938.12, Stats., based on the alleged abuse or neglect.

(h) The person who is the subject of the initial determination may request one rescheduling of the review date or time, and the agency shall grant the request if the review of the initial determination can be rescheduled within 45 days after the person's initial request for review. The notice of the rescheduled review date may be sent less than 7 days before the review if that is necessary to complete the review within 45 days after the person's request for review.

(i) The review of the initial determination shall be scheduled for at least one hour. When the review is scheduled, the agency shall provide the reviewing individual or panel with information related to the initial determination.

(j) The person who is the subject of the initial determination may be represented by an attorney at the review of the initial determination.

(k) The person who is the subject of the initial determination may present information that is relevant to whether the person has abused or neglected a child as specified in the initial determina-

tion. The person who is the subject of the initial determination may not present witnesses and does not have the right to question agency staff who may be present. Agency staff may allow questioning and respond to questions to facilitate the review. The agency is not required to present evidence or witnesses to support the determination beyond the materials provided under par. (i).

**History:** EmR1427: emerg. cr., eff. 1-1-15; CR 14-072: cr. Register June 2015 No. 714, eff. 7-1-15.

**DCF 40.04 Final determination and hearing procedures.** (1) Within 10 days after the date of the review of the initial determination, the individual or panel conducting the review of the initial determination under s. DCF 40.03 shall make a final determination on whether the person who is the subject of the initial determination has abused or neglected a child. Within 5 days after the date of the final determination, the agency shall send a written notice of final determination to the person by first class mail.

(2) If the person who is the subject of the initial determination does not request a review of the determination within 15 days after the date of the notice of initial determination, the agency shall send a written notice of final determination to the person within 5 days after the deadline for requesting a review of the initial determination.

(3) If the final determination upholds the initial determination or the person who is the subject of the initial determination did not request a review of the determination, the notice of final determination shall include all of the following:

(a) A summary of the final determination that includes the name of the child involved in the alleged incident and the reasons for the agency's determination that the person who is the subject of the final determination has abused or neglected the child.

(b) Information on appealing the final determination, including all of the following:

1. To receive a contested case hearing under ch. 227, Stats., the person shall file a request for a hearing with the division of hearings and appeals within 10 days after the date of the notice.

2. Materials may be submitted to the division of hearings and appeals by mail, personal service, inter-departmental mail, or fax. The date of filing shall be one of the following:

a. Materials mailed to the division of hearings and appeals shall be considered filed on the date of the postmark. If the postmark date is illegible or absent, the filing date shall be the date of receipt by the division of hearings and appeals.

b. Materials submitted by personal service or by inter-departmental mail shall be considered filed on the date they are received by the division of hearings and appeals.

c. Materials transmitted to the division of hearings and appeals by facsimile shall be considered filed or served on the division or the administrative law judge on the date and at the time that is imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received after midnight local time shall be deemed filed on the first following business day.

**Note:** The address for the Division of Hearings and Appeals is 5005 University Avenue, Room 201, Madison, Wisconsin, 53705-5400. The fax number of the division is (608) 264-9885.

3. A person who is the subject of a final determination may request that the division of hearings and appeals expedite the person's appeal if any of the following apply:

a. The person currently has, or has applied for, a license, certification, certificate of approval, or registration that may be revoked or denied as provided in s. 48.685 or 50.065, Stats.

b. The person is currently employed by or contracts with, or the person is actively engaged in seeking employment or a contract with, an entity for duties subject to the background check requirements under s. 48.685 or 50.065, Stats.

c. The person is enrolled in an academic program that leads to license, certification, or employment or contract position that

will be subject to the background check requirements under s. 48.685 or 50.065, Stats., and the person can be expected to complete the academic program within 150 days after the date of his or her request for a hearing with the division of hearings and appeals.

4. A person who requests that the division of hearings and appeals expedite his or her appeal shall indicate the request on his or her request for a hearing and provide documentation that a qualifying condition under subd. 3. applies to him or her.

5. The division of hearings and appeals shall commence the hearing within 90 days after receipt of the request for hearing, unless any of the following apply:

a. The hearing is rescheduled on the request of the person requesting the hearing.

b. The contested case proceeding is held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13, Stats., based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13, Stats., based on the alleged abuse or neglect.

6. The division of hearings and appeals shall issue a final decision within 60 days after the close of the hearing.

7. Judicial review of the final decision following the hearing may be had by any party to the contested case proceeding as provided in ch. 227, Stats.

(c) Information on background checks under ss. 48.685 and 50.065, Stats., including all of the following:

1. A final determination that the person abused or neglected a child is a bar to certain licenses, employment, residence, and other specified actions involving an entity or person that is covered by the background check requirements in s. 48.685 or 50.065, Stats.

2. The person may request a review to demonstrate that he or she has been rehabilitated.

3. Rehabilitation may be denied, approved for all actions that would otherwise be barred by the final determination under s. 48.685 or 50.065, Stats., or limited to approval for specified actions only.

**Note:** Information on the rehabilitation review process is in ch. DHS 12.

(4) (a) The division of hearings and appeals shall consider the date of filing of a person's request for a hearing to be the date determined under sub. (3) (b) 2.

(b) The division of hearings and appeals shall provide an expedited hearing and final decision for a person who meets a condition in sub. (3) (b) 3. as soon as practicable.

**History:** EmR1427: emerg. cr., eff. 1-1-15; CR 14-072: cr. Register June 2015 No. 714, eff. 7-1-15.

**DCF 40.05 Other requirements.** (1) The agency records related to an initial determination and the subsequent review and hearing shall be governed by the confidentiality provisions of s. 48.981 (7), Stats.

(2) An initial or final determination that a specific person has abused or neglected a child shall be based on a preponderance of the evidence.

(3) Any review or appeal of an initial or final determination shall be governed by the standards established by the department for conducting child abuse and neglect investigations under s. 48.981 (3) (c) 1. a., Stats.

**Note:** The department's *Child Protective Services Access and Initial Assessment Standards* are available on the department's website, <http://dcf.wisconsin.gov>, by clicking on Child and Family Safety/Wisconsin's Statewide Automated Child Welfare Information System (WiSACWIS)/Frequently Used Links/CPS, Safety, Ongoing Standards.

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**DCF 40.06 Background checks.** The agency shall ensure that authorized information regarding the final determina-

tion that a specific person has abused or neglected a child is available for background checks under ss. 48.685 and 50.065, Stats., within 15 days after the agency's final determination. If a contested case hearing under ch. 227, Stats., or judicial review overturns the agency's final determination that a specific person has abused or neglected a child, the agency shall update the authorized information available for background checks within 15 days after the decision.

**History:** EmR1427: emerg. cr., eff. 1-1-15; CR 14-072: cr. Register June 2015 No. 714, eff. 7-1-15.