

## 922 KAR 2:260. Child care service appeals.

RELATES TO: KRS Chapter 13B, 23A.010, 194A.005, 194A.030(1), 45 C.F.R. Part 98, 205.10, 42 U.S.C. 601-619, 9857-9858g

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. Under 42 U.S.C. 9858c, the cabinet is the agency designated to administer the Child Care and Development Fund block grant. KRS 13B.170 permits an agency to promulgate administrative regulations to carry out provisions of KRS Chapter 13B pertaining to administrative hearings. This administrative regulation establishes cabinet procedures related to appeals and complaints for child care benefits and services under 922 KAR Chapter 2 effective October 1, 2017.

Section 1. Definitions. (1) "Child care assistance" means the subsidy benefits as described by 922 KAR 2:160, Child Care Assistance Program.

(2) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(3) "Contract agency" means a business or organization that offers child care benefits or services to the public through a contract or agreement with the cabinet.

(4) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 5(8) of this administrative regulation.

(5) "Parent" is defined by 45 C.F.R. 98.2.

(6) "Provider" means the entity providing child care services.

(7) "Registered child care provider" means a caregiver registered under 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

Section 2. Right to Appeal. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 922 KAR 2:160, Section 17(1).

(2) A provider may request an administrative hearing regarding certification, licensure, or civil monetary penalty through the Office of Inspector General, Division of Regulated Child Care in accordance with:

(a) 922 KAR 2:090, Child-care center licensure;

(b) 922 KAR 2:100, Certification of family child-care homes; or

(c) 922 KAR 2:190, Civil penalties.

(3) An administrative hearing pertaining to a matter not specified in subsection (1) or (2) of this section may be requested in accordance with:

(a) This administrative regulation; or

(b) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties.

(4) With the exception of subsections (1), (2), and (3)(b) of this section, an individual or provider aggrieved by an action of the cabinet may request an administrative hearing in accordance with this administrative regulation for a matter by which a Kentucky Revised Statute or 922 KAR Chapter 2 expressly permits the appeal of a cabinet action or alleged act.

(5) With the exception of subsections (1), (2), and (3)(b) of this section, a parent or provider

aggrieved by an action of the cabinet may request review of the following through an administrative hearing in accordance with this administrative regulation:

(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefit, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapter 2; or

(b) A cabinet failure to act within program timeframes to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapter 2.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing in accordance with this administrative regulation:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 5(5)(b) of this administrative regulation; or

(e) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, a provider, or an early care and education professional may:

(a) Attempt to resolve the issue by submitting a written complaint to the department's Division of Child Care within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman if the matter was not previously reviewed:

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2)(a) The director of the department's Division of Child Care, director's designee, or the cabinet's Office of the Ombudsman shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The director of the department's Division of Child Care or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(3)(a) A parent, provider, or an early care and education professional dissatisfied with a written response rendered by the director of the department's Division of Child Care, director's designee, or the Office of the Ombudsman may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10)

calendar days of receipt of the written response provided in accordance with subsection (2) of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and
2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

(4) The department may compile data regarding service complaints to:

- (a) Fulfill federal and state reporting requirements; or
- (b) Use for program development and evaluation.

Section 5. Request for Appeal. (1) The cabinet shall provide:

(a) Information regarding appeals to a child care assistance applicant or recipient pursuant to 921 KAR 2:046; or

(b) A DCC-88, Child Care Service Appeal Request, to a provider:

1. In accordance with 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program, for a:

a. Withdrawal or denial of child care registration application, not at the request of the applicant; or

b. Revocation or closure of a registered child care provider, not at the request of the provider;

2. Upon a reduction or revocation of a child care provider's STARS level in accordance with:

a. 922 KAR 2:170, STARS for KIDS NOW Program Type I licensed child-care centers;

b. 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed and certified family child-care homes; or

c. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; or

3. Upon a revocation of a trainer's credential in accordance with 922 KAR 2:240, Kentucky Early Care and Education Trainer's Credential and training approval.

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail:

(a) A DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals; or

(b) Notice in accordance with 922 KAR 2:160, Section 11.

(3) Unless the matter is appealable in accordance with Section 2(1), 2(2), or 2(3)(b) of this administrative regulation, the cabinet shall send a notice of adverse action at least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services.

(4) The cabinet may take emergency action under KRS 13B.125.

(5) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (3) of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;
2. Name of each cabinet staff person involved with the disputed action, if known; and
3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (3) of this section, if available.

(6)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and
2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 9 of this administrative regulation.

(7) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (3) of this section was issued or date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the outcome of the appeal.

(8) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or
2. Participate in a proceeding related to an administrative hearing.

Section 6. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 7. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

- (a) Each party to the administrative hearing;
- (b) The commissioner of the Department for Community Based Services; and
- (c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

- (a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;
- (b) Be based on facts and evidence presented at the hearing;
- (c) Not refer to evidence that was not introduced at the hearing; and
- (d) Be sent to each other party involved in the hearing.

Section 8. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 9. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

- (a) Section 4 of this administrative regulation; or
  - (b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.
- (2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.
- (b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.
  - (c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:
    - 1. Extenuating circumstances prolong the review of the complaint; and
    - 2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph.
  - (d) The contract agency shall abide by the commissioner's written determination.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DCC-88, Child Care Service Appeal Request", 04/17; and
  - (b) "DCC-108, Notice of Adverse Action for Child Care Providers and Early Care and Education Professionals", 10/17.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (42 Ky.R. 2690; 43 Ky.R. 65; eff. 8-17-2016; 44 Ky.R. 1166; eff. 3-15-2018.)