

922 KAR 1:320. Service appeals.

RELATES TO: KRS 2.015, Chapter 13B, 23A.010, 194A.005, 194A.030(11), 199.011(4), (9), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(9), (28), (46), 605.090(1)(b), (6), 610.110(6), 620.020(1), 620.140(1)(e), 620.142, 620.157, 620.180(2)(a)1, 620.230, 620.363, 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

STATUTORY AUTHORITY: KRS 13B.170(1), 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, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). KRS 13B.170(1) authorizes promulgating administrative regulations necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 and 5.

Section 1. Definitions.

- (1) "Adoption assistance" means a payment under:
 - (a) KRS 199.555(2) and 922 KAR 1:050; or
 - (b) KRS 199.557 and 922 KAR 1:060.
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed in the custody of the cabinet by an order of commitment.
- (4) "Case plan" means a plan described in 922 KAR 1:430 for a child who is not placed in the custody of the cabinet by an order of commitment.
- (5) "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.
- (6) "Child" means:
 - (a) A child defined by KRS 199.011(4) and 600.020(9);
 - (b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(e); or
 - (c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.
- (7) "Child welfare services" means benefits or services on behalf of a child meeting a purpose of 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, or 1397.
- (8) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.
- (9) "Contract agency" means a business or organization that offers child welfare, adult, or domestic violence services to the public through a contract or agreement with the cabinet.
- (10) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (11) "General adult services" means a voluntary preventive service in accordance with 922 KAR 5:090.
- (12) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.
- (13) "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed as an alternative to foster care in accordance with 922 KAR 1:130.

(14) "Parent" is defined by KRS 600.020(46) and 42 U.S.C. 675(2) for child welfare benefits and services.

(15) "Protective services" is defined by KRS 209.020(5).

(16) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Right to Appeal.

(1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4;

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330; or

(d) The cabinet's determination that return home is not recommended for their child, in accordance with KRS 620.157.

(2) A foster parent approved by the department in accordance with 922 KAR 1:350 or an adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to the home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060; or

4. Provide an adoptive parent with known relevant facts regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050 or 922 KAR 1:060;

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the adoption assistance agreement is renewed under 922 KAR 1:050 or 922 KAR 1:060; or

(d) Closure of a foster or adoptive home under 922 KAR 1:350 unless a provision of Section 3(1)(f), (g), (h), (i), or (j) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)

(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19.

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055.

- (5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.
- (6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.
- (7) An adult may request review of the following through an administrative hearing:
 - (a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or
 - (b) Failure by the cabinet to respond with reasonable promptness to a request for:
 - 1. General adult services; or
 - 2. Protective services for an adult.
- (8) A non-parent relative or fictive kin caregiver who received physical custody of a child through a child abuse, neglect, or dependency action may appeal:
 - (a) Regarding a protection and permanency service as established in 922 KAR 1:565, Section 7; or
 - (b) A denial, reduction, modification, suspension, or termination of child welfare services unless a provision of Section 3(1)(f), (g), (h), (i), (j), or (n) of this administrative regulation applies.
- (9) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 and 5 expressly permits the appeal of a cabinet action or alleged act.
- (10) A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:
 - (a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5; or
 - (b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5.

Section 3. Matters Not Appealable through an Administrative Hearing.

- (1) The following shall not be subject to review through an administrative hearing:
 - (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 6(4)(b) of this administrative regulation;
 - (e) A decision to deny:
 - 1. Approval of an individual seeking to provide foster or adoptive services or respite care in accordance with 922 KAR 1:350 or 922 KAR 1:310; or
 - 2. A caretaker relative approval as a kinship caregiver if the:
 - a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or
 - b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;
 - (f) The cabinet's fitness determination of a relative or fictive kin in accordance with 922 KAR 1:565, Section 3;
 - (g) Removal of a foster child from a foster or adoptive home or respite care provider if the foster or adoptive home parent, respite care provider, or another individual residing

in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Foster or adoptive home parent, respite care provider, or other individual waived the right to appeal the substantiated incident; or
2. Substantiated incident was upheld after:
 - a. An administrative hearing; or
 - b. Judicial review;
- (h) Removal of a child from a foster home, relative caregiver, or fictive kin caregiver for the purpose of:
 1. Achieving a permanency goal described by 922 KAR 1:140; or
 2. Uniting or reuniting the child with a sibling at the next placement;
- (i) Closure of a foster or adoptive home if the cabinet has not placed a child in the home within the previous two (2) years;
- (j) Closure of a relative, fictive kin, foster, or adoptive home according to the terms of the contract between the cabinet and the relative, fictive kin, foster, or adoptive home;
- (k) A situation where state or federal law requires adjustment of a payment or grant, except if a payment or grant computation is incorrect;
- (l) The per diem rate of reimbursement paid to a foster home parent; or
- (m) A decision to not recommend a foster home parent in accordance with 922 KAR 1:350, Section 6(9), for enrollment in specialized training as a medically complex foster parent or care plus foster parent; or
- (n) A request for foster care maintenance payment on behalf of a child who was not in the cabinet's legal custody during the period of time for which the payment is requested.
- (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, relative or kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, or an adult may:
 - (a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee with-in thirty (30) calendar days after the date of the cabinet action or alleged act; or
 - (b) Contact the cabinet's Office of the Ombudsman and Administrative Review if the matter was not previously reviewed:
 1. By that office; or
 2. Pursuant to paragraph (a) of this subsection.
- (2) A child who is in the custody of the cabinet, or a child who has aged out of the cabinet's custody within the previous twelve (12) months may file a complaint through the Office of the Ombudsman and Administrative Review for any of the following:
 - (a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;
 - (b) Closure of a child protective services case in accordance with:
 1. 922 KAR 1:330, Section 12; or
 2. 922 KAR 1:430, Section 4; or
 - (c) Failure by the cabinet to:
 1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;
 2. Complete a case plan or case permanency plan;
 3. Provide or refer for services as specified in the case plan or case permanency plan;

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330; or
 5. Demonstrate diligence in the protection and preservation of a foster child's right in accordance with KRS 620.363.
- (3) A child described in subsection (2) of this section may file a complaint or a request for the commissioner's review in accordance with subsection (5) of this section with assistance from the child's authorized representative.
- (4)
- (a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman and Administrative Review 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 service region administrator 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.
- (5)
- (a) A parent, relative or kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, a child described in subsection (2) of this section, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman and Administrative Review 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 (4) 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.
- (6) The department shall compile data regarding service complaints to:
- (a) Fulfill federal and state reporting requirements; and
 - (b) Use for program development and evaluation.

Section 5. Other Appeals.

- (1) An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480.
- (2) An individual aggrieved by a cabinet action or inaction under 922 KAR Chapter 2 may appeal the action or inaction in accordance with 922 KAR 2:260.

Section 6. Request for Appeal.

- (1) The cabinet shall provide a copy of the DPP-154, Protection and Permanency Service Appeal Request, to an individual:
 - (a) At each case planning conference;
 - (b) Upon denial, reduction, modification, suspension, or termination by the cabinet of:
 1. Child welfare services provided by the cabinet;
 2. General adult services or protective services, if notification does not present a risk of harm to the victim;
 3. Adoption assistance; or
 4. Other federally-funded program benefit described in 922 KAR Chapter 1 or 5; or

- (c) Upon determination that a student is not eligible for a tuition waiver or education and training voucher.
- (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 the DPP-154A, Protection and Permanency Notice of Intended Action.
- (3) The cabinet may take emergency action under KRS 13B.125.
- (4) 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 (2) 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 (2) of this section, if available.
- (5)
 - (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 10 of this administrative regulation.
- (6) If the cabinet receives a written request for appeal within ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or the 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 out-come of the appeal.
- (7) 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 7. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 8. 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 party involved in the hearing.

Section 9. 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)

(a) Unless waived by an appellant, final administrative action shall be taken within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

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

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

Section 10. 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 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DPP-154, Protection and Permanency Service Appeal Request", 12/2019; and
- (b) "DPP-154A, Protection and Permanency Notice of Intended Action", 6/2019.

(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.

(17 Ky.R. 3608; 18 Ky.R. 316; eff. 8-21-1991; 20 Ky.R. 2431; 2855; eff. 3-23-1994; 23 Ky.R. 1786; 2528; eff. 11-20-1996; 25 Ky.R. 926; 1649; eff. 1-19-1999; Recodified from 905 KAR 1:320, 2-1-1999; 28 Ky.R. 2464; 29 Ky.R. 141; eff. 7-15-2002; 30 Ky.R. 1679; 2468; eff. 6-16-2004; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 36 Ky.R. 1376; 1947; eff. 3-5-2010; 39 Ky.R. 2228; 40 Ky.R. 556; eff. 9-18-2013; 2377; 41 Ky.R. 77; 286; eff. 9-5-

2014; 42 Ky.R. 2663; 43 Ky.R. 50; 221; eff 8-17-2016; 44 Ky.R. 420, 1064; eff. 1-5-2018; TAm eff. 5-29-2019; 416 Ky.R. 766, 1573; eff. 12-9-2019; TAm eff. 3-20-2020.)