

FOSTER CARE HANDBOOK



REPLACES:

SECTION:
PAGE NO.: 1
ISSUED/REVISED:11-19-82

NOTICE OF ACTION—
FAIR HEARINGS/APEALS

SECTION: 45-400
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EFFECTIVE: 09-11-17

I. GENERAL

A State Hearing or Appeal is a method where a dis-satisfied client may obtain an impartial review of a County action or inaction. The process is mandated by federal law and is administered by the California Department of Social Services (CDSS).

The process is called a State Hearing, Appeal or Fair Hearing. These terms are interchangeable. For the purpose of this section, 'Appeal' will be used.

Providers in receipt of Foster Care (FC), Legal Guardian in receipt of KinGAP, adoptive parents in receipt of Adoption Assistance Program (AAP) and Relative Caregivers in receipt of Approved Relative Caregiver (ARC) benefits can initiate an appeal when disagreeing with a County action. The initiation of the Appeal is the responsibility of the caregiver for the child.

Appeals are normally the result of a response to a Notice of Action (NOA) sent to a provider. Appeals must be filed within 90 days of receiving the NOA.

When an Appeal is filed, the person filing the appeal is the claimant and can appoint an Authorized Representative (see 'Authorized Representative' on page 3).

A. Request in Writing:

1. Requests for appeals must be in writing and the request must have sufficient information to identify the general concern. Most FC, KinGAP, AAP and ARC appeals will be on the back of the NOA. Oral request can only be accepted by CDSS.
2. There is no right to appeal concerning foster care placements or removal of a foster care child. Additionally, there is no right to an appeal concerning group home rates established by the State of California.

B. Notice of Action

Notification to a Group Home/Foster Family Agency (FFA)/Short Term Residential Therapeutic Program (STRTP), foster care or ARC provider, KinGAP Legal Guardian and AAP parents are required whenever the benefit is granted, increased, reduced or discontinued, or when a child is removed from the facility or resource family home.

1. Notices of Positive Action

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- a. The FC Eligibility Worker (EW) must validate a Notice of Positive Action to the resource parent or facility, KinGAP guardian or AAP parent when the case is granted or the payment is increased.
2. Notices of Negative or Adverse Action
 - a. The FC EW must send a Notice of Adverse Action at least ten days in advance to the provider if payment is reduced or discontinued. A copy of the notice must be either retained in the Client Correspondence subsystem in CalWIN or must be scanned into the child's case file.
 - b. The FC EW must send a Notice of Adverse Action to the provider if payment is discontinued because the child was removed from placement. Ten days advance notice is not required in this situation.
 - c. Providers have the right of Appeal on behalf of the child or youth in their care.

C. When an Appeal is Filed

When an Appeal is filed, it is sent to the Employment and Human Service Department (EHSD) Appeals Unit. The request can be mailed to the Appeals Unit or hand-delivered. The Appeals Officer will review the appeal and may contact the Foster Care Eligibility Worker (FC EW) and/or FC EW Supervisor to request the continuation of payments or services under the 'Aid Paid Pending' policy.

1. The Role of the Foster Care Eligibility Worker and/or Foster Care Eligibility Supervisor:
 - a. Notification of the Appeal is sent to FC EW and FC EW Supervisor using the '*Notice of Filing of Fair Hearing*', CAC 10. The FC EW is responsible to follow the instructions given on the CAC 10 in a timely manner.

D. Aid Paid Pending

Aid Paid Pending (APP) is the continuation of aid (payments) or services in the amount of what the provider would have received if the termination or denial of benefits was not received. The Aid Paid Pending determination can only be authorized by the Appeals Unit. When APP is requested, benefits must be restored or approved as soon as possible.

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1. When the claimant is receiving a Special Care Increment (SCI) (also known as Difficulty of Care) and APP is requested, the SCI can only be paid through the period of time the SCI was originally authorized. When the SCI expires during the APP period, the benefits must be reduced to the basic foster care rate unless a new SCI payment authorization is submitted by the assigned Social Worker (SW).

EXAMPLE: APP is requested on October 1. The SCI is good from July through December. The basic rate plus the SCI is good only through December while the case is still in Appeals. If the case remains in Appeals in January, the payment must be reduced to the basic foster care rate effective January.

2. The FC EW must advise the Appeals Officer when the benefits have been restored or approved per the CAC 10 instructions.

E. Representation

1. The Appeals Officer is required to fully represent EHSD at the Appeals hearing. Only when it is in the best interest of EHSD, the Appeals Officer may request a FC EW or Social Worker (SW) be present or available during the hearing. EHSD prohibits FC EWs or SWs from representing claimants at the Appeals hearing.
2. In the rare instance that the FC EW is required to attend the Appeal hearing, the Appeals Officer will notify the FC EW and the FC EW Supervisor of the hearing place including the date and time. The FC EW or FC EW Supervisor must be available during the hearing either by phone or in person to clarify discrepancies. The FC EW may attend the Appeal hearing only upon approval of the FC EW Supervisor.

F. Authorized Representative

1. An Authorized Representative (AR) is a person or group who has authorization from the claimant. All authorization must be provided in writing to the Appeals Unit.
2. Authorized Representatives are to be allowed to inspect non-privileged, non-confidential information contained in the case file (including the scanned case file) and may represent the claimant during all aspects of the Appeals hearing process.
3. Whenever the claimant is represented by an AR, the AR is furnished copied of all notices and decisions concerning the state hearing. The AR is authorized to

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receive copies of all subsequent notices and correspondences that are sent to the claimant. Additionally, the AR is authorized to receive copies of notices and correspondences related to a ‘Conditional Withdrawal’ (see ‘Withdrawals and Decisions’ beginning on page 6) for compliance with a state hearing.

4. The AR and claimant may request to review the eligibility case file at any time. This is considered a Third Party Case Review. When the request is not related to an appeal, the FC EW is responsible to allow the case information be made available for review.
5. Authorized Representative approvals are limited to one year unless revoked or expressly limited by the claimant. The approval may be extended for the length of time it takes for a final disposition of the Appeal.

G. Case Reviews By Provider/Authorized Representative (EAS 22-051)

1. Clients have the right to review their physical case record, documents scanned into the Compass Pilot System, as well as information entered into CalWIN, regardless of whether a hearing has been requested.
2. Whenever a client or Authorized Representative (AR) for the client requests to review his/her case record, the client and Authorized Representative must be allowed to review all non-privileged, non-confidential information contained in the case record. This includes but is not limited to any documents scanned into our online document imaging system, including the case narrative as well as screens available in CalWIN that contain case information.
3. Documentation in the ‘*Maintain Case Comments*’ window in CalWIN is part of the case record subject to review by the client and Authorized Representative. As such, it is imperative that only factual statements pertinent to the client’s case situation are documented. Under no circumstances are personal feelings or criticisms to be documented.

H. Privileged and Confidential Information (EAS 19-006)

Certain portions of the case record are considered to be privileged and/or confidential information and cannot be released to the client or Authorized Representative (AR). For more information about privileged or confidential information FC EWs may refer to the IM 14, ‘*EHSD Confidentiality Policy*’ or FC EW Supervisors may contact the Civil Rights Coordinator for further information.

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I. The Appeal Process

Aid Paid Pending is Requested:

STEP	WHO	ACTION
1	Appeals	<ul style="list-style-type: none"> Sends the CAC 10 to take immediate action to the EW Supervisor to issue Aid Paid Pending, as appropriate (approve or restore benefits) Sends verification of authorization by the client of an Authorized Representative (AR): the NOA Back (acceptable when the appropriate box is checked and signed), the DFA 19 (state form) or any other written statement with a valid signature. <p>NOTE: Documents are scanned into the case file by the Appeals Clerk and an email is sent to the FC EW and FC EW Supervisor to notify of the appeal action</p>
3	FC EW Supervisor	<ul style="list-style-type: none"> Reviews the CAC 10 form and the Appeal situation to determine if any corrective action is necessary Forwards the CAC 10 to the appropriate FC EW for processing
4	FC EW	<ul style="list-style-type: none"> Reviews the CAC 10 form Directs any questions regarding Aid Paid Pending to the Appeals Unit Issues any required NOAs, client correspondence and payments When claimant has an AR, ensures all copies of documents sent to the claimant is forwarded to the AR at the same time Thoroughly documents all action in CalWIN ‘Case Comments’ Sends documents to FC Clerical for scanning into our online document imaging system, when necessary Advise the Appeals Officer and the FC EW Supervisor when the requested actions are complete
6	FC EW Supervisor	<ul style="list-style-type: none"> Ensures the implementation of the Aid Paid Pending is completed Ensures compliance with the request is correct and timely Ensures the Appeals Unit is notified timely of the completion of the form Ensures all documentation regarding the appeal and the initial determination is well documented in CalWIN ‘Case Comments’



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J. Withdrawals and Decisions

1. Withdrawals

There are two types of Appeal Withdrawals:

- a. A straight or unconditional withdrawal, which is generally referred to simply as a withdrawal (no action is required); and
- b. A conditional withdrawal is a withdrawal that accompanies an agreement signed by the Appeals Officer and the claimant

2. The Appeals Officer will submit the ‘*Withdrawal/Dismissal of Request for Administrative Hearing or Denial of Claim*’, CAC 22 to Eligibility. Only Appeals staff can sign the CAC 22. Foster Care Staff must take the required action on the CAC 22 and return to the Appeals Officer when completed.

- a. Conditional Withdrawals must be acted upon within 10 business days of the date of the signing of the conditional withdrawal. The conditional withdraw is an agreement and a commitment to take the required actions. Dishonored agreements may result in a reopening of the hearing. If situations arise where compliance is impossible, the FC EW Supervisor must immediately contact the Appeals Officer and explain the issue.

3. Decisions

For any appeal which is ultimately heard by the Administrative Law Judge, a written decision will be issued and adopted by either the DCSS or the State Department of Health Care Services (DHCS).

- a. The written decision will contain:
 - A summary of the hearing,
 - The evidence presented by both sides,
 - Applicable regulations,
 - A conclusion and,

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- An Order

The decision will indicate the action to be taken as follows:

IF...	THEN...
The County's position is upheld in its entirety,	The claim will be denied
The claimant's position is upheld in whole or in part,	The claim will be granted. The claim may be granted in its entirety or may be granted in part and instructions provided on what must be done

- b. A copy of the 'Notice to Comply with Administrative Hearing Decision', CAC 20, with the hearing decision is forwarded to the FC EW and FC EW Supervisor. The EW must complete and return the form to the Appeals Officer. The FC EW is required to comply with the Decision Order within 30 days of receipt.

K. The Conditional Withdrawal and Decision Process

Upon receipt of the 'Notice to Comply with Administrative Hearing Decision', CAC 20 or the, 'Notice of Withdrawal/Dismissal of Request for Administrative Hearing or Denial of Claim', CAC 22, the following process will occur:

Step	WHO	ACTION
1	Appeals Unit	<ul style="list-style-type: none"> • Sends the CAC 20, Hearing Decision or • Sends the CAC 22, Withdrawal/Dismissal • When not already sent, sends DFA 19 (Authorized Representative), if appropriate • All documents are sent by email to the appropriate FC EW and FC EW Supervisor
2	FC EW	<ul style="list-style-type: none"> • Thoroughly reviews the CAC 20, Hearing Decision or CAC 22, Withdrawal/Dismissal and accompanying instructions/orders • Discuss any questions regarding the compliance with EW Supervisor • Remaining questions regarding the compliance must be addressed

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		<p>with the assigned Appeals Officer</p> <ul style="list-style-type: none"> • Immediately completes the required instructions listed in the Hearing Decision/Compliance Orders • Sends the completed, signed and dated CAC 20 by email to the assigned Appeals Officer which includes the following: <ul style="list-style-type: none"> ○ Date when the payment was made ○ Amount of the payment • Validates all generated client correspondence and ensures they are sent to the claimant • When applicable, copies must be sent to the assigned SW and the AR at the same time • Thoroughly documents all actions taken in CalWIN 'Case Comments' • Forwards all documents for scanning, if needed • Advises FC EW Supervisor the request has been completed <p>NOTE: All CAC notifications must be processed immediately upon receipt when possible, but no later than 30 days from receipt</p>
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II. REFERENCE

- Division 22-000, State Hearing and Request for Review
- ACIN 1-97-10, Access to Public Assistance Case Records
- ACL 09-50, Access to Public Assistance Case Records
- ACL 07-29, Access to Records and Use of Manual Work Arounds
- MPP Section 19-005.4, Access to Records
- EAS 22-051, State Hearing and Request for Review

III. FORMS

- CAC 10, Notice to Review Case Record Pending Administrative Hearing
- CAC 20, Notice to Comply with Administrative Hearing Decision
- CAC 22, Notice of Withdrawal/Dismissal of Request for Administrative Hearing or Denial of Claim

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DPA 19, Authorized Representative
EAS 19-006, Information Which May Not Be Released to the Applicant/Recipient
IM 14, EHSD Confidentiality Policy