COLORADO DEPARTMENT OF EARLY CHILDHOOD~~HUMAN SERVICES~~

Administrative Appeals for the Colorado Department of Early Childhood~~Income Maintenance (Volume 3)~~

ADMINISTRATIVE APPEALS~~PROCEDURES~~ RULES AND REGULATIONS~~FOR THE COLORADO CHILD CARE ASSISTANCE PROGRAM~~

8~~9~~ CCR 1406-1~~2503-8~~

6.100 AUTHORITY

These rules are adopted pursuant to the rulemaking authority provided in sections 26.5-1-105(1)(a), 26.5-2-105(5), 26.5-4-108(1)(a), 26.5-4-111, and 26.5-5-314, C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 through 24-4-204 (APA), C.R.S., and the Anna Jo Garcia Haynes Early Childhood Act (Early Childhood Act), Title 26.5 of the C.R.S.

6.101 SCOPE AND PURPOSE

These rules govern the processes and procedures of administrative appeals for programs and services administered by the Colorado Department of Early Childhood including the County Dispute Resolution Process for the Colorado Child Care Assistance Program, Child Care Licensing determinations and decisions, and the oversight of Local Coordinating Organizations. For rules related to child care provider stringency appeals and materials and hardship waivers pursuant to sections 26.5-5-313 and 314, C.R.S., see rules located at 8 CCR 1402-1 in rule sections 2.114 - 2.118. For rules related to dispute resolutions for Colorado Shines ratings, see rules located at 8 CCR 1401-1 in rule section 1.207. For rules related to dispute resolutions for the Colorado Child Care Assistance Program, see rules located at 8 CCR 1403-1 in rule section 3.144. For rules related to dispute resolution and appeals of the Early Intervention Colorado Program, see rules located at 8 CCR 1405-1, rule sections 5.119 - 5.124.

6.102 APPLICABILITY

The provisions of these rules are applicable to all current or former recipients, applicants, licensees, and administrators of the programs and services administered by the Colorado Department of Early Childhood within the scope of these rules.

6.103 DEFINITIONS

A. "Administrative Law Judge" or "ALJ" means the same as described in section 24-30-1003, C.R.S.

B. "Appellant" means the person appealing a county department or Department decisions.

C. "Applicant" means the adult caretaker(s) or teen parent(s) who sign(s) the Colorado Child Care Assistance Program (CCCAP) application form and/or the redetermination form.

D. "County Department" means a county department of human or social services as defined by section 26.5-4-103(3), C.R.S.

E. "Colorado Child Care Assistance Program" (CCCAP) means the public assistance program for child care established in Part 1 of Article 4 of Title 26.5, C.R.S.

F. "County Dispute Resolution Process" means the dispute resolution process required by section 26.5-4-108(1)(a), C.R.S.

G. "Department" means the Colorado Department of Early Childhood (CDEC) created in section 26.5-1-104, C.R.S.

H. "Department Administrative Appeals Unit" references the unit within the Department that acts as the designee for the Executive Director in actions that are administratively appealed, including review of the Administrative Law Judge's Initial Decision, and entering Final Agency Decision affirming, modifying, reversing, or remanding the Initial Decision.

I. "Final Agency Decision" means the same as a final agency action or order in compliance with the State Administrative Procedure Act, section 24-4-106(2), C.R.S., that determines the rights and obligations of the parties and represents the conclusion of the agency's decision-making process.

J.~~15~~ ~~"~~Good Cause~~"~~ includes, emergency conditions or circumstances beyond the control of the party seeking the modification such as, but not limited to, impossibility for a party to meet a specified deadline; incapacity of the party or representative; lack of proper notice of the availability of the appeal process; additional time required to obtain documents which were timely requested but not delivered; or other situations which would prevent a reasonable person from meeting a deadline or complying with the process without modification. Good cause does not include: excessive workload of either the party or his/her representative; a party obtaining legal representation in an untimely manner; failure to receive the Initial Decision when a party has failed to advise the Department Administrative Appeals Unit of a change of address or a correct address; or any other circumstance which was foreseeable or preventable.~~but is not limited to: death or incapacity of an applicant/recipient, or a member of his immediate family, or the representative; any other health or medical condition of an emergency nature; or, other circumstances beyond the control of the applicant/recipient, and which would prevent a reasonable person from making a timely request for a conference or postponement of a scheduled conference.~~

K. "Governing body" means the individual, partnership, corporation, or association in which the ultimate authority and legal responsibility is vested for the administration and operation of a child care facility.

L. "Initial Decision" means the written decision rendered by the Administrative Law Judge pursuant to sections 24-4-105 and 26.5-1-107, C.R.S.

M. "Licensee" means the entity or individual to which a license is issued and that has the legal capacity to enter into an agreement or contract, assume obligations, incur and pay debts, sue and be sued in its own right, and be held responsible for its actions. A licensee may be a governing body.

N. "Local Coordinating Organization" (LCO) means the entity selected by the Department pursuant to section 26.5-1-103(4), C.R.S.

O. "Office of Administrative Courts" (OAC) means the courts created in the Colorado Department of Personnel and Administration by section 24-30-1001(1), C.R.S.

P. Preponderance of Evidence means credible evidence that a claim is more likely true than not.

Q. "Recipient" means the same as in section 26.5-4-103(10), C.R.S.

R. "Timely Request" means a request for modification of a hearing or procedural deadline made no later than one (1) business day prior to the hearing date or deadline.

6.200 GENERAL RULES FOR AN APPEAL, INITIAL DECISIONS, AND FINAL AGENCY DECISIONS

A. This section applies to state-level appeals of:

1. County department decisions and Department actions concerning CCCAP benefits, including the result of a county dispute resolution conference and a county department's failure to act concerning benefits;

2. Department actions concerning child care licenses, including Department determinations to deny, suspend, or revoke a permanent license or to make a permanent license probationary; and

3. Department determinations concerning LCO applications and agreements, including application denials and termination of coordinating agreements.

6.2013.850.5 CONDUCT AND PROCEDURE OF STATE HEARINGS

A. The conduct and procedure of all hearings described in these rules are governed by the Office of Administrative Court's Procedural Rules found at 1 CCR 104-1 (Sept. 30, 2014), herein incorporated by reference, unless specified otherwise in these rules. No later editions or amendments are incorporated. These rules are available at no cost from the Department of Personnel and Administration, 1525 Sherman St., Denver, Colorado 80203 or at https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=5911&fileName=1%20CCR%20104-1. These rules are also available for public inspection and copying at the Colorado Department of Early Childhood, 710 S. Ash St., Bldg. C, Denver, Colorado 80246.

B. When the Administrative Law Judge (ALJ) dismisses an appeal, the decision of the ALJ shall be an Initial Decision, which shall not be implemented pending review by the Department Administrative Appeals Unit and entry of a Final Agency Decision pursuant to section 26.5-1-107, C.R.S.

~~3.850.50 Conference telephonic hearings may be conducted unless otherwise requested by any of the parties, as an alternative to face-to-face hearings. All applicable provisions of the face-to-face hearings procedures will apply, such as the right to be represented by counsel, the right to examine and cross-examine witnesses, the right to examine the contents of the case file, and the right to have the hearing conducted at a reasonable time and date.~~

~~3.850.51 The administrative law judge shall conduct the hearings in accordance with the colorado administrative procedure act (section 24-4-105, c.r.s.).~~

~~3.850.52 The county department shall have the burden of proof, by a preponderance of the evidence, to establish the basis of the ruling being appealed. Every party to the proceeding shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be~~

subsequently prejudiced thereby, the administrative law judge may receive all or part of the evidence in written form or by oral stipulations.

3.850.6 PROCEDURE OF HEARING

3.850.61 PROCEDURE BEFORE ALJ

The following provisions govern the procedure at state hearings before the administrative law judge:

A. The hearing is private; however, any person or persons whom the appellant wishes to appear for him may be present, and, if requested by the appellant and in the record, such hearing may be public;

B. The purpose of the hearing is to determine the pertinent facts in order to arrive at a fair and equitable decision in accordance with the rules of the state department. In arriving at a decision, only the evidence and testimony introduced at the hearing is considered, except that the administrative law judge may permit the introduction of medical or other evidence after the hearing, provided the opposing party is also furnished a copy and is afforded the opportunity to controvert or otherwise respond to such evidence, in circumstances when it is shown, at the hearing, that such evidence could not, for good cause, be obtained in time for the hearing. Delays in rendering the initial decision will be charged to the party requesting the delay;

C. Although the hearing is conducted on an informal basis and an effort is made to place all the parties at ease, it is essential that the evidence be presented in an orderly manner so as to result in an adequate record;

D. A complete and exact record of the proceedings shall be made by electronic or other means. When required, the office of administrative courts shall cause the proceedings to be transcribed.

3.850.62 When the administrative law judge dismisses an appeal for reasons other than failure to appear, the decision of the administrative law judge shall be an initial decision, which shall not be implemented pending review by the office of appeals and entry of an agency decision.

3.850.63 The administrative law judge shall not enter a default against any party for failure to file a written answer in response to the notice of hearing, but shall base the initial decision upon the evidence introduced at the hearing. An appellant may be granted a postponement of the hearing, however, if the county department has failed to provide the statement required by section 3.850.42 and the appellant has therefore been unable to prepare for the hearing.

3.850.64

When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the administrative law judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and an order of dismissal shall be entered by the administrative law judge and served upon the parties by the office of administrative courts. The dismissal order shall not be implemented pending review by the office of appeals and entry of an agency decision.

The appellant, however, shall be afforded a ten-day period from the date the order of dismissal was mailed, during which the appellant may explain in a letter to the administrative law judge the reason for his/her failure to appear. If the administrative law judge then finds that there was acceptable good cause for the appellant not appearing, the administrative law judge shall vacate the order dismissing the appeal and reschedule another hearing date.

If the appellant does not submit a letter seeking to show good cause within the 10-day period, the order of dismissal shall be filed with the office of appeals of the state department. The office of appeals shall confirm the dismissal of the appeal by an agency decision, which shall be served upon the parties. The county department shall immediately carry out the necessary actions to provide assistance or services in the correct amount, to terminate assistance or services, to recover assistance incorrectly paid, and/or other appropriate actions in accordance with the rules.

If the appellant submits a letter seeking to show good cause and the administrative law judge finds that the stated facts do not constitute good cause, the administrative law judge shall enter an initial decision confirming the dismissal. The appellant may file exceptions to the initial decision pursuant to section 3.850.72, a.

3.850.65 INTERIM RELIEF (NOT APPLICABLE TO CHILD CARE ASSISTANCE PROGRAMS)

3.850.651

Upon written sworn application accompanied by appropriate financial statement, the appellant may, at any time prior to the hearing of an action concerning termination or reduction of assistance or services, apply for an agency order (the administrative law judge is designated as representing the agency in such matters) granting interim relief to prevent irreparable injury. The order, if made, shall continue in force until the final agency decision. The order shall contain a specific finding based upon evidence submitted to the administrative law judge that specified irreparable damage will result if the order is not granted. A copy of such decision shall be sent to the county department. In the event the final agency decision is against the appellant, recovery shall be considered for all funds expended under the order of interim relief subject to recovery rules.

3.850.652

The county department shall provide to the appellant the assistance or service specified in an agency order granting interim relief as soon as possible but not later than ten calendar days from the date of receipt of such order.

3.850.653

The appellant need not request interim relief if he/she is eligible for continued benefits pursuant to section 3.800.34 of this staff manual.

6.2023.850.7 DECISION AND NOTIFICATION

A.3.850.71 INITIAL DECISION

1. Following the conclusion of the hearing, the Administrative Law Judge (ALJ) shall promptly prepare and issue an Initial Decision within sixty (60) days, or as soon as possible. Once the ALJ issues the Initial Decision, the Office of Administrative Courts shall immediately deliver the Initial Decision toand file it with the Department

Administrative Appeals Unit Office of Appeals for determination of the Final Agency Decision of the state department of human services.

2. The Initial Decision is shall make an initial determination on whether the county department, or state Department, or its agents acted in accordance with, and/or properly applied, the applicable statutes and interpreted, the administrative rules of the state Department. The administrative law judge may determine whether statutes were properly interpreted and applied only when no implementing state rules or county department policy exist. The ALJ administrative law judge has no jurisdiction or authority to determine issues of constitutionality or legality of the Department's al administrative rules.

3. The Initial Decision must shall advise the applicant/recipient parties that failure to file exceptions to provisions of the Initial Decision will waive the right to seek judicial review of a Final Agency Decision which affirms those provisions.

4. The Department Administrative Appeals Unit Office of Appeals shall promptly serve the Initial Decision upon each party by first class mail or by electronic mail, if the parties agree to electronic service within ten (10) calendar days of receiving the Initial Decision. This is the Notice of Initial Decision. The Department Administrative Appeals Unit, and shall transmit a copy of the Initial Decision to the division within of the state Department that which administers the program(s) pertinent to the appeal.

5. The Initial Decision shall not be implemented pending review by the Department Administrative Appeals Unit Office of Appeals and entry of an Final Agency Decision.

B. 3.850.72 REVIEW BY THE DEPARTMENT ADMINISTRATIVE OFFICE OF APPEALS UNIT

The Department Administrative Appeals Unit Office of Appeals of the state Department, ais the designee of the Executive Director, and shall review the Initial Decision of the Administrative Law Judge (ALJ) and shall enter a Final Agency Decision affirming, modifying, reversing, or remanding the Initial Decision.

1. Procedure

a A. Any party seeking an Final Agency Decision which reverses, modifies, or remands the Initial Decision of the ALJ administrative law judge must shall file Exceptions to the Initial Decision with the state department, Department Administrative Appeals Unit Office of Appeals, within fifteen (15) days (plus three days for mailing) from the date the Initial Decision wais mailed to the parties. Exceptions must state specific grounds for reversal, modification, or remand of the Initial Decision. The Department Administrative Appeals Unit cannot consider any arguments other than the issues raised in the appeal before the ALJ. The Department Administrative Appeals Unit cannot consider new evidence, which with reasonable diligence could have been produced at the time of the hearing or review.

b. If the Exceptions do not challenge the findings of fact, but instead assert only that the ALJ administrative law judge improperly interpreted or applied state administrative rules or statutes, the party filing Exceptions is not required to provide a transcript or recording to the Department Administrative Appeals Unit Office of Appeals.

c. The Department Administrative Appeals Unit cannot consider any challenge to the facts unless a transcript and/or audio recording in lieu of a hearing transcript is provided.

d. The Department Administrative Appeals Unit Office of Appeals shall serve a copy of the Exceptions on each party by first class mail or by electronic mail, if the parties agree to electronic service. Each party has shall be limited to ten (10) calendar days (plus three days for mailing) from the date Exceptions wea are mailed to the parties in which to file a written response to such the Exceptions. The Department Administrative Appeals Unit Office of Appeals shall not permit oral argument.

e. While review of the Initial Decision is pending before the Department Administrative Appeals Unit, the record on review, including any transcript or recording of testimony filed with the Department Administrative Appeals Unit, shall be available for examination by any party at the Department Administrative Appeals Unit during regular business hours.

f. For appeals of decisions related to CCCAP, the division(s) within the Department responsible for administering CCCAP may file Exceptions to the Initial Decision, or respond to Exceptions filed by a party, even though the division has not previously appeared as a party to the appeal. The division's exceptions or responses must be filed in compliance with the requirements of this rule section 6.202(B). Exceptions filed by the division that did not appear as a party at the hearing, shall be treated as requesting review of the Initial Decision upon the Department's own motion.

gC. In the absence of Exceptions filed by any party or by a division within of the state dDepartment of human services, the Department Administrative Appeals Unit Office of Appeals shall review the Initial Decision, the Office of Administrative Court's hearing file, and if applicable, and may review the hearing file of the administrative law judge and/or the recorded testimony of witnesses, before entering a Final Agency Decision.

h. Review by the Department Administrative Appeals Unit Office of Appeals will shall determine whether the Initial Decision properly interpreteds and applieds the administrative rules of the state Department, or relevant statutes, and whether the findings of fact and conclusions of law support the decision. If a party or division of the state department objects to the agency decision entered upon review by the Office of Appeals, the party or division may seek reconsideration pursuant to section 3.850.73, below.

iD. The Department's Administrative Appeals Unit must issue a Final Agency Decision in every appeal. All Final Agency Decisions shall be made within sixty (60) days from the date that the Department's Administrative Appeals Unit receives the Initial Decision from the Office of Administrative Courts.

j. The Department Administrative Appeals Unit Office of Appeals shall servemail copies of the Final Agency Decision to all parties by first class mail or by electronic mail, if the parties agree to electronic service.

kE. For purposes of requesting judicial review, The effective date of the Final Agency Decision shall be the third (3rd) day after the date the Final Agency Decisiondecision is mailed to the parties, even if the third (3rd) day falls on Saturday, Sunday, or a legal holiday. The Department Administrative Appeals Unit mustparties shall be advised the parties of the effective date of this in the Final Agency Decision.

lF. The Departmentstate or county department shall initiate action to comply with the Final Agency Decision within three (3) businessworking days after the effective

date of the Final Agency Decision. The Department shall comply with the Final Agency Decisiondecision even if reconsideration is requested, unless the effective date of the Final Agency Decision is postponed by order of the Department Administrative Appeals UnitOffice of Appeals or a reviewing court.

m. The Final Agency Decision must notify the parties of their right to seek judicial review pursuant to section 24-4-106, C.R.S.

If the party asserts that the administrative law judge's findings of fact are not supported by the weight of the evidence, the party shall simultaneously with or prior to the filing of exceptions request the Office of Administrative Courts to cause a transcript of all or a portion of the hearing to be prepared and filed with the Office of Appeals. The exceptions shall state that a transcript has been requested, if applicable. Within 5 days of the request for transcript, the party requesting it shall advance the cost therefore to the transcriber designated by the Office of Administrative Courts unless prior payment is waived by the transcriber.

The Office of Appeals shall not consider evidence which was not part of the record before the administrative law judge. However, the case may be remanded to the administrative law judge for rehearing if a party establishes in its exceptions that material evidence has been discovered which the party could not with reasonable diligence have produced at the hearing.

B. The division(s) of the state department responsible for administering the program(s) relevant to the appeal may file exceptions to the Initial Decision, or respond to exceptions filed by a party, even though the division has not previously appeared as a party to the appeal. The division's exceptions or responses must be filed in compliance with the requirements of 3.850.72, a, above. Exceptions filed by a division that did not appear as a party at the hearing shall be treated as requesting review of the Initial Decision upon the state department's own motion.

2. Transcripts

a. The party filing Exceptions challenging the ALJ's findings of fact is responsible for obtaining a transcript unless they file for permission to file an audio recording (see rule subsection 3, below).

b. To obtain a transcript, a party must:

1) request the audio recording of the hearing from the Office of Administrative Courts;

2) pay for a transcriptionist of their choosing to transcribe the audio recording into a transcript; and

3) file the transcript by the due date for filing Exceptions.

c. Transcripts must be filed with a party's Exceptions. A party may request additional time for filing Exceptions in order to obtain the transcript. Any transcript received by the Department Administrative Appeals Unit after the due date for filing Exceptions stated in the Notice of Initial Decision or the deadline imposed by the Department Administrative Appeals Unit if a request for extension of time was granted, will not be considered.A party who is unable because of indigency

to pay the cost of a transcript may file a written request, which need not be sworn, with the Office of Appeals for permission to submit a copy of the hearing recording instead of the transcript. If submission of a recording is permitted, the party filing exceptions must promptly request a copy of the recording from the Office of Administrative Courts and deliver it to the Office of Appeals. Payment in advance shall be required for the preparation of a copy of the recording.

While review of the Initial Decision is pending before the Office of Appeals, the record on review, including any transcript or recording of testimony filed with the office of appeals, shall be available for examination by any party at the Office of Appeals during regular business hours.

3. Audio Recording

a. If a party cannot afford a transcript, the party may request permission to file an audio recording. The request must be filed in writing with the Department Administrative Appeals Unit prior to the due date for filing Exceptions, and include:

1) An explanation as to why they cannot afford a transcript; and

2) Why it is essential for the Department Administrative Appeals Unit to listen to testimony of a specific witness or witnesses.

b. A County Department's request to submit an audio recording instead of a transcript must state that funds are not available in the county department's operating budget to pay for preparation of a transcript and the request must be certified by the county department director.

c. Any submission of an audio recording without first obtaining permission from the Department Administrative Appeals Unit will not be considered.

d. The requesting party is solely responsible for requesting the copy of the audio recording from the Office of Administrative Courts and for filing the audio recording with the Department Administrative Appeals Unit by the due date provided in the Notice of Initial Decision unless an extension of time has been granted by the Department Administrative Appeals Unit.

6.203 3.850.73 RECONSIDERATION OF FINAL AGENCY DECISION

A. A motion for reconsideration of a Final Agency Decision may be granted by the Department Administrative Appeals Unit Office of Appeals only for the following reasons:

1 A. Upon A showing of good cause for failure to file Exceptions to the Initial Decision within the fifteen (15) (plus three days for mailing) day period allowed by rule section 6.202(B)(1)(a) 3.850.72, a; or

2 B. Upon a showing that the Final Agency Decision is based upon a clear or plain error of fact or law. An error of law means failure by the Department Administrative Appeals Unit Office of Appeals to follow a rule, statute, or court decision which controls the outcome of the appeal.

3. No motion for reconsideration shall be granted unless it is filed in writing with the Department Administrative Appeals Unit Office of Appeals within fifteen (15) days (plus

three days for mailing) of the date that the Final Agency Decision is mailed to the parties. The motion must state specific grounds for reconsideration of the Final Agency Decision.

4. The Department Administrative Appeals Unit Office of Appeals shall serve mail a copy of the motion for reconsideration to each party of record and to the appropriate division of the state Department via first class mail or by electronic mail, if the parties agree to electronic service.

B. 3.850.74

For the Colorado Child Care Assistance Program (CCCAP) appeals, when an appeal results in a Final Agency Decision that an action of the county department or state Department was not in accordance with administrative rules of the Department, or when the county department or state Department so determines after a request for a hearing is made, the CCCAP adjustment or corrective payment is made retroactively to the date of the incorrect action. 3.850.75

The applicant/recipient is to be fully informed by the final agency decision of his further right to apply for judicial review of the agency decision by the filing of an action for review in the appropriate state district court. Any such action must be filed in accordance with the rules of civil procedure for courts of record in Colorado within thirty five (35) days after the final agency decision becomes effective.

3.850.76

The state department will establish and maintain a method for informing, in summary and depersonalized form, all county departments and other interested persons concerning the issues raised and decisions made on appeals.

3.850.77

The executive director or designee shall have the power to enter declaratory orders. The executive director or designee may, in his/her discretion, entertain and promptly dispose of petitions for declaratory orders to terminate controversies and/or remove uncertainties as to the applicability to the petitioners of any statutory provisions or of any rule. The order of the executive director or designee disposing of the petition shall constitute final agency action subject to judicial review.

6.300 3.840 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP COUNTY DEPARTMENT DISPUTE RESOLUTION PROCESS AND APPEALS

In order To resolve disputes between county departments of social services or the service delivery agency and CCCAP applicants or /recipients, county departments shall adopt procedures for the resolution of disputes consistent with this section. The procedures shall be designed to establish a simple non-adversarial format for the informal resolution of CCCAP disputes.

6.301 3.840.1 OPPORTUNITY FOR CONFERENCE

A. 11 Before the county department or local service delivery agency, prior to taking a negative action such as to denies, terminates, recovers, or modifies a CCCAP benefit, it initiate vendor payments or modify financial assistance or public assistance, to an applicant or recipient, shall, at a minimum, provide an the individual opportunity for a county dispute resolution conference in writing and in accordance with the "Timely Written Noticing" requirement outlined in 8 CCR 1403-1 rule section 3.103(CCCCC).

B. 3.840.12

The county department or local service delivery agency must provide the applicant/recipient with notice of the applicant/recipient's right to the county dispute resolution conference. The notice must provide that:

1. The applicant/recipient must request a county dispute resolution conference prior to the effective date of the suspension, termination, or modification of the CCCAP benefit as provided on the written notice;

2.14 Failure of the applicant/recipient to request a county dispute resolution conference prior to the effective date provided on the written noticelocal conference within the prior notice period, or failure to appear at the time of the scheduled conference without making a timely request for postponement, shall constitutes abandonment of the right to a conference, unless the applicant/recipient can show good cause for his failure to appear.

3. The right of an individual to a local conference is primarily to assure that the proposed action is valid, to protect the person against an erroneous action concerning benefits, and to assure reasonable promptness of county action. The individual may choose, however, to The applicant/recipient may bypass the county dispute resolution processprocess and appeal directly to the state Office of Administrative Courts, pursuant to the section 24-4-105(2), C.R.S., and as described below in rule section 6.304.on appeal and state hearing.

C. If the applicant/recipient requests a county dispute resolution conference prior to the effective date of the suspension, termination, or modification of the CCCAP benefit as provided on the written notice, the county department or local service delivery agency must provide notice to the applicant/recipient of the scheduled date, time and location or log-in information for the conference. Notice should be in writing; however, verbal notice may also be given in addition to the written notice to facilitate the dispute resolution process.

13 The applicant/recipient is entitled to:

B. privileged communications with the exception of names of confidential informants, privileged communications between the county department and its attorney, and the nature and status of pending criminal prosecutions, examine the contents of the case file and all documents and records used by the county department or agency in making its decision at a reasonable time before the conference ands well as during the conference;

C. present new information or documentation to support reversal or modification of the proposed adverse action;

6.3023.840.2 CONDUCT OF COUNTY DISPUTE RESOLUTION CONFERENCE

A. Upon request, the county department or local service delivery agency must provide or allow access to the contents of the case file and all documents and records used by the county department or local service delivery agency in making its decision with the exception of names of confidential informants; privileged communications between the county department and its attorney; and the nature and status of pending criminal prosecutions. The county department must provide these documents or records within thirty (30) days of the request.

B.21 The county dispute resolution conference mustlocal dispute resolution conference shall be held in the county department and would include the local service deliveryor agency where the proposed decision is pending, before a person who was not directly involved in the initial determination of the action in question. The county may conduct the county dispute resolution conference virtually if the technology is available to both the county and the applicant/recipient. The individual who

initiated the action in dispute shall not conduct the county dispute local level dispute resolution conference.

C.22 The individual person designated to conduct the conference must have shall be in a position which, based on knowledge, experience, and training, would enable him to determine if the proposed action is valid.

D.23 Two (2) or more county departments/service delivery agencies may establish a joint dispute resolution process. If two (2) or more counties/service delivery agencies establish a joint process, the location of the conference need not be held in the county department or agency taking the action, but the conference location must be easily accessible shall be convenient to the applicant/recipient.

E.24 The county dispute resolution local level level conference may be conducted either in person, or by telephone, or virtually, if the applicant/recipient agrees to. a telephonic or virtual conference. must be agreed to by the applicant/recipient.

F.25 The individual county/agency caseworker or other person who initiated the action in dispute, or another person familiar with the case, shall attend the county dispute resolution local level conference and present the factual basis for the disputed action.

GA. The applicant/recipient may represent themselves or may be represented by an authorized representative, such as legal counsel, a relative, friend, or other spokesman. Representation by a nonlawyer in this circumstance does not constitute the practice of law., or the may represent himself;

H.26 The county dispute resolution local level dispute resolution conference must shall be conducted on an informal basis. The county department must make every effort is to be made to ensure assure that the applicant/recipient understands the county department/agency's specific reasons for the disputed proposed action., and the applicable state department's rules, or county policy. If in the event the applicant/recipient requests an interpreter does not speak English, the county department shall provide an interpreter for the county dispute resolution conference shall be provided by the county department/agency.

I.27 The county department/agency shall have available at the conference all documents and records in the case file described in rule section 6.302(A) available at the conference pertinent to the specific action in dispute.

J. The applicant/recipient must be allowed to present information or documentation to support their position.

K.3.840.28 To the extent possible, the county local dispute resolution conference must shall be scheduled and conducted prior to the effective date of within the prior notice period. If the county department cannot conduct the conference within this period, for whatever reason, the adverse action the suspension, termination, or modification of the CCCAP benefit as provided on the written notice. If the county department cannot conduct the county dispute resolution conference prior to suspension, termination, or modification of the CCCAP benefit, must shall be delayed and benefits must be continued until such conference can be held, unless the individual waives continued benefits are waived by the individual. The county department/local service agency shall provide reasonable notice to the individual of the scheduled date, time and location for the conference, or the date, time and call-in telephone number of the scheduled telephone conference. Notice should be in writing, however, verbal notice may be given to facilitate the dispute resolution process.

L.3.840.29 The county department may consolidate disputes with any other public assistance program if the facts are similar and consolidation will facilitate resolution of all disputes.

M. Failure to appear at the time of the scheduled county dispute resolution conference without making a timely request for postponement constitutes abandonment of the right to a county dispute resolution conference unless the applicant/recipient can show good cause for their failure to appear.

6.3033.840.3 NOTICE OF COUNTY DEPARTMENT DISPUTE RESOLUTION CONFERENCE DECISION

A. Ifn the event the dispute is not resolved through the county dispute resolution conference, the person conducting the county dispute resolution conferencepresiding shall prepare a written statement indicating that the dispute was not resolved. The statementdecision must be issued within ten (10) calendar days of the county dispute resolution conference and shallinclude an statement explanationining of the applicant/ or recipient's right to request an appeal state level fair hearing before an Administrative Law Judge;, the time limit for requesting an appeal state level fair hearing;, and if appropriate, a statement that applicable benefits will continue pending a final state decision if appealed to the state within ten (10) calendar days from the date of the statementconference decision.

1. To appeal a written statement, the applicant/recipient must submit a written request that is mailed within ten (10) calendar days of the date the county dispute resolution conference decision was mailed to the applicant/recipient in order to receive continued benefits pending state appeal. Continued benefits will be recovered by the county department as a client error pursuant to rule section 3.145 located in 8 CCR 1403-1, if the Final Agency Decision confirms that the applicant/recipient was not eligible.

B. If the parties reach an agreement at the county dispute resolution conferenceAt the conclusion of the conference, the person who conductedpresiding the county dispute resolution conference shall havereduce the agreement entered into by the parties reduced to writing. TSuch agreement shall be signed by the parties and/or their representatives and shall sign the agreement. The agreement will be binding upon the parties. The county department must immediately provide the applicant/recipient with a copy of the written decision. shall immediately be provided to the applicant/recipient and/or his representative. If the conference is held by telephone or through virtual means, the agreement need only be signed by the person who conducted the county dispute resolution conferencepresiding. The county department must A copy of the agreement will be promptly mailed or deliveredd the agreement to the other party(s) within one (1) business day after the county dispute resolution conference.

3.840.316.3043.850 COLORADO CHILD CARE ASSISTANCE PROGRAM (CCCAP) APPEAL AND STATE LEVEL FAIR HEARING

3.850.1 APPEAL AND STATE LEVEL FAIR HEARING

A.3.850.12 The applicant/recipient is entitled to an appeal at the Office of Administrative Courts for the following circumstancesRequests for state hearings may result from such reasons as:

1A. The applicant/recipient's CCCAP opportunity to make application or reapplication has been denied.;

2B. The applicant/recipient's CCCAPAn application for assistance or services has not been acted upon within fifteen (15) calendar daysthe maximum time period for the category of assistance.;

3~~C~~. The CCCAP ~~application for assistance has been denied, the~~ benefit has been modified or discontinued, ~~vendor payments have been initiated,~~ the requested reconsideration o~~f~~ a CCCAP benefit amount deemed incorrect has been refused or delayed through the withholding of authorization, ~~payment has been delayed through the holding of payments,~~ the county department is demanding repayment for any part of an award from~~to~~ a recipient or former recipient which the recipient does not believe is justified, ~~or~~ the applicant/ ~~or~~ recipient disagrees with the type or level of benefits or services provided, or the parent fee calculation.

B. The county department has the burden of proof, by a preponderance of the evidence, to establish the basis of the decision being appealed. Every party to the proceeding has the right to present their case or defense through testimony and evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.

C. The hearing is closed to the public; however, any person or persons whom the applicant/recipient wishes to appear on their behalf in accordance with rule section 6.302(G) may be present, and, if requested by the applicant/recipient and in the record, such hearing may be public.

D. If an appellant fails to appear at a duly scheduled hearing, having been given proper notice in accordance with 1 CCR 104-1, Rule 4, without having given timely advance notice to the Administrative Law Judge of good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and an Order to Show Cause shall be entered by the Administrative Law Judge and served upon the parties by the Office of Administrative Courts. The Order to Show Cause shall not be implemented pending review by the Department Administrative Appeals Unit and entry of a Final Agency Decision.

1. The applicant/recipient must be afforded a ten (10) day period from the date the Order to Show Cause was mailed or delivered, during which the applicant/recipient may explain in writing to the Administrative Law Judge the reason for failure to appear.

   a. If the Administrative Law Judge finds that there was good cause for the applicant/recipient not appearing, the Administrative Law Judge shall reschedule another hearing date.

   b. If the applicant/recipient submits in writing seeking to show good cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, or if the applicant/recipient does not submit a letter seeking to show good cause within the ten (10) day period, the Administrative Law Judge shall enter an Initial Decision dismissing the appeal.

2. The appellant may file exceptions to the Initial Decision pursuant to rule section 6.202(B)(1)(a).

3. After considering the record and any exceptions filed, the Department Administrative Appeals Unit shall issue a Final Agency Decision that confirms or reverses the dismissal, which shall be served upon the parties.

   a. If the dismissal is confirmed, the county department shall immediately carry out the necessary actions to provide assistance or services in the correct amount, to terminate assistance or services, to recover assistance incorrectly paid, and/or other appropriate actions in accordance with the rules. An applicant/recipient has

the right to appeal a Final Agency Decision confirming the dismissal through the judicial review process as outlined in section 24-4-106, C.R.S.

b. If the dismissal is reversed, the case shall be remanded back to the Office of Administrative Courts for further proceedings, if necessary.

E. The Administrative Law Judge shall not enter a default against an applicant/recipient for failure to file a written answer in response to the notice of violation and voluntary wavier of hearing but shall base the Initial Decision upon the evidence introduced at the hearing, assuming the applicant/recipient appears for the hearing.~~3.850.11~~

~~These rules apply to all state-level appeals of county department actions concerning child care assistance and benefits, social services, medical assistance eligibility, child welfare services, adult protective services, and child care, unless such actions have appeals procedures explicitly specified elsewhere in department rules/regulations. An affected individual who is dissatisfied with a county department action or the result of a county dispute resolution conference or failure to act concerning benefits may appeal to the Ooffice of Aadministrative Ccourts for a fair hearing before an administrative law judge. This will be a full evidentiary hearing of all relevant and pertinent facts to review the decision of the county department. The time limitations for submitting a request for an appeal are:~~

~~A. When the individual elects to avail thehimself of a county dispute resolution conference, but is dissatisfied with that decision, the request must be submitted in writing and mailed or delivered within ten (10) calendar days of the date the county dispute resolution conference decision was mailed or delivered to the applicant or recipient in order to receive continued benefits pending state appeal; otherwise, the ninety (90) day period specified in b, below, applies;~~

~~B. When the individual elects not to avail himself of a county dispute resolution conference but wishes to appeal directly to the state, a written request for an appeal must be mailed or delivered not later than 90 calendar days from the date prior notice of the proposed action was mailed to the person;~~

~~C. A request for an appeal must be mailed or delivered to the office of administrative courts.~~

~~3.850.13 the basic objectives and purposes of the appeal and state hearing process are:~~

~~A. To safeguard the interests of the individual applicant or recipient;~~

~~B. To provide a practical means by which the applicant or recipient is afforded a protection against incorrect action on the part of the representatives of the state or county departments;~~

~~C. To bring to the attention of the state department and county department information which may indicate need for clarification or revision of state and county policies and procedures;~~

~~D. To assure equitable treatment through the administrative process without resort to legal action in the courts.~~

~~3.850.14 Any clear expression in writing by the individual, or someone legally authorized to act on their behalffor him, that they wants an opportunity to have a specific action of a county department reviewed by the Dstate department is considered an appeal and a request for a hearing. The county department shall, when asked, aid the person in preparation of a request for a hearing. If the request for a hearing is made orally, the county department shall immediately prepare a written request for the individual's signature or have the recipient prepare such request, specifying the action on which the request is based and the reason for appealing that action.~~

3.850.15 The appellant, applicant/recipient is entitled to:

1A. Be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or they may represent themselves himself;

2B. With the exception of the names of confidential informants, privileged communications between the county departments and its attorney, and the nature and status of pending criminal prosecutions, examine the complete case file and any other documents, records, or pertinent material to be used by the county at the hearing, at a reasonable time before the date of hearing and during the hearing.

3.850.16 The applicant/recipient, staff of the county department, and staff of the state department are entitled to:

A. Present witnesses;

B. Establish all pertinent facts and circumstances;

C. Advance any arguments without undue interference;

D. Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

3.850.2 AUTHORITY AND DUTIES OF STATE ADMINISTRATIVE LAW JUDGE

3.850.21 [REV. EFF. 9/15/12]

One or more persons from the state department of general support services/personnel, office of administrative courts, are appointed to serve as administrative law judges for the state department of human services.

.22 The state administrative law judge shall, prior to the hearing, review the reasons for the decision under appeal and be prepared to interpret applicable departmental rules and/or official written county policies pertaining to the issue under appeal in preparation for conduct of the hearing.

.23 For purposes of these rules, the terms "official written county policies governing the program area" or "county policies" are policies or amendments which have been formally adopted by the county board of commissioners in that county, subject to the requirements of state rules, state law, federal regulations, and federal law. Such policies include county plan submittals required by the state department.

The county shall forward copies of its policies and any subsequent amendments, including effective dates, to the state department and to the office of appeals. Individuals appealing a county action shall be provided reasonable opportunity to examine the county's policies.

.24 When the applicant/recipient and/or the department are not represented by legal counsel, the administrative law judge shall assist in bringing forth all relevant evidence and issues relating to the appeal. This will include granting the right of either party to submit pertinent questions to the other pursuant to appropriate rules of civil procedure.

6.305 3.850.4 COUNTY DEPARTMENT RESPONSIBILITIES FOR A CCCAP APPEAL

A. 3.850.41

When the applicant/recipient has had a county~~local~~ dispute resolution conference and wishes to appeal the county department's decision to the Office of Administrative Courts for a hearing, the county department must follow~~ing~~ the below procedures ~~are to be followed~~:

1~~A~~. ~~As part of the local conference the applicant or recipient is informed that if he wishes to appeal to the office of administrative courts for a hearing, the county department will~~ Assist ~~him~~ in providing materials~~organizing the facts~~ supporting the applicant/recipient's~~his~~ claim~~,~~ if the applicant/recipient so desires~~;, and that he may have~~

2. Provide the applicant/recipient with the opportunity to examine materials as described in rule~~the~~ section 6.202(A)~~concerning opportunity for state level fair hearing~~;

3~~B~~. ~~The county will~~ Forward a copy of the ~~decision and a copy of the~~ written notification given to the applicant/recipient of the proposed adverse action and a copy of the county dispute resolution conference decision to the Office of Administrative Courts.

B.~~3.850.42~~

If~~When~~ the applicant/recipient bypasses the county dispute resolution conference and ~~makes his/her~~ appeals directly to the Office of Administrative Courts, the applicant/recipient or the county department must deliver a written request for a CCCAP appeal no later than ninety (90) calendar days from the date the county department mailed prior notice of the proposed action to the applicant/recipient via postal service, e-mail or other electronic systems, fax, or hand-delivery. After the Office of Administrative Courts receives the appeal request, it will forward a copy of the notice to the applicant/recipient~~appellant~~ setting a date for the hearing ~~is forwarded~~ to the county department. Upon receipt by the county department, the county department shall prepare~~s~~ and mail~~s~~ a letter to the applicant/recipient~~appellant~~ with a copy to the Office of Administrative Courts, no later than five (5) business days prior to the hearing, which provides~~giving~~ the following information:

1~~A~~. The reasons for the county department decision ~~of the county department~~ and a specific explanation of each factor involved, such as the amount of excess property or income, assignment or transfer of property, residence factors, and service needs;

2~~B~~. The specific state administrative rules and/or the official written county department policy(s) on which the decision is based, and numeric reference to each ~~such~~ rule, including the appropriate Code of Colorado Regulations (CCR) citations~~es~~;

3~~C~~. Notice that the county department will assist the applicant/recipient~~him/her~~ in providing materials~~organizing the facts~~ supporting the applicant/recipient's~~his/her~~ claim, if ~~s/he so~~ desire~~d~~s~~;~~ and~~, and~~

4. Notice that the applicant/recipient~~s/he may have~~ has the opportunity to examine regulations and ~~other~~ materials described in rule section 6.302(A),to be used at the hearing ~~concerning the basis of the county decision~~.

C.~~3.850.43~~

Any clear expression ~~orally or~~ in writing by the applicant/recipient, or someone described in rule section 6.302(G) that the applicant/recipient legally authorized to act on their behalf, that they want an opportunity to have a specific action, as defined by rule section 6.304(A), ~~taken by a county department regarding their CCCAP application, reapplication, or benefit~~ reviewed by the Department is considered an appeal and a request for a hearing. If the request for an appeal and hearing is made orally, the county department shall immediately prepare a written request for the

individual's signature or have the recipient prepare such request, specifying the action taken by the county department on which the request is based and the reason for appealing that action.

D. If the appellant indicates that s/he desires To withdraw anhis/her appeal, the applicant/recipient must submit a statement to that effect shall be obtained from him/her in writing and forwarded to the Office of Administrative Courts. The county department shall also advise the Office of Administrative Courts by telephone, as soon as it is ascertained that the appeal has been withdrawn and that the appellant will not attend the hearing.

E.3.850.44

If the applicant/recipientan individual who files an appeal is to be represented by legal counsel, a relative, friend, or other spokespersonrepresentative, at the pending hearing, the county department mustwill not discuss with the individual the merits of the appeal or the question of whether or not to proceed with the appealit outside unless in the presence of, or without the permission of, such legal counsel, relative, friend, or such other spokespersondesignated representative.

F.3.850.45

If the county department learns that the applicant/ or recipient will be represented by legal counsel, the county department shall make every effort to einsure that it too is represented by an attorney at the hearing. The county department may be represented by an attorney in any other appeal that it considers such representation desirable.

G.3.850.46

If the applicant/recipientappellant has a language difficulty, the county department shall arrange to have present at the hearing a qualified interpreter who will be sworn to translate correctly.

H.3.850.47

The fact that an appellant and the county department have been notified that a hearing will be held does not prevent the county department mayfrom reviewing the case and considering any new factors which might change the status of the case at any time prior to the hearing, includingtaking such action as may be indicated to reversinge its decision or otherwise settlinge the issue. The county department must immediately report any change which eliminatesresults in a voiding of the cause of appeal shall be immediately reported the need for a hearing to the Office of Administrative Courts by telephone or in writing.

I.3.850.48

Upon receipt of notice of a state hearing on an appeal, The county department shall arrange for a suitable hearing room appropriate to accommodate the number of persons, including witnesses, who are expected to be in attendance, taking into consideration such factors as privacy; whether the hearing is being held virtually absence of distracting noise; need for tables, chairs, electrical outlets, adequate lighting and ventilation, and conference telephone facilities.

6.3063.850.3 STATE RESPONSIBILITIES FOR A CCCAP APPEAL

A.3.850.31 The Department is responsible for notifying the Office of Administrative Courts (OAC) of all requests for appeals that the Department receives.

B. Upon receipt by the Office of Administrative Courts of an appeal request, the Office of Administrative Courts will~~it is~~ assign~~ed~~ the appeal a case number and cause the appeal to be set for hearing through a setting conference.

C. At the setting conference, the Office of Administrative Courts will set a hearing date ~~is set~~ at least thirty (30)~~ten (10)~~ days in advance.~~, and a letter~~ The Office of Administrative Courts will send a hearing notice by first class mail or electronic~~certified~~ mail, depending on the preferences of the applicant/recipient, to the applicant/recipient ~~is sent to the appellant~~ and the county department notifying them of the date, time, and place of the hearing.

D. The Office Administrative Courts must inform the applicant/recipient appealing the county decision (appellant) that if the date, time, and/or place of the hearing is ~~told that if these arrangements are~~ not satisfactory, they must~~to~~ notify the Office of Administrative Courts and, if good cause ~~therefore~~ exists, the Office of Administrative Courts will consider~~ation will be given to~~ changing the date, time, and/or place of the hearing~~them~~.

E. The Office of Administrative Courts will provide an information sheet to the appellant with the hearing notice~~shall be enclosed~~ to explain the hearing procedures to the appellant. The information sheet must inform the appellant that:

1. They ~~appellant is informed of his~~have the right to seek legal representation.~~,~~

2. Before and during the hearing, the appellant or the appellant's ~~that he or his~~ representative has the right to examine all materials to be used at the hearing~~, before and during the hearing~~. Information which the appellant or the appellant's~~his~~ representative does not have an opportunity to see before or after the hearing shall not be made a part of the hearing record or used in a decision on an appeal. No material made available for review by the Administrative Law Judge may be withheld from review by the appellant or the appellant's~~his~~ representative.

3. ~~The appellant also is informed that~~ Failure to appear at the hearing as scheduled, without having secured a proper extension in advance, or without having shown good cause for failure to appear, shall constitute abandonment of the appeal and cause the appeal to be~~a~~ dismisse~~d~~al thereof. See rule section 6.304(D), above.

F. Initial Decisions:

1. The Office of Administrative Courts Administrative Law Judge must issue a written Initial Decision of law in every appeal.

2. The Office of Administrative Courts must include copies of all exhibits, pleadings, applications, evidence, exhibits, and other papers used to inform the Initial Decision, with the Initial Decision for the Final Agency Decision.

3.~~.32~~ ~~In assistance payments and medical assistance eligibility appeals,~~ The Administrative Law Judge has twenty (20) days from the ~~hearing~~ date the hearing record closed to issue~~to arrive at~~ an Initial Decision.

4. The Initial Decision shall not be implemented pending review by the Department Administrative Appeals Unit~~Office of Appeals~~ and entry of a Final Agency Decision.

~~**G. The Department's Administrative Appeals Unit must issue a Final Agency Decision in every appeal. All Final Agency Decisions on CCCAPthese appeals shall be made within ninety (90) days from the date of the request for hearing was received.**~~

~~.33 In all other appeals, the administrative law judge shall arrive at an initial decision (which is not to be implemented) within a reasonable timeframe. All final agency decisions on those matters shall also be made within a reasonable period of time.~~

~~.34 Once the initial decision has been made, it shall immediately be delivered to the state department of human services, office of appeals, for determination of the final agency decision.~~

6.307~~3.850.8~~ GROUP HEARINGS AND EXCEPTIONS

A.~~.81~~ When more than one~~a number of~~ (1) individual requests for hearing are received and if the sole issue involved pertains to~~is one of~~ state or federal law or changes in state or federal law, a single group hearing may be conducted. ~~In all group hearings, the policies governing hearings must be followed.~~ Each applicant/recipient~~individual~~ shall be permitted to present their~~his~~ own case or be represented by legal counsel of their choice, or a relative, friend, or other spokesperson. Each applicant/recipient ~~his authorized representative and~~ is entitled to receive a copy of the written decision.

B.~~.82~~ A hearing shall not be granted when either state or federal law requires an automatic benefit adjustment for classes of applicants/recipients unless the sole reason for an individual appeal is incorrect benefit computation. Furthermore, a hearing shall not be granted when either state or federal law requires or results in a reduction or deletion of a benefit.

C.~~.83~~ Unless the applicant/recipient has properly designated ~~as~~ an individual to represent them~~ative of an individual~~, a provider of assistance, or any other provider of goods and services to applicants/~~or~~ recipients, shall not be granted a hearing concerning an alleged adverse action to an ~~applican~~applicant/~~t or~~ recipient~~s~~.

6.400 CHILD CARE LICENSING PROGRAM APPEALS

6.401~~3.850.9~~ NEGATIVE LICENSING ACTION APPEALS ~~PROVIDER APPEALS~~

A. In the case of a petition by the Department or an appeal by a license~~e~~ or an applicant~~d~~ for a license, for an issue related to license status~~or certified provider or vendor of services of an adverse action by a county department or the state department related to provider status, rates, or purchased services~~, the decision of the Administrative Law Judge is an Initial Decision subject to~~a final agency decision and is not subject to state~~ Department review or modification. The Department will review the Initial Decision and issue a Final Agency Decision. The Final Agency Decision ~~The decision of the Administrative Law Judge~~ is subject to judicial review, pursuant to sections 24-4-106 and 26.5-1-107~~26-1-106~~, C.R.S.

B. The licensing appeal process may be initiated by the licensee/applicant, their legal representative, or by the Department. The licensee/applicant need not hire an attorney to appeal the licensing decision unless required by section 13-1-127, C.R.S.

6.402 APPLICATION DENIAL OR DENIAL OF A RENEWAL

A. The Department can deny an application for a child care license or deny an application for renewal of a child care license for the reasons stated in section 26.5-5-317(2), C.R.S.

B. When the Department denies a child care licensing application or decides not to renew an existing license, it must notify the applicant or licensee in writing of the decision. The decision letter must be mailed by certified mail to the applicant or licensee at the address listed on the application or renewal form.

C. An applicant who is denied a license or a licensee whose application for renewal is denied has the right to appeal the agency decision. To appeal the decision, the applicant or licensee must request a hearing in writing by sending a request to the Department within thirty (30) calendar days of receiving the decision letter.

D. The burden of proof is on the applicant or licensee to show why they are entitled to a license or renewed license.

E. After receiving a request for hearing, the Department shall initiate a case in the Office of Administrative Courts (OAC) and cause a Notice of Duty to Answer and Notice of Charges (Notice of Charges) to be filed with the Office of Administrative Courts. The Notice of Charges must assert the grounds for denying the applicant's license application or failing to renew a licensee's license. The Department must serve the Notice of Charges on the applicant/licensee (appellant) consistent with the Office of Administrative Court's procedures, as incorporated by reference in rule section 6.201(A).

F. The appellant must respond to the Notice of Charges within thirty (30) days of service or mailing of the Notice of Charges. If the appellant fails to respond, the Office of Administrative Courts Administrative Law Judge may enter a Default Judgment affirming the Department's decision regarding the application or renewal.

G. All hearings regarding the denial of a license or decision not to renew an existing license must be conducted in accordance with sections 24-4-104 and 24-4-105, C.R.S., and rule section 6.201(A).

H. Each party in the action may file exceptions to the Initial Decision in accordance with section 24-4-105(14)(a)(I), C.R.S., and rule section 6.202(B)(1)(a).

I. The Department's Administrative Appeals Unit must issue a Final Agency Decision in accordance with rule section 6.202(B).

J. The Final Agency Decision may be further appealed by filing a judicial review action pursuant to section 24-4-106, C.R.S.

6.403 APPEALS FROM SUMMARY SUSPENSION, PROBATIONARY LICENSE, OR LICENSE REVOCATION

A. The Department can summarily suspend, modify to probationary, or revoke a child care license for the reasons stated in section 26.5-5-317(2), C.R.S.

B. The Department must follow the requirements of section 24-4-104(4), C.R.S., in issuing orders of summary suspension for child care licenses. The Department must personally serve, in accordance with Colorado Rules of Civil Procedure Rule 4, the Order of Summary Suspension on the licensee.

1. Once the Order of Summary Suspension has been served, the Department will initiate a case at the Office of Administrative Courts for approving the Order of Summary Suspension and/or proceeding with an Order of Revocation, as described in rule section 6.403(E), below.

C. When the Department makes a decision to revoke or modify a child care license, it must give notice, in writing, of the objective facts or conduct that warrants such action (Data Views and Arguments letter). The Department must send the notice by certified mail or electronic mail to the licensee to the mailing address or email address provided to obtain licensure.

1. The licensee shall have the opportunity to respond to the Data Views and Arguments letter. The licensee's response must be provided in writing, and is due on or before the date listed in the Data Views and Arguments letter, but no earlier than thirty (30) business days from the date provided on the Data Views and Arguments letter.

D. After the deadline provided on the Data Views and Arguments letter expires for the licensee to respond, the Department shall consider any responses provided, and make a decision regarding whether to proceed with modification or revocation of the child care license within thirty (30) days of receiving the licensee's response, or expiration of the licensee's deadline to submit a response to the Data Views and Arguments letter.

1. If the Department proceeds with modification or revocation, it shall send the notice of that decision to the licensee via certified mail or electronic mail, and initiate an appeal at the Office of Administrative Courts.

2. If the Department decides not to proceed with modification or revocation, it shall send notice of that decision to the licensee via certified mail or electronic mail.

E. The Department will initiate a case with the Office of Administrative Courts by causing a Notice of Duty to Answer and Notice of Charges (Notice of Charges) to be filed. The Notice of Charges must assert the grounds for suspending, modifying, or revoking the license. The Department must serve the Notice of Charges on the licensee in accordance with the Office of Administrative Courts procedures, incorporated by reference in rule section 6.201(A).

F. The licensee must respond to the Notice of Charges within thirty (30) days of service or mailing of the Notice of Charges. If the licensee fails to respond, the Office of Administrative Courts Administrative Law Judge may enter a Default Judgment affirming the Department's decision regarding the application or renewal.

G. The burden of proof is on the Department to show, by a preponderance of the evidence, why the license should be suspended, modified, or revoked.

H. All hearings regarding suspension, modification, or revocation of a license must be conducted in accordance with sections 24-4-104 and 24-4-105, C.R.S., and rule section 6.201(A).

I. Each party may file exceptions to the Initial Decision in accordance with section 24-4-105(14)(a)(I), C.R.S., and rule section 6.202(B)(1)(a).

J. The Department's Administrative Appeals Unit must issue a Final Agency Decision in accordance with rule section 6.202(B).

K. The Final Agency Decision may be further appealed by filing a judicial review action pursuant to section 24-4-106, C.R.S.

6.500 LOCAL COORDINATING ORGANIZATIONS (LCO) APPEALS

These rules are promulgated pursuant to section 26.5-2-105(5), C.R.S., to establish a process by which an applying entity that is not selected to act as a Local Coordinating Organization (LCO), or a Local Coordinating Organization for which the coordinating agreement is terminated, may appeal the decision of the Department.

A. LCOs are selected and reviewed by the Department according to sections 26.5-2-103(4) and 26.5-2-105, C.R.S.

B. When the Department denies an entity's application to be an LCO or terminates an LCO's coordinating agreement, it must provide the LCO with a written explanation that includes:

1. the reasons for the Department's decision and a specific explanation thereof;

2. the specific rules, laws, and/or contractual provisions on which the decision is based, and numeric references to each legal authority; and

3. a notice of the right to appeal the Department's decision to the Office of Administrative Courts (OAC), consistent with this rule section 6.500.

C. An entity that is not selected as an LCO, or an existing LCO that has had its coordinating agreement terminated is entitled to appeal that decision in an appeal with the OAC.

D. The entity wishing to appeal the LCO denial or termination (appellant) must submit a written appeal request to the Department no later than thirty (30) calendar days after the date the appellant's application for LCO was denied or the appellant's coordinating agreement was terminated.

E. The Department will initiate the appeal by filing with the OAC:

1. The appellant's timely appeal request; and

2. The Department's Notice of Charges setting forth the factual basis and legal authority for the denial or termination.

F. The Department must serve a copy of the Notice of Charges on the appellant by regular first class mail, on the same day in which the Notice of Charges was filed with the OAC.

G. Upon receipt by the OAC of an LCO appeal request, OAC will assign the appeal a case number, and cause the appeal to be set for hearing through a setting conference.

H. The OAC and the parties to the appeal will set a hearing date at least thirty-five (35) calendar days from the date of the setting conference. The OAC will serve a notice of hearing to the appellant and the Department notifying them of the date, time, and place of the hearing at least thirty (30) days prior to the hearing.

I. The appellant shall file a response to the Department's Notice of Charges within thirty (30) calendar days after service of the Notice of Charges, pursuant to section 24-4-105(2)(b), C.R.S.

J. The parties have the right to present their case or defense through testimony and evidence; to submit rebuttal evidence; and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing will be conducted pursuant to section 24-4-105, C.R.S., and the OAC's procedural rules published at 1 CCR 104-1, and incorporated by reference in rule section 6.201(A).

K. If an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of good cause for inability to appear at the hearing at the time, date, and place specified in the notice of hearing, then the appeal shall be considered abandoned and an Order to Show Cause shall be entered by the Administrative Law Judge and served upon the parties by the OAC. The Order to Show Cause shall not be implemented pending review by the Department Administrative Appeals Unit and entry of a Final Agency Decision.

1. The applicant/recipient must be afforded a ten (10) day period from the date the Order to Show Cause was mailed or delivered, during which the applicant/recipient may explain in a writing to the Administrative Law Judge the reason for failure to appear. If the Administrative Law Judge finds that there was good cause for the applicant/recipient not appearing, the Administrative Law Judge shall reschedule another hearing date.

2. If the applicant/recipient submits a writing seeking to show good cause and the Administrative Law Judge finds that the stated facts do not constitute good cause, or if the applicant/recipient does not submit a letter seeking to show good cause within the ten (10) day period, the Administrative Law Judge shall enter an Initial Decision Dismissing Appeal.

L. After considering all evidence presented at the hearing, the OAC must issue an Initial Decision as outlined in rule section 6.202(A), within sixty (60) days. The Department's Administrative Appeals Unit will review the Initial Decision pursuant to rule section 6.202(B). The Department's Final Agency Decision is subject to judicial review pursuant to section 24-4-106, C.R.S.

Editor's Notes

Historically located in 9 CCR 2503-8.