

## Child Protective Services (CPS) Appeals FAQ

### Agency Review

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**1. Can an individual who took or screened the access report for the case later review the substantiation determination at an agency review?**

The rule specifies “No person who conducts the review of the initial determination may have had any prior involvement in the investigation or determination for the case that is being reviewed.”

Most often the supervisors, whom are providing guidance to staff and making decisions in the investigation of the allegations on the case, would be excluded. A person who has not made decisions regarding the outcome of the case, such as safety determination, substantiation determination or case disposition, would be an appropriate member of a review panel.

**2. How does an agency proceed if the request for an agency review comes from a person’s attorney, and not the maltreater?**

If the person’s attorney requests the agency review or records relating to the substantiation, the agency should consult with their corporation counsel and decisions related to the release of records should be guided by [48.981\(7\)\(c\)](#). With a signed consent, records requests from an attorney should be honored; however, the Notices must still be mailed to the maltreater and the attorney.

**3. What information may be shared with the review panel or individual? What about confidentiality? Can the reviewer or review panel look at additional (new) information received during the agency review?**

An agency should consult with its agency counsel for guidance. In general, Wisconsin Statutes Section [48.981\(7\)](#) allows appropriate staff of an agency to have CPS information. Those reviewing the initial determination may have access to any information or documentation used in the initial determination decision. This includes eWiSACWIS documentation or 3<sup>rd</sup> party information such as doctor reports, or police reports. [Chapter 48](#) allows for the release of information to individuals within the agency for specific purposes.

If using someone outside the agency, the agency will want to consider use of confidentiality agreements. The reviewer or review panel will make a decision based on the CPS case record pertaining to the Initial Determination of Substantiated Child Maltreatment, as well as, any new information presented during the agency review.

Section [48.981\(7\)](#) in general allows an alleged maltreater to have CPS information except for information that would identify the reporter. Other types of information in CPS records may be subject to other controlling and more restrictive confidentiality laws, and may need further consideration before releasing. For example, certain AODA information is confidential under federal law, 45 DCF Part 2. If information that may be subject to other confidentiality laws was used in the initial determination, you should consult with your agency’s legal counsel for legal advice based on the specific type of information and specific circumstances.

**4. What requirement, if any, is there for recording/listing the maltreater’s evidence at the agency review?**

The review tab and the review page contains boxes that allow for agencies to document any part of the process they may wish within the case record and without the need for creating case notes to do so. This can include returned letters, verbal requests for reviews, review information or other information pertaining to the process. There is no direction or requirement to use these narrative sections, but rather, they have been requested by a number of agencies who prefer to maintain records in the system.

The rule does not require specific record keeping related to the agency review process, beyond the dates and findings made as part of an agency review. It is up to the agency to determine what and how to

maintain records related to agency reviews and should consult their own legal counsel regarding how the agency's interests should be represented in any Division of Hearings and Appeals (DHA) hearing.

**5. What should happen if a parent/maltreater requests an agency review and then does not attend the review? Should the agency hold the review?**

The requirement for a review is tied to a request, not whether the person shows up. Wis. Adm. Code Section [40.04\(1\)](#) says that within 10 days after the date of the review of the initial determination, the individual or panel conducting the review of the initial determination...shall make a final determination on whether the person...has abused or neglected a child. This language indicates a final determination would be made rather than a default determination. In some cases the reviewer could reach a different determination and that is the purpose of a review. The review outcome section allows for documentation of the maltreater's appearance without defaulting the review status.

Report ID	Victim	Relationship to Victim	AN Code	Description	Review Status
9019236	Apple, Green	Biological Parent(s)	Physical Abuse	Bruising	Overturned
9019236	Apple, Red	Biological Parent(s)	Neglect	Malnutrition	Pending

**6. Can an Initial Determination, Final Determination, or Agency Review be postponed pending the outcome of a CHIPS or criminal proceeding?**

No, the agency cannot hold any portion of the initial determination, agency review or final determination process in abeyance pending the outcome of a criminal or Ch. 48 matter. CHIPS hearing should be held without delay, as this outcome has an immediate impact on child safety.

See the Legal Issues Regarding Appeals Notice, Timeliness, and Motion Practice for more information on this matter. You can locate it on the DCF website, <https://dcf.wisconsin.gov/cwportal/access-ia/appeal>

**7. Can an agency enter into a settlement agreement with the maltreater?**

No, there is no legal authority for the use of a settlement agreement that removes a CPS substantiation based on the maltreater meeting certain conditions required by the agency or the Corporation Counsel's or District Attorney's Office. The statutes and administrative rules require that if a CPS substantiation is made, and is not properly overturned during an agency review, a contested case proceeding or judicial review, the substantiation must be provided for caregiver background checks under Wis. Stats. §§ [48.685](#), [48.686 \(effective September 30, 2018\)](#) and [50.065](#). See also § [48.981\(3\)\(c\)5r.](#), which requires an agency to provide information on a substantiated maltreater for purposes of caregiver background checks under §§ [48.685](#), [48.686](#) and [50.065](#).

The intent and effect of these provisions is to require that if a substantiation is not overturned during the review or appeal proceedings that the maltreater must be barred from certain caregiver activities as provided under §§ [48.685](#), [48.686](#) and [50.065](#). Those provisions include a specified rehabilitation review procedure under §§ [48.685\(5\)](#), [48.686\(5\)](#) and [50.065\(5\)](#) and Wis. Adm. Code chs. [DCF 12](#) and [DHS 12](#). Under these provisions, specified entities and agencies are authorized to determine that a maltreater has demonstrated according to those procedures that he or she has been rehabilitated to perform certain caregiver activities, but do not allow the removal of the maltreatment determination.

These provisions do not authorize an agency or a District Attorney or Corporation Counsel to determine as they see fit that a maltreatment determination can be removed because they believe the maltreater is no

longer abusing or neglecting a child after the prior abuse or neglect or that it's unlikely the maltreater will abuse or neglect a child or other vulnerable person again.

The Wisconsin Supreme Court has long recognized that ch. 48, Stats., provides a detailed statutory framework that carefully prescribes the authority of agencies, courts and officers of the courts.

These provisions do not authorize an agency or a District Attorney or Corporation Counsel to substitute their judgments via their own procedures for determining who is barred from regulated caregiver activities. Use of settlement agreements to circumvent these statutory protections for children and vulnerable adults may also create liability for any harm that may result.

**8. *The agency has had several requests for review but it is small and does not have enough staff available to hold a review that hasn't made decisions on the case.***

Small agencies seem to be experiencing this more frequently than larger counties. It is important to be collaborative amongst neighboring counties to develop of system of review that will accomplish the task at hand.

Persons who can conduct an agency review include:

Any person or panel who conducts the review shall have knowledge of child protective services in Wisconsin.

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

To provide some clarification, the person can be from the substantiating agency, however cannot be the direct supervisor or the IA worker or have any other DIRECT contact with the decisions and outcomes of the initial assessment.

**9. *Can a maltreater skip the agency review process?***

Yes, a maltreater can request an appeal hearing through DHA without first having an agency hearing. A final determination letter from the agency must still be completed and sent.

**10. *What should an agency do if a maltreater submits a request for an agency review and a request for an appeal by DHA at the same time?***

In these situations, the agency must proceed with the agency review despite the maltreater's request for an appeal to DHA. Requirements for the agency review process do not provide an exception for cases where a DHA review has been requested. However, the agency's corporation counsel should notify DHA that an agency review is occurring. DHA may dismiss the appeal and instruct the maltreater to re-file once the agency review has been completed.