



A Worker's Guide to Substantiation Decision Making and The Appeals Process

This guide was created with input from the CPS Appeals Workgroup and is meant to provide a foundation of information and resources to assist workers and supervisors in making the challenging decisions at the point of Initial Assessment (IA) conclusion, to help workers understand what to expect during the review/appeals process, and to provide support and direction when cases are overturned. Much of the information frames questions and concerns that have been shared with DCF since the implementation of DCF 40 in January 2015.

Appeals in the State of Wisconsin: History and DCF 40 Implementation

Prior to 2015, substantiated maltreaters had differing appeal rights based on their employment at the time of the substantiation. This sometimes caused problems down the road when a maltreater later wanted to apply for work that fell under the caregiver background check laws, but was not originally provided the right "pathway" to appeal. The framework for Wisconsin DCF 40, implemented in January 2015, is based on the appellate opinion *Dupuy v. Samuels*, which is a class action case that found that specified workers subject to a background check that presumes disqualification based on a determination of child abuse or neglect have a constitutionally protected property interest in pursuing employment in their chosen occupation and are entitled to due process before being deprived of that interest. The series of opinions set forth decision-making, notice and hearing, and disclosure policies that were acceptable to the 7th Circuit of the U.S. Court of Appeals. The new process ensures all individuals, regardless of their current employment, are provided the same opportunity for due process.

As the new agency review/appeals process rolled out, workers, supervisors, managers and directors experienced new considerations and stressors in implementing the process within their agencies. Child Protective Services is a challenging field in which maltreatment and maltreater determinations are subject to scrutiny from a variety of perspectives. This is a necessary, though often challenging process as it is the burden of the child welfare system to strike a balance between protecting children and preserving the rights of individuals. However, as workers and supervisors experience the new appeals process, they report the experience is resulting in new stressors, and sometimes, surprising findings of cases being overturned. This guide was created with input from the CPS Appeals Workgroup, and attempts to address questions and concerns that have been raised since implementation of DCF 40.

Substantiation Decision Making

As a Child Protective Services worker, you and your supervisor are responsible for making very challenging decisions related whether a child was maltreated, and who maltreated that child. Federal Child Abuse and Neglect Act (CAPTA), Wisconsin Children's Code, and Wisconsin Access and Initial Assessment Standards require, and provide direction and guidance as you make maltreatment and maltreater determinations. The following section is meant to provide direction to resources that should

be used in determining any of the factors that must be considered in accurate substantiation decision making. Remember, it is important to provide documentation for each of the elements needed to reach a maltreater and maltreatment determination, and you are encouraged to return to these resources when documenting your analysis and conclusions. It is also important to document your reasoning/analysis for why you arrived at a particular conclusion. At times, documentation is the only information being reviewed during an agency review, and should contain information sufficient to meet the burden of proof required by Standards with sufficient analysis to help those who will not have your experience with the family to allow them to arrive at the same conclusion.

Information Gathering and Analysis: Maltreatment and Surrounding Circumstances – Information gathering and analysis in Initial Assessment is critical to understanding and making decisions related to child safety, services needed and the occurrence of maltreatment. Information is gathered through interviews with and observations of family members, and information from collateral persons and reports.

- *Appendix 3, Wisconsin Access and Initial Assessment Standards (page 94-95)* provides discussion related to the gathering and analysis of information during IA related to maltreatment determinations.

Maltreatment Determination – Statute 48.981(3)(c)4 requires an agency to determine whether abuse or neglect has occurred. In order to substantiate abuse or neglect, the worker will have information that established all components of the statutory definitions for each type of maltreatment, as described in, Statutes and Standards. Be sure to provide documentation of your thought process/analysis for how the information gathered lead to the conclusion of substantiated maltreatment.

- *Appendix 1, Wisconsin Access and Initial Assessment Standards (page 77-83)* provides statutory definitions of abuse and neglect.
- *Appendix 2, Wisconsin Access and Initial Assessment Standards (page 85 -92)* provides discussion related to each component of each type of maltreatment.

Maltreater Determination – Statute 48.981(3)(c)5m requires an agency to determine whether a specific person has abused or maltreated a child. Be sure to provide documentation of your thought process/analysis for how the information gathered lead to the conclusion of substantiated maltreater.

- *Appendix 7, Wisconsin Access and Initial Assessment Standards (page 118 – 119)*, provides discussion/considerations for maltreater determinations.

Burden of Proof – The term *preponderance of the evidence* is referenced only once in the child abuse reporting law. It is found under s. 48.981(3)(d)4., Stats., and is presented in the context of identifying the level of proof under which the CPS worker should conclude that child maltreatment has occurred. The term *preponderance of evidence* is the level of proof which, as a whole, shows that the fact sought to be proved is more probable than not. It is the level of proof or persuasion which is more credible and convincing to the mind. Discussion related to *preponderance of evidence* can be found in Standards, and your documentation should include your analysis related to the burden of proof.

- *Appendix 2, Wisconsin Access and Initial Assessment Standards (page 84-85)* provides discussion points for substantiating different types of maltreatment.

Consultation and Shared Language - The process of substantiation decision making involves a significant amount of information gathering and analysis. It is important to consult with your supervisor, manager and legal counsel regarding the decisions being made during IA. However, doing so can be challenging

as it often involves communication between multiple systems and professions speaking similar, but not always the same “language.” The materials referenced above provide a strong point of reference for shared language to ensure your decisions are understood by the legal community, or other professionals and systems that may review your work. You may find the more you incorporate this language into your documentation and communication, the more readily you will be able to bridge the language gap sometimes felt between social work and the other professions and systems with which you interact.

Agency Review Process

A substantiated maltreater with an Initial Determination of maltreatment may request an agency review of the Initial Determination within 15 days after the agency sends notice. The agency must schedule and hold the review within 45 days of the maltreater’s request. Specific information for the process may be found at the process may be found at the CPS Appeals webpage. However, it is important for you as a worker, to know that during an agency review:

- Your maltreater determination will be reviewed by an individual or a panel of professionals who must have knowledge of Child Protective Services in Wisconsin and may not have had any prior involvement in the investigation or determination for the case that is being reviewed.
- The review is an opportunity for the maltreater to present information to explain why he or she believes the maltreater determination is incorrect. The maltreater may present information, written or oral, but may not present witnesses and may not question agency staff, including you or your supervisor.
- The maltreater may choose to hire an attorney at his/her own expense to represent him/her at the agency review. However, the attorney does not have the right to question agency staff, and may not present legal arguments. While the agency review is a formal process, it is not a legal proceeding that would afford the right for motions or briefs, as would be the case in a CHIPS or criminal proceeding.
- The maltreater may request an agency review, and if they do not attend the scheduled review, the individual or panel members may still proceed with a review of the maltreater determination, with the information available. The Final Determination is a separate decision, and if a maltreater does not attend the review, the Final Determination is not automatically “upheld.”
- The individual or panel members may review any of the case record used to make the maltreatment or maltreater determination, including materials you created or materials you may have received from others, including, but not limited to, police reports, medical reports, or school records. They may or may not ask you or your supervisor questions about your records or decision making before or after the agency review. Therefore, documentation of relevant information and your analysis of that information is vital to the review process.
- The individual or panel members must make a Final Determination of child maltreatment based on all of the information they have at the conclusion of the review.
- The Final Determination may change the decision to substantiate a particular maltreater, but does not necessarily change the determination that a child was maltreated. These are two distinct decisions covered separately in Statute, Standards and eWiSACWIS documentation. See below for further discussion of this example.

Division of Hearings and Appeals (DHA) Process

A substantiated maltreater with a Final Determination of maltreatment may request a DHA hearing within 10 days after the agency sends notice. DHA must commence the contested case hearing within

90 days of the request, and must issue a final decision within 60 days after the close of the hearing. Specific information for the process may be found at the CPS Appeals webpage. However, it is important for you as a worker to know that during the DHA process:

- Your maltreater determination will be reviewed by an Administrative Law Judge (ALJ).
- The review is an opportunity for the maltreater to present information to explain why he or she believes the maltreater determination is incorrect. The maltreater may present information, written or oral, may present witnesses, and may question agency staff, including you or your supervisor.
- The maltreater may choose to hire an attorney at his/her own expense to represent him/her at the agency review. The attorney or the maltreater has the right to present legal arguments, motions, or briefs, as unlike the agency review, a DHA hearing is a legal proceeding in which such arguments can be made. The ALJ will set the rules and expectations for any hearings.
- You and your agency should be represented by legal counsel, typically, your corporation counsel. Your legal counsel has the ability to present arguments, motions or briefs regarding late requests, who may testify, or other matters of legal jurisdiction/interpretation. The CPS Appeals webpage contains additional information for your legal partners.
- The DHA judge, maltreater, other legal parties will review any of the case record used to make the maltreatment or maltreater determination, including materials you created or materials you may have received from others, including, but not limited to, police reports, medical reports, or school records. You and others from your agency will likely testify about the documentation and actions taken during the case.
- The maltreater or his/her attorney may make a hearsay motion to request the child victim testify in the DHA hearing. It will be important for you and your agency to address areas related to victim testimony, including, but not limited to the child's cognitive and emotional functioning, revictimization, and arrangements that could be made if the child does have to testify. HOWEVER, there are exceptions to the hearsay rule, and legal counsel representing the agency can and should make a motion to allow hearsay in most cases so that the child victim does not have to testify. The CPS Appeals webpage contains additional resources regarding hearsay.
- The maltreater may request a DHA hearing, and if they do not attend, it is up to the Administrative Law Judge whether they allow more time, dismiss the request for a hearing, or some other outcome. The attorney representing you and your agency can make a motion for dismissal in such cases.
- The DHA judge may change the decision to substantiate a particular maltreater, but this does not necessarily change the determination that a child was maltreated. These are two distinct decisions covered separately in Statute, Standards and eWiSACWIS documentation. See below for further discussion of this example.

What Does "Overturned" Mean For My Case and My Practice

Before you arrived at the decision to substantiate a case of child abuse, and a particular maltreater, you put in a tremendous amount of work gathering and analyzing information to come to the best decision possible based on Statutes and Standards. In this role, you made decisions about child safety, and how to serve a family, all while working hard to engage with the family. To have a substantiation decision overturned at an agency review or DHA hearing can be extremely hard, and inevitably leads to questions about the work you've completed thus far, and what impact the overturned substantiation will have on the future of your case. In this circumstance, it is important for you and your supervisor to spend time processing two things: 1) the reasons for the changed decision so you can make well informed decisions

about future investigations/practice, and 2) how you should proceed with the case at hand related to case disposition (e.g. open/closed, voluntary/involuntary) as substantiations and case disposition are not entirely dependent on each other.

Other Decisions Being Made – The conclusion of an IA involves 3 main decision points: maltreatment determination, safety determination and case disposition. These decisions impact each other to some degree, but are not entirely dependent on each other. The finding that abuse happened, for example, does not necessarily mean that a case disposition should be to open a case. An unsubstantiated finding of abuse, does not automatically mean that a child is safe. Each decision has its own criteria and requirements for the finding. If a substantiation is overturned at DHA or agency review, your efforts to open a case do not automatically change, as the decision to open a case is based on family needs and child safety. These are case by case decisions, and you should consult standards, your supervisor and legal counsel if you have questions about how other decisions may be affected by an overturned substantiation.

Maltreater/Maltreatment: Two Separate Decision Points - There are 2 separate decisions being made every time you make a maltreatment determination. You are 1, determining whether a child was abused or neglected, and 2, determining who abused or neglected the child. The agency review and DHA appeals processes are concerned with the latter, which may or may not affect the former. For example:

- An investigation of physical abuse may have found that a 2 year old child had a handprint bruise across his face, and during the course of the Initial Assessment, a determination was made that the child was physically abused and maltreater was the child's father. If the substantiation was overturned at the conclusion of the agency review, or DHA hearing, this decision is specific to whether or not the person identified as the maltreater was in fact the person who abused the child. In other words, the decision to overturn the substantiation does not mean that physical abuse is not, or should not be substantiated. In such a case, the worker should document the maltreater finding as overturned\unsubstantiated, and document an allegation substantiating physical abuse to the child, by an unknown maltreater. Services and requirements, such as Birth-to-3 referrals, remain available to the child in this example as the decision about what the child experienced remains.
- Conversely, there will be cases in which the overturned finding does impact the maltreatment, and therefore, maltreater finding. Let's take the example of a mother substantiated for the neglect after leaving her child home alone to go to the store. As we know, the definition of neglect includes the statement that the parent did not provide "necessary care...so as to seriously endanger the physical health of the child." If the decision of DHA or the agency review finds that the child's health was never "seriously endangered," then the finding is really that no maltreatment took place. Unlike the example above, where the occurrence of maltreatment was not in question, this example of neglect finds that no maltreatment occurred, and as such, there is no maltreater, so both decisions would be documented as unsubstantiated.

Each case is unique and consultation with your supervisor and legal counsel may be necessary to determine whether it is solely the maltreater determination or also the maltreatment determination being impacted by an overturned agency review or DHA finding.

New Information - Maltreater determinations are point in time determinations. You are making a decision about whether someone maltreated a child based on the point at which you conclude your IA. A maltreater may present information during the agency review or DHA hearing that was not available,

or was possibly withheld from you during the IA. This information can be used during either proceeding to determine whether the substantiation should be upheld or overturned. If a case in this circumstance is overturned, it is important for workers and supervisors to recognize and work through concerns that may arise. An overturned substantiation DOES NOT mean you did not do your job, did not follow standards and statutes, or did not make the right decision at the time.

Impact of Preliminary Findings – Over the course of implementation, DHA has held pre-conference hearings which have involved parties presenting preliminary information and attempting to ensure everyone understands all of the necessary requirements. At times, the ALJ has indicated it may be challenging to uphold a substantiation decision based on preliminary information and before the hearing takes place. It is extremely important for county agencies to proceed to hearings when they believe they have made the correct and accurate decision. There are legal resources and contacts available for your legal partners to ensure they have access to motions and arguments that can be made when these challenges are identified [HYPERLINK](#). DHA has reviewed Milwaukee appeal cases for some time, but most ALJs are new to these cases. Arguments can be made to address particular challenges that may be problematic in other types of appeal cases. Also, please note, there is no authority for any legal proceeding in this case to result in a settlement agreement, or other arrangement that would eliminate the substantiation if the maltreater agrees to any particular conditions. The CPS finding is that maltreatment did or did not happen, and that a particular person did or did not maltreat a child. Settlement agreements are not an option for CPS maltreatment/maltreater determinations.

Impact to Future Decision Making – Supervisory Considerations

Child welfare is a profession steeped in strong beliefs about children, families, community and our society as a whole. However, it is a relatively young profession, and one that is evolving based on new understandings of child development, safety, attachment, legal decisions, and individual rights, among other things. The process of appeals is part of this evolution, and as with other changes to the system, it is important to understand the potential unintended consequences of actions taken during the change process. Workers spend a painstaking amount of time and energy working to understand all aspects of a family during the course of an IA, and decisions made during that time are done so with all care possible. It is anxiety producing for a worker to experience the review of their work by others, and extremely hard to experience a decision being overturned, even though there are a variety of reasons this may occur. Yes, at times, the decision will come down to a lack of documentation, lack of information or failure to follow standards and statutes. However, there are other reasons, as described above, where there is no indication the worker did not make the right decision at the time the decision was made. This process is a new one, for the child welfare system and the appeals system, and we are all in the process of learning. It is important for workers and supervisors to remember:

- Resources exist to help you in the process of making and documenting good substantiation decisions. Refer to them often. Share them with the professionals who need to consult with you about these decisions so you can have the discussions with a shared understanding of language and requirements.
- When an agency review or appeal is requested, consult with your team or others who have been through the process regarding what to expect. Ask questions. Review the CPS Appeals website for information. Contact your Child Welfare Administrator. While these processes are different within each county, and within each DHA hearing, many have experienced the process and the shared experience can provide greater understanding and ease worries.

- Use regional supervisor's and director's meetings to bring up points regarding your concerns, questions and experiences with the process. The Department of Children and Families is particularly interested in feedback regarding the process and will continue to make changes, and provide resources and training, to address the issues agencies are experiencing.
- Provide time for debrief after a review or DHA hearing. While the experience may have occurred for one worker, all workers in the agency likely experienced similar stress and anxiety related to their own decision making. Be aware of signs of anxiety and compassion fatigue in workers that can be exacerbated by these processes. We are often aware of and ready to address the secondary trauma related to hard stories workers carry from their work with families, however, research is becoming more aware of the role systems barriers play in compassion fatigue. Reactionary decision making, fear of making decisions, lack of confidence in work, and other factors can indicate a worker is struggling with systems level barriers and concerns.
- Resources exist to help workers and supervisors in recognizing and addressing compassion fatigue. The Child Welfare Information Gateway provides a variety of publications, resources and tools to help you address compassion fatigue in your agency (<https://www.childwelfare.gov/>). Use regional supervisor's and director's meetings to consult with neighboring counties and provide feedback to DCF regarding your agency's experiences and needs.