

Appeals Process Requirements

Initial Determination of Substantiated Child Maltreatment: Within one (1) business day of approving an Initial Assessment which identifies an individual as a substantiated maltreater, the agency is required to send, by first class mail, the *Notice of Initial Determination of Substantiated Child Maltreatment and Right to Request a Review* letter, which must include the following:

- A summary of the initial substantiation determination that includes the type(s) of substantiated maltreatment, the name(s) of the child(ren) involved in the alleged incident and the basis for the agency's substantiation determination;
- Information on requesting an agency review of the Initial Determination of Substantiated Child Maltreatment process, including the procedures for agency review of an initial determination and a contested case hearing before the Division of Hearings and Appeals (DHA) if the final determination upholds the initial determination; and,
- Information on the effects of a final determination on record checks under Sections 48.685 and 50.065, Stats.

An agency may not hold the initial substantiation determination or agency review of an initial determination in abeyance pending the outcome of any criminal proceedings or any proceedings under Section 48.13 or 938.12, Stats.

Agency Review of an Initial Determination of Substantiated Child Maltreatment: Within fifteen (15) days after receiving an agency review request, the agency must send a *Notification of Initial Determination of Substantiated Child Maltreatment – Scheduled Review* letter to the person with an agency review date, time and location or telephone contact information. The review of the initial substantiation determination must be scheduled for at least one hour and must occur within forty-five (45) days of the agency's receipt of the maltreater's request for an agency review. The notice of the agency review must be sent at least seven (7) days before the scheduled agency review date. The person may request one rescheduling of the agency review date or time, and the agency must grant the request if the review of the initial substantiation determination can be rescheduled within forty-five (45) days after the person's initial request for review. The notice of the rescheduled review date may be sent less than seven (7) days before the review if necessary to complete the review within forty-five (45) days after the person's request for review.

The agency review of the initial substantiation determination may be conducted by an individual or panel. If a panel is used, the panel must be comprised of at least three (3) members and decisions regarding whether to uphold or overturn an initial determination must be based on the conclusion of the majority of the panel. Any persons who conduct the agency review or serves on the agency review panel are required to 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 person may be represented by an attorney in the agency review and may present information that is relevant to whether the he or she has abused or neglected a child as specified in the initial substantiation determination. The person may not present witnesses and may not question any agency staff who may be present. The agency is not required to present evidence or witnesses to support the determination.

Final Determination of Substantiated Child Maltreatment: If the person does not request an agency review within fifteen (15) days after the date of notice of initial substantiation determination, the agency must send the person a *Notice of Final Determination of Substantiated Child Maltreatment and Right to Request a Hearing* within five (5) days of the date the agency request was due from the maltreater.

If an agency review is requested, the individual or panel conducting the agency review of the initial substantiation determination must make a final substantiation determination within ten (10) days after the date of the agency review. The agency must send a written *Notice of Final Determination of Substantiated Child Maltreatment and Right to a Hearing* letter to the person within five (5) days after the date of the final substantiation determination. If the final substantiation determination upholds the initial substantiation

determination or the person did not request an agency review and the agency approves a final substantiation determination, the notice is required to include a summary of the reasons for the final substantiation determination, the person's rights to a contested case hearing with the Division of Hearings and Appeals, and the procedures by which the person may receive that hearing.

Division of Hearings and Appeals Contested Case Hearing: Under s. 48.891 (3) (c) 5p., Stats., a person who is a subject of a final substantiation determination has the right to a contested case hearing before the DHA. To receive the hearing, the person must send a written request to the DHA within ten (10) days after the date of the notice of the final substantiation determination.

The DHA must commence the contested case hearing within ninety (90) days after the receipt of the request unless the hearing is rescheduled by the person requesting it or DHA holds the case proceeding in abeyance or the person requests and is eligible for an expedited hearing. DHA can hold the case proceeding in abeyance pending the outcome of any criminal proceedings or any proceedings under Section 48.13, Stats., based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under Section 48.13, Stats. The DHA must issue a final decision within sixteen (60) days after the close of the hearing. If the contested case hearing or judicial review overturns a final substantiation determination, the agency must update the authorized information available for record checks within fifteen (15) days after the DHA notification to the agency of this decision.

*Note – With the exception of *Notice of Initial Determination of Substantiated Child Maltreatment and Right to Request a Review* letter, which is required to be sent within one (1) business day after the approval of the IA, all other dates described in the appeals process are calendar dates.