

## Child Protective Services (CPS) Appeals FAQ

### DHA

1. [If a person requests a DHA hearing after the agency review, is the county responsible for sending information to DHA?](#)
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7. [Can the defense attorney at a DHA hearing require a child victim testify? Are there guidelines or rules in regards to requiring psychological testing of the victim, deposition, testimony, etc.?](#)

1. **If a person requests a DHA hearing after the agency review, is the county responsible for sending information to DHA?**

You should consult with your agency counsel for legal advice based on the particular circumstances.

2. **If the case goes to DHA, are they responsible for entering the results into eWiSACWIS?**

As of June 2017, DCF will be centralizing documentation of DHA findings. This will include the DHA Hearing Request and the DHA Findings/Orders. Agencies are responsible for entering any requests and/or hearing outcomes into eWiSACWIS that occur prior to June 16, 2017.

You can monitor DHA requests and outcomes in the CPS Appeals Outcome Report, SM06A114, located in eWReports.

3. **If an agency rescinds a substantiation after the maltreater has already initiated an appeal with DHA, how should this be documented?**

There is not currently a dedicated place on eWiSACWIS for documenting rescinded substantiations. Prior to the addition of a dedicated place on eWiSACWIS for documenting rescinded substantiations, agencies should use the DHA Appeal Information page when they rescind a substantiation in a case where an appeal request has already been made to DHA. Please enter the following information, as reflected below:

- Under Appeal Status, please enter “Overturned – Agency Rescinded”
- Under Decision Date, please enter the date that the agency rescinded the substantiation
- Under Comments, please document the reason/basis for rescinding the substantiation

The screenshot shows the 'Appeal Information' form in eWiSACWIS. At the top, there are fields for 'Appeal Type' (set to 'Division of Hearing and Appeals'), 'Hearing Request' (00/00/0000), 'DHA Hearing Held' (00/00/0000), and 'Decision Date' (00/00/0000). Below these are columns for 'Report ID', 'Victim', 'Relationship to Victim', 'A/N Code', and 'Appeal Status'. The 'Appeal Status' dropdown is currently set to 'Pending'. A red arrow points from the 'Comments' section to the 'Add/Edit' button.

4. **If an agency asks another county to conduct an agency review for a case and then the maltreater appeals to DHA, how can the agency ensure that DHA correspondence will go to the county that is litigating the appeal?**

DHA determines which county agency to direct correspondence to through reference to the “Sent by” field on the Notice of Final Determination/Contested Case Hearing Request Form that counties send to maltreaters. See below. This field defaults to the name of county that the person who is filling it out is affiliated with but it is

editable. If a person from a county other than the county that will be litigating the appeal at DHA fills out this form he or she should edit the "Sent by" field to reflect the correct county name.

Where a county is responsible for another county's case because it conducted an independent initial assessment for that county, the agencies should adhere to DCF Standards governing the responsibilities of agencies in independent initial assessments. See [DCF CPS Access and Initial Assessment Standards](#), Ch. XII.J. These standards provide that the assessing agency must conduct the appeal process.

DEPARTMENT OF CHILDREN AND FAMILIES  
Division of Safety and Permanence

### Child Abuse and/or Neglect Contested Case Hearing Request

#### Wisconsin Department of Administration Division of Hearing and Appeals

Complete all of the requested information in the form below and hand deliver, mail, or fax the form, with a copy of the Notice of Final Determination of Child Abuse and/or Neglect letter, *within 10 days of the date of the Notice of Final Determination of Child Abuse and/or Neglect*, to the agency listed below:

Wisconsin Division of Hearing and Appeals  
4822 Madison Yards Way  
Madison, WI 53705

Fax Number: (608) 264-9885

Date of Notice of Final Determination of Child Abuse and/or Neglect and Right to Request an Appeal Letter: [REDACTED]

Sent By: [REDACTED] Telephone Number: [REDACTED]

Name - Person Requesting Appeal [REDACTED]	Birthdate (mm/dd/yyyy) [REDACTED]	Date of Request (mm/dd/yyyy) [REDACTED]
Address (Street, City, State, Zip Code) [REDACTED] [REDACTED]		Telephone Number - Home [REDACTED]

You may request your appeal to be expedited if any of the following apply: (You must provide documentation that you qualify for an expedited review if you answer Yes to any of the questions below)

<input type="checkbox"/> Yes <input type="checkbox"/> No	Do you currently hold a license/certification, have applied for, or plan to apply for a license/certification to provide care to nursing home patients, other patients of a medical care facility, childcare, or foster care?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Are you currently employed or contract with, or are actively seeking employment with any facility that provides direct care to patients (such as a nursing home), licensed childcare facility, group home, residential care center, or foster care?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Are you enrolled in an academic program that may lead to a license/certification for employment or contract position that would be subject to the child abuse/neglect record check requirements for purposes of employment?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Will you be represented by an attorney at this hearing?
<input type="checkbox"/> Yes <input type="checkbox"/> No	Do you expect to bring witnesses to testify?

If YES: Witness Name(s): [REDACTED] Witness Address(es): [REDACTED]

**5. Can DHA postpone its hearing pending the outcome of a CHIPS or criminal proceeding?**

Yes, DHA may postpone the appeals hearing due to pending CHIPS or criminal proceedings and hold the hearing in abeyance.

**6. Do the ALJs use the CPS Access and Initial Assessment Standards when making their decision regarding the appeal?**

Yes, DCF 40 indicates that any review or appeal of an initial or final determination shall be governed by the standards established by the department for conducting child abuse and neglect investigations, [40.05\(3\)](#).

**7. Can the defense attorney at a DHA hearing require a child victim testify? Are there guidelines or rules in regards to requiring psychological testing of the victim, deposition, testimony, etc.?**

A child may have to testify at a DHA hearing because of the rules that limit reliance on only hearsay for certain findings at a hearing; however, legal counsel representing the agency can and should make a motion to allow hearsay in most cases. Hearsay is an oral or written statement of what a child or other person has said outside of the hearing. The reason for hearsay rules is a belief that hearsay may be unreliable. There are exceptions to the hearsay rules which sometimes allow the use of hearsay instead of a child or person's testimony when there is corroborating evidence.

There are also other types of hearsay exceptions that may allow the use of hearsay in a hearing. There are legal arguments that can be made regarding the use of hearsay so that a child may not need to testify, and a motion by the agency's legal counsel is typically required if the defense requests that the child testify. If an objection is made to a victim being called to testify, the presiding administrative law judge determines whether a child victim must testify and whether there is corroborating evidence to support the hearsay testimony of others without the testimony of the child. In some cases, attorneys make motions to quash a subpoena for a child victim to testify on the basis of the harm it would cause and that the information can be obtained in some other way. For example, adequate information may be available through existing CPS or law enforcement records, corroborating evidence or prior interviews. Some proceedings rely on videotapes of the child being questioned for the CPS IA or a criminal investigation. In some cases depositions of the child are done with the attorneys before the DHA hearing so that information can be used at the hearing.

If the child does testify there may be arrangements made so the child does not need to see the other parties while waiting to testify, or the child may be allowed to testify remotely from another room by videotape, or have a service dog present to support the child victim when testifying. If law enforcement was involved with a criminal case, the child victim may be eligible to receive victim witness services and protections through the county victim witness program as provided under Wisconsin Statutes [Chapter 950](#). The DHA may have some procedures that are used for child witnesses in CPS appeals or probation and parole revocations that DHA hears, so it may be helpful to ask the DHA administrative law judge about ways to protect and support the child if the child does testify. Please consult with your legal counsel, as depending on the specific circumstances, different requirements may apply or other approaches may be possible.

Additional resources relating to hearsay and other legal motions will be added to the CPS Appeals website as they become available. Please review the website for more detailed legal clarification/guidance.

\*\* It is very important to document the child's disclosure verbatim and all corroborating evidence in the initial assessment so that the ALJ can easily access and utilize it in their decisions regarding hearsay in order to minimize the need for a child's testimony.