

## Child Protective Services (CPS) Appeals FAQ

### Maltreater Information

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1. **Maltreater's address.**

The template in the eWiSACWIS system will populate the notice with the maltreater's address as it is recorded in his or her Person Management page. It is extremely important that the address in the system is accurate as it cannot be changed in the template. There is a hyperlink to the person management record on the Review page to allow for easier updating of addresses.

When the maltreater is incarcerated at the time of substantiation, it is best to send the Notice of Initial Determination to both the jail they are currently at and their last known home address. This will better ensure that the maltreater receives the notice if released from jail between the time the notice was sent and when it is delivered.

If the maltreater's address is unknown, agencies must make continuous efforts to locate the correct address. This may include utilizing the CARES system or CCAP or contacting the appropriate child support, economic support and WIC agency for information. It is not expected that agencies attempt to physically locate the maltreater.

2. ***How should the agency proceed with sending the Notice of Initial Determination and the Notice of Final Determination if the maltreater's address is unknown or if a letter is returned as undeliverable?***

If the agency is unable to determine the maltreater's address, including instances in which the maltreater refuses to provide a correct address, the agency should send the Notice of Initial Determination and the Notice of Final Determination to the last known address in the system. If there is no last known address in the system, the agency should create the notices and mark "Sent" but indicate in the "Additional Information" field in the Reviews tab that the letters were not actually sent because the agency did not have the individual's address. This is because eWiSACWIS requires that the notices be created and marked "sent" in order for a case to be closed.

If a letter is returned as undeliverable, select the "Returned as Undeliverable" box. If the Notice of Initial Determination is returned as undeliverable, the agency should still follow the remaining timelines for issuing the Notice of Final Determination as well.

When the maltreater's address is unknown or the letters are returned as undeliverable, the agency is responsible for continuous efforts to locate the correct address, which may include utilizing the CARES system or CCAP or contacting the appropriate child support, economic support and WIC agency for information.

3. ***If the maltreater's address is initially unknown or incorrect and the agency subsequently learns the correct address, or the maltreater comes to the agency and asks for a review, what should the agency do?***

If a new address is identified for a maltreater after the issuance of the Notice of Initial Determination, the actions that the agency should take depend on whether the Notice of Final Determination has already been issued:

If the Notice of Final Determination HAS NOT yet been issued, the agency should check the "override" button in the eWiSACWIS appeals record, which will start the timeline over again and change the date of the notice. The maltreater must submit a request for agency review within 15 days after the date of the Notice of Initial Determination.

While the rule indicates the maltreater has 15 days after the date of the Notice of Initial Determination to submit a request for review, if the agency has not yet sent the Notice of Final Determination and the maltreater

requests a review after the 15 days, the agency may choose to allow the maltreater the opportunity for an agency review.

If the Notice of Final Determination HAS been issued, the maltreater is no longer eligible for an agency review. If the maltreater comes back after the agency has sent the Notice of Final Determination, the agency should provide them a copy of their original Notice of Final Determination and their only recourse would be to go to DHA. DHA may remand it back to the agency for a review. Keeping a record of the agency's attempts, and the issue of the maltreater "denying" where they live, would be important should they later request a DHA hearing.

However, if the maltreater never received the letters due to an error on the part of the agency, it is within the discretion of the agency to re-send the Notice of Initial Determination and/or the Notice of Final Determination. If the agency chooses to do this, it must contact DCF at [DCFCPSDHAAppeals@wisconsin.gov](mailto:DCFCPSDHAAppeals@wisconsin.gov) because the "override" button on eWiSACWIS cannot be selected once the Notice of Final Determination has been generated and marked as "sent."

4.

4. ***When the maltreater is not a parent, what can be released? An agency may be concerned the record gives information in regards to hospitalizations, diagnosis, medications, as well as family of origin issues.***

In general, Wisconsin Statute Section [48.981\(1\)\(h\)2.](#) and [48.981\(7\)\(a\)1.](#) says that a person suspected of child abuse or neglect in a CPS record may be given the CPS record but information that would identify the reporter must be redacted. That release provision applies whether or not the alleged maltreater is a family member. However, other confidentiality laws may require that some information in the CPS record be redacted, for example, mental health or AODA information that may be confidential under Wisconsin Statute Section [51.30](#) and federal regulations such as 42 C.F.R. Part 2, medical information that may be confidential under Wisconsin Statute [146.82](#), or HIPPA or educational records that may be confidential under Wisconsin Statute Section [118.125](#) or federal law. Applicability to case specific records should be discussed with an agency's corporation counsel.

5.

5. ***What are the review/appeals requirements when a minor is named as a maltreater?***

"It is generally inconsistent with CPS purposes under Ch. 48 to make a formal determination that a child is a maltreater. The youth justice system is generally the appropriate system for determining whether a child must be held accountable for abusing another child" ([2021 Child Protective Services Access and Initial Assessment Standards](#), Appendix 7, Considerations in Maltreater Determinations, page 126). If the agency chooses, after careful consideration, to name a minor as the maltreater, the notices should be sent to the child, as well as, the child's legal parent or guardian, foster parent(s) or relative(s) with physical custody of the child, if applicable. Consideration should be made with agency counsel and documented for cases in which it may not be safe for the child or family if certain individuals receive notification, such as in the case of domestic violence or when a no contact order is in place.

To the minor maltreater, send the printed Notice of Initial Determination generated from eWiSACWIS.

To the minor maltreater's parents, send an exact copy of the printed Notice of Initial Determination generated from eWiSACWIS, meaning, make a copy of the notice generated for the maltreater, and mark it as a copy. Do not create a separate letter using the word documents. Include with the notice a cover letter explaining "this notice was sent to [insert child's name] because..." Scan the cover letter and the copy of the Notice of Initial Determination that was sent to the parent(s). This process should be used with all Notices sent relating to this procedure, to include Notice of Scheduled Review, Notice of Rescheduled Review and Final Determination.

The child's parents or guardians may be present for the agency review. The agency should also consider the role of the foster parent(s) or relative(s) with physical custody of the child in agency reviews, in terms of their

ability to provide support to a child during the process. Generally, the minor maltreater's parent, guardian or foster care provider or relative with whom the child is placed should accompany the child to the review. However, the review can be conducted without their presence depending on what is appropriate. The decision regarding who would be allowed in the hearing is guided by [48.981\(7\)\(a\)](#) through [48.981\(7\)\(c\)](#) (see particularly [48.981\(7\)\(a\)\(3m\)](#) and [48.981\(7\)\(a\)\(4\)](#)). An agency may want to consult with agency counsel regarding who is present for the agency review, involving others in the process and releasing information to them.

6. ***What should an agency do in cases when a maltreater dies during the IA or due process period?***

If a maltreater dies prior to the completion of an IA, the agency should not make a substantiation finding with respect to that individual. Instead, if the agency finds that the deceased individual was responsible for the maltreatment, the agency should substantiate as to an unknown individual. In these instances, the agency should make sure that the maltreater is included as a case participant on eWiSACWIS so that if his/her name is searched, the investigation(s) will be reflected.

If a maltreater dies subsequent to the completion of the IA, but prior to the completion of the due process period, the agency should document the maltreater's date of death in the maltreater's Person Management page. This will allow the agency to delete ticklers for the remaining review steps if they chose to do so. The agency may also choose to continue in the review process and should consult with their legal counsel in such cases.

7. ***If a maltreater participates in a Rehab Review, and is successful, is the substantiation finding to be removed from the record?***

No, if the maltreater participates in a Rehabilitation Review, and is successful, the substantiation finding remains. The Rehab Review process is to determine whether the maltreater has demonstrated they have been rehabilitated. A successful Rehab Review allows a maltreater to be considered for certain caregiver activities that have been approved through the Rehabilitation Review. Additional information regarding the Rehabilitation Review process can be found at <https://dcf.wisconsin.gov/rehab-review>

8. ***The maltreater has previously been substantiated and/or convicted with a licensing barring offense; does the agency still need to hold the agency review?***

Yes, despite prior substantiations or convictions, the maltreater is still afforded due process as required by Wisconsin Statute Section [48.981\(3\)\(c\)5m](#), [48.981\(3\)\(c\)5p](#), [48.981\(3\)\(c\)5r](#), and Wisconsin Administrative Code [Chapter DCF 40](#).