



# OLR RESEARCH REPORT

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## **PARENTS' APPEAL RIGHTS WHEN A CHILD PROTECTION AGENCY REMOVES A CHILD FROM THEIR HOME**

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You asked what states give parents a bill of rights or similar explanation of appeal rights at the beginning of an abuse or neglect investigation. You also asked (1) what appeal rights Connecticut parents have when the Department of Children and Families (DCF) removes a child from their home due to charges of parental abuse or neglect and (2) how these appellate procedures work.

### **SUMMARY**

Federal law requires state child protection agencies to have a process allowing appeals from a substantiated abuse or neglect complaint (1996 Child Abuse and Prevention Treatment Act of 1996, codified at 42 USC § 5101 et seq.).

Based on our Internet search, we found two states – Maryland and Tennessee – whose child protection agencies provide suspected abusers, including parents, written notice of their appeal rights at the beginning of their investigation.

Maryland's Department of Social Services distributes fliers to those involved in child protection services cases. The fliers describe agency findings that can be challenged through an administrative process followed by a court appeal. Tennessee's Department of Children's Services gives parents a comprehensive handbook when it opens a case.

Among other things, the handbook sets out the agency's administrative review process and specifies what rulings can be appealed and how to file a court challenge.

Connecticut is among the states, including Maine and Maryland, that provide handouts when a case is opened using a "Frequently Asked Questions" format that generally informs recipients that they have appeal rights. Each agency determination that can be appealed contains a description of the procedure for doing so.

An accused parent in Connecticut has several appeal options that he or she can pursue before a DCF finding of abuse or neglect becomes final. First, he or she may request an internal agency review of the case. If dissatisfied with its outcome, he or she can request an administrative hearing, and, if the hearing officer does not rule in his or her favor ask the DCF commissioner to reconsider. Alternatively, the accused may go directly to Superior Court to challenge the hearing officer's decision.

Except in extraordinary circumstances, the agency's decision becomes final if the accused misses any filing deadline.

### **APPEAL RIGHTS WHEN DCF REMOVES A CHILD FROM HOME**

A parent alleged to have perpetrated abuse or neglect that results in DCF's removing a child from his or her home can take several steps to challenge that action. He or she is entitled to an internal agency review if a written request is filed within 15 days after DCF places its recommended finding in the mail or delivers it to the accused in person (Conn. Agency Reg. § 17a-101k-4). The accused has 30 days after the agency's ruling on the review request is mailed or received to file a written request for an administrative appeal (Conn. Agency Reg. § 17a-101k-6).

When DCF receives a timely appeal request, it undertakes a prehearing review, which the accused does not attend (CGS § [17a-101k-6](#)). The department must reverse the investigator's recommended finding if it concludes that the charges have not been adequately substantiated. If so, it notifies the accused and the case goes no further. Otherwise, the agency assigns the case to a hearing officer and notifies the accused of the time and place of the hearing. The notice must include a written explanation of his or her rights and responsibilities.

The accused may review his or her file at any point before the hearing. Factual mistakes in such things as names and addresses can be corrected, but information about the nature of the case cannot. The accused may submit documents for inclusion in the file to correct information he or she perceives to be untrue (CGS § [17a-28\(m\)](#)).

## **HEARING DECISION**

The hearing officer has 30 days from the conclusion of the hearing to prepare a memorandum of decision. The memorandum must include the:

1. names of those present at the hearing;
2. provisions of law, regulation, and policy applicable to the case;
3. findings of fact and conclusions of law; and
4. hearing officer's reasoning for making the decision.

DCF has the burden of showing by a preponderance of the evidence that the abuse or neglect determination is supported by the case record as a whole (CGS § [17a-101k\(j\)](#)). When the hearing officer reverses DCF's decision, he or she directs the department to revise its records to reflect the reversal. When the decision is to uphold the agency's position, DCF must provide the accused with the written decision and an explanation of how he or she can (1) request the commissioner to reconsider the decision or (2) appeal to the Superior Court.

## **REQUEST FOR RECONSIDERATION**

Any party that participated in the substantiation hearing who is aggrieved by the hearing officer's decision can ask the commissioner to reconsider, but is not required to do so. If an aggrieved person wants to pursue this option, he or she must submit a written request within 15 days after the hearing officer's decision was mailed or personally delivered. The only grounds that can be raised are that:

1. an error of fact or law should be corrected;
2. new evidence has been discovered that materially affects the merits of the case, which for good reason was not presented at the substantiation hearing; or
3. there is other good cause for reconsideration.

The commissioner has 25 days to issue a ruling. If she does not act in the allotted time, the hearing officer's decision becomes final (Conn. Agencies Reg. § 17a-101k-11).

## **COURT APPEALS**

An accused parent (appellant) who disagrees with the agency's final decision can file an appeal in Superior Court within 30 days of the mailing or receipt of the decision. He or she can ask the court to block the implementation of the DCF hearing officer's decision until the court proceedings are concluded.

Appeal procedures and legal standards are governed by the state's Administrative Procedures Act (CGS § [17a-101k](#) (13)). Under that law, the court can only consider material in the DCF hearing record. This consists of:

1. written notices related to the case;
2. all petitions, pleadings, motions, and intermediate rulings, if any;
3. evidence the hearing officer received or considered;
4. questions and offers of proof, objections, and rulings affecting both;
5. the official tape recording of the proceedings; and
6. the agency's final decision.

The court must uphold DCF's decision unless it finds that the appellant's substantial rights were prejudiced because the administrative findings, inferences, conclusions, or decisions are clearly erroneous in light of the reliable, probative, and substantial evidence contained in the record as a whole (CGS § [4-183\(j\)](#)).

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