

	GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES CHILD WELFARE POLICY MANUAL		
	Chapter:	(17) Legal	Effective Date: April 2024
	Policy Title:	Fair Hearings	
	Policy Number:	17.16	Previous Policy #: 1013.3, 3.15

See [Child Welfare Services County Letter 2019-01](#) for revisions to this policy section.

CODES/REFERENCES

Title IV-E of the Social Security Act Section 471 (a)(12)
 Title IV-E of the Social Security Act Section 472 (a)(20)(B)
 Public Law (PL) 105-89 Adoption and Safe Families Act of 1997
J.J. vs. Ledbetter Consent Order

REQUIREMENTS

The Division of Family and Children Services (DFCS) will:

1. *Grant an opportunity for a fair hearing (before the State/Tribal agency) to any individual whose claim for benefits under this plan is denied or not acted upon within reasonable promptness.*
2. Grant an opportunity for an individual to have a Fair Hearing if the individual believes DFCS has denied or delayed a child's adoptive placement when there is an approved family outside the jurisdiction (see policy [11.7 Adoption: Child Specific Recruitment Efforts](#)).
3. Inform the individual in writing at the time of any DFCS action denying, reducing or terminating social services benefits or reasonable visitation that are not court-ordered. The individual has the right to request a fair hearing within 30 days of receiving the notification. The individuals' freedom to request a fair hearing is a right guaranteed to insure due process.
4. Not limit or interfere with an individual's freedom to request a fair hearing when the individual disagrees with DFCS' decision or feels DFCS has failed to act appropriately in carrying out its duties.

NOTE: All fair hearings shall be administered by the Office of State Administrative Hearings (OSAH) Administrative Law Judge (ALJ). If the individual does not agree with the initial adverse decision from the ALJ, the individual shall be allowed 30 days from the date of the adverse decision to appeal and request reconsideration. However, if the parent does not request reconsideration for review within 30 days of the date of the adverse decision, the initial ALJ decision shall become final.

PROCEDURES

When the agency plans to take action on a case which will deny or delay placement of a child for adoption with an approved family outside the jurisdiction responsible for the child and/or deny, reduce or terminate a social service or visitation that is not court-ordered, the SSCM will:

1. Provide written notice to the individual via the Notification Form for Denial, Reduction or

Termination of a Service or Inter-Jurisdictional Adoption. The written notification should include:

- a. The individual's right to request a fair hearing with regard to the decision or change within 30 days;
 - b. Information on how to obtain a hearing; and
 - c. A statement that the individual may be represented by an authorized representative such as legal counsel, a relative, friend, or other spokesperson, or that he/she may represent himself/herself.
2. If the individual formally accepts the proposed decision/change, ask the individual to waive their right to request a fair hearing by signing the Waiver of Fair Hearings and implement the change.
 3. If the individual requests a hearing, do not implement the proposed decision/change and promptly assist the individual in requesting and preparing for a fair hearing.
 4. Forward all hearing requests within three business days to the DFCS Fair Hearing Coordinator by:
 - a. Email to DFCSfairhearings@dhs.ga.gov; or
 - b. Mail to:

DFCS Fair Hearing Coordinator
Office of General Counsel
47 Trinity Avenue SW
Atlanta, Georgia 30334
 5. If the individual requests a hearing and an emergency threatens a child's health or safety, take emergency action to protect the child;
 - a. Obtain approval from the County Director/Designee for the emergency action within two business days of the action;
 - b. Provide the individual with written notice of the emergency, reasons for the action and information about the individual's right to appeal within three business days of the action.
 6. Upload copies of all forms/notifications in External Documentation in the GA Statewide Automated Child Welfare System (Georgia SHINES).

Whenever an individual disagrees with DFCS' decision/recommended change to deny or delay an inter-jurisdictional adoption or deny, reduce or terminate a social service or visitation that is not a part of a court-ordered case plan, the SSCM will:

1. Conduct a face-to-face meeting with the individual to review and try to resolve the situation. Include the Social Services Supervisor (SSS), other relevant county/regional staff and any party the individual wishes to invite;
2. If the issue is not resolved and/or the individual requests an appeal, process the appeal request in a timely manner, including:
 - a. Providing the necessary form- Request for Fair Hearing;
 - b. Explaining the time limits, including that oral requests for a hearing must be followed by a written request within 30 days of the Notification Form for Denial, Reduction or Termination of a Service or Inter-Jurisdictional Adoption; and, if necessary;
 - c. Facilitate the completion of the written request.
3. Accept a request for a fair hearing when the individual believes a change or decision has been made by DFCS without following the required procedural guidelines;
4. Upload all forms/notifications in External Documentation in Georgia SHINES within 72 hours of completion;

5. Submit the following forms to the DFCS Fair Hearing Coordinator within three business days of receiving the parent's written request for a hearing:
 - a. OSAH Form 1;
 - b. Subpoena Requests;
 - c. Request for Fair Hearing;
 - d. Notification Form for Change in Case Plan/Services;
 - e. Relevant narratives of the Contact Detail (information parents are unable to receive must be redacted);
 - f. Comprehensive Child and Family Assessment;
 - g. Case plans and case reviews;
 - h. Court orders;
 - i. Copies of foster care policies/procedures relied upon in reaching the action taken; and
 - j. Any other information pertinent to the case.
6. Contact the DHS Office of General Counsel to coordinate the legal representation for The County Department and obtain a determination concerning whether legal representation is required;
7. Determine (in consultation with the DHS Office of General Counsel) who should be present as witnesses at the hearing and what evidence/documents are needed to support the case;
8. Complete the subpoena forms for all witnesses/documents and attach to the OSAH Form 1 when submitted to the DFCS Fair Hearing Coordinator;
9. Make available any materials submitted to OSAH should the individual and/or the individual's authorized representative request to see them. A release of information must be obtained for non-agency material to be shared (e.g., psychological, medical records, etc.);
10. Prepare and redact confidential information in the narratives of the Contact Detail so that only the material releasable to the individual can be read;
11. Maintain contact with the individual and/or authorized representative and promptly report any changes in the individual's circumstances or any requests for postponement or continuance to the DFCS Fair Hearing Coordinator;
12. Adhere to established OSAH hearing procedures for presenting all pertinent facts/circumstances and advancing any arguments in support of DFCS' action/decision being asserted for review by the parent.

If it is determined at the fair hearing on inter-jurisdictional adoption that DFCS is in violation of section 471 (a) (23) of the Social Security Act:

1. The Permanency Unit Director, within ten days of the decision, will arrange and conduct a meeting with the County Director, Regional Director, Foster Care Services Director and Office of General Counsel to determine if DFCS plans to exhaust additional legal remedies to appeal the fair hearing decision.
2. If DFCS does not desire to exhaust any additional legal remedies, DFCS will notify the appropriate ACF Regional Office of the findings within 60 days of the decision.
3. If DFCS desires to exhaust additional legal remedies:
 - a. The Office of General Counsel will provide guidance on whether and how to proceed with the appeal of the fair hearing decision;

- b. After all appeals are completed, a final decision upholding the fair hearing officer's decision will be submitted to the Administration for Children and Families (ACF) within 30 calendar days of the final decision concluding the appeal process.

If the individual elects to withdraw the request for a fair hearing, the SSCM will:

1. Inform the individual the withdrawal must be in writing and can be submitted to the County Department or directly to OSAH;
2. Immediately forward any request for withdrawal to the DFCS Fair Hearing Coordinator;
3. If the individual withdraws the request prior to the County Department forwarding the completed "Request for Fair Hearing" to the DHS Office of General Counsel, forward both the form and withdrawal statement to the DHS Office of General Counsel;
4. If the individual withdraws the request after it has been submitted by DHS Office of General Counsel to OSAH, forward a summary to DHS Office of General Counsel which explains fully why the request is being withdrawn and how the agency will proceed;
5. Upload the withdrawal in External Documentation in Georgia SHINES within 72 hours.

PRACTICE GUIDANCE

As a result of the J.J vs. Ledbetter Consent Order, a parent may request a hearing whenever there is a disagreement with an agency decision to deny, reduce or terminate a social service or reasonable visitation (including transportation or other assistance regarding visitation). With respect to the denial, reduction or termination of a social service, the service is any which may be requested by or previously received by the parent. The service may be provided directly by DFCS staff or purchased/paid for by the County Department.

The appeal process for any individual is handled by an Administrative Law Judge (ALJ) with the Office of State Administrative Hearings (OSAH). The ALJ conducts the hearing and issues a decision that is binding upon DFCS. However, if the individual is not satisfied with the initial decision, the individual may appeal to the DHS Commissioner through the DFCS Fair Hearing Coordinator for a final administrative decision.

NOTE: When an individual disagrees with a decision or a service which is part of a court-ordered case plan (or a plan being submitted to become an order of the court), the appeal rights of the individual are exercised solely through Juvenile Court rather than through the OSAH administrative hearing process.

Counties should develop procedures to resolve differences without a hearing. The procedures should include how the County Department will take prompt action to resolve complaints beginning with the SSCM reviewing the situation with the parent. If the issue is not resolved locally and/or if the individual requests a Fair Hearing, the request should be processed in a timely manner.

Possible Reasons for a Fair Hearing

Some instances where an individual may request a fair hearing include, but are not limited to, the following:

1. A social service is denied, reduced or terminated;
2. Reasonable visitation (or transportation to visitation) is being denied, reduced or terminated;

3. A determination is being made that the individual must participate in a service as outlined in the case plan (not court-ordered);
4. The County Department has failed or is unable to provide/arrange certain services as specified in the case plan (not court-ordered);
5. A change in the case plan (not court-ordered) is being made;
6. The denial or delay of placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for the child;
7. Failure by the State agency to advise potential adoptive parents about the availability of adoption assistance (AA) for children in foster care;
8. DFCS erroneously determined that the child was ineligible for Title IV-E benefits;
9. Relevant facts regarding the child were known by DFCS or the Child Placing Agency (CPA) and not presented to the adoptive parents prior to finalization of the adoption which impacted the AA decision;
10. Denial of AA based on a means test of the adoptive family;
11. Decrease in the amount of AA without the concurrence of the adoptive parents;
12. The adoptive family disagrees with the determination by the State that the child is ineligible for AA.

DFCS Fair Hearing Coordinator

DFCS Fair Hearing Coordinator is responsible for the following:

1. Reviewing the hearing request and determine if the issue is appropriate for appeal by OSAH;
2. Responding in writing to the requester if the appeal will not be processed any further;
3. Forwarding to OSAH the materials submitted by the County Department if a fair hearing needs to be held.

The Fair Hearing

The individual may have an authorized representative such as legal counsel, a relative, friend or other spokesperson, or he/she may represent himself/herself at the hearing. The individual and/or the authorized representative should have an adequate opportunity to:

1. Examine the releasable contents of the case record and all documents/records to be used by DFCS at the hearing at a reasonable time before the date of the hearing and/or at the hearing;
2. Present the case and establish all pertinent facts and circumstances;
3. Bring witnesses;
4. Advance any arguments without undue interference; and
5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

Once rendered, the decision of the ALJ becomes effective immediately. However, if an adverse decision is issued, the individual has a right to a further appeal to the DHS Commissioner through the DFCS Fair Hearing Coordinator. The DFCS Fair Hearing Coordinator shall notify the individual and his/her legal representative of the final decision and of the individual's right to pursue a separate legal action for judicial review outside of DHS.

FORMS AND TOOLS

[Notification Form for Denial, Reduction or Termination of a Service or Inter-Jurisdictional Adoption](#)

OSAH Form 1
Request for Fair Hearing
Subpoena - Sample
Waiver of Fair Hearing