

4.21 Notification to individual's subject of the Family Functioning Assessment. *Note: Pilot Counties refer to special instructions regarding notification letters*

Upon Supervisor approval of the Family Functioning Assessment a notification letter is electronically generated and automatically mailed to the parties provided the correct name and mailing address is documented in FACTS. If the necessary information is not correctly documented a notification letter will not be automatically mailed. Each week FACTS generates a Fredi report titled "CPS Letters Exception Report". The report indicates the county, worker name, case number, client number and why a notification letter was not mailed the previous week. The report is located at www.wvfacts.org/fredi and should be reviewed weekly to determine if any of your clients were not mailed the notification letter. The letters will mention that the maltreatment findings could affect employment in the future. The letter will also notify the family of their right to appeal and the process to request a grievance. A copy of the letter can be found on the intra-net for your review. (Please see CPS policy 6.1 and Common Chapters, Chapter 700, Appendix C. concerning the Grievance Process)

If you discover one of your clients did not receive their notification letter, it is your obligation to mail the appropriate notification letter as soon as possible. **Each adult and alleged maltreater** subject of the Family Functioning Assessment gets their own letter addressed to them. A copy of the letters can be found on the intranet at http://intranet.wvdhhr.org/bcf/cps_letters.asp

6.1 Appeals and Grievances

At any time that the DHHR is involved with a client, the client (adult or child), or the counsel for the client has a right to express a concern about the manner in which they are treated, including the services they are or are not permitted to receive.

Whenever a parent, child, or counsel for the parent or child has a complaint about CPS or expresses dissatisfaction with CPS, the worker will:

- Explain to the client the reason for the action taken or the position of the DHHR which may have resulted in the dissatisfaction of the client.
- If the situation cannot be resolved, explain to the client his/her right to a meeting with the supervisor.
- Assist in arranging for a meeting with the supervisor.

The supervisor will:

- Review all reports, records and documentation relevant to the situation.
- Determine whether all actions taken were within the boundaries of the law, policy and guidelines for practice.
- Meet with the client.
- Consult with the Community Services Manager and Regional Program Manager or designee. If an agreement is made for revision to the case record, the supervisor will complete the "Override Request Form". The form must be signed by both the Community Services Manager and the Regional Program Manager or designee, and then submitted to the FACTS Help Desk.
- If the problem cannot be resolved, or the client does not wish to attempt resolution, provide the client with the form, Client and Provider Grievance Hearing Request, SS-28.
- Assist the client with completing the SS-28, if requested.
- The supervisor completes the "Hearing/Grievance Record Information" form IG-BR-29.
- Submit both forms immediately to the Chairman, State Board of Review, DHHR, Building 3, Capitol Complex, Charleston, WV 25305.

Preparing for the Grievance Hearing

It is the responsibility of the supervisor and worker to represent their findings during the grievance hearing. The Hearings Officer, who is a DHHR employee, is not there to represent the agency's position. The hearing should be treated much the same way as a court hearing; the worker will be defending him/herself and the actions taken during the casework process. The difference is that the worker and supervisor will not have the benefit of a prosecuting attorney to

make the agency's statements. Therefore, the worker and supervisor, who should both be in attendance unless other arrangements are made, must be prepared with the following:

- Copies for all parties (including grievant, grievant's counsel and hearings officer) and attending the hearing of all of the investigation materials, including the safety assessments, initial assessment and contacts with the family subject to the investigation.
- Copies for all parties (including grievant, grievant's counsel and hearings officer) attending the hearing of any family assessments and/or treatment plans that may be in question.
- Copies for all parties attending the hearing (including grievant, grievant's counsel and hearings officer) of applicable state laws and CPS policies that were used to make the decisions during the investigation or casework process.
- Copies for all parties attending the hearing (including grievant, grievant's counsel and hearings officer) of the anchors that were used when determining the rating for the maltreatment element.

(For more information on Grievance Procedures for Social Services, please see DHHR Common Chapter Manual, Chapter 700, Appendix C.)

**720 SUBPART B – ADMINISTRATIVE HEARINGS PERTAINING TO
SOCIAL SERVICES PROVIDED BY THE DEPARTMENT OF
HEALTH AND HUMAN RESOURCES****720.10 General**

Scope – This procedural rule is intended to set forth the procedures for social services administrative hearings within the Department of Health and Human Resources by the Board of Review. Pursuant to §49-2B-13 of the West Virginia Code, certain social services hearings including hearings involving the licensure or certification of residential child care facilities, child-placing agencies, day care centers, family day care facilities and family day care homes, as noted in West Virginia Code §49-2B-3, follow the procedures of the Contested Cases section of the Administrative Procedures Act found at §29A-5-1 et seq. of the West Virginia Code. All other hearings covered by these procedural rules are exempt from the Administrative Procedures Act pursuant to §29A-1-3 of the West Virginia Code.

720.11 Definitions

- A. Department – The West Virginia Department of Health and Human Resources.
- B. Grievant – Any person who wishes to file a grievance/hearing request due to an alleged action or inaction by the Department or any alleged policy violation by the Department.
- C. Hearing Officer – Member of the Department's Board of Review authorized to conduct hearings and render decisions on behalf of the Board.
- D. Hearing Request – Any written or oral statement by the grievant, or his or her attorney/representative, requesting an opportunity to appeal to the Board of Review any adverse action taken by the Department. The written statement may be made to the office or bureau within the Department that is taking the adverse action. This request may also be referred to as a Grievance Request.

720.12 Computing Time

In computing any period of time prescribed within this rule, the day of the act, event, default, or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

720.13 Hearings Covered by These Rules

- A. Any social service provided by the Department shall be covered by these rules. Social Service hearings include, but may not be limited to:
 1. Child Protective Services;
 2. Adult Protective Services;
 3. Licensure or Certification of Residential Child Care Facilities, Child-Placing Agencies, Day Care Centers, Family Day Care Facilities and Family Day Care Homes, Adult Family Care Home;
 4. Adoption Subsidy Program; and
 5. Foster Care.
- B. Reasons for Hearing
 1. Adverse Action – Any action taken against an individual or provider that negatively affects that individual or provider. Adverse action may include, but is not limited to: a finding of maltreatment or abuse in a Child Protective Services or Adult Protective Services case, denial or revocation of license or certificate in Residential Child Care Facilities, Child-Placing agencies, Day Care Centers, Family Day Care Facilities, Family Day Care Homes cases and Adult Family Care, or a denial or negative change in an adoption subsidy program or foster care case.
 2. An administrative hearing shall not be granted if the substantive issue being grieved has been or is, at the time of the grievance, being adjudicated in a court of law in the State of West Virginia.

720.14 Pre-Hearing Rights

- A. Right to a Hearing – Any grievant must be advised, in writing, of his or her right to a hearing any time a decision is made by the Department of Health and Human Resources that is not favorable to the grievant.
- B. Pre-hearing Conference – Any grievant requesting a hearing shall be advised, in writing, on the “Request for Hearing” form or within the decision taken against the individual, of his or her right to have a pre-hearing conference with an employee of the Department who was involved in the decision-making process on the grievant’s case. Pre-hearing conferences are encouraged in all cases. At no time shall the grievant be discouraged from pursuing his or her right to a fair hearing.
- C. Release of Information to the Grievant – Except where prohibited by state law, for purpose of the fair hearing process the grievant shall have access to his, her or its entire case record including, but not limited to, all documents that pertain to the adverse action that is the subject of the fair hearing. With written authorization from the grievant, grievant’s attorney or representative may review the record. The review of the record shall take place during normal business hours at the Departmental location where the record is housed. Additionally, grievant or his/her/its attorney or representative may request and receive, at the rate currently assessed by the Department, a copy of the entire case record and a copy of any policy, manual section or other document that may be used in a hearing involving the grievant.
- D. No matters pending in any court shall be ripe for a hearing before the Board.

720.15 Time Limits for Requesting and Scheduling a Hearing or Pre-Hearing Conference

- A. A grievant shall have sixty (60) days from the date that notice of the action is provided to grievant in order to request a hearing on any negative action taken by the Department against the grievant. Grievant shall also provide notice to the Child Protective Services (CPS) supervisor in the county involved.
- B. Notice of Right to Pre-hearing Conference – An individual shall be notified in writing at the time of the notification of action taken by the Department against him or her of his or her right to a pre-hearing conference.

C. Notice of Right to Hearing

1. An individual shall be notified in writing, at the time of the notification of action taken by the Department against him or her, of his or her right to a hearing.
2. Once a fair hearing request is received by the office or bureau that issued the adverse action, that office or bureau shall notify the appropriate Hearing Officer of the hearing request and the office or bureau will send Form IG-BR-29 along with the original hearing request or copy of letter confirming verbal request and a copy of the notification letter that corresponds to the request.
3. The Board of Review shall send written notice to the grievant giving the date, time and place for the hearing. If a pre-hearing conference has been requested, the hearing shall take place after the pre-hearing conference. The Notice of Hearing shall contain the name, address and telephone number of the person to contact in the event the grievant cannot attend the scheduled hearing. An outline of the grievant's rights concerning the hearing process and an outline of the hearing procedures shall be attached to the notice.
4. The Notice of Hearing shall be sent to the parties at least thirteen (13) days prior to the hearing.

720.16 Notice of Hearing, Service of Documents, and Location of Hearing

- A. Notice of hearing and any document or order shall be served on all parties of record. When a party is represented by an attorney, service shall be made on the attorney as the proper recipient of all such notices, documents, and orders.
- B. The hearing shall be held at the Department's office in the county in which the grievant resides (or, in the case of an entity, in which the business is located). A hearing may be held by telephone conference or by videoconference where available. If the hearing will be held by telephone conference or videoconference, all parties shall submit, to the Hearing Officer and the opposing side at least five (5) days prior to the hearing, any evidence to be used at the hearing.

1. A telephone hearing shall be conducted as follows: 1) Grievant provides Hearing Officer with a telephone number at which he or she may be reached at the date and time scheduled by the Hearing Officer for the hearing. 2) At the date and time appointed for the hearing, the Hearing Officer will initiate a conference call, contacting the Department's representative and the grievant. The Department's representative shall have with him or her all witnesses necessary for the Department's case. The grievant shall have with him or her all witnesses necessary to prove his or her case. 3) The Hearing Officer shall conduct the hearing as any other hearing in front of the Board of Review, including, but not limited to, placing under oath all individuals who will provide testimony during the hearing.
2. A videoconference hearing shall be conducted as follows: 1) Hearing Officer contacts grievant to determine the closest Department of Health and Human Resources office with videoconference capabilities. 2) Hearing Officer reserves videoconferencing equipment at all necessary locations. Hearing Officer may be at the same location as the grievant or may be at a separate location. Department's representative may be at the same location as either the grievant or the Hearing Officer or may be at a third location. 3) The Hearing Officer shall conduct the hearing as any other hearing in front of the Board of Review, including, but not limited to, placing under oath all individuals who will provide testimony during the hearing. Or all parties shall call into a central number pre-arranged for that purpose.

720.17 Continuation of a Hearing

A request for continuance shall only be granted for good cause. In all cases involving a request for good cause, the Hearing Officer shall determine good cause.

720.18 Denial or Dismissal of a Hearing

- A. Withdrawal – The Hearing Officer may dismiss a request for hearing if the grievant withdraws the request in writing.
- B. Abandonment – The Hearing Officer may dismiss a request for hearing if the grievant fails to appear at a scheduled hearing without good cause. The Hearing Officer shall determine good cause. The Hearing Officer shall send to grievant an Abandonment Letter offering to reschedule the hearing if the grievant establishes good cause for missing the original

hearing in writing within ten (10) days of receipt of the Abandonment Letter. Good cause includes, but is not limited to:

- Death in the family
- Personal illness or injury
- Sudden or unexpected emergency

- C. The Board shall have the power to dismiss any matter where relief cannot be granted.

720.19 Hearing

- A. Attendance at Hearing - The hearing may be attended by the grievant and/or the grievant's representative(s), any attorney representing the grievant, any employee(s) of the Department who took the action that was allegedly adverse to the grievant, and/or his or her designee, and an attorney for the Department.

Due to the confidential nature of the cases, these hearings are not open to the public. The Hearing Officer shall have the authority to determine who may attend the hearing, and under this authority shall recognize the grievant's wishes concerning persons in attendance at his or her request.

- B. Communication with Board of Review - No person may confer or correspond with the Board of Review or any Hearing Officer therein regarding the merits of a hearing unless all parties to the hearing are present.
- C. Witnesses – Either party may have witnesses testify to the issues in controversy. Witnesses may be sequestered upon request by either party or at the discretion of the Hearing Officer.

At the request of the grievant, any employee or consultant of the Department who may have relevant evidence or information regarding the grievant's appeal must appear at the hearing prepared to give testimony in the grievant's case. The grievant must make this request at least seven (7) days prior to the hearing.

- D. Official Record – All hearings shall be recorded electronically on tapes or other electronic recording media. The Board of Review shall prepare the official record, which shall include reported testimony and exhibits in each contested case as well as all papers, motions and requests, and rulings filed

in the case. It shall not be necessary to transcribe the recorded testimony unless required for purposes of judicial review.

- E. Impartiality – All hearings shall be conducted in an impartial manner.
- F. Presentation of the Case – The Department will present its case and then the grievant will present his or her case. The burden of proof is first on the Department to prove, by a preponderance of the evidence, that its adverse action was correct, then shifts to the applicant or recipient to prove, again by a preponderance of the evidence, that the Department's action was incorrect.
- G. Cross Examination – Either party shall have the right to cross-examine witnesses who testify and shall have the right to submit rebuttal evidence.
- H. Admissibility of Evidence – The Hearing Officer shall rule on the admissibility of any evidence presented by either party at a hearing. Only evidence related to the issue involved in the hearing will be considered when arriving at a decision.
- I. Rules of Evidence – Unless otherwise provided in these rules, the Rules of Evidence as applied in civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The parties shall be bound by the rules of privilege recognized by law. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.
- J. Decision – The Hearing Officer's decision must be based on the facts as they existed at the time of the Department's action or proposed action at issue. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy.
- K. The decision must be carried out by the bureau within ten (10) working days. Also, bureau is to complete the Form IG-BR-45 and return to the Hearing Officer to notify him or her of action taken.

720.20 Time Limits for Final Disposition of a Hearing Request

Final administrative action shall be taken within ninety (90) days of the receipt of the hearing request by the Board of Review.

720.21 Hearing Decisions Not Available to the General Public

Hearing decisions are not available to the general public.

720.22 Appeal of a Hearing Decision

- A. Proceedings that are Exempt from the Administrative Procedures Act – Except for hearings held pursuant to West Virginia Code §49-2B-13, upon a final decision of a Hearing Officer, the grievant may file, pursuant to West Virginia Code §53-3-2, a Petition for Writ of Certiorari in the Circuit Court of Kanawha County, West Virginia within four (4) months of the date of the final decision. The grievant shall be advised of this right, as well as any applicable time frames within which the petition must be filed, upon receipt of the final decision.
- B. Proceedings for which the Administrative Procedures Act Applies - Hearings involving the licensure or certification of residential child care facilities, child-placing agencies, day care centers, family day care facilities and family day care homes, as noted in West Virginia Code §49-2B-3, follow the procedures of the Contested Cases section of the Administrative Procedures Act found at §29A-5-1 et seq. of the West Virginia Code. Pursuant to West Virginia Code §29A-5-4, any party adversely affected by a final decision of the Board of Review may file a petition, at the election of petitioner, in the Circuit Court of Kanawha County, West Virginia or in the circuit court of any county in which the petitioner or any one of the petitioners resides or does business. The petition must be filed within thirty (30) days after the date upon which such party received notice of the final order or decision of the Department. The grievant shall be advised of this right, as well as any applicable time frames within which the petition must be filed, upon receipt of the final decision.