12. Appeals for Foster Care, Kin-GAP and Adoptions

A State Hearing or Appeal is a method where a dissatisfied client may obtain an impartial review of a County action or inaction. The process is mandated by federal law and is administered by the California Department of Social Services (CDSS).

The process is called a State Hearing, Appeal, or Fair Hearing. These terms are interchangeable. In this chapter “Appeal” will be used.

Providers in receipt of Foster Care (FC), Legal Guardian in receipt of Kin-GAP and adoptive parents in receipt of Adoption Assistance Program (AAP) benefits can initiate an appeal when disagreeing with a County action. The Appeal is the responsibility of the FC provider, Kin-GAP guardian and AAP parent.

Appeals are normally the result of a response to a Notice of Action (NOA) sent to a provider, Legal Guardian or adoptive parent. Appeals must be filed with 90 days of receiving the NOA.

When an Appeal is filed the person (FC provider, Kin-GAP Legal Guardian, or AAP parent) filing the appeal is the claimant and can appoint an Authorized Representative (see “Authorized Representative” on page 12-3”).

Request in Writing

Requests for appeals must be in writing and the request must have sufficient information to identify the general concern. Most FC, Kin-GAP and AAP appeals will be on the back of the NOA. Oral requests can only be accepted by CDSS.

Note:

For more information regarding the Appeals process refer to the Common Place Handbook “Appeals” on page 37-1.

There is no right to appeal concerning foster care placements or removal of a foster care child. Additionally, there is no right to a appeal concerning group home rates established by the State of California.

12.1 Notice of Action

Notification to an institution or foster care provider, Kin-GAP Legal Guardian and AAP parents are required whenever the FC, Kin-GAP or AAP is granted, increased, reduced or discontinued, or when a child is removed from the institution or foster care home.
Notices of Positive Action

The FC Eligibility Worker (EW) must validate a Notice of Positive Action to the foster parent or institution, Kin-GAP guardian or AAP parent when the case is granted or the payment is increased.

Notices of Negative or Adverse Action

- The FC EW must send a Notice of Adverse Action at least ten days in advance to the foster care provider, Kin-GAP recipient or AAP parent if payment is reduced or discontinued. A copy of the notice must be either retained in the Client Correspondence subsystem in CalWIN or must be filed in the IDM case and a copy of the notice must be sent to the assigned Social Worker.

- The FC EW must send a Notice of Adverse Action to the foster parent or institution if payment is discontinued BECAUSE THE CHILD WAS REMOVED FROM PLACEMENT. Ten days advance notice is not required in this situation.

- The foster care providers, Kin-GAP Legal Guardians and AAP parent/s have the right of Appeal on behalf of the child or youth in their care.

Note:

For more information regarding Notice of Actions refer to the Common Place Handbook “Notices of Action” on page 22-1.

12.2 When an Appeal is Filed

When an Appeal is filed it is sent to the Appeals Unit located at 333 W Julian, San Jose, CA 95110. The request can be mailed to the Appeals Unit or hand-delivered. The Appeal Officer will review the appeal and may contact Foster Care Eligibility (FCE) to request the continuation of payments or services under the “Aid Paid Pending” policy.

The Role of the Foster Care Eligibility (FCE)

Notification of the Appeal is sent to FCE with “Notice of Filing of Fair Hearing” (SCD 555) and/or an e-mail. The FC Supervisor receives the request and forwards it the appropriate FC EW to take the action.
Aid Paid Pending

Aid Paid Pending (APP) is the continuation of aid (payments) or services in the amount of what the FC provider, Legal Guardian or AAP parent/s would have received if the termination or denial of benefits was not received. Aid Paid Pending determination can only be authorized by the Appeal Unit. When APP is requested benefits must be restored or approved as soon as possible.

When the claimant is receiving a Special Care Increment (SCI) and APP is requested, the SCI can only be paid for the period of time included SCI on the payment instructions. When the SCI expires during the APP period, the benefits must be reduced to the basic foster care rate unless new SCI payment instructions are submitted by the assigned SW.

Example:

APP is requested on October 1. The SCI is good from July through December. The basic rate plus the SCI is good only through December while the case is still in Appeals. If the case remains in Appeals in January, the payment must be reduced to the basic foster care rate effective January.

The FC EW must advise the Appeal Officer when the benefits have been restored or approved.

Representation

The Appeals Officer is required to fully represent Social Service Agency (SSA) at the Appeals hearing. Only when it is in the best interest of SSA the Appeals Officer may request a FC EW or Social Worker (SW) be present or available during the hearing. SSA prohibits FC EWs or SWs from representing claimants at the Appeals hearing.

In the rare instance that the FC EW is required to attend the Appeal hearing the Appeals Officer will notify the FC EW and the FC EW Supervisor of the hearing place including the date and time. The FC EW or FC EW supervisor must be available during the hearing either by phone or in person to clarify discrepancies. Due to confidentiality issues, SWs are more likely to attend an Appeals hearing.

12.3 Authorized Representative

An Authorized Representative (AR) is a person or group who has authorization from the claimant (foster care provider, Kin-GAP guardian or adoptive parent/s).

All authorization must be provided in writing, by completing the “Authorized Representative” (DFA 19). When a request is made to review the IDM case or the Service Case file the “Consent to Release Social Services Records to An Authorized Representative For A State Hearing” (SCD 143) must be signed and dated.
Authorized Representatives are to be allowed to inspect non-privileged, non-confidential information contained in the case file (includes the IDM case) and may represent the claimant during all aspects of the Appeals hearing process.

Whenever the claimant is represented by an AR, the AR is furnished copies of all notices and decisions concerning the state hearing. The AR is authorized to receive copies of all subsequent notices and correspondences that are sent to the claimant. Additionally, the AR is authorized to receive copies of notices and correspondences related to a “Conditional Withdrawal” (see “Withdrawals and Decisions” on page 12-6) for compliance with a state hearing.

As part of the Appeal the AR and claimant may request to review the SSA case file. This is a Third Party Case Review. When privileged/confidential information is in the IDM file the FC EW will complete the “Removal of Confidential/Privileged Information” (SCD 2251) indicating what information is being withheld. The FC EW will provide a copy of the SCD 2251 to the AR.

Authorized Representative approvals are limited to one year unless revoked or expressly limited by the claimant. The approval may be extended for the length of time it takes for a final disposition of the Appeal.

**Note:**

To determine the extent of information and the procedures for case reviews for both claimant and the AR refer to Common Place Handbook “Client/Third Party Case Reviews” on page 42-1.

### 12.4 The Appeal Process

**Aid Paid Pending is Requested**

<table>
<thead>
<tr>
<th>STEP</th>
<th>Who</th>
<th>ACTION</th>
</tr>
</thead>
</table>
| 1.   | Appeals         | • Sends the SCD 555 to take immediate action to issue Aid Paid Pending as appropriate (approve or restore benefits).  
• Sends DFA 19 when claimant has an Authorized Representative.  
All documents are sent by e-mail to the FosterCareProcessing inbox. |
| 2.   | FC Clerical     | • Reviews and forwards the SCD 555 to the appropriate FC EWS, or  
• Request the assistance from the Information FC EWS to determine the how to handle the SCD 555 request. |
| 3.   | FC EWS          | • Reviews the SCD 555 to determines the appropriate FC EW to handle the request.  
• Returns the SDC 555 to FC Clerical to immediately assign a TMT or assigns the request to the designated FC EW. |
<table>
<thead>
<tr>
<th>STEP</th>
<th>Who</th>
<th>ACTION</th>
</tr>
</thead>
</table>
| 4.   | FC Clerical | • Creates a TMT Request or assigns the case to the assigned FC EW to complete the SCD 555.  
     |             | • Forwards SCD 555 to the assigned FC EW.                               |
| 5.   | FC EW       | • Reviews the SCD 555.                                                 |
|      |             | • Directs any questions regarding Aid Paid Pending to the Appeals Unit. |
|      |             | • Executes all changes requested on the SCD 555 in the case **not** related to the issue under appeal, |
|      |             | • Issues any required NOAs, client correspondences and payments,        |
|      |             | • When claimant has an AR, ensures all copies of documents sent to the claimant is forwarded to the AR at the same time, |
|      |             | • Thoroughly documents all action in CalWIN Case Comments,             |
|      |             | • Sends all documents to FC Clerical for IDM, and                      |
|      |             | • Advise the Appeals Officer and the FC EWS when the request is completed. |
| 6.   | FC EWS      | • Ensures the implementation of the Aid Paid Pending is completed,     |
|      |             | • Ensures compliance with the request is correct and timely,           |
|      |             | • Ensure that the Appeals unit is notified timely of the completion of the forms SCD 55, and. |
|      |             | • Ensure all documentation regarding the appeal and the initial determination is well documented in CalWIN Case Comments. |
12.5 Withdrawals and Decisions

Withdrawals

There are two types of Withdrawals of an Appeal.

- A straight or unconditional withdrawal, which is generally referred to simply as a withdrawal (no action is required); and

- A conditional withdrawal are withdrawals that accompany an agreement signed by the Appeals Officer and the claimant.

Conditional Withdrawals

The Appeals Officer will submit the “Withdrawal-Conditional Withdrawal of Request For Hearing (DFA 315) and the “Compliance Response to Conditional Withdrawal” (SCD 2293) to FCE. Only Appeals staff can sign the DFA 315. Foster Care Staff must take the required action on the DFA 315 and return the SCD 2293 to the Appeals Officer.

Conditional withdrawals must be acted upon appropriately within 30 days of the date of the signing of the conditional withdrawal. The conditional withdraw is an agreement and a commitment to take the required actions. Dishonored agreements will result in a reopening of the hearing and damage to the credibility of the SSA. If situations arise where compliance is impossible the FC EW must immediately contact with the FC EW Supervisor, the Appeals Officer and the Appeals Supervisor and explain the issue.

Note:

For more information regarding withdrawal see the Common Place Handbook “Withdrawals” on page 37-10.

Decisions

For any appeal which is ultimately heard by the Administrative Law Judge, a written decision will be issued and adopted by either the CDSS or the State Department of Health Care Services (DHCS).

The written decision will contain:

- A summary of the hearing,
- The evidence presented by both sides,
- Applicable regulations,
- A conclusion and,
• An Order.

The decision will indicate the action to be taken as follows:

<table>
<thead>
<tr>
<th>IF...</th>
<th>THEN...</th>
</tr>
</thead>
<tbody>
<tr>
<td>The County’s position is upheld in its entirety,</td>
<td>The claim will be denied.</td>
</tr>
<tr>
<td>The claimant’s position is upheld in whole or in part,</td>
<td>The claim will be granted. The claim may be granted in its entirety or may be granted in part.</td>
</tr>
</tbody>
</table>

A copy of the “Report of Compliance With Adopted Fair Hearing Decision” (SCD 1562) along with the Decision is forwarded to FCE. The assigned FC EW must return the SCD 1562 to the Appeals Officer. SSA is required to comply with the Decision Order within 30 days of receipt.

12.6 The Conditional Withdrawal and Decision Process

Upon receipt of the SCD 2293 or the SCD 1562 the following process will occur:

<table>
<thead>
<tr>
<th>Step</th>
<th>WHO</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Appeals Unit</td>
<td>• Sends the SCD 2293 and Hearing Decision or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Sends the SCD 1562 and DFA 315.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• When not already sent, Sends DFA 19 (Authorized Representative)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All documents are sent by e-mail to the “FosterCareProcessing” Inbox</td>
</tr>
<tr>
<td>2.</td>
<td>FC Clerical</td>
<td>• ID’s the documents and forwards them to the appropriate FC EW Supervisor (FC EWS).</td>
</tr>
<tr>
<td>3.</td>
<td>FC EWS</td>
<td>• Reviews the request.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Forwards the request to FC Clerical to create a TMT request or assign to a designated FC EW.</td>
</tr>
<tr>
<td>4.</td>
<td>FC Clerical</td>
<td>• Creates a TMT request or assigned case to the assigned FC EW to complete the SCD 2293 or SCD 1562 with the attachments.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Forwards the documents to the assigned FC EW.</td>
</tr>
<tr>
<td>Step</td>
<td>WHO</td>
<td>ACTION</td>
</tr>
<tr>
<td>------</td>
<td>-------</td>
<td>--------</td>
</tr>
</tbody>
</table>
| 5.   | FC EW | • Thoroughly reviews the SCD 2293 and Hearing Decision, or  
      |       | • Thoroughly reviews the SCD 1562 and DFA 315.  
      |       | • Any questions regarding the compliance must be addressed to the assigned Appeals Officer.  
      |       | • Immediately completes the required request.  
      |       | • Send the completed signed and dated SCD 2293 or SCD 1562 by e-mail to the assigned Appeals Officer. Includes the following:  
      |       | • The date when the payment was made and the amount of the payment must be included on the documents.  
      |       | • Validates all generated client correspondences and ensures they are sent to the claimant.  
      |       | • When applicable; copies must be sent to the assigned SW and the AR at the same time.  
      |       | • Thoroughly documents all actions taken in CalWIN Case Comments.  
      |       | • Forwards all documents to FC Clerical to be IDM’d.  
      |       | • Advises FC EWS the request has been completed.  
      |       | **Note:** All SCD 2293s and SCD 1562s must be processed with 30 days. |