**Section 50.1240 Hearing Process for** **Child Care Providers**

a) Child care providers whose employees are covered by a collective bargaining agreement with DHS shall refer to the relevant agreement, rather than the procedure outlined in this Section.

b) Child care providers may request a hearing regarding the imposition of a sanction as follows:

1) Notification of all sanction actions will be sent to the provider and the Division of Early Childhood by the Department or its agents. The notification will include a description of the violation and the statute or administrative rule that has been violated and the instructions for filing an appeal.

2) Child care providers must file first-level appeals of sanctions with the DHS Division of Early Childhood Bureau of Subsidy Management's Policy Unit within 60 calendar days of the date on the notification action (see subsection (b)(1)) that they are disputing.

c) Representation

1) Child care providers may appear with or without representation at the hearing.

2) If the child care provider is represented by legal counsel or another authorized representative, the appellant need not be present at the hearing. The representative must have a written authorization signed by the appellant prior to any action taken on behalf of the appellant.

3) The action or inaction of an authorized representative shall be deemed to be an action or inaction of the appellant.

d) First Level Hearing with the Division of Early Childhood’s Bureau of Subsidy Management

1) The Bureau of Subsidy Management will send reasonable notice in writing that a first level hearing has been scheduled. This hearing is intended to determine whether a provider appeal can be resolved before it reaches the Bureau of Hearings.

2) This notice shall be provided at least 10 calendar days prior to the hearing.

3) Following the first level hearing, the Bureau of Subsidy Management will issue a decision to either uphold, withdraw, dismiss, or revise the sanction action, or determine that the Department lacks jurisdiction.

e) Second Level Hearing with the Bureau of Hearings

1) If the child care provider is dissatisfied with the results of the first level appeal, they may file a second level appeal through the DHS Bureau of Hearings within 30 calendar days of the date that the Bureau of Subsidy Management issues their decision.

2) The second level hearing (which is equivalent to the hearing process described in Section 50.1230) will be conducted de novo and will not consider the first level hearing in making its determination.

3) The Bureau of Hearings will give reasonable notice to the provider and to the Division of Early Childhood that a hearing has been scheduled. This notice shall be provided at least 10 calendar days prior to the hearing.

4) At the adjournment of the hearing, the record shall be closed and no further evidence may be submitted. Prior to adjournment of the hearing, a request to leave the record open for a specified period for the submittal of additional evidence specifically identified during the hearing may be granted by the hearing officer. Copies of any evidence presented after the hearing shall be provided to all parties.

5) Following the hearing, a Final Administrative Decision will be made by the Secretary that either upholds or does not uphold the appealed sanction or determines that the Department lacks jurisdiction. A copy of the decision shall be mailed to the appellant and any representative.

6) A Final Administrative Decision is reviewable only through the Circuit Courts of the State of Illinois under the Administrative Review Law [735 ILCS 5/3-101].

7) After a Final Administrative Decision is released, no petition for rehearing or reconsideration is allowed. Neither the filing of any such motion, or correspondence in the nature of such a motion, nor any response by the Department to such correspondence nor motion will delay the time for filing of a complaint in the Circuit Court.

8) The Bureau of Subsidy Management will implement the results of the Final Administrative Decision within 10 calendar days of receiving the notice.

f) Conduct of the Hearings

1) The Department shall have the responsibility at the hearing to prove, by a preponderance of the evidence, that the child care provider committed an intentional program violation or fraud.

2) The hearing shall not be bound by common law or statutory rules of evidence, nor by technical or formal rules of procedure, but shall be conducted in a manner best calculated to conform to substantial justice.

3) An appeal may be withdrawn by the child care provider either prior to or at the hearing. A withdrawal must be in writing and signed by the appellant or entered orally on the record.

4) A request for postponement or continuance may be made by DHS or the child care provider.

A) A request to postpone a hearing must be in writing and received by the Bureau of Hearings at least 2 business days prior to the scheduled hearing date.

B) A request for postponement made less than 2 business days prior to the scheduled hearing date will be granted only upon showing of good cause.

C) At the hearing, the hearing officer may grant a request to continue when the party shows that good cause exists for not proceeding with the hearing. If the request is based on the unavailability of witnesses and/or documentary evidence, the hearing officer may defer ruling on the request until after the available evidence on the issues of the case is presented.

5) An appeal shall be dismissed, and appellant shall be informed of the dismissal by written notice, if:

A) The child care provider's employees are covered by a collective bargaining agreement with DHS; or

B) The appellant or the appellant's authorized representative does not appear at the time, date, and place designated for the hearing; or

C) The appellant or the appellant's authorized representative fails or refuses to proceed with the hearing.

(Source: Added at 47 Ill. Reg. 110, effective December 20, 2022)