

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER b: PROGRAM AND TECHNICAL SUPPORT

PART 338

**APPEAL OF FOSTER FAMILY HOME LICENSE DENIALS BY RELATIVE
CAREGIVERS**

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AUTHORITY: Implementing and authorized by Section 5 of the Children and Family Services Act [20 ILCS 505/5].

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Section 338.10 Purpose

The purpose of these rules is to explain the internal review and administrative hearing process for relative caregivers providing full-time care to children for whom the Department of Children and Family Services is legally responsible who apply for and are denied a foster family home license. This includes license denials based on background checks, including child abuse/neglect and criminal history information.

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Section 338.20 Definitions

"Administrative hearing" in the context of this Part means a formal review of the Department's decision to deny a foster family home license to the relative who is serving as caregiver of children for whom the Department is legally responsible.

"Administrative law judge" means the person who is appointed by the Director of the Department and is responsible for conducting the fair hearing.

"Administrator of the Administrative Hearings Unit" means the person who is responsible for coordinating the administrative hearing appeal process.

"Appeal file" means the correspondence, statements, reports, investigative files, documents and other written material submitted to the Administrative Hearings Unit and the appellant after the commencement of the appeal. It does not include any documents or other material that may be in the custody of any other unit of DCFS, unless the document or material has been submitted to both the appellant and the Administrative Hearings Unit.

"Appellant" means the person who requests a review or administrative hearing or in whose behalf a review and administrative hearing is requested.

"Children for whom the Department is legally responsible" means children for whom the Department has temporary protective custody, custody or guardianship via court order, or children whose parents have signed an adoptive surrender or voluntary placement agreement with the Department.

"Date of action" means the date on which any Department action becomes effective.

"Date of appeal" is the postmark date on the appellant's request to appeal the Department's decision to deny the application for a foster family home license.

"Date of notice" means the date of the written notice of the Department's decision.

"Department's representative" means an attorney or designated individual responsible for presenting the Department's case.

"Fictive kin" means any individual, unrelated by birth or marriage, who:

*is shown to have significant and close personal or emotional ties with the child or the child's family prior to the child's placement with the individual;
or*

is the current foster parent of a child in the custody or guardianship of the Department pursuant to the Child and Family Services Act and the Juvenile Court Act of 1987, if the child has been placed in the home for at least one year and has established a significant and family-like relationship with the foster parent, and the foster parent has been identified by the Department as the child's permanent connection. [20 ILCS 505/7(b)]

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"Final administrative decision" means the Department's final decision, order or determination on an appealed issue rendered by the Director in a particular case, that affects the legal rights, duties or privileges of participants and that may be further appealed to the circuit court under the Administrative Review Law [735 ILCS 5/Art. III].

"Full-time care" means the child is a resident of the household, whether on a temporary, emergency, or permanent basis, and is receiving family care usually provided by a parent or guardian.

"Godparent" is a person who sponsors a child at baptism or one in whom the parents have entrusted a special duty that includes assisting in raising a child if the parent cannot raise the child. If the person is considered to be the child's godparent, in order for placement to occur, the same placement selection criteria as contained in 89 Ill. Adm. Code. 301.60 (Placement Selection Criteria) must be met. If the godparent is not a licensed foster parent, all the conditions currently in effect for placement with relatives in 89 Ill. Adm. Code. 301.80 (Relative Home Placement) must be met.

"License" means a document issued by the Department of Children and Family Services which authorizes a relative caregiver to operate a foster family home in accordance with 89 Ill. Adm. Code 402 (Licensing Standards for Foster Family Homes) and the provisions of the Child Care Act of 1969 [225 ILCS 10] and rules promulgated thereunder.

"Party" to any administrative hearing or other proceeding in the Department is the Department or the appellant, as the case may be.

"Permanent connection" means a family-like relationship, consistent with a child's best interests, health, safety and well-being, that provides

- safe, stable and committed parenting;
- unconditional love and lifelong support; and
- a permanent legal status between child and family.

For a child for whom the Department is legally responsible, a permanent connection may be the child's parents or another caregiver in the child's home of origin. When the child cannot be safely returned home, a permanent connection may be the current or former foster parent or relative caregiver, an individual identified as an adoptive or legal guardianship placement resource, or another individual from among the child's or family's lifelong connections with whom a child has developed a familial relationship.

"Relative", for purposes of placement of children for whom the Department is legally responsible, *means any person, 21 years of age or over, other than the parent, who:*

is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once removed (children of one's first cousin to oneself), second cousin (children of first cousins are second cousins to each other), godparent (as defined in this Section), great-uncle, or great-aunt; or

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is the spouse, or party to a civil union, of such a relative; or

is the child's step-father, step-mother, step-grandfather, step-grandmother, or adult step-brother or step-sister; or

is the partner, or adult child of a partner, in a civil union with the child's mother or father; or

is a fictive kin as defined in this Section.

"Relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. For children who have been in the guardianship of the Department, have been adopted, and are subsequently returned to the temporary custody or guardianship of the Department, a "relative" may also include any person who would have qualified as a relative under this definition prior to the adoption, but only if the Department determines that it would be in the best interests of the child to consider this person a relative. [20 ILCS 505/7(b)]

(Source: Amended at 42 Ill. Reg. 2239, effective January 17, 2018)

Section 338.30 Who May Appeal

- a) Relative caregivers who have full-time care and custody of a related child for whom the Department is legally responsible have the right to appeal the denial of an application for a foster family home license.
- b) If an appellant has an authorized representative or an individual legally acting on the appellant's behalf, that representative or individual may exercise the rights of the appellant in the appeal process. These rights include the right to:
 - 1) review and copy record material;
 - 2) receive Department notices;
 - 3) speak in the administrative hearing process; and
 - 4) take any other actions permitted an appellant during the appeal process.

Section 338.40 What May Be Appealed

Relative caregivers providing full-time care to related children who have applied for a foster home license and been denied licensure may appeal the denial of a foster family home license.

Section 338.50 What May Not Be Appealed

The following circumstances are not appropriate for the appeal process:

- a) when the Department has already made a final administrative decision on the issue as a result of a previous appeal;
- b) when a court has made a judicial decision on the issue being appealed; or
- c) when the appellant has not met the time frame for requesting an appeal.

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Section 338.60 Concurrent Jurisdiction

If an appeal may be filed under either 89 Ill. Adm. Code 337, Service Appeal Process, or under this Part, the appeal shall be heard under this Part.

Section 338.70 Notices of Department Decisions

- a) Relative caregivers who apply for a foster family home license have a right to receive a written notice informing them:
 - 1) whether their application for licensure is approved or denied;
 - 2) if denied, the reason for the denial;
 - 3) of their right to appeal a denial of their application;
 - 4) how to file an appeal.
- b) All written notices used in this Part shall be in the appellant's primary language.
- c) The following notices shall be hand delivered with a certificate of delivery or sent by certified mail, return receipt requested, to "the addressee only":
 - 1) the final administrative decision that no genuine issue of material fact exists;
 - 2) the final administrative decision of an administrative hearing;
 - 3) the first notice of hearing.
- d) All other notices referenced in this Part shall be sent by regular mail.

Section 338.80 The Appeal Process

- a) To begin the appeal process the relative caregiver shall request in writing that the Department review its decision to deny the application for license as a foster family home. The request for a hearing must be postmarked within 15 calendar days of the date of notice of the Department's decision to deny the appellant's application for a foster home license. The request must be submitted to the Department staff person designated in the written notice.
- b) If the appellant is unable to request an appeal in writing, the Department or provider agency shall help the appellant put the request in writing upon request.

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Section 338.90 Internal Review

- a) After the Administrative Hearings Unit has received the appellant's request for an appeal, the Administrator of the Administrative Hearings Unit shall notify the Department that the appellant has appealed and the Department shall send to the Administrator a copy of the notice of denial of the application for a foster family home license. The notice of denial shall be prima facie evidence that the Department had a basis for refusing to license the home.
- b) The Administrator shall ask both the Department and the appellant to submit any documents, records, statements, or other materials pertinent to the Department's denial of the application for licensure to create an appeal file. The Administrator shall further advise the Department and the appellant of the intent to examine the appeal file, including all materials submitted for the appeal file, to determine whether a genuine issue of material fact exists. Within fifteen days of the date of the Administrator's request for materials, both the Department representative and the appellant shall submit to the Administrative Hearings Unit and to the opposing party any and all documents, records, statements, materials, or evidence to establish that the Department's decision to deny the license was either correct or incorrect. Fifteen days after the Administrator's request for materials, the Administrator shall then proceed to complete the internal review based on the materials received.
- c) The Administrator shall examine the entire appeal file, including all materials submitted by both parties, and shall determine if a genuine issue of material fact exists.
- d) If the Administrator determines that no genuine issue of material fact exists, the Administrator shall dismiss the appeal. The letter dismissing the appeal shall be the final administrative decision of the Department.
- e) If the Administrator determines that there is no genuine issue of material fact as to one or more of the major issues in the case but that substantial controversy exists with respect to other major issues, the Administrator shall specify in writing the major issue(s) about which there is no dispute. The Administrator shall direct that a hearing be held only on the contested issues. At the hearing, facts specified by the Administrator as without dispute shall be deemed established and the hearing conducted accordingly. The Administrator shall notify the parties of the matters which may be appealed.
- f) If the Administrator determines that all the issues are contested, the Administrator shall direct that a hearing be held and notify the parties of the decision.

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Section 338.100 The Administrative Hearing

- a) The Administrator of the Administrative Hearings Unit may grant a request for a hearing only when:
 - 1) the original written request for appeal was postmarked within 15 calendar days of the date of notice to the appellant that the Department has denied the appellant's application for a foster family home license; and
 - 2) the issue is within the jurisdiction of the Administrative Hearings Unit as set forth in Sections 338.30 and 338.40 of this Part.

- b) The Administrator of the Administrative Hearings Unit may dismiss a request for an administrative hearing for the following reasons only:
 - 1) the Administrator has determined that no genuine issue of material fact exists pursuant to Section 338.90;
 - 2) the appeal has been withdrawn in writing;
 - 3) the appeal has been abandoned. Abandonment shall be deemed to have occurred if the appellant, the appellant's authorized representative, or an individual legally authorized to act on behalf of the appellant fails to appear at the hearing, and the appellant does not have an adequate cause for failing to appear. Adequate cause for failing to appear at an administrative hearing may include, but is not limited to:
 - A) death in the family of the appellant or in the family of the appellant's representative.
 - B) serious illness of the appellant or the appellant's representative or serious illness in either person's immediate family.
 - C) transportation difficulties that make it impossible for the appellant or representative to appear at the hearing.
 - D) failure of the Department to give notice of the hearing to the appellant or representative at the last known address available to the Department. However, it is the appellant's responsibility to keep the Department updated on any change of address;
 - 4) the issue is not within the jurisdiction of the Administrative Hearings Unit as set forth in Sections 338.30 and 338.40 of this Part;
 - 5) the request for the appeal was not postmarked within 15 calendar days of the date of the notice that the application for license was denied;

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- 6) the appellant failed to notify the Administrator of the Administrative Hearings Unit of a change of address, and a notice of the administrative hearing cannot be delivered.
- c) If the appeal is not dismissed, the appeal shall be scheduled for hearing.
- d) The Department shall provide written notice of the decision to grant or deny the request for an administrative hearing within 20 calendar days of receipt of the request for an administrative hearing. If the Administrator of the Administrative Hearings Unit finds that the issue is not appealable under this Part but can be appropriately heard through another appeal process, in accordance with 89 Ill. Adm. Code 435, Administrative Appeals and Hearings, the Department shall forward the appeal to the proper hearing authority and notify the appellant of this action.
- e) The Administrator of the Administrative Hearing Unit shall:
 - 1) schedule the hearing at a date within a reasonable time period after the Administrator determines a genuine issue of material fact exists;
 - 2) ensure that the administrative hearing is scheduled at a time and place reasonably convenient for all parties. If the parties cannot agree to a reasonably convenient time and place, the administrator shall make this determination and proceed to schedule the hearing;
 - 3) provide a written notice to the appellant at least 15 calendar days before the scheduled hearing, which shall contain the following information:
 - A) the date, time and location of the hearing;
 - B) a statement that the appellant or appellant's representative's failure to appear at the hearing without adequate cause may be deemed an abandonment of the request, thus constituting a waiver by the appellant of the right to a hearing; and
 - C) a statement of the parties' rights during the appeal process.

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Section 338.110 Rights and Responsibilities in Administrative Hearings

- a) An appellant may bring a representative, including legal counsel, to the hearing. Expenses of a representative or of an appellant's witnesses shall be paid by the appellant.
- b) An appellant may request the Department employee who had direct involvement in the case or other persons who may have information relevant to the issues in dispute to attend the hearing by asking the administrator of the appeal hearing system to issue appropriate subpoenas. Witness fees and travel expenses for persons other than Department employees are the responsibility of the party requesting the subpoena.
- c) Any motions from the appellant or the Department shall be filed with the administrative law judge, at least ten calendar days before the hearing. Copies shall be sent to the Department's representative and the appellant.
- d) At the appellant's request, the Department shall provide an interpreter at no cost to the appellant if English is not the appellant's primary language or a sign interpreter if the appellant is hearing impaired.
- e) During the administrative hearing, the appellant and the Department have the right to:
 - 1) present and question witnesses;
 - 2) present any information relevant to the issues;
 - 3) question or disprove any information, including an opportunity to question opposing witnesses; and
 - 4) dispose of any disputed issue by mutually agreeing to a resolution any time prior to the conclusion of the administrative hearing.
- f) In an administrative hearing, the appellant bears the burden of proving, by a preponderance of the evidence, that the Department was in error when it denied the appellant's application for a foster family home license.

Section 338.120 Rules of Evidence

- a) All evidence helpful in determining these questions, including oral and written reports, may be relied upon to the extent of its probative value, even though not competent under the common law or statutory rules of evidence.
- b) All Department licensing records and investigatory files shall be admissible to prove the matters contained within the record or investigatory file.

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Section 338.130 The Administrative Law Judge

a) **Appointment of the Administrative Law Judge**

The Administrator of the Administrative Hearings Unit shall select and the Director shall appoint a trained, impartial administrative law judge from the available pool to conduct the appeal hearing. The administrative law judge shall:

- 1) possess knowledge and information acquired through training and/or experience relevant to the field of child and family welfare law, including familiarity with Department rules, procedures and functions;
- 2) not have been involved in the decision to take the action being appealed or have rendered legal advice to the decision maker on the issue; and
- 3) not have a personal or professional interest which interferes with exercising objectivity or have any bias against the parties or issues appealed. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

b) **Functions of the Administrative Law Judge**

The administrative law judge shall have all authority allowed under the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.]. This authority shall include, but is not limited to, the following:

- 1) conduct a fair, impartial and formal hearing in which the strict rules of evidence do not apply;
- 2) provide for the recording of the hearing;
- 3) inform participants of their individual rights and their responsibilities;
- 4) conduct preliminary and pre-hearing telephone conferences, if necessary, between the parties and/or their attorneys to provide information about the procedural aspects of the hearing, narrow the issues and discuss possible stipulations and contested points of law, in order to expedite the actual hearing;
- 5) take necessary steps to develop a full and fair record which contains all relevant facts;
- 6) administer an oath or an affirmation to all witnesses;
- 7) quash or modify subpoenas for good cause, including but not limited to, relevance, scope, materiality and emotional harm or trauma to the subpoenaed witness;

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- 8) preserve all documents and evidence for the record;
- 9) rule upon evidentiary issues and contested issues of law at the hearing or take matters under advisement pending issuance of the written opinion and recommendation;
- 10) order the removal of any person from the hearing room who is creating a disturbance whether by physical actions, profanity or otherwise engaging in conduct which disrupts the hearing;
- 11) identify the issues, consider all relevant facts and receive or request any additional information necessary to decide the matter in dispute, including but not limited to, the submission of briefs, memoranda of law, affidavits or post hearing briefs; and
- 12) present a written opinion and recommendation to the Director within 30 calendar days after the record of the administrative hearing is completed or transcript is received. This report shall include a recommended decision on whether the Department's decision to deny the appellant's application for a foster home license was correct or incorrect based on information considered at the hearing contained in the administrative record. The opinion shall contain findings of fact, conclusions of law and a recommendation.

Section 338.140 Combined or Separate Hearings

- a) When a common issue is raised, the Department may respond to requests for hearings from more than one appellant by conducting a single group hearing. The Department may also combine all issues raised by a single appellant in all pending appeals arising under this or any other Department rule in a single hearing. In all group hearings, the appeal system in this Part shall apply. Individuals shall be permitted to present their own cases separately.
- b) The Department, if required for the fair, efficient administration of the hearing or to prevent possible prejudice to the appellant, may sever any party or any issue from the combined hearing. The severed party or issue shall be heard separately.

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Section 338.150 Final Administrative Decision

a) Making the Final Administrative Decision

The Director of the Department shall receive the recommended decision from the administrative law judge and shall agree, disagree, or modify the recommended decision based upon the preponderance of the evidence. The Director's decision is the final administrative decision of the Department. If the decision requires corrective action by the Department, the Director shall appoint a Department staff person who shall be responsible for assuring compliance with the decision.

b) Notice of the Availability of Judicial Review

The Department shall include a notice to appellants as part of the final administrative decision. This notice shall advise the appellants that, under the provisions of the Administrative Review Law [735 ILCS 5/Art.III], they may seek within the statutory time frame judicial review of the Department's decision if it is unfavorable to them.

c) Who Receives Copies of the Final Administrative Decision

The appellant or authorized representative, the Department's Licensing unit, the Department's representative, the administrative law judge (except for notices of internal review decisions), and the Administrator of the Administrative Hearings Unit, shall receive a copy of the final administrative decision.

Section 338.160 Records of Administrative Hearings

The permanent record of the administrative hearing and the final administrative decision shall be maintained by the Administrator of the Administrative Hearings Unit. All hearing decisions shall be available for public inspection during regular business hours. However, confidential information shall be deleted in conformance with 89 Ill. Adm. Code 431, Confidentiality of Personal Information of Persons Served by the Department, and state and federal laws and rules and regulations on confidentiality.

Section 338.170 Severability of This Part

If any Court of competent jurisdiction finds that any Section, clause, phrase, or provision of this Part is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.

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Section 338.180 Transition Provisions

a) Definitions

"Approved under 89 Ill. Adm. Code 335, Relative Home Placement" means that a relative family home had been approved as meeting the standards of that Part prior to July 1, 1995.

"Child only standard of need" means the assistance standard for cases in which no adult member is included, as established by the Illinois Department of Public Aid in 89 Ill. Adm. Code 111, Assistance Standards.

"Foster care payment" means the amount paid by the Department for a child's room, board, clothing, and personal allowance in a licensed foster family home.

"Timely application for licensure" means a relative caregiver whose home had been approved under 89 Ill. Adm. Code 335, Relative Home Placement, submitted an application for a foster family home license postmarked no later than June 30, 1995.

b) Relative Caregivers Not Approved Under 89 Ill. Adm. Code 335, Relative Home Placement

Relative caregivers whose payments for the care of related children were reduced to the child only standard of need effective July 1, 1995, because the Department determined the relative home was not a licensed foster family home and had not been approved under 89 Ill. Adm. Code 335, Relative Home Placement, may appeal the proposed reduction of these payments, as notified in a letter from the Department to the appellant on June 12, 1995. Requests for a hearing under this subsection must have been postmarked on or before July 31, 1995, as stated in the letter from the Department to the appellant dated June 12, 1995, and submitted to the Bureau of Administrative Hearings, 160 N. LaSalle Street, Sixth Floor, Chicago, Illinois 60601 in order for the request to be accepted. The basis of the appeal must be that the relative caregiver:

- 1) was licensed as of July 1, 1995, under the provisions of 89 Ill. Adm. Code 402, Licensing Standards for Foster Family Homes. If a request for a hearing submitted under this paragraph was postmarked no later than June 30, 1995, foster care payments will be continued throughout the appeal process; or
- 2) had been approved under 89 Ill. Adm. Code 335, Relative Home Placement, and submitted an application for a foster family home license postmarked no later than June 30, 1995 which has not been denied. If a request for a hearing submitted under this paragraph was postmarked no later than June 30, 1995, foster care payments will be continued throughout the appeal process, until a decision is made on the application for license, or until September 30, 1995, whichever occurs first.

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c) Relative Caregivers Approved Under 89 Ill. Adm. Code 335, Relative Home Placement, Who Did Not Submit a Timely Application for Licensure

Relative caregivers whose payments for the care of related children will be reduced to the child only standard of need effective July 1, 1995, because the Department has determined that they were approved under 89 Ill. Adm. Code 335, Relative Home Placement, but who, according to Department records, did not submit a timely application for a foster family home license may appeal the proposed reduction of these payments as notified in a letter from the Department to the appellant on June 12, 1995. Requests for a hearing under this subsection must be postmarked on or before August 31, 1995 and submitted to the Bureau of Administrative Hearings, 160 N. LaSalle Street, Sixth Floor, Chicago, Illinois 60601 in order for the request for a hearing to be accepted. The basis of the appeal must be that the relative caregiver:

- 1) was licensed as of July 1, 1995 under the provisions of 89 Ill. Adm. Code 402. If a request for a hearing submitted under this paragraph was postmarked no later than June 30, 1995, foster care payments will be continued throughout the appeal process; or
- 2) had been approved under 89 Ill. Adm. Code 335, Relative Home Placement, and submitted a timely application for a foster family home license which has not been denied. If a request for hearing submitted under this paragraph is postmarked within ten days after the date of notice of the intended reduction of payments, foster care payments will be continued throughout the appeal process, until a decision is made on the application for licensure, or until September 30, 1995, whichever occurs first.

d) Relative Caregivers Who Reside Out of State

Relative caregivers whose payments for the care of related children will be reduced to the child only standard of need because they reside outside the State of Illinois and, according to Department records, failed to submit proof postmarked no later than July 15, 1995 to the Interstate Compact Unit, 406 East Monroe Street, Springfield, Illinois 62701 as required by Section 359.4, Payments for Substitute Care Services (89 Ill. Adm. Code 359, Authorized Child Care Payments) may appeal the proposed reduction of these payments. Requests for a hearing under this subsection must be postmarked within thirty days after the date of notice of the intended reduction of payments and submitted to the Bureau of Administrative Hearings, 160 N. LaSalle Street, Sixth Floor, Chicago, Illinois 60601 in order for a request for a hearing to be accepted. The basis of the appeal must be that the relative caregiver submitted proof of licensure, certification, or approval, as required by 89 Ill. Adm. Code 359.4. If a request for hearing submitted under this paragraph is postmarked within ten days after the date of notice of the intended reduction of payments, foster care payments will be continued throughout the appeal process.

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e) Recoupment of Overpayments

If the Department continues the payment at the current level while the appeal is pending and the hearing upholds the Department's decision to reduce the payment, the Department shall fully recoup the amount of overpayments made. This may be achieved by reducing future payments made by the Department to the appellant or by other appropriate action against the appellant's income or resources, as provided in Section 402 of the Social Security Act (42U.S.C.A. 602(a)(22)). When an overpayment results from willful misstatements made by the appellant to the Department, or from the willful withholding of relevant information by the appellant from the Department, the Department may recoup the overpayment from any available income and resources as provided in 45 CFR Section 233.20 (12).

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