
OVERVIEW

A person who is the subject of a report or record made under the CPL may request amendment or expunction by requesting a hearing, in writing, within 180 days from the date of service found on the DHS-847, Notice of Placement on Central Registry. If the local office reviews the request for hearing and determines that amendment or expunction is not warranted, the local office must complete a DHS-3050, Hearing Summary, and forward it, along with both pages of the original DHS-847 (signed by the petitioner), or original copy of the request for hearing if not made on the DHS-847, immediately to:

Michigan Administrative Hearing System (MAHS)
Benefit Services Division
P.O. Box 30763
Lansing, MI 48909
Tel. (517) 373-0722
Fax: (517) 763-0146

See the Hearing Summary section in this item for more information on completing the DHS-3050.

Note: A person's right to an administrative hearing under the CPL is neither automatic nor tied to the department's review and determination not to amend or expunge. Rather, a person must submit a written request for hearing within 180 days from the date of service found on the DHS-847. For good cause, an administrative hearing may be held if the written request for hearing is submitted within 60 days after the 180-day notice period expired.

MAHS Response to Hearing Requests

Only MAHS has the authority to grant or deny the hearing request. MAHS informs the petitioner and the local office in writing when a request is granted or denied. If the hearing request is granted, MAHS will issue a Notice of Hearing giving the date, time, and location of the hearing. MAHS denies requests signed by unauthorized persons and requests without original signatures (faxes or photocopies of signatures are acceptable).

Note: Staff must not call or email the Administrative Law Judge (ALJ) assigned to a hearing for any reason. Once a case is

scheduled, any questions regarding the case must be directed to the MAHS secretaries at (517) 373-0722.

Local Office Review of Request for Hearing And Pre-Hearing Conference

Upon receipt of a written request for hearing, the local office may review the case and offer the petitioner a pre-hearing conference within 15 days from receipt of the request for hearing. Note: The pre-hearing conference does not need to be held within the 15-day standard.

The local office case review should be performed by someone other than the person who denied the petitioner's original request for amendment or expunction. If conducted, the local office case review must determine whether the case record supports amendment or expunction.

If a pre-hearing conference is offered to the petitioner, it must take place within 30 days after the local office receives the request for hearing. A pre-hearing conference does not need to be held in the following situations:

- The petitioner chooses not to attend the pre-hearing conference. Note: The petitioner is not required to participate in the pre-hearing conference in order to have a hearing. This must be explained in any notice of the pre-hearing conference.
- A conference was held prior to the receipt of the request for hearing and:
 - The issue in dispute is clear.
 - MDHHS staff fully understands the positions of both the department and the petitioner.

The pre-hearing conference may be used to clarify the issues for the department and the petitioner. All of the following, actions must occur at the pre-hearing conference:

- Determine why the petitioner is disputing the MDHHS action.
- Review any documentation the petitioner offers in support of his/her request for hearing.

- Explain the department's position and identify and discuss the differences.
- Determine whether the dispute can be resolved prior to submission of the matter to MAHS for administrative hearing.

Local Office Administrative Review

The local office manager or designee must review all hearing requests that are not resolved by the first-line supervisor. The purpose of the review is to ensure that local office staff has completed the following:

- Applied MDHHS policies and procedures correctly.
- Explained MDHHS policies and procedures to the petitioner.
- Explored alternatives.
- Considered requesting a central office policy clarification or policy exception, if appropriate.

The local office manager or designee must evaluate the advisability of a hearing in relation to such factors as intent of policy, type of issue(s) raised, strength of the department's case, and administrative alternative.

NOTE: Once the department receives a request for hearing seeking amendment or expunction, a local office review does not replace the administrative hearing process. The matter must be submitted to MAHS for the scheduling of an administrative hearing unless the department amends the record or expunges the information as requested by the petitioner prior to submission of the matter to MAHS or the petitioner withdraws his/her request for hearing.

Pre-hearing Conference with ALJ

In more complex cases, following submission of the request for hearing and other required materials to MAHS, the Administrative Law Judge (ALJ) may order a pre-hearing conference on the ALJ's own motion or at the request of the department or petitioner. Issues to be discussed may include witness lists, proposed exhibits, requests for subpoenas, stipulations, duration of hearings, and simplification of the issues.

Hearing Summary

The department must complete the DHS-3050, Hearing Summary, and forward it to MAHS within 15 days from receipt of the hearing

request. The Hearing Summary must sufficiently describe the administrative facts, including but not limited to the following:

- Date of complaint.
- Date of disposition.
- Date of placement on central registry.
- Copy of the notice to the perpetrator.
- The allegations of abuse or neglect.
- Name and date of birth of the victim(s).
- Name and date of the perpetrator(s).
- Name and position of the department support person.
- Name of each witness (unless that would put the witness in danger).
- Prior administrative or judicial decisions on the alleged abuse/neglect, including prior decisions regarding requests for amendment or expunction involving the same placement on the central registry.
- Whether the petitioner was placed on central registry after April 1, 2014, and whether the petitioner has been on the registry for more than 180 days, but less than 240 days. This information must be noted at the very beginning of the DHS-3050 "Explanation of Action" section.

Exhibits

The department must decide what exhibits to offer at the hearing and provide copies to the petitioner prior to the hearing. Do not send copies of the exhibits to MAHS prior to the hearing. The department should offer, at a minimum, the investigative report(s), the risk assessment, and a central registry inquiry for the perpetrator. Other useful exhibits include photographs of injuries, audiotapes, and videotapes of interviews, police reports pertaining to closed criminal investigations, and a diagram of the location of the alleged child abuse/neglect.

Petitioner Access to Information

The petitioner has the right to review investigation reports and obtain copies of needed documents and materials. After confidential information has been redacted (see SRM 131, Confidentiality - Children's Services), send a copy of all documents and records that may be used by the department to the petitioner and/or the petitioner's attorney, including a copy of the DHS-3050.

Subpoenas

Request a subpoena if you or the petitioner requires a person outside MDHHS to testify at the hearing or to obtain a document outside MDHHS to be offered as evidence. Send a memo requesting a subpoena to MAHS including:

- Case name (for example, Jane Doe v. Ingham County MDHHS).
- Docket number.
- The name and address of the person whose testimony is required.
- What document is to be subpoenaed.
- Why the person or document is needed.
- How the person's testimony or document relates to the hearing issue.
- A copy of the notice of hearing, if available.

Allow adequate time to mail or hand deliver the subpoena. Do not send a copy of the entire witness list with subpoena requests.

The requestor must serve the subpoena and must pay the attending witness fee plus the state-approved mileage rate from and to the person's residence in Michigan; see Employee Handbook Policy, EHP 400, Subpoenas Issued in Administrative Matters.

Note: MDHHS employees are expected to participate in hearings without a subpoena when their testimony is required. If participation of an MDHHS employee cannot be arranged, send a memo to MAHS giving the name and location of the employee and how the

employee's testimony relates to the hearing issue. MAHS will decide whether to require the employee's participation.

Representation in Administrative Hearings

An assistant attorney general **must** be requested to represent the department in all administrative hearings where the opposing party (in these cases, the petitioner) is represented by counsel. Complete the DHS-1216 E, Request for Attorney General Representation, and send it, along with supportive materials to:

CLSRequestsforRepresentation@michigan.gov

If the opposing party is represented by counsel at an administrative hearing and the department's authorized employee is not, the department must request an adjournment from the ALJ so that the department may request representation by counsel.

Request for Adjournment

The petitioner or local office may request an adjournment of a scheduled hearing. All requests for adjournment must be in writing and sent (mailed or faxed) to MAHS, with a copy to the other party. Only MAHS can grant or deny an adjournment. If the adjournment is granted, an Order Granting Adjournment will be issued containing the new hearing date, time, and location. If the request for adjournment is denied, the hearing will commence at its originally scheduled date.

Withdrawal of Request for Hearing

A petitioner may withdraw the request for a hearing any time prior to the ALJ issuing a hearing decision and order. When a petitioner wishes to withdraw a request, ask for a signed written withdrawal. The DHS-18A, Hearing Withdrawal, form should be used for this purpose. The petitioner must clearly state that he/she has decided to withdraw the request. The local office hearings coordinator must enter all case identifying-information on the withdrawal form, attach the original copy to the request, and forward both to MAHS immediately. File a copy of the withdrawal in the case record.

Witness Testimony by Conference Call

Local offices may request that a witness testify via conference call, if necessary. Send a written request to MAHS, including specific information as to the reason for the request (for example, inability of the witness to travel, etc.) and to the extent possible, document any hardship that may be caused as a result of the witness needing to appear in person at the hearing.

Administrative Hearing Steps

The usual steps for a hearing are:

- Introduction by the ALJ.
- Opening statements (first the department, then the petitioner).
- Testimony of witnesses (both direct and cross-examination).
- Closing statements.

Role of the ALJ

In general, the ALJ will follow the same rules used in circuit court to the extent practical in the issue being heard. The ALJ must ensure the record is complete and may:

- Take an active role in questioning witnesses and parties.
- Assist either side to ensure that all necessary information is presented on the record.
- Be more lenient than a circuit court judge in deciding what evidence may be presented.
- Refuse to accept evidence that is repetitious, immaterial or irrelevant.

Either party may object on the record stating disagreement with the ALJ's decision to include or exclude evidence. The ALJ must state on the record why evidence was not admitted.

Decision and Order

The ALJ determines the facts based solely on the evidence at the hearing, draws a conclusion of law, and issues a decision and order. Copies of the decision and order are sent to the local office and the petitioner. In most cases, the petitioner has the right to

appeal the final decision to the Family Division of Circuit Court within 60 days after the decision is received.

Local Office Implementation

The hearing decision and order may require the local office to amend or expunge central registry. The local office must implement the required action within ten calendar days of the receipt of the hearing decision. The local office must complete the DHS-1844, Administrative Hearing Order Certification, within ten calendar days and send it to the Bureau of Legal Affairs to certify the implementation of the required action(s).

Bureau of Legal Affairs
Children's Services Legal Division
333 S. Grand Avenue, 5th Floor
Lansing, MI 48933
Phone (517) 284-4853

Rehearing/ Reconsideration

A rehearing is a full hearing, which is granted when the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that could affect the outcome of the original hearing.

A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. A reconsideration is granted when the original hearing record is adequate for judicial review and a rehearing is not necessary but a party believes the ALJ failed to accurately address all the issues.

MAHS determines if a rehearing or reconsideration will be granted.

The department should file a written request for rehearing/reconsideration if any of the following exists:

- Newly discovered evidence, which could affect the outcome of the original hearing.
- Misapplication of law in the hearing decision, which led to a wrong conclusion.
- Failure of the ALJ to address in the decision relevant issues raised in the hearing request.

Specify all the reasons for the request. Send the request to the CPS program office for a recommendation.

CPS Program Office
235 S. Grand Avenue, Suite 510
Lansing, MI 48933
Phone (517) 335-3704

If the CPS program office agrees, the CPS program office forwards the request to MAHS. The request for a rehearing must be received in MAHS within 60 days of the mailing date on the original decision and order.

MAHS will grant or deny the request and will send written notice to all parties of the original hearing. If MAHS grants a reconsideration, the hearing decision may be modified without another hearing unless there is need for further testimony. If a rehearing is granted, MAHS will schedule and conduct the rehearing in the same manner as a hearing.

Pending a rehearing, the local office must implement the original decision and order unless a circuit court or other court with jurisdiction issues an order delaying implementation of the original decision.

APPEALS TO CIRCUIT COURT

If the petitioner appeals the results of the Administrative Hearing to Circuit Court, immediately forward the legal notices (for example, subpoena, notice and complaint, the Administrative Hearing decision and order, etc.) to the Bureau of Legal Affairs.

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