

Preparing and Presenting Your Case – Appellant

Family Support for Children with Disabilities Act (FSCD Act)

Related Documents

Thinking About Filing an Appeal under the FSCD Act

A Guide to Appeal – FSCD Act

Preparing and Presenting Your Case – Director – FSCD Act

Appeal Tip Sheet for Legal Counsel

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Appeals Secretariat

Alberta 

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Introduction

The Community and Social Services Appeals Secretariat has provided Presenting and Preparing Your Case – Appellant – *Family Support for Children with Disabilities Act* (FSCD Act) to help you:

- understand the appeal process;
- understand your role in the appeal process; and
- prepare for the hearing.

The appeal process described in this guide and those listed below may be amended from time to time. The guides provide information about the general process for appeals and serve only as broad guidelines of what to expect.

Other guides available to assist you with your appeal are:

- Thinking About Filing an Appeal under the *Family Support for Children with Disabilities Act*;
- A Guide to Appeal – *Family Support for Children with Disabilities Act*;
- Preparing and Presenting Your Case – Director – *Family Support for Children with Disabilities Act*; and
- Appeal Tip Sheet for Legal Counsel.

Commonly used terms

In this document and the other documents listed above, the following terms are used:

- **Appellant** – this is the person who filed the Notice of Appeal.
- **Director** – this is the person (or representative) who made the decision that is being appealed. This can be the Family Support for Children with Disabilities caseworker, caseworker supervisor, manager or any other person designated as a director.
- **Family Support for Children with Disabilities Appeal Committee (Appeal Committee)** – this is a committee of Albertans from the community appointed by the Community and Social Services Minister and trained to hear appeals under the *Family Support for Children with Disabilities Act* (FSCD Act). Three members of this committee will serve as the hearing panel for the appeal. It is important to note that the members are volunteers; they are not employees of Community and Social Services and they are not a part of the Child and Family Services Authorities (CFSAs).
- **Appeals Secretariat** – this is an impartial government body that provides administrative support to the appeal process and the Appeal Committee. The Appeals Secretariat schedules hearings and provides information to all parties about the appeal process. In addition, the Appeals Secretariat maintains a website, www.appeals.gov.ab.ca, which contains information about the appeal process. The Appeals Secretariat operates at arm's length from all parties and focuses on providing support services.

As you use this guide to prepare for an appeal, please feel free to call the Appeals Secretariat office at 780-427-2709 (Edmonton and Area) or toll-free at 310-0000 then dial 780-427-2709 if you need assistance.

General summary of the appeal process

The appeal process starts with a Notice of Appeal that you file under the FSCD Act. You can ask for and fill out a Notice of Appeal form at your local CFSA office. The director acknowledges receipt of the Notice of Appeal by signing and dating the form, and sends a copy of it to the Appeals Secretariat. The director also provides the Appeals Secretariat with a copy of the director's decision if it is available.

Upon receipt of the Notice of Appeal, the Appeals Secretariat contacts you and the director to schedule an appeal hearing and to answer any questions you may have about the appeal process. The Appeals Secretariat also provides instructions about exchanging documents and providing them to the Appeal Committee before the hearing takes place.

The appeal hearing is conducted by a three-member hearing panel consisting of a hearing chair and two members. In the majority of cases, hearings are held in your community or region. However, in some cases, the hearing panel may consider it appropriate to hold a hearing by teleconference or videoconference, with agreement from the parties.

It is important to understand that the hearing panel is not conducting an investigation. The hearing panel can only make a decision using the information presented to it during the hearing (verbally or in writing) by you, the director, and through witnesses.

After the appeal hearing is complete, the hearing panel will review all of the information that was presented. The panel will then make a decision and issue a written statement that includes the reasons for its decision.

Mediation

Mediation is a voluntary process where you and the director meet with an independent mediator in an attempt to reach a solution to the issue under appeal. Mediation can be requested by either party at any time and, once mediation has started, the appeal process is put on hold until mediation is finished or discontinued. If mediation is successful, you will be asked to withdraw the appeal and the file will be closed.

For a full description of the mediation process, including the impact of mediation on the time limits for filing a Notice of Appeal, please see the document entitled "A Guide to Appeal – *Family Support for Children with Disabilities Act*."

Before the Hearing

Understanding your role

An appeal hearing will be scheduled by the Appeals Secretariat. Your role prior to the hearing is to:

- gather documents supporting your case; and
- send copies of the documents to the Appeals Secretariat (who distributes them to the hearing panel) and exchange documents with the director by a date set by the Appeals Secretariat. The date is usually three weeks before the hearing is to take place.

Your role at the hearing is to:

- present your case, including written information that you believe supports your position, to the hearing panel;
- explain to the hearing panel why it should decide in your favour; and
- bring witnesses, if you choose, to support your case.

Legal counsel

Although having a lawyer is not required, you have the right to hire a lawyer if you feel you need legal advice for your appeal. If you do hire a lawyer, he or she will be responsible for presenting your case to the hearing panel.

You may already know a lawyer or know how to select one, but if not, you can get advice from the Lawyer Referral Service, which is operated by the Law Society of Alberta (1-800-661-1095), or from Legal Aid Alberta (1-866-845-3425).

Preparing for the Hearing

Introduction

This hearing is your opportunity to tell the hearing panel, in your own words, what the circumstances of your situation are and how and/or why you believe the decision of the director is not valid or not correctly made.

When preparing your case, make sure your arguments fit under the FSCD Act and Regulation. The hearing panel is not required to comply with Community and Social Services' policies, such as those found in the Family Support for Children with Disabilities Policy and Procedures Manual, though the panel will consider all information presented by the parties when making its decision.

If you require information on the appeal process, please contact the Human Services Appeals Secretariat office at 780-427-2709 (Edmonton and Area) or toll-free at 310-0000 then dial 780-427-2709.

You can view the *Family Support for Children with Disabilities Act* and Regulation by visiting the website at www.appeals.gov.ab.ca.

You can prepare for the hearing by:

- reading the director's documents;
- writing an appeal summary detailing the history leading up to the decision that is being appealed and your reasons for disagreement with the director's decision;
- planning to explain how the director did not act in accordance with the FSCD Act and Regulation;
- planning to support your position through witnesses (factual, character or expert); and
- providing documents (e.g. medical reports or psychological reports) supporting your case.

If you are referencing past history, plan to show or tell the hearing panel how and why that information is relevant to the decision under appeal.

Documentation submission

Documentation submission, also referred to as disclosure, is the exchange of documents and information between the parties and is necessary to ensure that each party has knowledge of the case of the other party.

Parties must disclose their case by following these steps:

- gather the summary you prepared, a copy of the director's written decision, and all your supporting documents, statements and letters together;
- make a list of these documents (title, date, description);
- list the names of your witnesses;
- list the names of other persons who may be attending as a support person or representative; and
- make copies of all these documents (one for the director, four for the hearing panel, and one for other parties to the hearing, if applicable) and organize the documents in packages with the document list on the top of each package.

You and the director will be required to exchange this information between yourselves and to submit the information to the Appeals Secretariat for distribution to the hearing panel approximately **21 calendar days prior to the hearing**. The date will be set by the Appeals Secretariat.

When documents are submitted at the hearing, it will likely cause a delay, as the hearing chair may adjourn the hearing to allow the other party to review the documents and prepare a rebuttal, and to give the hearing panel time to review the new documents.

Use of witnesses

Witnesses are people that you may want to have present information at the hearing to help you support your case to the hearing panel. These people can be expert witnesses, such as doctors, counsellors, therapists or factual witnesses who have first-hand knowledge about your case. When witnesses come to the hearing, it gives them a chance to explain their evidence and answer any questions that the parties to the appeal and the hearing panel members ask them. Witnesses are not allowed into the hearing boardroom until they are called to present their evidence at the appeal hearing.

When preparing for the hearing, contact your witnesses to be sure they:

- can attend the hearing, at the scheduled time and place to give their submission;
- know that they do not sit in the hearing except for when they are giving their evidence and answering questions;
- know they will not need to come to the start of the hearing (your witnesses will not be called to give their evidence until after the director's witnesses are finished. After the hearing has started, you will be able to advise each of your witnesses of an estimated time to arrive at the hearing);
- know what information you need from them;
- understand that the director and hearing panel may ask them questions; and
- know they should dress and act appropriately at the hearing (witnesses should be aware that dress is business casual and that they are expected to behave in a courteous and respectful manner to all parties attending the hearing).

Your caseworker will most likely be providing information in support of the director's decision at the hearing, by acting as a witness for the director. If you would like your caseworker to provide certain information to the hearing panel which is not included in the director's presentation, you can ask him/her questions during the hearing to bring out this information. The hearing panel will advise you when it is the appropriate time for your questions.

Plan for the director's case

Be prepared to respond to what the director submits to support the decision that you have appealed by:

- reviewing the director's original decision and the documentation the director submits in response to your Notice of Appeal;
- understanding the "why" of the director's case (e.g. "Does it make sense?");
- being prepared to explain to the hearing panel why you disagree with the director's decision using the FSCD Act and Regulation and other relevant documents;
- preparing questions to ask the director and the director's witnesses; and
- arranging to bring your own witnesses, if you choose, to present information to support why you disagree with the director's case.

Prepare to question and be questioned

You will have a chance to ask questions of the director and his/her witnesses at the hearing. You may find it helpful to write down some questions before the hearing begins. Your questions should focus on bringing out what is relevant to your case and important for the hearing panel to hear and understand. You may want to ask:

- questions for clarification (e.g. "What did you mean by...?");
- questions to challenge (e.g. "How could you comment on that when you weren't present?"); and
- questions to obtain admissions that help your case (e.g. "Didn't you state that...?").

Be aware that the director will have the same chance to question you and your witnesses. Preparation is important. Try to anticipate those questions and prepare the answers that you will give when you are questioned. You may also wish to talk with your witnesses about the questions the director may ask them. Ask them to prepare answers for the questions they may be asked so their information can be clearly told.

What to expect at the appeal hearing

Reading all of the documents submitted to the hearing panel, and contacting the Appeals Secretariat if you have any questions about the process, will help you know what you can expect at the hearing.

You can expect a certain level of formality and a pattern to appeal hearings. The panel will follow specific procedures to keep the hearing running smoothly and to ensure that all parties have adequate time to give their evidence. Please note that all hearings are not identical, but the procedures followed by the hearing panel will always be similar.

At the Hearing

Introduction

All persons will enter the hearing boardroom together so there is no private contact with the hearing panel. Upon entering the hearing boardroom, the hearing panel will advise you and the director on where to sit. They will try to create the most comfortable arrangement possible. After the parties have all taken their seats, the hearing chair will call the hearing to order, make introductions, explain the hearing procedures, explain the objective of the panel, and confirm the roles of the parties, witnesses, and other persons who may attend the hearing.

Confirming the issue(s) under appeal

The hearing chair will ask both you and the director for clarification or confirmation of the director's decision being appealed.

New issues cannot be added at the hearing. The hearing is normally limited to the issues identified in the Notice of Appeal. However, you may be able to request to clarify or confirm the issue(s) under appeal at the start of the hearing. If this occurs, the panel will ask the director to respond to your request for the change, in which case the director may request an adjournment. This would delay the hearing as it would need to be rescheduled, or extra time added.

Presenting Your Case

The jurisdiction of the committee

Jurisdiction means the Appeal Committee's authority to hear and decide the issue being appealed. The Appeal Committee's jurisdiction is set out in the FSCD Act. If the issue being appealed does not fall within section 7 of the FSCD Act, the Appeal Committee will not have jurisdiction to continue with the hearing.

If the director has an objection to the jurisdiction of the Appeal Committee, he/she should communicate this to the Appeals Secretariat as soon as possible before the appeal hearing. (See page 4 of *A Guide to Appeal – Family Support for Children with Disabilities Act* for more details.)

In some cases, objections concerning jurisdiction are not raised until the beginning of the hearing. If this occurs, the hearing will be delayed because the jurisdictional issue has to be heard first. (See page 11 of *A Guide to Appeal – Family Support for Children with Disabilities Act* for more details.)

Identify the outcome you are requesting

Once the issue or matter under appeal and the jurisdiction of the panel have been confirmed, both parties will be given the opportunity to make a brief opening statement on the decision that was made and what outcome each party is requesting from the hearing panel.

Presentations

The director's case

The director will be called on first to make his/her submissions in exactly the same way as you will later. The director is asked to go first so that you may hear what he/she has to say about how and why the decision was made. This process allows you the opportunity to note any questions that you will want to ask to clarify or rebut the information presented.

When the director is presenting his/her case, it is important to:

- listen carefully and follow the presentations of the director and his/her witnesses; and
- write down the questions you want to ask each presenter.

The hearing panel will give you the opportunity to ask the director questions about the submissions he/she made. The hearing panel will then ask the director questions in order to clarify information or points that were made.

The same process will be followed for each witness that the director has brought to support his/her case.

The appellant's case

You will be called to present your case after the director has finished presenting his/her case, including all of his/her witnesses. When presenting your case, it is important to:

- explain your case in a clear and logical way to the hearing panel, noting how your case is supported by the FSCD Act and Regulation;
- present your evidence witness by witness;
- refer to the documents you have submitted to the hearing panel by identifying a specific document and page number (remember, that the director and hearing panel have received copies of your documents); and
- speak slowly and clearly so the panel members can take their own notes.

After your submission, the director and hearing panel will ask you questions about your case and the submissions that were provided.

- Answer clearly, concisely and honestly.
- If you are unclear about the question asked or did not hear it, ask to have the question repeated.

The same process will be followed for each witness that you have brought to support your case.

Adjournment

You may ask the hearing panel for an adjournment if the director brings new material to the hearing that you need to review or if you need to consult with your legal counsel about the new material. You will be expected to give reasons to show the hearing panel that an adjournment is necessary.

Resolution

You and the director are free to talk about resolving the matter you have appealed at any time during the appeal process. The hearing panel will not participate in discussions about resolutions and will not be influenced by them. If, during the hearing dates, you and the director agree to engage in resolution discussions, indicate this to the hearing panel and ask for an adjournment to do so. An adjournment may be granted to allow the parties to determine if there is a chance for resolution. If you and the director agree to a settlement, you will be asked to withdraw your appeal in writing.

Closing the hearing

At the end of the hearing, each party has an opportunity to summarize all of the relevant points made during the hearing. No new evidence is allowed at this point in the appeal hearing. After the summaries have concluded, the hearing chair will close the hearing.

After the Hearing

The hearing panel's decision

After the hearing is concluded, the hearing panel reviews all of the verbal and written information provided by the parties to the appeal and makes its decision. The hearing panel may confirm, vary or rescind the decision of the director under appeal.

The hearing panel then prepares its written decision and issues it to the appeal parties within approximately 45 calendar days of the hearing. Given the complexity of some cases, however, the hearing panel may require more than 45 calendar days to issue the decision.

The written decision will contain the issue under appeal, the hearing panel's finding of facts, the decision and the reasons for the decision. The written decision that is issued on this appeal is the Appeal Committee's final decision.

In making decisions on issues under appeal, the Appeal Committee must comply with the FSCD Act and its respective Regulation. However, the Appeal Committee is independent from Community and Social Services and is not required to comply with Community and Social Services' policies, such as those found in the Family Support for Children with Disabilities Policy and Procedures Manual. The Appeal Committee will, however, consider any and all evidence submitted as part of the appeal, including policy documents. Also Appeal Committee decisions are not precedent setting in the same way as case law is precedent setting in the courts. Each appeal is heard on its own merits.

If you are dissatisfied with the hearing or the committee's decision

A party who is not satisfied with the hearing process or a decision of the Appeal Committee under the FSCD Act can apply to the Court of Queen's Bench for a judicial review of the decision. A judicial review is not a re-hearing; rather, is it a review of the process by which the decision was arrived at. Upon completion of the judicial review, the Court of Queen's Bench may confirm the decision of the Appeal Committee or it may send the issue back to the Appeal Committee to be reheard.

If you believe you want to have the hearing panel's decision referred to the Court, you will likely need the assistance of a lawyer. Contact information for legal assistance can be found in Appendix 1 of this guide. Contact information for the Court of Queen's Bench locations around Alberta can be found online at www.albertacourts.ab.ca/qb/.

If you believe your hearing was unfair, you may file a complaint with the Office of the Ombudsman. The Office of the Ombudsman cannot change a decision of the hearing panel; however, it can review the process and make recommendations. The Ombudsman's office number is 780-427-2756 in Edmonton or 403-297-6185 in Calgary. Additional information is available online at www.ombudsman.ab.ca.

Contact Us

If you have any questions or would like more information about filing an appeal under the *Family Support for Children with Disabilities Act* or the appeal hearing process, please contact the Community and Social Services Appeals Secretariat by:

Phone:

780-427-2709 (Edmonton and Area)
or toll-free at 310-0000 then dial 780-427-2709

Mail or in person:

Community and Social Services
Appeals Secretariat
201 Agronomy Centre
6903 - 116 Street
Edmonton, Alberta T6H 5Z2

Information is also provided on the Community and Social Services' website:

www.appeals.gov.ab.ca

Appendix 1 – Resources

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| Alberta Association for Community Living | 780-451-3055 Edmonton 403-717-0361 Calgary | www.aacl.org |
| Appeals Secretariat | 780-427-2709 | www.appeals.gov.ab.ca |
| Court of Queen's Bench | 310-0000, and ask for the location nearest you | www.albertacourts.ab.ca/qb/ |
| Family Support for Children with Disabilities – Provincial Office | 780-427-2551 | www.child.alberta.ca/home/591.cfm |
| Law Society of Alberta • Lawyer Referral Service | 1-800-661-1095 | www.legalaid.ab.ca |
| Legal Aid Alberta • Law Line | 1-866-845-3425 | www.ombudsman.ab.ca |
| Office of the Ombudsman | 780-427-2756 Edmonton | |
| | 403-297-6185 Calgary | |

