**Section 385.80 Appeal of Decision to Deny License or Permit Based on Background Check Information**

a) Notice of Decision to Deny Licensure Based Upon Background History

1) When an application for licensure is denied due to criminal background history or identification as an indicated perpetrator of abuse/neglect, the supervising agency shall send notice to the applicants for licensure of the denial, including the reason for denial. The initial notice of denial shall provide the applicant the opportunity to request a review of the decision by Central Office of Licensing Review Committee. When there is a request for a review of the decision, the Central Office shall send a notice of decision that the request was granted or denied. When the request for review of the decision is denied, the notice shall provide an opportunity for the applicant to appeal the decision to the DCFS Administrative Hearings Unit for its review and determination.

2) When there is no request for a review of the decision by the Central Office of Licensing Review Committee, the assigned licensing unit shall send a second and final notice of denial, which provides an opportunity for the applicant to appeal to the Administrative Hearings Unit for review and determination.

b) What May Be Appealed Under This Part

A license applicant may appeal:

1) the denial of an initial license based upon a background check conducted in accordance with this Part; or

2) the denial of a permit based upon a background check conducted in accordance with this Part.

c) What May Not Be Appealed Under This Part

The DCFS Chief Administrative Law Judge will decide whether an issue is appropriate for a fair hearing under subsection (b). Issues inappropriate for a fair hearing under this Part include, but are not limited to:

1) a decision based upon a background check conducted pursuant to this Part that revealed that the license applicant has a criminal conviction that bars licensure or employment or residence in a licensed child care facility pursuant to Section 4(a) and (b) of the Child Care Act, unless the licensing applicant can establish that an exception, as provided in Section 4(b)(2) of the Act, may exist (see Appendix A); or

2) a decision based upon a background check conducted pursuant to this Part that revealed that the license applicant has a criminal conviction that bars licensure of or residence in a foster family home pursuant to Section 4(c) of the Child Care Act, unless the licensing applicant can establish that an exception, as provided in Section 4(d) of the Act, may exist.

d) Appeal Request

1) An individual requesting an opportunity for an appeal pursuant to subsection (b) shall submit the request, in writing, to the:

Administrative Hearings Unit

Department of Children and Family Services

406 E. Monroe St., Station #15

Springfield, Illinois 62701

2) All such requests must be postmarked within 10 days after the date of written notice of the denial of an application for license or permit.

e) Review of File

1) After the Administrative Hearings Unit has received the individual's request for an appeal, the Administrator of the Unit shall notify the Department that the individual has filed an appeal and the Department will send to the Administrator a copy of the notice of denial of the application for a license or permit. The notice of denial shall be prima facie evidence that the Department had a basis for refusing to issue the license or permit.

2) The Administrator shall ask both the Department and the individual 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 individual 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 10 business days after the date of the Administrator's request for materials, both the Department representative and the individual shall submit to the Administrative Hearings Unit any and all documents, records, statements, materials, or evidence to establish that the Department's decision to deny the license because of the background check was either correct or incorrect.

3) At least 10 business days after the Administrator's request for materials, 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.

4) 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.

f) The Appeal Process

The individual shall be notified, in writing, of the date, time and location of the appeal hearing. The individual may be represented by counsel and may present evidence and/or witnesses. The individual shall be required to produce evidence that the person identified in the background report is not the individual in question or that the background check report is inaccurate. If the issue is delinquency in the payment of child support, the individual shall provide evidence that the child support has been paid in full or that a payment schedule has been arranged with the Department of Healthcare and Family Services (Title IV-D cases) or a court of jurisdiction (all other child support cases). Evidence to be considered shall be limited to:

1) When the appeal involves an indicated CANTS/SACWIS report, written statements from the administrator of the child protection division for the Department that the individual named in the report is not the individual in question or that the record has been expunged or amended; or

2) When the appeal involves a criminal history record, evidence shall be limited to written statements from a law enforcement agency or clerk of the court: that the subject of the criminal history record provided to the Department is not the individual in question, was never convicted of the crimes as alleged in the criminal history record, or was granted a full pardon by the Governor indicating that the person did not commit the crime; the crime was amended or expunged; or the information in the criminal history record concerning the existence of the conviction was erroneous; or

3) When the appeal involves delinquent child support, written statements from the Department of Healthcare and Family Services or the clerk of the court, as applicable, that child support has been paid in full or a payment schedule arranged or that the payment record was incorrect.

g) Final Administrative Decision

The administrative law judge conducting the appeal must conclude that, when all the evidence presented pursuant to this Part and the applicable licensing standards are considered, there is clear and convincing evidence that the individual is not the person named in the indicated report/criminal history record or that the individual is suitable for service that allows access to children. If the appeal is addressing the issue of delinquent child support, the individual must submit proof that the record was in error or that he or she has paid the delinquency or made arrangements for payment of delinquent child support. The final administrative decision is made by the Director and, subject to review by a court of competent jurisdiction.

h) Record of Appeal

A written record shall be made of any reviews conducted pursuant to this Section, and that record shall contain copies of all documents relied upon in making the determination of fitness or unfitness for licensure.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)