



Justice Center for the Protection of People with Special Needs

What You Need to Know About The Appeal Process

October 2017

The Administrative Appeals Unit conducts administrative reviews of reports of substantiated findings of abuse and neglect and refers cases to the Administrative Hearings Unit for assignment to an Administrative Law Judge to conduct hearings.

REQUESTING AN ADMINISTRATIVE APPEAL

Who can request an Appeal?

Individuals who have received a Report of Substantiated Findings letter for a Category 1, Category 2 or Category 3 offense.

When should I request an Appeal?

If you wish to challenge a Report of Substantiated Findings, you must request an Appeal within thirty (30) calendar days of the date on the Report of Substantiated Findings letter.

How can I request an Appeal?

1. You can complete and submit an Appeal Request form found on the Justice Center's website, <https://www.justicecenter.ny.gov/investigations-prosecution/admin-appeals/request-amendment>; or
2. Submit a request with any additional material to support your request to the Administrative Appeals Unit by mail, 161 Delaware Avenue, Delmar, NY 12054 or via email at jc.sm.admappealsunit@justicecenter.ny.gov.

What if I miss the thirty (30) day deadline for requesting an Appeal?

The Executive Director of the Justice Center has authority, in extraordinary circumstance, to accept a late request for an Appeal. You must submit a written request to the Justice Center's Administrative Appeals Unit by mail, 161 Delaware Avenue, Delmar, NY 12054 or via email at jc.sm.admappealsunit@justicecenter.ny.gov.

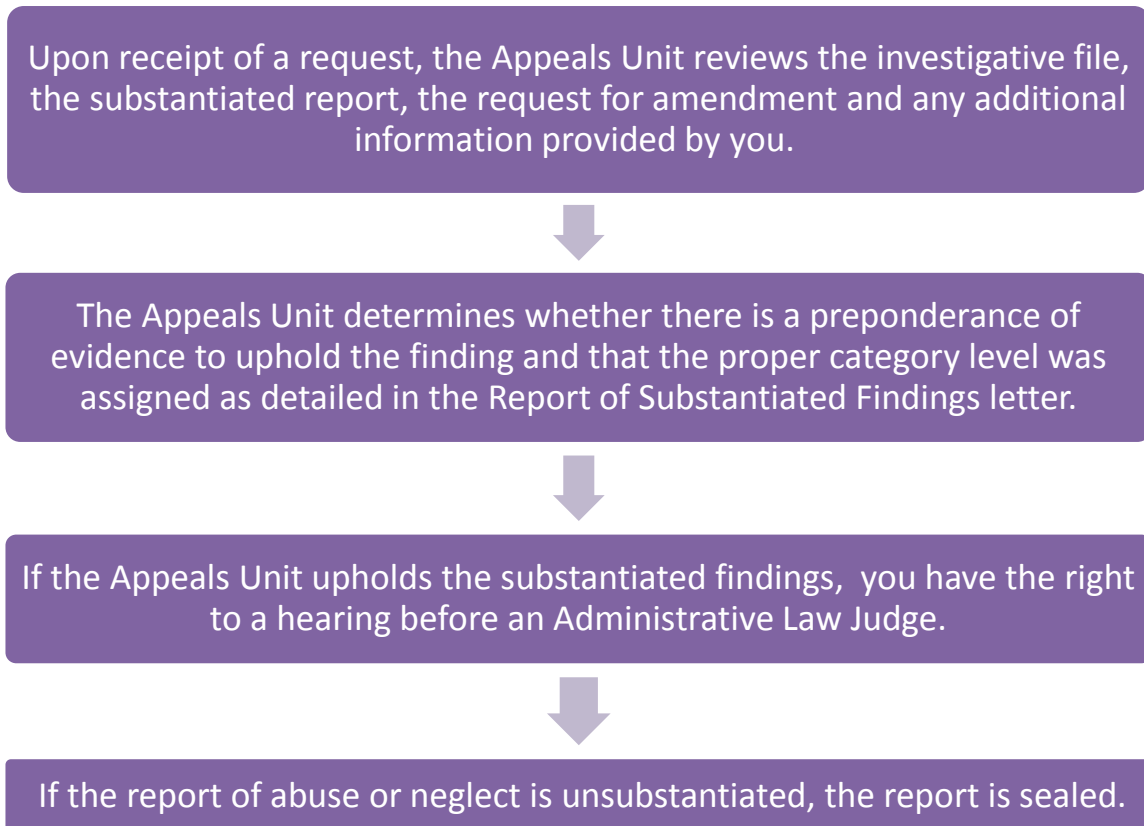
- Your request should include a statement of the extraordinary circumstance(s) causing the late request; and
- any supporting documentation.

Can I change my mind after I submit a request for an Appeal?

Yes. You can contact the Administrative Appeals Unit via email at jc.sm.admappealsunit@justicecenter.ny.gov, or submit a Withdrawal Request form found on the Justice Center's website, <https://www.justicecenter.ny.gov/investigations-prosecution/admin-appeals/withdrawal>.

OUTCOMES OF AN ADMINISTRATIVE APPEAL

After I submit a request to the Justice Center's Administrative Appeals Unit, what happens next?



What does “preponderance of evidence” mean?

Preponderance of the evidence means that a review of the evidence shows that the allegation of abuse and/or neglect was more likely than not to have occurred.

If the Report of Substantiated Findings is upheld, what happens next?

1. You will be mailed the date of a telephonic Pre-Hearing Conference.
2. The telephonic Pre-Hearing Conference is held and a hearing date is set.
3. The Hearing is held on the date chosen.
4. You may hire an attorney at your expense for the Pre-Hearing Conference and the Hearing.

What if I can't make the scheduled Hearing date?

Contact the Administrative Hearings Unit to advise as soon as possible via phone at 518-387-3682 or email at jc.sm.hearingprocess@justicecenter.ny.gov. A new Hearing date may be given under certain conditions.

What if I decide I don't want to go through with the Hearing?

If you decide not to go through with the Hearing or if you fail to appear for the Pre-Hearing Conference or for the Hearing, the report with the substantiated findings will be upheld and you will not have the right to further appeal.

ADMINISTRATIVE HEARING PROCESS

What happens at an Administrative Hearing?

The Justice Center must prove to the Administrative Law Judge, by a preponderance of evidence, that:

1. you committed the act(s) of abuse or neglect as set forth in the Report of Substantiated Findings and
2. the acts constitute abuse or neglect and
3. if the acts are considered abuse and neglect the appropriate category level was assigned.

You have the right to:

- submit documents for the Administrative Law Judge to consider
- have witnesses testify on your behalf
- ask questions of the Justice Center witnesses
- review/challenge any documents the Justice Center offers into evidence

What happens after an Administrative Hearing?

The Administrative Law Judge considers all the evidence presented and makes a recommended decision that will be reviewed by the Executive Director of the Justice Center.

- 1) If the Executive Director finds that the Justice Center met its burden to prove you committed the acts alleged and the correct category level was assigned;
 - then the Report is upheld and a record of the finding remains substantiated against you in the Vulnerable Persons Central Register.
- 2) If the Executive Director finds that the Justice Center met its burden to prove you committed the acts alleged but an incorrect category level was assigned;
 - then the Report is upheld, a record of the finding remains substantiated against you in the Vulnerable Persons Central Register with the new category level assigned.
- 3) If the Executive Director finds that the Justice Center did not meet its burden to prove you committed the acts alleged;
 - then the Report is not upheld and the finding is unsubstantiated and the record is sealed.

What if the Category 3 finding against me is upheld?

- Substantiated Category 3 findings of abuse and/or neglect will not result in you being placed on the Staff Exclusion List.
- The fact that you have a substantiated Category 3 finding will not be disclosed to entities during the Staff Exclusion List and Criminal Background Checks with the Justice Center.
- The report of your substantiated Category 3 finding will be sealed after five years from the date of the Report of substantiated Findings letter.

What if the Category 2 finding against me is upheld?

- Substantiated Category 2 findings will be disclosed only to Office for Persons With Developmental Disabilities (OPWDD) providers during pre-employment inquiries with the Justice Center, unless that finding has been sealed because it happened over five years ago.
- A substantiated Category 2 finding is not a bar to employment; it is only a factor to be considered by an OPWDD provider in making a hiring determination.
- If you have another substantiated Category 2 finding against you within three years of the date of the report of substantiated finding in the first category 2 finding, the second substantiated Category 2 finding shall be elevated to Category 1 finding, and you may be placed on the Staff Exclusion List.
- Reports that result in a Category 2 finding not elevated to a Category 1 finding shall be sealed after five years from the date of the Report of Substantiated Findings letter.

What if the Category 1 finding against me is upheld?

- A substantiated Category 1 finding of abuse and/or neglect will result in you being placed on the Staff Exclusion List.
- The fact that you are on the Staff Exclusion List will be disclosed to entities authorized to conduct Staff Exclusion List checks with the Justice Center.
- Placement on the Staff Exclusion List may subject you to immediate termination from employment and prohibit your future employment or volunteer service with certain vulnerable populations within New York State.

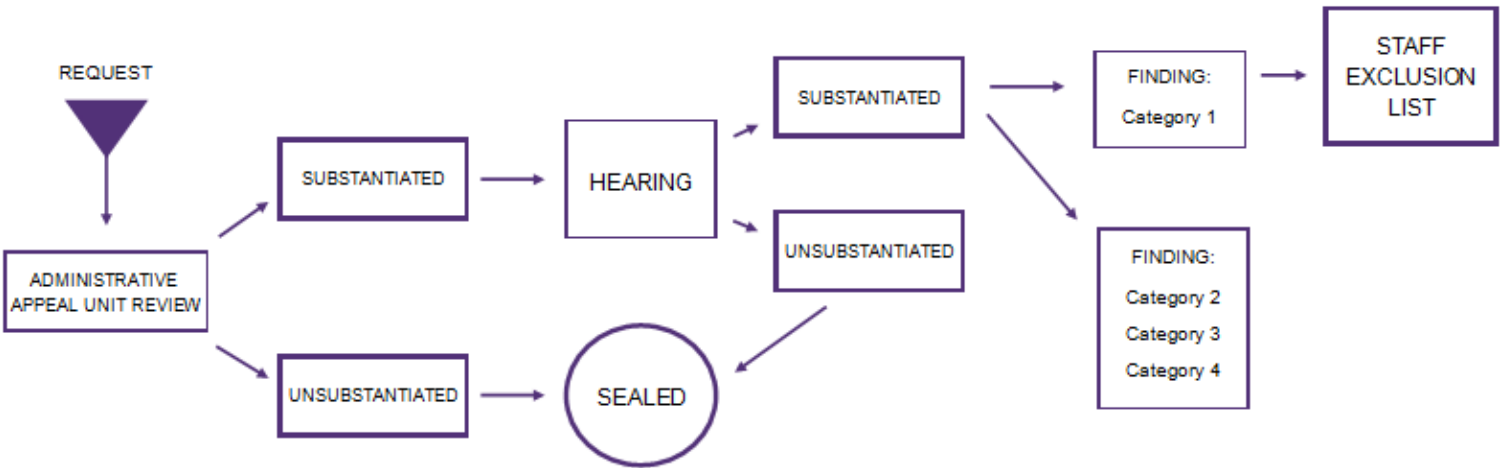
How will I receive Appeal and Hearing results?

All applicable information will be mailed to you, including the:

- Appeal decision
- Pre-Hearing Conference and Hearing notices
- Hearing Decision

If your address changes, make sure you let the Justice Center know by contacting the Administrative Appeals Unit by mail, 161 Delaware Avenue, Delmar, NY 12054 or via email at jc.sm.admappealsunit@justicecenter.ny.gov.

ADMINISTRATIVE APPEAL UNIT PROCESS



STAFF EXCLUSION LIST

What is the Staff Exclusion List (SEL)?

The SEL contains the names of individuals who have been found responsible for serious and/or repeated acts of abuse or neglect of vulnerable persons.

Individuals who have either a *single* substantiated “Category 1” offense or *two* substantiated “Category 2” offenses within a three-year period are placed on the SEL.

Certain employers must request a SEL check before hiring or approving any person who would have the potential for regular and substantial contact with a service recipient.

Individuals on the SEL are subject to immediate termination and prohibited from future care of vulnerable persons in the State of New York.

What happens if I am placed on the SEL after an Administrative Appeal or Hearing?

If you are placed on the SEL, facilities and provider agencies will be advised that you are prohibited from working or volunteering in similar positions with vulnerable persons in the State of New York; and you may be subject to immediate termination if you are currently working or volunteering in such a position.

CHALLENGING FINAL DETERMINATIONS

Can I challenge the final determination issued by the Executive Director?

The Justice Center's determination is final and not subject to further administrative review. You do, however, have the right to challenge the determination in court through an Article 78 proceeding of the Civil Practice Law and Rules.

CONTACT INFORMATION

What if I have additional questions?

For questions about Administrative Appeals, please email jc.sm.admappealsunit@justicecenter.ny.gov

For questions about Hearings, please email jc.sm.hearingprocess@justicecenter.ny.gov