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**4200.00.00 APPEALS AND FAIR HEARINGS**

This chapter presents information relating to appeals and fair hearings, and includes:

- Appeals (Section 4205);
- Fair Hearings (Section 4210).

**4205.00.00 APPEAL REQUEST**

An appeal is a request for a fair hearing before a representative of the FSSA Office of Hearings and Appeals (OHA) for the purpose of deciding whether the action taken or proposed by the agency is correct. An appeal is any clear, written expression by the applicant/recipient, or individual authorized to act for him, stating that he wants an opportunity to appeal.<sup>1</sup> If a verbal request is made, the request is to be noted and the applicant or recipient informed that the request must be made in writing.

Appeal requests must be filed with the Division of Family Resources (DFR) in one of the following ways:

- i. Mail or fax to the FSSA document center; or
- ii. File in person at the Local DFR Office.

An Administrative Law Judge (ALJ) of OHA will conduct a fair hearing on the action(s) under appeal and will render a decision on the findings of the hearing.<sup>2</sup> This decision is binding on the DFR.<sup>3</sup>

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<sup>1</sup> 470 IAC 1-4-3; 42 CFR 431.201

<sup>2</sup> 42 CFR 431.240; 42 CFR 431.244

<sup>3</sup> IC 12-15-28-7

#### **4205.05.00            RIGHT TO APPEAL**

All individuals must be informed in writing at the time of application and when action is taken which affects their benefits, of:

The right to a fair hearing; and

The method for requesting a hearing.<sup>4</sup>

This information is contained in the Rights and Responsibilities listing which is given to applicants, and is also on all eligibility notices.

An individual's freedom to make a request for a fair hearing must not be limited or interfered with in any way.<sup>5</sup>

#### **4205.05.05            Assistance in Exercising the Right to Appeal**

The DFR is responsible for assisting an unsatisfied individual so that he may fully exercise his right to appeal.<sup>6</sup> Any time an individual expresses a disagreement with any action taken, he must be verbally reminded of the right to request a fair hearing. Assistance is to be provided to the individual who is having difficulty in preparing the written request for an appeal.

The individual is to be informed that he may represent himself at the hearing or be represented by an attorney, a relative, a friend, or any other spokesman of his choice.<sup>7</sup> Information and referral services should also be provided to help the unsatisfied individual make use of any free legal services that are available in the community. This information is included on the eligibility notices.

#### **4205.10.00            APPEALABLE ACTIONS**

In accordance with Indiana Code §12-15-28-1, any action with which an applicant for or recipient of Medicaid is dissatisfied may be appealed. An applicant may appeal and

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<sup>4</sup> 42 CFR 431.206

<sup>5</sup> 42 CFR 431.221(b)

<sup>6</sup> 470 IAC 1-4-3; 42 CFR 431.221(c)

<sup>7</sup> 42 CFR 431.206(b)(3)

have a fair hearing when his application for medical assistance is denied or not acted upon with reasonable promptness.<sup>8</sup> A recipient may appeal when he believes the agency has taken erroneous action to reduce, suspend or discontinue assistance.<sup>9</sup> An individual can also appeal the level of benefits for which he is receiving.

**4205.10.05 Spousal Impoverishment Specified Appealable Issues (Med 1)**

For institutionalized individuals with community spouses (eligibility that is determined under the spousal impoverishment provisions), there are certain specific issues which are appealable, and criteria are set forth by which an Administrative Law Judge (ALJ) can establish a higher community spouse resource standard and spousal allocation.<sup>10</sup>

The resource issues that are subject to appeal are as follows:

The computation of the spousal share;

If either spouse or their representative alleges that the spousal share was computed inaccurately, they may appeal if an application for MA has been filed on behalf of the institutionalized spouse. For example, an applicant might appeal the spousal share because he disagrees with the DFR's determination of the availability of a resource or because the couple neglected to disclose the existence of a particular resource at the time of the assessment.

The computation of the community spouse resource standard;

An appeal of the resource standard could be related to the couple's disagreement with the spousal share computation. For example, the community spouse would be entitled to a higher

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<sup>8</sup> SSA 1902(a)(3)

<sup>9</sup> 42 CFR 431.220; IC 12-15-28-1

<sup>10</sup> SSA 1924(a)(3)

resource standard if the spousal share was determined too low.

The computation of the amount of resources to be transferred to the community spouse;

Hearings on this issue must be held within 30 days of the date of the appeal request. Therefore, it is important that the DFR specifically notify the Hearings and Appeals Section of the nature of such an appeal when forwarding it to them.

The income issues that are subject to appeal are as follows:

The ownership of income;

The institutionalized spouse may rebut through the fair hearing process the ownership of income as determined by the DFR.

The amount of the spousal income allocation;

The couple or their representative may appeal the amount of the income allocation budgeted by the DFR. Absent a calculation error by the DFR, the couple must establish that the community spouse needs a higher allocation due to exceptional circumstances resulting in extreme financial duress. Exceptional circumstances are those in which the community spouse is required to pay an expense beyond what is recognized in the establishment of the maintenance standard. An example might be a medical expense which the community spouse cannot be expected to pay out of the amount established for maintenance needs.

An ALJ ruling in which a higher allocation is granted will be conditioned upon the existence of exceptional circumstances which will cause extreme financial duress. Therefore, it is the responsibility of the DFR to monitor the case to determine whether the exceptional circumstances continue to exist. The necessary frequency of this monitoring will depend on the individual circumstances involved, but generally the

frequency should not be less often than quarterly.

When the DFR has determined that the exceptional circumstances which substantiated the higher income allocation granted by the ALJ no longer exist, a desk review must be completed. The DFR is to calculate the spousal allocation as explained in Chapter 3400 and provide timely notice to the individual and his representative. If the individual disputes the DFR's determination, they may appeal.

Note that a higher spousal income allocation based on financial duress can be established only by an ALJ, not the DFR. The DFR's role in this matter is to monitor the case after the ALJ's ruling to determine if and when the documented exceptional circumstances no longer exist.

#### **4205.15.00          GROUP APPEALS**

OHA may respond to a series of requests for hearings by providing group hearings in cases in which the sole issue involved in the cases is one of federal or state law or regulation.<sup>11</sup> Similarly, a group of individuals who wish to appeal some aspect of policy may request to be heard as a group. If there is disagreement as to whether the issue is one of federal or state law or regulation or the facts of an appellant's personal situation, OHA will make the decision as to whether his appeal may be included in a group hearing.

The ALJ may limit the discussion in a group hearing to the sole issue under appeal. When an appellant's request for a hearing involves additional issues to the one serving as the basis for the group hearing, his appeal will be handled individually. An appellant scheduled for a group hearing may choose to withdraw and be granted an individual hearing regardless of whether his grievance is limited to the sole issue involved in the group hearing.

Policies governing the conduct of individual hearings are pertinent to group hearings. Each appellant will be given

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<sup>11</sup> 42 CFR 431.222

full opportunity to present his case or have his case presented by a representative at the group hearing.

**4205.20.00            TIME LIMITS FOR REQUESTING APPEALS**

Appeals must be received by close of business not later than 33 days from the date of the action or issue being appealed.<sup>12</sup> Close of business is 4:30 P.M., local time on the business day where the appeal is received. For recipients, the 33 day period is measured from the effective date of the action as recorded on the notice. For actions taken on applications, the 33 day period is measured from the date the notice of agency action is sent. For purposes of this Chapter 4200, "sent" means to be delivered by mail or in electronic format consistent with 42 CFR §435.918.<sup>13</sup> Additionally, if the last day of the 33-day time period falls on a non-business day, the appeal request is considered timely if it is received by close of business on the next business day.<sup>14</sup>

In cases involving a delay in acting on the application, the time limit for appealing begins as follows:

- 45 days after the date of application for all MED categories except Disability;
- 90 days after the date of application for the Disability categories (regular Disability and MEDWorks).

In cases in which action has not been taken on a reported change in circumstances, the time limit for appealing begins with the first day of the second month following the month in which the change in circumstances was reported to the DFR.

If the appeal request is not received within the required time limits, the appeal is invalid, and a hearing will not be scheduled. The determination that an appeal is untimely

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<sup>12</sup> 405 IAC 1.1-1-3

<sup>13</sup> 42 CFR 431.201

<sup>14</sup> 405 IAC 1.1-1-3



and therefore invalid is made by Central Office Hearings and Appeals, not the DFR.<sup>15</sup>

**4205.25.00            RESERVED**

**4205.26.00            CONTINUED BENEFITS WHILE APPEAL IS PENDING**

Benefits must continue without change if an appeal is received by the DFR not later than close of business on the day prior to the effective date of the proposed adverse action.<sup>16</sup> If the day before the effective date is a non-business day, the appeal is timely if received by the next FSSA business day. Close of business is 4:30 P.M. local time where the appeal is received.

The only exceptions to continued benefits are (1) the recipient declined continued benefits specifically in his appeal request, or (2) the reason for discontinuance was failure to pay any applicable Medicaid or CHIP premium or failure to pay the POWER account payment required to remain eligible for the Healthy Indiana Plan.<sup>17</sup>

Once continued benefits are allowed, benefits are not to be reduced or terminated, for the reason under appeal, prior to receipt of the official hearing decision. Benefits can be reduced or terminated during an appeal only if there is another reason that causes a reduction or termination in benefits during the continued benefit period, other than the reason for why there is an appeal in the first place. The appeal, however, must continue.

**4205.27.00            FAILURE TO ISSUE NOTICE OF ADVERSE ACTION**

If an adverse action is taken against an applicant or recipient without the required notice being issued, a notice must be sent to the applicant or recipient and authorized representative(s) immediately upon knowledge of the situation. Benefits are not reinstated/restored at this point. If an appeal of the action is received by the DFR within ten (15) days of the mailing date of the notice, benefits are to be reinstated at the level prior to the

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<sup>15</sup> 405 IAC 1.1-1-3

<sup>16</sup> 42 CFR 431.230

<sup>17</sup> 405 IAC 9-4-5; 405 IAC 9-5-3

adverse action. The appeal must be received by close of business on day 10 after the date of receipt. If day 10 is a non business day, the appeal must be received by close of business on the next FSSA business day.<sup>18</sup> If the appellant can demonstrate that he did not receive the notice within fifteen (15) days of the mailing date, benefits must be reinstated if the appeal request is received within ten (10) days of the date the appellant demonstrated that he received the notice.

#### **4205.30.00 APPEAL PROCEDURES**

All written appeals filed with the DFR are to be immediately forwarded to the OHA.

The DFR should inform OHA if a hearing request is received from the applicant or recipient that plan to move, such as farm workers, so that the request can be expedited to enable a decision to be reached before the applicant or recipient leaves the area.

#### **4205.35.00 THE HEARING NOTICE**

The Hearings and Appeals Section sends a notice acknowledging the appeal to the applicant or recipient (appellant) and the DFR.<sup>19</sup> The notice:

- Includes a statement of the date, time, place, and nature of the hearing which is always conducted in the appellant's county of residency<sup>20</sup> or via telephone
- Advises the appellant of the name, address, and telephone number of the person to notify in the event it is not possible for him to attend;
- Specifies that the hearing request will be dismissed if the appellant fails to appear for the hearing without good cause;<sup>21</sup>

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<sup>18</sup> 42 CFR 431.231

<sup>19</sup> IC 12-15-28-3; 470 IAC 1-4-3; 405 IAC 1.1-1-3;

IC 4-21.5-3-20

<sup>20</sup> 42 CFR 431.240

<sup>21</sup> 42 CFR 431.223

- Specifies that the appellant may request a continuance of the hearing if good cause is shown;
- Includes the appellant's rights, information, and procedures to provide the appellant with an understanding of the hearing process; and
- Explains that the appellant may examine the case record prior to the hearing.

This notice is sent out so that it reaches the appellant at least 10 days prior to the hearing.

**4205.40.00            REQUEST FOR CONTINUANCE FROM THE APPELLANT**

A written request for a continuance is to be directed to the OHA. Good cause must exist for a continuance to be granted. Good cause is defined as a valid reason for the appellant's inability to be present at the scheduled hearing such as a death in the family, personal injury or illness, or a sudden and unexpected emergency.<sup>22</sup> If good cause exists and a continuance is granted, the hearing is rescheduled.

**4205.40.05            Request for Continuance from the Appellant  
for Medical Evidence**

If disability or blindness was denied by the FSSA Medical Review Team (MRT), a continuance may be requested to allow the appellant time to obtain additional medical evidence on his condition.<sup>23</sup> If the ALJ orders an additional medical assessment, it must be made at the expense of FSSA and made part of the record when the issue under appeal is:

Decision that the visual requirement is not met;

Decision that the disability requirement is not met;  
or

Denial or limitation of medical services under the Medicaid program.<sup>24</sup>

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<sup>22</sup> 405 IAC 1.1-1.3(d)

<sup>23</sup> 42 CFR 431.223

<sup>24</sup> 42 CFR 431.240

The written request for a continuance on a medical-related issue must be submitted to the OHA within 10 days of the date that the hearing notice was sent. The additional medical evidence on the visual and disability requirement must be submitted to the DFR within 30 days of the date the hearing notice was sent unless a written request for an extension of time is received by the OHA within the 30 day period. The denial or limitation of medical services must be submitted to the OHA within 30 days of the mailing of the prehearing order unless a written request for an extension of time is received by the Central Office within the 30 day period.

The DFR is to forward the original or most legible copy of the additional medical evidence to the OHA and retain a copy for the appellant's case record. The DFR will forward said evidence to the Medical Review Team (MRT).

The additional medical information on incapacity is submitted to the DFR for review.

The granting of a continuance to the appellant extends the time frame by which the hearing decision must be issued.

#### **4205.40.10 Request for Continuance from the DFR**

Although the DFR may also request a continuance, one should not be routinely requested. Unlike the continuance given to an appellant, the granting of a continuance to the DFR does not extend the time frame by which the hearing decision must be issued.

#### **4205.45.00 REVIEW OF ACTION BY DFR**

When an appeal request is received, the proposed action is reviewed to determine whether the action is appropriate.

The DFR should carefully review the appellant's situation to determine whether the action on the case was correct or any adjustment is indicated. The appellant and the DFR worker should discuss the issue under appeal.

Important: this review must not in any way interfere with a prompt continuation of benefits in accordance with Section 4205.26.00 if a timely appeal of an adverse action is received by the DFR.

#### **4205.45.05 RESERVED**

#### **4205.50.00            DISPOSAL OF APPEAL WITHOUT A FAIR HEARING**

An appeal request may be disposed of without holding a fair hearing in the situations discussed in the following sections.

#### **4205.50.05            Adjusting Action by DFR**

If, after review of the appellant's situation, the DFR realizes that the adverse action proposed or taken on the case was incorrect, the DFR must take adjusting action to correct the error. The appellant and the OHA are to be promptly notified in writing that the incorrect action is being withdrawn or rescinded.

#### **4205.50.10            Withdrawal of Appeal by Appellant**

If the appellant wishes to withdraw his appeal, he is to be assisted by the DFR in promptly notifying the OHA in writing of his decision. No pressure is to be exerted on the applicant/recipient to withdraw his appeal. The withdrawal will be acknowledged in writing. The appeal is then dismissed.<sup>25</sup>

#### **4205.50.15            Abandonment**

An appeal is abandoned when the appellant or his representative, without good cause, does not appear at a scheduled hearing. The appeal will be dismissed and the appellant so notified.<sup>26</sup>

#### **4210.00.00            THE FAIR HEARING**

A fair hearing is an administrative review of the action taken or proposed concerning an individual's eligibility and/or level of benefits. An Administrative Law Judge (ALJ), who is a State employee of FSSA, is designated to hold fair hearings and to issue findings of fact and decision on an appeal request.

A fair hearing allows the unsatisfied applicant/recipient an opportunity to present his grievance and to describe his circumstances and needs in his own words. He may also be

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<sup>25</sup> 42 CFR 431.223(a)

<sup>26</sup> 42 CFR 431.223(b); IC 4-21.5-3-24

represented by legal counsel, relatives, friends, or any other spokesman of his choice. DFR staff involved in the protested action also attend the hearing and present the facts on which the action was based.

**4210.05.00            PREPARATION FOR HEARING BY APPELLANT**

As the appellant prepares for the hearing, he or his representative is to be given an opportunity to:

Discuss the issue being appealed with the DFR;

Examine his entire case record and all documents and records that will be used by the DFR at the hearing; and

Obtain, free of charge, copies of all exhibits that will be used as evidence by the DFR at the hearing.

The appellant is to be advised of any legal services available that can provide representation at the hearing.

**4210.10.00            PREPARATION FOR THE HEARING BY DFR**

The most important factor behind an ALJ's decision to sustain a DFR action is correct application of federal or state law or regulation to the appellant's situation. It is important that the DFR representative presents thorough support at the hearing for the action of the DFR.

The person testifying for the DFR at the hearing should be very familiar with the appellant's case, understand what is under appeal, and be able to argue the facts of the case and State's position.

To prepare for the hearing, the DFR representative is to:

Review the case record and recheck all eligibility factors and all issues that led to the action being appealed;

Discuss the issue being appealed with the appellant or his representative if at all possible, and definitely if a discussion is requested by the appellant. If requested, allow the appellant or his representative to examine the entire case record.

Identify and label all documents that are pertinent to the issue under appeal and label them (for example, DFR Exhibit A, and so forth). Make one copy for the ALJ and one copy for the appellant (unless already given to the appellant). A duplicate copy of the notice sent to the appellant advising him of the proposed action should be included as part of the documentation.

Additionally, for MED 1, if the spousal allocation is appealed, the spousal allocation budget, AEBCA, is to be submitted as pertinent documentation at the hearing.

Prepare a written outline that can be used as a tool in presenting the testimony of the DFR at the hearing. Bear in mind that when preparing the outline, that the ALJ knows nothing about the situation. The outline should focus on:

- Identification of the staff representative by name and position;
- The period of time the representative worked directly or indirectly with the appellant;
- A one sentence explanation of the issue under appeal;
- The important information concerning how the DFR determined that the action proposed or taken was appropriate; and
- Federal and state laws and regulations that were the basis for the action.

Include the labeled exhibits at the appropriate point in the presentation outline.

**EXAMPLE :**

Personal Identification:

Name  
Position  
Months/years as an employee of DFR or its contractor

Issue:

Discontinuance of Medicaid effective April due to earnings from employment

Sources of Information:

Copy of letter from recipient dated February 20 reporting employment beginning February 3 (DFR Exhibit A);

Copies of three check stubs dated February 22, February 18, and February 25 showing gross wages of \$225 per week from XYZ Manufacturing Company (DFR Exhibit B);

ICES screens showing the computation of the budget for April (DFR Exhibit C).  
Explain the entire budget computation from the number in the household to the final calculation of ineligibility.

Notice of Action sent on March 8 informing appellant of the proposed action (DFR Exhibit D).

Request for appeal received on March 14 (DFR Exhibit E).

**4210.15.00 CONDUCT OF THE HEARING**

The ALJ conducts the hearing. Both the appellant and the DFR have the opportunity to:

Present the case or have it presented by legal counsel or another person;

Present testimony of witnesses;



Introduce relevant documentary evidence;

Establish all pertinent facts and circumstances;

Present any arguments without interference;

Question or refute any testimony or evidence presented by the other party, including the opportunity to confront and cross-examine any adverse witnesses; and

Examine the appellant's entire case record and all documents and records used by the DFR at the hearing.<sup>27</sup>

The parties are advised at the close of the hearing that they will be informed in writing of the ALJ's findings and decision on the appeal as soon as possible.

#### **4210.15.05 DFR's Responsibility at Hearing**

The DFR representative at the hearing is to:

Present the testimony of the DFR according to the outline prepared prior to the hearing;

Limit his remarks to facts (not speculation or guessing);

Avoid the use of jargon used only by DFR employees;

Offer labeled exhibits into evidence at appropriate points in the testimony and explain what they are and how they relate to the issue; and

Offer the labeled exhibits to the appellant and/or his representative for examination and objections (if any).

The DFR representative should be prepared to question the appellant about any statements made that which he feels need further explanation.

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<sup>27</sup> 42 CFR 431.242

**4210.20.00 CONTINUANCE OF HEARING**

If the ALJ determines that further evidence is needed to reach a decision, the decision is delayed until such further evidence is obtained. The hearing may also be reconvened, if necessary, to obtain additional testimony. The parties will be notified of this and of the time and method for obtaining this evidence. Any evidence submitted must be copied and given to the appellant, who then has the opportunity for rebuttal.

**4210.25.00 THE HEARING RECORD**

The hearing record is an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the decision of the ALJ. This record shall be available to the appellant at a place accessible to him or his representative at a reasonable time.

**4210.30.00 THE FAIR HEARING DECISION**

A written copy of the ALJ's hearing decision is sent to the appellant and the DFR. The decision includes:

The findings of fact and conclusion regarding the issue under appeal; and

Supporting laws and regulations.

In all cases the decision of the ALJ is based solely on the evidence introduced at the hearing and the appropriate federal and state laws and regulations. The finding of fact and decision is signed by the ALJ. The decision is to be explained to the appellant upon request.<sup>28</sup>

Unless a continuance has been granted in accordance with law as set forth in Section 4205.40.00, the final hearing decision must be made by the ALJ and communicated to the appellant and the DFR within 90 calendar days of the hearing request.<sup>29</sup>

**4210.30.05 RESERVED**

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<sup>28</sup> 42 CFR 431.244

<sup>29</sup> 42 CFR 431.244

**4210.30.10 Action Required as a Result of the Hearing Decision**

The decision of the OHA shall be binding upon the DFR and is to be enacted by the DFR even if one of the parties requests an Agency Review.<sup>30</sup> Such decisions do not preclude modifying the benefit thereafter to meet changed conditions.

**4210.30.10.05 Action Is Sustained**

No further action or response is required by the DFR if the hearing decision sustains an adverse action which was not appealed in a timely manner.

If the hearing decision sustains an adverse action and continued benefits were received pending the hearing in accordance with Section 4205.26.00 of this Chapter 4200, the DFR must immediately take appropriate corrective action to institute recovery procedures against the applicant or beneficiary to recoup the cost of such services by establishing a claim for benefits the beneficiary received pending the hearing decision.<sup>31</sup> Additionally, action to implement the correct budget should be taken.

**4210.30.10.10 Action Is Modified**

DFR actions which are modified by the hearing decision must be immediately corrected as directed by the hearing decision. This may require a claim for incorrectly issued benefits or a restoration if benefits received were not at the correct level.

**4210.30.10.15 Action Is Reversed**

If the hearing decision reverses the DFR's action, and continued benefits were received, no further action is required. However, if the hearing decision reverses the DFR's action, and continued benefits were not received, immediate corrective action must be taken. Please refer to Section 4205.26.00.

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<sup>30</sup> IC 12-15-28-7; 42 CFR 431.230(b)

<sup>31</sup> 42 CFR 431.230(b)

**4210.35.00 AVAILABILITY OF AGENCY REVIEW**

The appellant or the DFR may request an Agency Review of the case by the Family and Social Services Administration if dissatisfied with the decision made by the ALJ. The agency review is explained to the appellant in the decision.<sup>32</sup> The request must be made in writing to the OHA within 10 days following receipt of the hearing decision.<sup>33</sup>

**4210.35.05 Agency Review**

Once an Agency Review is requested, the Hearings and Appeals Section writes to the DFR and the appellant to acknowledge receipt of the request and to provide information concerning the review.

The parties may choose to submit a written Memorandum of Law for consideration. The Memorandum of Law must be submitted within twenty (20) days of the date of hearing decision. The Agency Review's decision will be sent to appropriate parties by certified mail.

Action required by the hearing decision must be enforced while awaiting the Agency Review.

Any party aggrieved by the decision of the Agency Review may file a petition for Judicial Review in the appropriate court by following the procedures required by IC 4-21.5-5-5 et seq.

**4210.40.00 LAWSUITS**

When an applicant/recipient (plaintiff) sues the DFR and/or the Central Office (defendant) and DFR staff are subsequently contacted by the plaintiff's attorney, the attorney should be advised to contact the defendant's attorney of record. The defendant's attorneys of record would be the Deputy Attorney General. These attorneys are known to the plaintiff's attorney through the pleadings filed in the case.

**4215.00.00 RESERVED**

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<sup>32</sup> IC 4-21.5-5-16

<sup>33</sup> 470 IAC 1-4-6; 42 CFR 431.245(b)