

3400.0230 RIGHT TO FAIR HEARING.

Subpart 1. [Repealed, 33 SR 695]

Subp. 2. [Repealed, 33 SR 695]

Subp. 3. **Child care payments pending fair hearing.**

A. If the applicant or participant requests a fair hearing before the effective date of termination or adverse action or within ten days after the date of mailing the notice, whichever is later, the commissioner or CCAP agency must not terminate the applicant's or participant's child care assistance or take the adverse action until the conclusion of the fair hearing. Child care assistance paid pending a fair hearing is subject to recovery under part 3400.0187 to the extent that the commissioner finds on appeal that the participant was not eligible for the amount of child care assistance paid.

B. If the commissioner finds on appeal that child care assistance should have been terminated or the amount of benefits reduced, a CCAP agency must send a notice of termination or reduction in benefits to the family and the child care provider as required by part 3400.0185 and determine if an overpayment needs to be recouped or recovered according to Minnesota Statutes, section 119B.11, subdivision 2a.

C. A participant may appeal the termination of child care assistance and choose not to receive child care assistance pending the appeal. If the commissioner finds on appeal that child care assistance should not have been terminated, a CCAP agency must reinstate the participant's eligibility retroactively from the date of the termination and issue payments to an eligible child care provider under part 3400.0120, subpart 1, when the child care provider bills according to Minnesota Statutes, section 119B.13, subdivision 6, paragraphs (a) to (c), for child care expenditures incurred pending the appeal.

Subp. 4. **Child care payments pending fair hearing or administrative disqualification hearing.**

A. If a child care provider requests a fair hearing before the effective date of a termination or an adverse action, the termination or adverse action must not take effect until the conclusion of the hearing, unless:

(1) the child care provider appeals the assignment of responsibility, amount, or recovery of an overpayment, in which case the recoupment or recovery of the overpayment will occur while the appeal is pending;

(2) the fair hearing is stayed under Minnesota Statutes, section 119B.16, subdivision 3; or

(3) the adverse action entitles the child care provider to an administrative review under Minnesota Statutes, section 119B.161.

B. Child care assistance that a CCAP agency pays to a child care provider pending a hearing is subject to recovery under part 3400.0187 when the commissioner finds on appeal that the child care provider was not eligible for the paid amount of child care assistance.

C. A child care provider may request a fair hearing under Minnesota Statutes, section 119B.16, subdivision 1a, and choose not to receive child care assistance pending appeal. If, on appeal, the commissioner finds that child care assistance should not have been terminated or an adverse action should not have been taken:

(1) the child care provider must complete the registration process in Minnesota Statutes, section 119B.011, subdivision 19a; and

(2) a CCAP agency or the commissioner must reimburse the child care provider for documented eligible child care expenditures made or incurred pending the appeal for dates of service when the child care provider was eligible under part 3400.0120, subpart 1, and the child care provider bills according to Minnesota Statutes, section 119B.13, subdivision 6, paragraphs (a) to (c).

Subp. 5. Child care payments pending administrative review.

A. If a child care provider requests an administrative review under Minnesota Statutes, section 119B.161, a CCAP agency or the commissioner must stop payments during the administrative review.

B. If a child care provider's payments are suspended under Minnesota Statutes, chapter 245E, or the child care provider's registration is denied or revoked under Minnesota Statutes, section 119B.13, subdivision 6, paragraph (d), clause (1) or (2), and:

(1) the commissioner or a law enforcement authority subsequently determines there is insufficient evidence warranting the action and a CCAP agency or the commissioner does not pursue an administrative remedy under Minnesota Statutes, chapter 119B or 245E, or Minnesota Statutes, section 256.98; or

(2) all criminal, civil, and administrative proceedings related to the child care provider's alleged misconduct conclude in the child care provider's favor and all appeal rights are exhausted; or

(3) the commissioner finds good cause exists under Minnesota Statutes, section 119B.161, subdivision 4, not to deny, revoke, or suspend a child care provider's registration, or not to continue a denial, revocation, or suspension of a child care provider's registration, and the child care provider chooses to resume receiving child care assistance payments, then:

(a) the child care provider must complete the registration process in Minnesota Statutes, section 119B.011, subdivision 19a; and

(b) a CCAP agency or the commissioner must reimburse the child care provider for documented eligible child care expenditures made or incurred pending the administrative review for dates of service when the child care provider was eligible under part 3400.0120, subpart 1, and

the child care provider bills according to Minnesota Statutes, section 119B.13, subdivision 6, paragraphs (a) to (c).

Statutory Authority: *MS s 119B.02; 119B.04; 119B.06; 256.01; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253; 33 SR 695; 47 SR 391*

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