

Resource Manual for Human Services Background Check Determinations



**Department of Health
& Human Services**
Licensing &
Background Checks

Purpose

This document is provided as guidance and is not a legal document. It does not override or replace the need to be familiar with rules. Current rules may be found on the DLBC website.

This manual guides human services providers and contractors through the background check process run by the Utah Department of Health and Human Services (DHHS) Office of Background Processing (OBP). It specifically explains how to manage and support employees who have a temporary status of “Not Eligible-Appeal in Process” (also known as “May Deny”).

Statutory requirements: Who must be in DACS?

Under **Utah Code Section 26B-2-101 and Section 26B-2-120**, background checks must be initiated for any individual who meets either one of the following criteria:

Direct access

This includes any individual who has or is likely to have:

- Physical contact or personal communication with a child or vulnerable adult.
- Opportunity to view medical, financial, or other confidential personal identifying information of a client, child, or vulnerable adult.

This includes youth ages 12-17 that are employed, volunteer, or reside in a home-based program. The youth is only exempt if they are residing in the home and receiving DHHS services themselves.

[26B-2-120(1)(a)(i)]

Associated with the licensee

This includes any person acting as an owner, director, member of the governing body, employee, agent, volunteer, or department contractor. [26B-2-101 and R501-14-2(2)]

Association does not include local mental health authorities, substance abuse authorities, organizational board members, or guests and visitors whose access to clients is **directly supervised at all times**. [26b-2-120(1)(a)(ii)]

An employer can initiate a background check as soon as an offer of employment is accepted.

Understanding background check determinations

OBP issues several types of determinations. Providers shall monitor and respond appropriately to these statuses in the Direct Access Clearance System (DACS). [R501-14-4(3)]

Determination status	Meaning	Work status
Eligible	The applicant is cleared to have direct access.	May work unsupervised, and have direct access. [26B-2-120(1)(f)]
Not Eligible	Based on the criminal and non criminal findings the applicant is not cleared to have direct access to clients or their records.	Cannot have supervised or unsupervised direct access. [26B-2-120(6)]
Not Eligible-Appeal in Process	Based on the criminal and non criminal findings more information is required to make a final determination (see above for final determination).	May only work under direct supervision. [26B-2-120(5), 26B-2-120(13)]
In Process	The background check is submitted but a determination has not yet been made. This could be because the applicant has not had their fingerprints taken or the Department of Public Safety has not yet released fingerprints to OBP.	May only work under direct supervision. [26B-2-120(5), 26B-2-120(13)]

Navigating the “May Deny”-Appeal in Process status

When an applicant’s status is updated to “**Not Eligible-Appeal in Process**” in DACS, the provider must take immediate action to be compliant and support the applicant.

Immediate action items

- **Check supervision:** The provider representative must ensure the employee is directly supervised under uninterrupted visual and auditory surveillance when working with clients or client files [R501-14-5(4)]. Training that does not involve direct access to clients or client files can be done without supervision [R501-14-5(2)(b)].
- **Verify notification:** The provider representative should ensure the applicant received the email from OBP with the attached “Notice of Agency Action” [R501-14-7(1)(b)]
- **Update DACS:** If the email was not received, the applicant should check their spam and junk folders. The provider representative should verify the email address for the applicant is correct in the DACS profile. If updates to the applicant email are required, the provider should update DACS and email chsunit@utah.gov so OBP can resend the email. [R501-14-5(6)(b)]

Supporting the applicant

The “**Not Eligible-Appeal in Process**” status can be stressful for applicants. OBP conducts this review to carefully check all background findings and make sure there is no risk to the people being served [R501-14-9(1)]. OBP must evaluate based on these findings if the applicant should have direct access. This may include access to private information, medications, or financial data, and whether the role requires rapid judgment to ensure safety. [26B-2-120(7)(a)]

- **15 days to respond:** The applicant must submit additional documentation or request additional time to gather and send documentation within 15 calendar days from the date the email regarding their “not-eligible - appeal in process” email was sent. [R501-14-8(3)(d)] If the applicant does not respond within 15 calendar days, **the determination status updates to a final “Not Eligible” decision, which remains in effect for 2 years.** [R501-14-8(6)].

Necessary documents

The applicant will be notified via email of their “**Not Eligible**” status based on background check findings [R501-14-8(3)(a)]. OBP does not list every specific finding to avoid making applicants justify every single past action [R501-14-7(8)]. Instead, OBP focuses on evaluating rehabilitation, personal accountability, and the current status of any court requirements [26B-2-120(7)(a)(vii)].

Applicants must send the following documents to OBP at chsunit@utah.gov:

- **Signed request form:** The request for administrative review form attached to the original OBP email must be completed and signed [R501-14-8(3)]
- **Personal statement:** A brief written overview describing the past circumstances, the applicant’s involvement, and their current situation. This helps OBP understand the applicant’s background from their perspective. [R501-14-8(3)(b)(iv)]
- **Incident reports:** For findings involving direct harm, such as assault or domestic violence, the applicant should provide official police reports, child protective services (CPS) records, or adult protective services (APS) records. [R501-14-8(3)(b)(iii)]

- **Proof of rehabilitation:** Official certificates confirming completed treatment, classes, counseling, or support programs.[26B-2-120(7)(a)(vii) and R501-14-8(3)(b)(i)].
- **Letters of recommendation:** Approximately 3 signed and dated character references from individuals who can speak directly to the applicant’s rehabilitation and character. [R501-14-8(3)(b)(vi)]
- **Legal records:** Relevant court dockets or proof that a case is resolved. This is especially important for out-of-state findings or active diversion agreements. [R501-14-8(3)(b)(v)]

The review and reconsideration process

Once the applicant submits the documents, OBP follows several steps to make the final determination:

1. **Initial Analyst Review (approx. 10 business days):** A lead analyst looks over the response and the background findings. They write a summary and suggest a decision to the program manager within 10 business days.
- **Manager Review (approx. 5 business days):** The program manager reviews the background findings, the applicant response, and the lead summary and recommendation. Within 5 business days, they will either make a final decision or suggest a meeting with the OBP director to discuss a settlement.
- **Settlement Meeting:** The OBP director may meet with the applicant to talk about safety concerns and hear the applicant’s story. During this meeting, they should discuss specific steps to become eligible, such as:
 - Resolving active warrants
 - Successfully completed drug court
 - Successful case closure
 - Removal of the finding

At the end of the meeting the OBP director will make the final determination of eligible or not eligible.

Note: Because of the high number of requests, these meetings are currently being scheduled about one month in advance.

How OBP Makes a Decision (The Human Factor)

OBP uses state laws and rules (Utah Code 26B-2-120(7) and R501-14-8) to make a final determination. OBP will deny approval only when they find making the approval would create a risk of harm to the population being served.

To make this decision, OBP looks at:

- The actions the applicant has taken to show accountability and repair the situation.

- How much time has passed since a serious finding occurred. OBP prefers a minimum of 3–5 years for serious findings, noting that data shows¹ completing 3 years without a new finding decreases the likelihood of repeat offenses by 80%.
- The length of sobriety and whether the applicant has completed all court requirements.
- The vulnerable population the applicant would serve and the type of application submitted (such as employment, foster care, working with adults only, or with DSPD).

Please note that severe findings mandated by law exist that automatically disqualify applicants, regardless of the time passed or the review process.

Final determination: Not Eligible

If OBP upholds the denial after the settlement negotiation, DACS will update to “**Not Eligible**” [R501-14-7(1)(c)]. If the applicant chooses not to resolve the discussed issues during negotiation, the case moves forward to the Office of Administrative Hearings (OAH) [26B-2-120(11) and R501-14-15].

- **Work restriction:** Applicants with a final “**Not Eligible**” determination are not **permitted to work** or have any access to clients, even under supervision [26B-2-120(10)(b)] and R501-14-5(5)(a)]. The provider representative will end the individual’s direct access immediately upon notification R501-14-3(5)(h)(ii)].
- **Association:** The applicant needs to remain associated with the provider if they are appealing the final “**Not Eligible**” determination. If the provider separates the applicant from their program OBP has no authority to review and OAH will dismiss the appeal.
- **Inquiries:** All inquiries regarding the status of the case must be directed to OAH.
- **Re-application:** Denied applicants can re-apply after 2 years have passed from the final determination date, or if there is a substantial change in circumstances such as the finding is:
 - Dismissed
 - Expunged
 - Modified from the original charge
 - Removed from APS or CPS records [R501-14-8(6)]

Association during the appeal process

An applicant will remain associated with the provider in DACS if the applicant is actively appealing the background check determination. If the provider representative separates the applicant from the program’s roster in DACS, OBP loses the statutory authority to perform a background check [R501-14-5(5)(b)]. Consequently, OAH will dismiss the appeal because the applicant is no longer associated with a provider. Provider representatives will separate within 5 business days if employment has officially ended and no appeal is being pursued. [R501-14-4(3)(c)]

¹ See, e.g., Bureau of Justice Statistics, *Recidivism of Prisoners Released Cohort Studies*; National Institute of Justice, “Redemption” in an Era of Widespread Criminal Background Checks; and Council of State Governments Justice Center, *50 States, 1 Goal: Reducing Recidivism*. These studies confirm the risk of reoffending is highest right after release and drops drastically by year three.

Post-approval responsibilities

An applicant or a provider representative will immediately notify OBP via email of any new findings or investigations.

- **Supervision required:** Upon receiving notice of new findings, OBP will update DACS to reflect the “**Eligible-supervision required**” determination.
- **Directly supervised:** The provider representative will ensure the applicant is immediately directly supervised until they are notified a final determination is updated in DACS.