

<p style="text-align: center;"><b>STATE OF IOWA</b> <b>DEPARTMENT OF CORRECTIONS</b></p> <p style="text-align: center;"><b>POLICY</b> <b>AND PROCEDURES</b></p>		Policy Number IS-CL-10	Applicability <input checked="" type="checkbox"/> DOC <input type="checkbox"/> CBC
		Policy Code Public Access	Iowa Code Reference 903A.2(1)(a) 903A.2(1)(b)(2) 903A.3 903A.4
Chapter 5 INSTITUTIONAL SERVICES	Sub Chapter CLASSIFICATION	Related DOC Policies AD-CR-02 IO-RD-03 IS-CL-03 OP-SOP-08	Administrative Code Reference N/A
Subject SOTP/IDAP HEARING AND APPEAL PROCEDURES		ACA Standards N/A PREA Standard N/A	Responsibility Michael Savala
		Effective Date September 2020	Authority Beth Skinner Director Signature on file at Iowa DOC

## I. PURPOSE

To establish the procedures used to conduct hearings regarding treatment classification decisions for a required Sex Offense Treatment Program (SOTP) and/or a required Iowa Domestic Abuse Program (IDAP). This policy describes the procedures used for hearing and subsequent appeals of such decisions.

## II. POLICY

It is the policy of the IDOC to provide hearing and appeal processes that meet the requirements of the Iowa Code and comply with due process requirements for incarcerated individuals regarding certain SOTP/IDAP classification matters.

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### **III. DEFINITIONS** - As used in this policy:

- A. Administrative Law Judge (ALJ) - An Administrative Law Judge appointed by the IDOC Director.
- B. Appeal Authority - An IDOC staff person or persons appointed by the IDOC Director to handle appeals from SOTP/IDAP hearings.
- C. Earned Time - The term earned time shall refer to the reduction in time credits given to incarcerated individuals under the Iowa Code, as amended, and any other current or prior section of the Iowa Code that specifies the

reduction in time credits that apply to a particular incarcerated individual's sentence.

- D. Hearing Coordinator - A person or persons responsible for scheduling the classification hearings, sending out the documents for incarcerated individual receipt or review, coordinating any pre-hearing continuance or document requests, distributing decisions and appeal forms, distributing appeal decisions, and scanning appropriate documents into the ICON system.
- E. ICON - The "Iowa Corrections Offender Network" computer system used by IDOC staff members to record information relating to incarcerated individuals.
- F. SOTP/IDAP – Treatment programs established by the IDOC for incarcerated individuals who must participate in and complete the treatment program in order to be eligible for earned time credits. The term covers a sex offense treatment program (SOTP) covered by **Iowa Code 903A.2(1)(a)** and an Iowa domestic abuse program (IDAP) covered by **Iowa Code 903A.2(1)(b)(2)**, both of which are covered by **Iowa Code 903A.3**.
- G. See IDOC Policy **AD-GA-16** for additional Definitions.

#### **IV. PROCEDURES**

- A. General Guidelines
  - 1. The Iowa Code indicates that an incarcerated individual who is required to participate in a required SOTP/IDAP shall not be eligible to receive earned time credits unless the incarcerated individual "participates in and completes" the required treatment program(s) established by the IDOC Director. **Iowa Code 903A.2(1)(a) & (1)(b)(2)** and **Iowa Code 903A.3**.
  - 2. IDOC staff shall determine if an incarcerated individual is required to take SOTP/IDAP in accordance with the appropriate IDOC Policies. In some, but not all, cases, policy provides that an incarcerated individual shall have the opportunity to have an ALJ hearing to determine whether the incarcerated individual is required to take SOTP/IDAP. Such ALJ hearing shall be conducted using the procedures described in this policy.
  - 3. An incarcerated individual required to complete SOTP/IDAP who refuses to take or who is removed from an SOTP/IDAP program shall

have a hearing with an ALJ, unless the incarcerated individual waives the right to a hearing or is not eligible for such a hearing. An incarcerated individual is not eligible for an ALJ hearing if the incarcerated individual is not eligible to receive any earned time credits. Such an ALJ hearing shall be conducted using procedures described in this policy.

4. The time computation provisions in the Iowa Code and the general IDOC time computation procedures found in IDOC Policy **AD-CR-02**, *Sentence Computation and Tracking* shall govern all time computations relating to SOTP/IDAP hearings.
5. The Iowa Supreme Court indicated that to meet the requirements to comply with due process:
  - a. Advance written notice allowing an incarcerated individual time to secure documents or prepare a statement.
  - b. An opportunity to present documentary evidence, letters, or make statements before the hearing decision maker.
  - c. A written explanation for the reasons for the decision.
  - d. A decision maker who is sufficiently impartial.

The procedures established by this policy for ALJ hearings are meant to comply with those requirements.

6. Although not required by due process, the IDOC has also established a procedure for incarcerated individuals to appeal any adverse ALJ hearing decision.
7. It is the intent of this policy that IDOC staff shall follow all of the procedures described herein. However, nothing in this policy shall require the dismissal or reversal of any matter for minor deviations from the outlined procedures that do not negatively affect the substantive rights of the incarcerated individual subject to the hearing.
8. This policy is designed to create procedures that ensure the rights of incarcerated individuals under the United States Constitution, the Iowa Constitution, federal law, and Iowa law. This policy does not create or add new independent legal rights for incarcerated individuals.

9. In a case where a binding court decision (state or federal) is in direct conflict with the procedures described herein, the court decision shall prevail. Court decisions that apply to individual incarcerated individuals are not necessarily binding regarding the procedures or decision for other incarcerated individuals who were not parties to the court proceeding. The IDOC shall work with the Attorney General to ensure that policy and practice are consistent with current applicable case law.

B. Hearing Notice and Supporting Documents

A Hearing Coordinator shall coordinate the preparation of the hearing notice and supporting documents in accordance with the appropriate IDOC Policies. The notice and supporting documents shall be forwarded to the incarcerated individual's counselor, so that they may be provided to the incarcerated individual. Staff shall document the delivery and/or review of the documents as appropriate. Certain documents that are confidential under federal law, the Iowa Code, the Iowa Administrative Code, or IDOC policy, will not be given to or reviewed by the incarcerated individual, but may be reviewed and considered by the ALJ.

C. Hearing Waiver

1. An incarcerated individual who does not want to contest the SOTP/IDAP classification decision specified in the hearing notice may waive the right to an ALJ hearing. In order to waive the right to have an ALJ hearing, an incarcerated individual must sign and date the hearing waiver section of the hearing notice. A copy of the signed waiver shall be scanned by staff and emailed to the Hearing Coordinator for processing.
2. If an incarcerated individual waives the right to have a hearing, the SOTP/IDAP decision specified in the notice shall be considered to have been affirmed and upheld.
3. An incarcerated individual who waives the right to a hearing also waives the right to any appeal. The incarcerated individual shall be deemed to have failed to exhaust the administrative procedures and administrative remedies available to the incarcerated individual. An incarcerated individual's signed hearing waiver may preclude any court challenge to the proceeding or the classification.

D. Scheduling

The Hearing Coordinator shall schedule the time of the hearings. The Hearing Coordinator shall seek to spread the hearing workload among the ALJs doing the hearings. The Hearing Coordinator may also limit the number of hearings scheduled each week to allow the ALJs and institutional staff to reasonably handle the workload associated with the preparation and conducting of the hearings. A notice of the upcoming hearing schedule shall be sent out via email to all appropriate staff by the Hearing Coordinator.

E. Administrative Nature of Hearings

1. The hearing and appeal procedures are meant to comply with due process requirement for incarcerated individuals.
2. The ALJ hearings are considered to be an administrative procedure similar to prison disciplinary hearings. The hearings are not governed by the Iowa Administrative Procedure Act, **Iowa Code Chapter 17A**.
3. Limits on the type of evidence that can be used in district court or under the Iowa Administrative Procedure Act do not apply to the evidence presented or relied upon in the ALJ hearings covered by this policy. An ALJ may rely upon any relevant evidence, including hearsay evidence, that the ALJ finds is credible based on the totality of the circumstances related to the evidence.
4. Incarcerated individuals may consult with an attorney regarding an SOTP/IDAP hearing and/or appeal done in accordance with this policy. However, incarcerated individuals do not have the right to have an attorney present during the ALJ hearing or appeal process.
5. Except as described in this policy, incarcerated individuals do not have the right to make prehearing motions or discovery requests.
6. Incarcerated individuals do not have the right to directly or indirectly confront or cross-examine any witnesses as part of the hearing process.

F. Procedures for the Incarcerated Individual Submission of Documents

Incarcerated individuals may submit relevant documents as described in this policy. Such submissions shall be given to the Associate Warden/Treatment (treatment director) or designee at the institution where

the incarcerated individual is then located. Normally, the incarcerated individual's counselor shall be a designee to receive such submissions. Documents submitted by an incarcerated individual shall be scanned by staff and forwarded via email to the Hearing Coordinator. The Hearing Coordinator shall notify the appropriate ALJ of the submission and shall make the documents part of the ICON record regarding the hearing.

G. Requests for Hearing Continuances

1. Incarcerated individuals are allowed to request that a hearing be delayed. Such a request shall be in writing. The request should be made as soon as possible by an incarcerated individual, but no later than two business days before the scheduled hearing date.
2. Continuance requests shall be made using Form **IS-CL-10 F-1**, *SOTP/IDAP Hearing Continuance Request*. The request should specify in detail the reason why a delay in the hearing is appropriate. Merely saying that more time is needed to prepare for the hearing is generally not a sufficient reason to request a continuance.
3. The incarcerated individual shall submit the continuance request in accordance with the provisions of this policy governing incarcerated individual submissions of documents. The Hearing Coordinator shall notify the appropriate ALJ of the request and send all relevant documents to that ALJ for review and disposition.
4. The ALJ shall review and consider the request for a continuance. The granting of such a request is within the sole discretion of the ALJ. Generally, such a request shall only be granted if the ALJ finds that there is a compelling reason to delay the hearing or the lack of a delay would work a serious injustice. Instead of delaying the hearing, the ALJ may indicate that the record will be held open for an additional time to allow for the incarcerated individual to obtain and file additional documents after the hearing.
5. The ALJ shall provide a written decision as soon as practical, but no later than the second business day after the ALJ receives the continuance request and shall forward the decision to the Hearing Coordinator. The Hearing Coordinator shall ensure that appropriate parties receive copies of the ALJ's continuance decision. If a continuance request is forwarded to the ALJ less than two business days before the scheduled hearing, the ALJ may rule on the continuance request orally at the hearing and document in the ruling on the continuance in the decision or other document.

- a. If the continuance request is granted and the ALJ decision specifies a specific date that the hearing is moved to, the Hearing Coordinator shall note the new hearing date on the appropriate hearing docket.
  - b. If the hearing date cannot be specified because it depends on some contingency, then the ALJ's continuance decision shall specify the conditions that shall determine when the hearing shall be rescheduled.
6. The ALJ's decision on the granting of a continuance is final. No prehearing or interlocutory appeal of a continuance denial is allowed. If an incarcerated individual believes that the denial of a continuance was erroneous, the incarcerated individual may raise that issue at the hearing or upon appeal.
  7. The hearing may be continued without a request from an incarcerated individual if the Hearing Coordinator or ALJ determine that there is an appropriate reason to delay the hearing. The person making such a decision shall issue a written notice documenting the continuance and the reasons therefor.

#### H. Submission of Documents and Statements by Incarcerated Individuals

1. Incarcerated individuals may submit documentary evidence for inclusion into the hearing record. Such evidence may include any relevant court or treatment documents, letters, or statements by the incarcerated individual or by other incarcerated individuals that are not already part of the hearing record.

If an incarcerated individual submits more than five pages of documents, the incarcerated individual shall also submit IDOC Form **IS-CL-10 F-2**, *SOTP/IDAP Hearing Document Submission*, to accompany the documents. That form shall provide a summary of the documents being submitted and a written statement indicating the relevant portions of the materials that should be reviewed by the ALJ.

If an incarcerated individual wishes to submit copies of a court decision, the incarcerated individual shall indicate the relevant passages from that decision that the ALJ should review. Incarcerated individuals shall also mark the relevant parts of any documents by marking the pages, such as by placing marks in the



margins indicating the relevant text to be reviewed. Such markings should not obscure any of the text or other information contained in the submitted documents.

2. Incarcerated individuals shall bear the cost of obtaining, copying, and providing the documents that the incarcerated individual wants included in the record. The incarcerated individual shall also be responsible for contacting any outside entity to get copies of documents that the incarcerated individual wants to make part of the record. The IDOC shall have no responsibility for obtaining such outside documents or for the costs of providing copies of such documents for the record.
3. Documents that an incarcerated individual wants the ALJ to review should normally be submitted as soon as possible by an incarcerated individual, but no later than two business days before the scheduled hearing date. For good cause and at the ALJ's sole discretion, an ALJ may allow documents to be submitted at a later time.

I. Incarcerated Individual Requests for Additional Documents and for Staff Statements

1. Document request - Incarcerated individuals may request that additional materials from IDOC records, such as ICON records, be submitted to the ALJ.
  - a. Any such request shall be specific and indicate what documents are being requested and why such documents are relevant.
  - b. If an incarcerated individual requests a document from ICON or other IDOC records that law or IDOC policy does not allow the incarcerated individual to have, but which is relevant to the hearing, then the following procedure shall be followed:
    - (1.) The incarcerated individual shall not be given a copy of the document.
    - (2.) A copy of the document shall be provided to the ALJ for review during the hearing process.
    - (3.) The Hearing Coordinator shall make the document part of the confidential record for the hearing.

- c. Incarcerated individuals shall bear the cost of obtaining, copying, and providing all such documents, in accordance with the IDOC's policy on providing such documents to incarcerated individuals. The costs may be waived if IDOC staff determines that the documents should have been part of the hearing information packets. The decision to waive such costs shall be made by the Associate Warden/Treatment (treatment director) or designee at the institution where the incarcerated individual is then located.
  2. Staff statement request – An incarcerated individual may request that a current IDOC staff member submit a written statement for the ALJ to review and consider regarding the issues involved in the hearing. Incarcerated individuals do not have the right to ask specific questions of the staff member, but may only request a general statement from the staff member. Staff statements may be recorded on IDOC Form **IS-CL-10 F-3**, *Staff Statement*.
  3. Requests for documents or staff statements should normally be submitted as soon as possible by an incarcerated individual, but no later than three business days before the scheduled hearing date. The incarcerated individual shall make any request for additional IDOC documents or for an IDOC staff statement in writing. The written request shall be submitted in accordance with the provisions of this policy governing incarcerated individual submissions of documents.
  4. A copy of any non-confidential documents and staff statements produced under these provisions shall be given to the incarcerated individual and shall also be scanned and sent to the Hearing Coordinator for distribution and placement into the record of the hearing.
  5. If the ALJ determines that additional documents, statements, or information are needed to make the hearing record complete, the ALJ may request that such documents, statements, or information be gathered and entered into the record. Copies of any additional non-confidential documents used for this purpose shall be provided to an incarcerated individual.
- J. Failure or Refusal to Appear
  1. An incarcerated individual's refusal or deliberate failure to appear at a hearing shall constitute a waiver of all hearing participation and

appeal rights. The ALJ may enter a summary affirmance of the classification decision based on an incarcerated individual's refusal or deliberate failure to attend a scheduled hearing. The hearing decision shall document the fact that the incarcerated individual refused or deliberately failed to attend the hearing.

2. An incarcerated individual taking part in a hearing is expected to behave appropriately and is subject to the rules of discipline in the same manner as at any other time. If the incarcerated individual becomes so unruly at the hearing that the hearing cannot be effectively completed, such conduct may be treated as a refusal to appear at the hearing. The ALJ shall document the incarcerated individual's behavior and make a finding regarding whether it constituted a waiver of the incarcerated individual's hearing right. If the behavior does constitute a waiver of the incarcerated individual's hearing right, then the incarcerated individual loses the right to appeal and the ALJ may issue a summary affirmance.

#### K. Hearing Procedures

1. During the calendar week before the scheduled hearing date, the Hearing Coordinator shall send out an announcement regarding the scheduled time for an incarcerated individual's hearing. The announcement shall be sent to the ALJ assigned to conduct the hearing, as well as the appropriate staff at the institution housing the incarcerated individual, including the appropriate Associate Warden/Treatment (Treatment Director) and the incarcerated individual's assigned IDOC counselor. The announcement shall normally be sent via email to the appropriate parties. Notice of the time and location for the hearing shall be given promptly to the incarcerated individual by the appropriate staff.
2. If an incarcerated individual is in a special needs or mental health status at the time that the hearing notice is prepared, the following provisions shall apply:
  - a. A statement from a mental health professional shall be prepared regarding:
    - (1.) Whether the incarcerated individual's mental capacity allows the incarcerated individual to adequately comprehend the issues relevant to the hearing, and

- (2.) Whether the incarcerated individual's special needs or mental health status precludes the incarcerated individual from being held responsible for conduct that relates to current participation in or potential participation in the SOTP/IDAP program.

The Hearing Coordinator shall make such a statement part of the hearing record. The ALJ may contact the mental health professional for clarification of the written statement or the reasons supporting the mental health professional's conclusions.

- b. If the mental health professional determines that the incarcerated individual's mental capacity does not allow the incarcerated individual to adequately comprehend the issues relevant to the hearing, then the ALJ may:
    - (1.) Continue the hearing, if the condition is temporary and is expected to change in the near future.
    - (2.) Reverse or dismiss the classification decision, if the condition appears permanent.
  - c. If the mental health professional determines that the incarcerated individual's special needs or mental health status precludes the incarcerated individual from being held responsible for conduct that relates to current participation in or potential participation in the SOTP/IDAP program, then the ALJ may reverse or dismiss the classification decision.
  - d. A new classification decision may be made after a dismissal or reversal due to an incarcerated individual's mental health issues, if the mental health status of an incarcerated individual changes and the incarcerated individual may fully participate in a hearing and/or is not precluded from being held responsible for the incarcerated individual's conduct as it relates to SOTP/IDAP. Any such new classification decision is subject to a new hearing process under the provisions of this policy.
3. The ALJ may conduct the hearing via telephone. Staff shall call the appropriate phone number to connect to the hearing and then allow the incarcerated individual to use the phone. Appropriate staff may listen in on the hearing or may be present with the ALJ or

incarcerated individual during the hearing. The ALJ may also use the Tele-justice video system rather than the telephone to conduct a hearing.

The ALJ shall have the option, at the ALJ's sole discretion, to conduct the hearing in-person, if the ALJ is at the same location as the incarcerated individual.

The hearing shall not be recorded by audio or video equipment or by a court reporter.

4. If an incarcerated individual is unable to understand English as verified by institutional staff, the ALJ shall arrange to have a telephonic interpreting service available to help the incarcerated individual understand the proceedings and make statements to the ALJ. The ALJ shall note the use of such an interpreter in the hearing decision.
5. The hearing record shall consist of the hearing notice, the supporting documents provided as part of the hearing packet, documents and statements submitted by the incarcerated individual and accepted into the record, additional documents and staff statements made part of the record at the incarcerated individual's request, the statements made by the incarcerated individual at the hearing. The ALJ shall be responsible for making sure that the hearing record is complete. The ALJ may make additional information part of the record if the ALJ determines that the record would be incomplete without such information. The ALJ may reject documents and statements offered by the incarcerated individual if the ALJ determines that such information is irrelevant, repetitive, inflammatory, or of no probative value.
6. The ALJ shall conduct the hearing as follows:
  - a. Briefly describe the procedures that shall be used for the hearing and ask if the incarcerated individual has any questions about the procedures.
  - b. Read or summarize the classification decision and the justification information specified in the hearing notice. The ALJ shall also read or summarize the relevant information that was part of the supporting information packet provided to the incarcerated individual.

- c. Provide the incarcerated individual an opportunity to make a statement regarding the matter. The ALJ may limit an incarcerated individual's statement if the statement contains irrelevant issues or becomes duplicative or repetitive. The ALJ may also take steps to keep the incarcerated individual's arguments focused on the issues of the hearing.
  - d. No in-person witnesses, other than the incarcerated individual, shall be part of the hearing process, unless the ALJ determines, in the ALJ's sole discretion, that the interest of justice requires such in-person testimony.
  - e. At the conclusion of the hearing, the ALJ shall take the matter under advisement. Normally, the ALJ shall not announce any decision at the time of the hearing.
7. In some cases, new information that was unavailable at the time of the hearing may become available. If the ALJ has not yet issued a hearing decision, then such information may be submitted to the ALJ for review. The incarcerated individual shall be given an opportunity to review such new information and provide a written statement about it. If the incarcerated individual is the one submitting information, then the new information shall be accompanied by a written statement by the incarcerated individual describing the information and its relevance. The ALJ may, but need not at the ALJ's sole discretion, determine to hold a further hearing regarding such new information.
8. If hearing or procedural issues arise that are not covered by this policy, an ALJ may use procedures similar to those used to conduct major report disciplinary hearings under IDOC Policy **IO-RD-03**, *Major Discipline Report Procedures*. If no comparable procedures exist regarding a specific situation, the ALJ shall use procedures designed to meet the requirements of law, due process, and governing court decisions.

L. Hearing Decisions

- 1. The ALJ shall issue a written hearing decision as soon as practicable after the completion of the hearing but no later than 15 business days. If an ALJ kept the record of the hearing open to allow an incarcerated individual more time to file documents, the hearing shall not be considered complete until the documents are received by the ALJ and any needed supplemental hearing is held or the ALJ closes

the record because the incarcerated individual did not file the proffered documents by the time deadline established by the ALJ. No proceeding shall be dismissed solely based on any delay of issuing a decision.

2. The ALJ shall review the hearing record, weigh the evidence, and make a decision regarding the disposition of the case using only the record available to the ALJ through the hearing process. An ALJ can make decisions based on direct and circumstantial evidence and reasonable inferences from the evidence. An ALJ shall be impartial.
3. The ALJ shall review all pertinent evidence presented and may draw an adverse inference from the incarcerated individual's hearing waiver or silence regarding one or more issues during the proceedings.
4. In analyzing the evidence and reaching conclusions, the ALJ shall give consideration to whether the decision shall appropriately help to rehabilitate the incarcerated individual and/or protect the community.
5. The hearing decision shall include findings of fact and conclusions of law. The findings of fact should contain references to the part of the hearing record that supports the findings. The hearing decision shall also include a notice regarding the incarcerated individual's right to appeal an adverse decision.
6. The ALJ may uphold or affirm the classification decision if the ALJ determines that the evidence in the record supports the classification decision listed in the hearing notice.
7. The ALJ shall forward a copy of the hearing decision to the Hearing Coordinator for distribution to the incarcerated individual and appropriate IDOC staff. A copy of the decision shall be entered into ICON.
8. If an ALJ discovers a typographical or scrivener's error in a hearing decision after the decision was given or sent to an incarcerated individual but before an appeal has been filed, the ALJ may issue a corrected hearing decision. A copy of the corrected decision shall be given to the incarcerated individual. The incarcerated individual shall have an additional 24 hours to file an appeal after receiving the corrected hearing decision.

9. If an ALJ finds that the evidence does not support the classification decision, the ALJ shall reverse the classification decision. Such a reversal does not preclude the classification staff from filing a new notice and starting a new hearing process if evidence is obtained or developed that was not available during the original proceeding or was not part of the record reviewed by the ALJ in the original proceeding.

M. **Appealing the Hearing Decision**

1. An appeal form for appealing the hearing decision (IDOC Form **IS-CL-10 F-4**, *SOTP/IDAP Hearing Appeal*) shall be provided to each incarcerated individual with a decision that affirms or upholds all or part of the classification decision. Any appeal must be submitted within 24 hours of the date and time that the incarcerated individual receives a copy of the written decision. The appeal form shall be turned in to the Associate Warden/Treatment (treatment director) or designee at the institution where the incarcerated individual is then located. Normally, the incarcerated individual's counselor shall be a designee to receive such submissions. The staff shall forward a copy of the appeal form to the Hearing Coordinator.
2. If an incarcerated individual fails to file an appeal within the 24 hours, then the hearing decision shall be deemed to be affirmed and the decision shall be implemented.
3. All appeals shall be handled by the appropriate Appeal Authority. The Hearing Coordinator shall forward the appeal form and other relevant documents to the appropriate Appeal Authority. The Appeal Authority shall review the documents and shall issue a written appeal decision as soon as practicable using IDOC Form **IS-CL-10 F-5**, *SOTP/IDAP Hearing Appeal Response*.
4. The Appeal Authority may affirm the decision if the record supports the decision. If procedures have not been followed or there is insufficient evidence in the record to support the findings, the Appeal Authority may:
  - a. Remand for correction of procedural errors;
  - b. Order a rehearing; or
  - c. Reverse or modify the decision.



5. The failure of the Appeal Authority to respond to the appeal within 15 business days may, for purposes of an incarcerated individual's exhaustion of administrative remedies, be considered a denial of the appeal and the incarcerated individual may proceed with other available remedies. However, the Appeal Authority shall still be required to provide an appeal response as soon as practical.
6. Incarcerated individuals are expected to fully participate in the hearing process in order to preserve all of their appeal rights. If an incarcerated individual does not make any statement about the facts raised by SOTP/IDAP hearing notice at the hearing, then the incarcerated individual may not raise factual issues as part of an appeal. The incarcerated individual may still raise issues about the conclusions and analysis used by the ALJ. An incarcerated individual may also raise factual issues raised by evidence that is newly discovered after the hearing is completed.

N. Request for a Review Based on New Evidence

1. If an incarcerated individual obtains additional relevant evidence that was unavailable through reasonable diligence during the initial ALJ hearing and appeal regarding an issue, then the incarcerated individual may submit the additional evidence for review.
2. In order to submit the additional evidence and request a review, the incarcerated individual must meet the following conditions:
  - a. The incarcerated individual must have participated in the prior ALJ hearing and filed an appeal to the Appeal Authority regarding that decision.
  - b. The incarcerated individual must demonstrate that the incarcerated individual could not obtain or access the additional evidence during the prior ALJ hearing or the appeal through reasonable diligence.
  - c. The incarcerated individual must demonstrate how the additional evidence is relevant to the issues involved in the initial ALJ hearing and appeal.
  - d. The incarcerated individual must indicate how the additional evidence would support a different conclusion to the one reached by the ALJ hearing and appeal.

3. To submit the additional evidence and request a review, the incarcerated individual must complete IDOC Form **IS-CL-10 F-6**, *Request for Review Based on Additional Evidence*. The completed form and a copy of the additional evidence shall be submitted to the Associate Warden/Treatment (treatment director) or designee at the institution where the incarcerated individual is then located. Normally, the incarcerated individual's counselor shall be a designee to receive such submissions. Documents submitted by an incarcerated individual shall be scanned by staff and forwarded via email to the Hearing Coordinator.
4. The costs associated with obtaining and submitting the additional evidence are the responsibility of the incarcerated individual.
5. The Hearing Coordinator will forward the incarcerated individual's submission to the ALJ who conducted the original ALJ hearing. If that ALJ is unavailable or cannot hear the matter due to a conflict, the Hearing Coordinator will forward the submission to another ALJ.
6. The ALJ will review the submission and will issue a decision that includes the following findings:
  - a. Whether the incarcerated individual took part in the prior hearing and appeal.
  - b. Whether the additional evidence submitted by the incarcerated individual was reasonably unavailable during the initial ALJ hearing and appeal or if the incarcerated individual could have obtained the additional evidence by proper diligence. The ALJ may use the fact that an incarcerated individual made or did not make a request for a continuance during the initial ALJ hearing process in making this determination.
  - c. Whether the additional evidence if available during the initial ALJ hearing would have led the ALJ to make different findings and conclusions that would have supported the reversal of the classification decision at issue.
  - d. Whether the failure to reverse the prior decision in light of the additional evidence would work a manifest injustice even if the other conditions described above are not met.

7. At the ALJ's sole discretion, the ALJ may hold an in-person, Telejustice, or phone hearing with the incarcerated individual if the ALJ determines that such a live hearing is appropriate or would help the ALJ understand the submitted additional evidence.
8. The ALJ will issue a decision to either uphold the initial ALJ decision or reverse or modify that initial decision. The ALJ's decision shall be issued within 15 business days following the later of the date the ALJ receives the written submission or the date the ALJ conducts a live hearing with the incarcerated individual.
9. The ALJ will submit the decision regarding the additional evidence to the Hearing Coordinator. The Hearing coordinator will distribute the decision in the same manner as other ALJ decisions and will include an appeal form if appropriate.
10. If the ALJ decision does not change the conclusion of the prior ALJ decision and appeal, then the incarcerated individual may file an appeal using the same procedures as for other appeals.
11. The Appeal Authority shall issue an appeal decision in the same manner as other appeals.
12. An incarcerated individual may only submit one request under this provision regarding an initial ALJ hearing decision and appeal.
13. The submission of additional evidence under this provision does not automatically change or postpone a prior decision. During the time that a submission is pending, the incarcerated individual is expected to meet any requirements from staff that are based on the initial ALJ and appeal decisions.