



## **What Is Maltreatment and How Can It Affect My Job?**

### **What Is Maltreatment?**

When a child protection or adult protection agency decides a child or vulnerable adult (elderly, physically or mentally disabled) you care for was hurt or neglected by you, this is called maltreatment. Common examples include bruises or scratches, broken bones, verbal threats or verbal abuse, financial fraud, or leaving children or vulnerable adults alone without proper supervision.



### **How Can a Maltreatment Determination Affect Me?**

A maltreatment determination does not show up on your criminal record, but it is used in state or county background checks for caretaker jobs. It can stop you from working in a variety of caretaker jobs for 7 to 10 years.

A maltreatment record affects the following caretaker jobs

- health care or home health aide
- child care
- licensed foster care
- adopting children
- work in corrections or chemical dependency counseling
- any other position involving direct contact with vulnerable adults or children.

For a maltreatment determination to affect you, it must be serious or “recurring.” This means it must have happened more than once or it must have resulted in an injury.

A maltreatment determination on your record does not result in jail, fines, or the loss of your parental rights. But, it is possible that criminal charges or child protection actions might be taken against you.

### **Can I Fight a Maltreatment Determination?**

Yes, you can fight a maltreatment determination, but you must appeal before the determination is final. There are very short deadlines. Make sure you follow the time limits in the letter you receive from the agency accusing you of maltreatment. It is best to have a lawyer help you. You can ask the state or county to “rescind,” or “take back”, the maltreatment determination. If you succeed, you will not be disqualified from caretaker jobs because of the accusation.

## How Do I Fight a Maltreatment Determination?

Immediately appeal in writing within 15 days. Send in a written appeal even if you cannot find a lawyer right away. If you don't appeal, you might lose your chance to defend yourself forever. Explain why you did not commit the accused maltreatment.



For example

- Was the abuse or neglect the result of an accident?
- Were you using moderate parental discipline?
- Was someone else responsible for the abuse or neglect?
- Was the alleged victim truthful about the allegation?
- Are there witnesses to back up your story?
- If you work in a childcare center, a non-serious injury to a child may be considered a “non-maltreatment mistake.”

Write as much detail as possible.

You must also explain why the maltreatment was not serious or recurring, to prevent it from disqualifying you from caretaker jobs in the future. For example

- Did it happen more than once?
- Did an injury occur?
- If neglect, was the injury treatable with just minor, over-the-counter or topical treatment?

You can get a copy of your child or adult protection file from the county that made the maltreatment determination to see the evidence against you. You should get the file right after you find out you have been accused of maltreatment.

## What if my Appeal is Denied?

If your written appeal is denied or you do not get an answer within 15 days, you can ask for a fair hearing in front of a hearing officer. You can introduce evidence to defend yourself at that hearing. You can also subpoena witness to testify at the hearing. A subpoena is an order to come to the hearing. Tell the hearing officer as soon as possible that you want to subpoena a witness or certain documents. They will send you the forms for a subpoena. Instructions on how to ask for a fair hearing are in the maltreatment accusation letter you get from the agency. If you win the fair hearing, the state or county takes back its maltreatment accusation and you can continue to work in caretaker jobs.

If you lose the fair hearing, you can appeal the decision to district court in the county where the maltreatment determination was made. You must appeal within 30 days after the decision. If you lose in district court, you can appeal to the Minnesota Court of Appeals within 60 days after the court decision.

## What If I Missed the Deadline or Lost the Appeal?

If it is too late to appeal, or you lost the appeal, the maltreatment stays on your record. A maltreatment record prevents you from working in caretaker jobs for 7 to 10 years. But you can still work in a caretaker job if

- the maltreatment was not serious or recurring

OR

- if you get a “set-aside” or a “variance” from the state.

For more information on how to get a “set-aside” or a “variance” see the Factsheet “DHS Disqualifications” online at [www.LawHelpMN.org](http://www.LawHelpMN.org).

### Is There Anything Else I Can Do?

If you are sure you never got a letter about the maltreatment determination, you can get a copy of your child or adult protection file (from the county where the maltreatment determination was made) and see if a letter from the state or county is in it. If not, ask the state or county agency to give you a chance to fight the accusation. You must first appeal from the state or county letter telling you that you are disqualified from working at a certain job. You must appeal in writing before the deadline stated in the letter. Next, tell the hearing officer and the opposing attorney you want to reopen the maltreatment determination because you did not receive notice of the maltreatment accusation when it was made against you.

If you are stuck with a maltreatment record, remember after 7 to 10 years the maltreatment does not affect caretaker jobs and you can try to work in those jobs again. Also, a maltreatment record does not stop you from working in any other jobs that do not require direct contact with vulnerable adults or children.

### Who Can I Call For Help?

Your local Legal Aid office may be able to help you (if you qualify based on your income). You can find the office nearest you online at [www.LawHelpMN.org](http://www.LawHelpMN.org).

There may be a volunteer attorney available to take your case. The following volunteer agencies can be contacted by phone

Volunteer Lawyers’ Network - 612-752-6677

University of Minnesota Law Clinic – 612-625-5515

Volunteer Attorney Program – 218-723-4005



William Mitchell College of Law Clinical Program – 651-290-6351

Private civil attorneys (if you can afford to pay an attorney) are also available.

Contact the Minnesota State Bar Association’s Attorney Referral Service online at [www.mnfindalawyer.com](http://www.mnfindalawyer.com).

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