

Agency Conference and Fair Hearing Procedures

- I. Availability of hearings: The state agency shall provide a hearing procedure through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the Program (7 CFR §246.9, (a)).
- II. Applicants or participants who would like to appeal a decision made by the local agency may request an informal agency conference or a may request a fair hearing.
- III. The time limits concerning making an appeal are as follows:
 - a. Appeals must be made within 60 days from the date of the notice of adverse action was mailed or given to the applicant by the local agency.
 - b. An agency conference should be held within two (2) weeks of the request. A fair hearing must be held within three (3) weeks of receipt of request by the state agency.
 - c. Written notification of the decision made in a conference must be made to the appellant within fifteen (15) days; in the case of a hearing, notification must be made by certified mail within forty-five (45) days.
- IV. Denial or Dismissal of Request. The State or local agency shall not deny or dismiss a request for a hearing unless:
 - a. The request is not received within the sixty (60) day time limit set above.
 - b. The request is withdrawn in writing by the appellant or a representative of the appellant.
 - c. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
 - d. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to program eligibility have changed in such a way as to justify a hearing.
- V. Continuation of Benefits. Participants who appeal the termination of benefits within 15 days of being notified of the adverse action must continue to receive program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification period has expired or participants who become categorically ineligible for benefits. Applicants who

are denied benefits at initial certification, or participants who become categorically ineligible during a certification period (or whose certification period expires), may appeal the denial or termination, but must not receive benefits while awaiting the hearing.

VI. Agency Conferences Procedures:

- a. When possible, an agency conference should be held to resolve the problem on the local level. Appellants may be encouraged to attempt to settle the dispute in an agency conference before requesting a fair hearing. An agency conference is defined as problem resolution discussion with the supervisory personnel of the clinic/local agency and the participant/applicant. The state agency will be represented at all agency conferences. In participating in the agency conference, the participant agrees to try and resolve the problem. If the agency conference does not resolve the problem to the appellant's satisfaction, or if the appellant does not want an agency conference, she/he has the right to a fair hearing with the state Department of Health and Human Services hearing officer.
- b. The agency conference will be held within two (2) weeks of the date of request.
- c. Agency conferences are normally held at the local agency location.
- d. Both sides shall have the opportunity to present evidence and witnesses.
- e. The conference shall be conducted without unduly complex or legalistic procedures, taking into consideration the appellant's background and education.
- f. Generally the local WIC director makes the final decision after consultation with the state WIC program manager and other state or local agency representatives and/or legal counsel. The appellant is notified of the decision within 15 days.
- g. If the appellant is not satisfied with a conference decision, she/he may request a fair hearing; this request must be made within sixty (60) days from the effective date of the adverse action taken by the local agency.

VII. Fair Hearing Procedures:

- a. The hearing shall be conducted by an impartial official who has no personal stake or involvement in the decision, and who was not directly involved in the initial determination of the action being contested. The hearing official shall:

- i. Administer oaths or affirmations if required by the state;
 - ii. Ensure that all relevant issues are considered;
 - iii. Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;
 - iv. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;
 - v. Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the agency; and
 - vi. Render a hearing decision that will resolve the dispute.
- b. The hearing official shall mail a notice of the hearing, which includes an explanation of the procedure and the date, time, and place and reason for the hearing to the appellant and the appellant's representative. The hearing shall be accessible to the appellant and shall be held within three weeks from the date the state agency received the request for a hearing. The state or local agency shall provide the appellant with a minimum of ten (10) days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure within the notice.
- c. Local agency staff that has knowledge of the dispute should be in attendance as well as legal counsel for the agency if the agency desires. The local agency shall have the opportunity to present oral and documentary evidence and to examine, question, or refute any testimony or other evidence, including the opportunity to confront and cross-examine witnesses.
- d. The hearing official will also provide the appellant or representative an opportunity to:
 - i. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
 - ii. Be assisted or represented by an attorney or other persons;
 - iii. Bring witnesses;
 - iv. Advance arguments without undue interference;
 - v. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
 - vi. Submit evidence to establish all pertinent facts and circumstances in the case.
- e. Decisions of the hearing official will be factually based on the hearing record. The verbatim transcript or recording of testimony and exhibits or official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for the final decision by the hearing official. This record shall be retained for four (4) years. This record shall also be

available for copying and inspection, to the appellant or representative at any reasonable time.

- f. A decision by the hearing official shall be binding on the local agency and should summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.
- g. Within forty-five (45) days of the receipt of the request for hearing, the appellant or representative shall be notified in writing of the decision and the reasons for the decision identifying the supporting evidence, pertinent regulations or policies.
- h. If the decision is in the favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official.
- i. Repayment of Certain Benefits by WIC Recipients:
 - i. When a state or local agency/clinic pursues collection of a claim against an individual participant who has been improperly issued benefits, the person shall be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits, which must be repaid, and of the right to a fair hearing.
 - ii. If the decision regarding repayment of benefits by the appellant is in favor of the agency, the state shall resume efforts to collect the claim, even during pendency of an appeal of a fair hearing decision.
- j. If the decision being appealed concerns disqualification from the program, the appellant shall not continue to receive benefits while an appeal is pending.
- k. The appellant may appeal a hearing decision, provided that the request for appeal is made within fifteen (15) days of the mailing date of the hearing decision notice.
- l. The state and local agency shall make all hearing records and decisions available for public inspection, and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.
- m. Decision.
 - i. An official report containing the substance of what transpired at the hearing, together with the papers and requests filed in the proceedings shall constitute the exclusive record for the final

decision by the hearing official. This record shall also be available for copying and inspection, to the appellant or representative at any reasonable time.

- ii. At the conclusion of the formal hearing, the hearing officer shall take the matter under advisement and shall submit to the commissioner of the Utah Department of Health and Human Services a proposed decision, based exclusively on evidence and other material introduced at the hearing.
- iii. The proposed decision shall be in writing and shall contain findings of fact and conclusions of law.
- iv. The commissioner of the Utah Department of Health and Human Services may adopt the proposed decision, or any portion of the decision, or they may reject the proposed decision, or any portion thereof, and make their own independent determination based upon the record; or, he/she may remand the matter to the hearing officer to take additional evidence. In the latter case, the hearing officer thereafter shall submit to the commissioner of the Utah Department of Health and Human Services a new proposed decision. The final determination of the commissioner of the Utah Department of Health and Human Services constitutes final administration action.
- v. Within forty-five (45) days of the receipt of the request for a hearing, the appellant or representative shall be notified of the decision in writing, the reasons for the decision, and to the extent it is available to him/her, of his/her right to appeal to a departmental hearing or judicial review.

VIII. Rehearing:

- a. All departmental hearing decisions shall be accessible to the public (subject to provisions of safeguarding confidential information).
- b. Time for Filing. Any petition for rehearing must be filed no later than within ten (10) days after receipt of notice of the commissioner's final determination.
- c. Contents of Petition. A petition for rehearing shall set forth specifically the detail and particulars in which it is claimed the order is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the hearing officer failed to consider certain evidence it shall include an abstract of that evidence. The petition may be based upon newly discovered evidence. When such ground is used, the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not with reasonable diligence have discovered the evidence prior to the hearing.

- d. Action on Petition. Upon the filing of a petition for rehearing, the hearing officer may set a time for hearing said petition or may summarily grant or deny the petition in whole.
- e. Rehearings Limited. If an order is made granting the petition for rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the hearing officer may confirm the former judgment, reverse, change, or modify the same. Such order and decision shall have the same force and effect as the original order but shall not affect any right or the enforcement of any right arising out of or by virtue of the original order unless so ordered by the hearing officer.
- f. Action on Petition. The hearing officer will act upon a petition for rehearing within thirty (30) days from the date of its filing. If no action is taken by the hearing officer within such time, it shall be deemed to be denied.
- g. Submission of a petition for rehearing will automatically stay an order until final resolution of the petition unless otherwise determined by the hearing officer.

IX. Judicial Review.

- a. Judicial review of a final determination of the commissioner may be secured by the aggrieved party by filing a petition in the district court within thirty (30) days after receipt of notice of the commissioner's final determination.
- b. The petition, which shall be served upon the commissioner, shall state the grounds upon which review is sought. With his/her answer, the commissioner shall certify and file with court all documents and papers and a transcript of all testimony taken in the matter, together with the recommended findings of fact and conclusions of law of the hearing officer, and the final determination of the commissioner.
- c. If the final determination of the commissioner is consistent with the findings of fact and conclusions of law recommended by the hearing officer, the court shall review the record and may alter the final determination only upon a finding that the final determination is capricious, or not supported by the evidence.
- d. If the final determination of the commissioner is not consistent with the findings of fact and conclusion of law recommended by the hearing officer, the commissioner shall prepare and file with the court at the time of filing the answer to the petition, findings of fact and conclusions of law to support the final determination of the commissioner. The petitioner shall

have fifteen (15) days after receipt of the commissioner's findings of fact and conclusions of law to amend the petition for review. The court may affirm or amend the final determination of the commissioner, or require further or additional testimony necessary to be taken, and issue an order based on its own findings of fact and conclusions of law.

X. Appeals of vendors or local agencies.

- a. Food vendors or local agencies which have been adversely affected by a State Agency decision may request an agency conference with the state WIC office, or a fair hearing as specified above.
- b. The uniform rules of procedures set forth above apply and will be followed.
- c. The state agency shall provide a hearing procedure whereby a food vendor or local agency adversely affected by a state or local agency action may appeal the action.
- d. The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied, or during the course of the contract or agreement when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. Expiration of a contract or agreement with a food vendor or local agency shall not be subject to appeal.
- e. The adverse action affecting a participating local agency shall be postponed until a hearing decision is reached.
- f. The state agency may take adverse action against a vendor after the thirty (30) day advance notification period has elapsed. In deciding whether or not to postpone adverse action until a hearing decision is rendered the state agency shall consider whether participants would be unduly inconvenienced and may consider other relevant criteria, determined by the state agency.
- g. The state agency hearing procedure shall at a minimum provide the local agency or vendor with the following:
 - i. Written notification of the adverse action, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than one month (30 days) in advance of the effective date of the action. In the case of the disqualification of local agencies, the state agency shall provide not less than sixty (60) days advance notice of pending action.
 - ii. The opportunity to appeal the adverse action within a time period specified by the state agency in its notification of adverse action.

- iii. Adequate advance notice of thirty (30) days will be given as to the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.
 - iv. The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request.
 - v. The opportunity to confront and cross examines adverse witnesses. When WIC vendors are disqualified based on a Supplemental Nutrition Assistance Program (SNAP) Disqualification, the SNAP investigator will not appear at a state level hearing unless subpoenaed.
 - vi. The opportunity to be represented by counsel, if desired.
 - vii. The opportunity to review the cause record prior to the hearing.
 - viii. An impartial decision maker, whose decision as to the validity of the state or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the program. The basis for the decision shall be stated in writing although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.
 - ix. Written notification of the decision concerning the appeal, within sixty (60) days from the date of receipt of the request for a hearing by the state agency.
- h. Appealing an action does not relieve a local agency or a food vendor permitted to continue in the program while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement or contract with the state or local agency.
- i. If a state level decision is rendered against the local agency or food vendor and the appellant expresses an interest in pursuing higher review of the decision, the state agency shall explain any further state level review of the decision and any available state level rehearing process. If neither is available or both have been exhausted, the state agency shall explain the right to pursue judicial review of the decision.

WIC VENDOR ADMINISTRATIVE REVIEW REQUEST FORM

If the state agency takes any adverse action against you, you have the right to ask for an administrative review.

You may wish to contact a legal service office or obtain legal assistance. They can help you decide if you should ask for a meeting or a hearing. You may bring an attorney or any other person with you to the administrative review.

If you want an administrative review, please contact:

Utah Department of Health and Human Services ■ Division of Family Health ■ Utah WIC Program
State Vendor Manager
PO Box 141013 ■ Salt Lake City, Utah 84114-1013
801-273-2991 or 1-877-942-5437

If you do ask for an administrative review, be aware that you have certain rights. These are:

1. The right to appeal the state's decision to sanction your store. You may make this request verbally or in writing. You must make this request within thirty (30) calendar days from the effective date of the sanction. Please contact the state WIC agency at the address and phone above
2. The administrative review will be held within three (3) weeks from the date of receipt of the request. At least ten (10) days advance notice will be given to the individual/vendor, specifying the time and place of the hearing. Appealing adverse action and its process does not relieve the vendor from responsibility of continuing compliance with their terms of the agreement with the Utah WIC Program.
3. The right to receive advance notice of the time and place of the hearing.
4. The right to present your case. This includes the right to one opportunity to reschedule your hearing upon making a written request. This request must be received by the hearing officer before the originally scheduled hearing.
5. The right to confront and cross-examine any witnesses. Where WIC vendors are disqualified based on a SNAP disqualification, the SNAP investigator will not appear at a state level hearing unless subpoenaed.
6. The right to be represented by a lawyer, yourself, or anyone else that you choose.
7. The right to review any case record prior to the hearing.
8. The right to an impartial decision maker.
9. The right to receive written notification of the decision on the appeal. You have the right to receive this decision within sixty (60) calendar days from the day you filed for the appeal.

All vendors participating in the Utah WIC Program have the right to a fair hearing when any adverse action (i.e.: sanction points, denial of payment, disqualification or denial of application) could affect the vendor's participation in the WIC Program. Expiration of a contract or agreement

with a food vendor is not subject to appeal. Requests for a fair hearing must be made within thirty (30) days from the date of the notice of adverse action. Direct all requests for a fair hearing to the State WIC Office.