

Maine Center for Disease Control and Prevention WIC Nutrition Program

Effective: October 1, 2011

Policy No. OM-17

Revised: August 1, 2014

Fair Hearings Procedures

Authority

7 CFR §246.9

Policy

1. All applicants or participants shall be informed in writing of his/her right to a fair administrative hearing and how to request a hearing.
2. The Local Agency shall notify the State Agency of any requests for a fair hearing.
3. The State Agency shall maintain records necessary to document client complaints and formal hearing requests.

Procedure

1. Any applicant/participant has the right to appeal a Local Agency or State Agency decision under circumstances including but not limited to:
 - 1.1 Denial of eligibility at certification or recertification
 - 1.2 Disqualification from the Program
 - 1.3 Suspension from the Program
 - 1.4 Assessment of a claim
 - 1.5 Placement on a waiting list
 - 1.6 Reported Civil Rights complaint
2. An applicant or participant found ineligible for the Program during a certification visit shall receive a *Notification of Appeal Procedure* form (Appendix OM-A3). The reason for ineligibility must be documented and retained on file at the Local Agency.
3. A person who is at risk of suspension or disqualification from program participation during the certification shall receive a *Notification of Appeal Procedure* form not less than fifteen (15) days before the suspension or disqualification.

- 3.1. The *Notification of Appeal Procedure* form does not have to be provided to participants who become inactive for failure to keep a scheduled WIC appointment, at the expiration of a certification period, or when they become categorically ineligible for WIC benefits.
4. Any applicant found ineligible for the Program or placed on the waiting list shall be immediately informed in writing of the action, of the reasons for the action and of the right to an administrative hearing.
5. A participant/applicant request for an administrative hearing is defined as a written or verbal statement by an applicant or participant requesting the opportunity to present his/her case to a higher authority.
6. Participant/applicant requests for an administrative fair hearing must be made within sixty (60) days from the date of the written notice of the adverse action.
 - 6.1 An applicant or participant can make their request to either the Local or State Agency staff.
 - 6.2 Requests received by the Local Agency must be sent to the State Agency within three (3) working days of their receipt.
 - 6.3 The State Agency staff must complete a Fair Administrative Hearing Report Form (Appendix OM-A9). Local Agencies shall maintain records necessary to document formal hearing requests.
7. The Department of Health and Human Services shall not deny or dismiss a request for an administrative fair hearing unless:
 - 6.4 The request is not received within sixty (60) calendar days of the notice of the adverse action;
 - 6.5 The request is withdrawn in writing by the appellant or representative;
 - 6.6 The appellant or representative fails, without good cause, to appear at the scheduled hearing.
 - 6.7 The appellant or representative 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.
8. An applicant or participant who is denied benefits at an initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.
9. A participant who appeals the termination of benefits during a certification period and within the fifteen (15) days adverse advance notice period shall continue to receive

Program benefits until a decision is reached or the certification period expires, whichever comes first.

- 9.1 If the administrative hearing decision is in favor of the appellant, and benefits were denied or discontinued, benefits shall begin once a decision is made.
- 9.2 When the decision is not in favor of the appellant, continued benefits or participation shall be terminated as soon as administratively feasible as decided by the Hearing Officer.
- 9.3 Administrative hearing dates shall be schedule to take into consideration the convenience of the appellant, in terms of time and location.
 - 9.3.1 The Office of Administrative Hearings schedules hearing.
 - 9.3.2 Requests to reschedule a hearing date must be made in writing and is subject to the policies of the Office of Administrative Hearings.
- 9.4 Details concerning case record disclosure prior to a hearing include:
 - 9.4.1 All documents and records to be used in the hearing shall be available for examination by the claimant and/or his/her designated representative prior to the fair administrative hearing. Such examination shall be made at the Local Agency.
 - 9.4.2 Upon request, the Local Agency shall make available, without charge, the specific materials necessary for a claimant and/or his/her representative to determine whether a hearing shall be requested or to prepare for a hearing.
 - 9.4.3 The claimant and/or his/her representative shall be given an opportunity to have copies of any documentation in the file which is relevant to the appeal.
 - 9.4.4 Confidential material which cannot be released to the claimant or his/her representative s hall not be made available and shall not be used at the hearing.
- 9.5 All hearings shall:
 - 9.5.1 Be conducted privately and be open only to the claimant and individuals he/she requests be present, pertinent local and State Agency staff and others as requested by the hearing officer.
 - 9.5.2 Be conducted formally without technical rules of evidence. However, all witnesses shall be subject to the requirement of due process and shall be sworn in.
 - 9.5.3 Be opened by the hearing officer who shall make a statement to the points at issue.

- 9.5.4 Be permanently recorded.
- 9.6 The decision of the DHHS hearing officer shall comply with Federal law, regulations, and policy and shall be based on the hearing record.
- 9.7 The hearing officer shall take into consideration only those issues directly related to the action being appealed and shall be based exclusively on evidence and other material introduced at the hearing.
- 9.8 A recommended decision by the hearing officer shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy.
- 9.9 The claimant may file written responses and exceptions to the hearing officer's decision within thirty (30) days of receipt of the recommended decision.
- 9.10 The Commissioner, Department of Health and Human Services, shall make the final decision.
- 9.11 If legal counsel charges fees, the claimant is responsible for payment.
- 9.12 An appellant may appeal an unfavorable decision to Superior Court pursuant to Maine Rules of Civil Procedure, Rule 80C.
- 9.13 A petition for review must be filed with the appropriate Superior Court within thirty (30) days of the receipt of the final decision.
- 9.14 The Commissioner, Department of Health and Human Services, shall make the final decision and unless otherwise ordered by the Superior Court, the Hearing Officer's decision shall not be stayed, and benefits or participation shall continue to cease.
- 9.15 The State and Local Agencies shall make all administrative fair hearing records and decisions available for public inspection and copying; however, the names and addresses of the participants and other members of the public must be kept confidential.