

1.17 Fair Hearing Policy for Local Agencies

POLICY:

The State Agency will provide a hearing procedure whereby a Local Agency adversely affected by a State Agency action may appeal the action.

PROCEDURE:

A. Notification of Right to Request a Fair Hearing

1. The right to request a fair hearing will be granted when a Local Agency's application of contract is denied or, during the course of the yearly contract, when a Local Agency is disqualified or other adverse action which affects participation is taken.
2. Expiration of a contract or agreement with a Local Agency and/or sanctions which do not pertain to disqualification will **not** be subject to appeal.
3. The Local Agency must be informed in writing of their right to a request a fair hearing and the method to request a fair hearing when:
 - < The Local Agency is found to be non-compliant with WIC Program regulations;
 - < The State Agency's Program funds are insufficient to support the continued operation of all existing Local Agencies at their current participation level; or
 - < The State Agency determines, following a review of Local Agency credentials, that another Local Agency can operate the Program more effectively and efficiently.
4. The State Agency considers, but is not limited to the following, when terminating a Local Agency or denying an application:
 - < The availability of other sources to participate and the efficiency and effectiveness of the Local Agency in terms of food, administrative and program services costs;
 - < The percentages of participants in each priority level being served by the Local Agency and the percentage of need being met in each participant category;
 - < The relative position of the area or special population served by the Local Agency in the Affirmative Action Plan;
 - < The Local Agency's place in the priority system based on the relative availability of health and administrative services; and
 - < The capability of another Local Agency(ies) to provide service to the affected Local Agency's participants.

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5. When disqualifying a Local Agency, the State Agency will:
 - < Make every effort to transfer affected participants to another Local Agency without disruption of benefits;
 - < Ensure that participants are notified of the changes which may occur, such as scheduling and location of the WIC clinic, and the effective date;
 - < Provide the Local Agency with written notice not less than sixty (60) days in advance of the pending action which includes the reasons for disqualification, the date of disqualification, and **except** in cases of the expiration of a Local Agency's agreement, the Local Agency's right to appeal as set forth in policy; and
 - < Ensure that the action is not in conflict with any existing written agreements between the State Agency and the Local Agency.
6. The State Agency will not transfer caseload until the administrative appeal action is completed and the decision is rendered.
 - a) Local Agencies losing or gaining caseload through a caseload redistribution of a Local Agency may appeal the action if they disagree with the State Agency's proposed plan of action.
 - b) In order to ensure a smooth transition of caseload from one Local Agency to another, advance notification will be provided to a Local Agency which will lose or gain caseload, or which will not have its contract renewed.

B. Notification of WIC Program Policies and Federal Regulations

1. The Local Agency may request a pre-hearing conference to discuss the topic(s) in depth prior to the actual fair hearing.
2. When the Local Agency continues to want a fair hearing after the pre-hearing conference, the State Agency will distribute to the Local Agency:
 - < Information on fair hearing procedures;
 - < A discussion of their rights and responsibilities;
 - < The role of the Hearing Officer; and
 - < Other pertinent information.

C. Time Limit for Requesting a Fair Hearing

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1. The Local Agency must request a fair hearing within sixty (60) days of the date the State Agency mails or gives the written notice of adverse action to deny or terminate the contract.
2. The Local Agency must use the **Appeal Request For Local Agencies form (see Attachment #1 1.17)** to request a fair hearing. No modifications or creation of new materials will be used that mimic the form.

D. Denial or Dismissal of Request

The State Agency will not deny or dismiss a Local Agency's right to request for a fair hearing unless:

- < The request is not received within the sixty (60) day time limit;
- < The request is withdrawn in writing by the Local Agency or their representative;
- < The Local Agency or their representative fails, without good cause, to appear at the scheduled hearing; or
- < The State Agency decision was upheld at a previous hearing and the Local Agency cannot provide evidence that circumstances relevant to WIC Program or participation have changed in such a way as to justify a second hearing.

E. Continuation of Local Agency Operation

The Local Agency is subject to review by the State Agency for compliance with the terms in the contract.

1. If the Local Agency is found to be out of compliance at any time during the contract period or because of any of the reasons listed under procedure A4 of this policy, the Local Agency will be advised in writing of the reason(s) for termination of the contract prior to the effective termination date.
2. The State Agency retains the option of abrogation of the contract on a gradual phase-out basis, not to exceed ninety (90) calendar days, should the Local Agency fail to meet any of the obligations stipulated and agreed to in the contract.

F. Policy and Procedure

The State Agency will process each request for a fair hearing according to policy and will make the fair hearing policies and procedures available for public inspection and copying.

1. A copy of Policy 1.17, Fair Hearing Policy for Local Agencies, and the **Appeals Request for Local Agencies form (see Attachment #1 1.17)** will be issued to the Local Agency upon receipt of a request for a fair hearing.

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2. The form will be completed by the Local Agency Director and sent to the State Agency Director to request a fair hearing.
3. The State Agency will **immediately** submit the hearing request to the State Board of Review.

G. State Agency

The State Agency will send the personnel who make the decisions regarding the appellant to the fair hearing in order to explain why the appellant was denied participation, disqualified, or terminated from the WIC Program contract.

1. State Agency personnel will appear at the fair hearing to testify regarding the denial, disqualification, or termination.
2. State Agency personnel will state exactly how they came about making the decision regarding the appellant.
3. State Agency personnel will explain each step within the decision making process as it pertains to the appellant.
4. State Agency personnel will inform the Hearing Officer of the policy and procedure upon which they relied to make the decision regarding the appellant.

H. Hearing Officer

Fair hearings will be conducted by an officer of the WV DHHR Board of Review who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The Hearing Officer is responsible for the following.

1. Notify the appellant **and** the State Agency Director of the hearing location, date and time with a **minimum** of ten (10) days advance written notice.
 - a) The fair hearing will be held in Charleston, West Virginia, unless otherwise agreed to by the State Agency and the Hearing Officer.
 - b) The initial hearing date will be conducted within thirty (30) days from the date the State Agency received the request for a fair hearing.
 - c) The Local Agency will have an opportunity to reschedule a fair hearing date a maximum of one (1) time.
2. Maintain an updated copy of the **West Virginia WIC Policy and Procedure Manual**. A copy of the fair hearing policy will be included with the written notice to the appellant.

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3. Administer oaths of affirmation.
4. Ensure all relevant issues are considered.
5. Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised.
6. Regulate the conduct of the fair hearing to be consistent and orderly.

I. Conduct of the Hearing

The Local Agency or their representative will have an opportunity to:

- < Examine the evidence to support the decision under appeal prior to and during the hearing;
- < Be assisted or represented by an attorney (at Local Agency's own expense) or other person;
- < Bring witnesses;
- < Advance arguments without undue interferences;
- < Question or refute any testimony or evidence, including an opportunity to confront and cross examine adverse witnesses; and
- < Submit evidence to establish all pertinent facts and circumstances in the case.

J. Hearing Decisions

1. Decisions of the Hearing Officer will comply with Federal Law, Regulations or Policy and will be factually based on the hearing record.
2. The decision will be binding on the State Agency and will summarize the facts of the case, specify the reasons for the decision, identify supporting evidence and relevant regulations or policy. The decision will become a part of the record.
3. Within sixty (60) days of the hearing request, the Local Agency or their representative **and** the State Agency Director will be notified in writing of the decision. The Local Agency may operate as an authorized West Virginia WIC Agency if the decision is in their favor.
4. All State Agency hearing records will be available to the appellant or representative at any reasonable time period.
 - a) All records will be kept on file until all issues are resolved, or until the end of a three (3) year and one-hundred fifty (150) day period, whichever is later.

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- b) The fair hearing records can include, but are not limited to: the verbatim transcript or recording of testimony; an official report containing the substance of what transpired at the hearing; and all papers and requests filed in the preceding.

K. Appeal of Unfavorable Fair Hearing Decision

1. The fair hearing will be conducted in conformance with USDA Regulations.
2. If the decision of the Hearing Officer is unfavorable to the Local Agency, the decision will include explanation of appellant's right to pursue Judicial Review.
3. The Local Agency will not continue to issue food instruments while pursuing Judicial Review of the decision.

L. Appeal to State Agency - Monetary Claims

1. The Local Agency who is being disqualified for disallowed costs identified by a State Agency audit that requires restitution to the State Agency may request an appeals hearing.
2. The Local Agency has fifteen (15) days from receipt of the notice of payment due to request an appeals hearing.
3. The appeals hearing will be held before the West Virginia Health and Human Resource, Board of Review, Office of Inspector General.
4. The appeals hearing will be conducted in conformance with USDA Regulations.

M. Use of claims from Local Agencies

1. The State Agency may use funds collected through the recovery of local agency claims to cover allowable expenditures incurred during the fiscal year in which the initial obligation was made, the claim arose, the funds are collected, or after the funds are collected.
2. The State Agency may not credit recoveries of a local agency claims until any review of the claim action requested in accordance with the local agency agreement has been completed.
3. The State Agency must maintain documentation supporting the amount and use of all local agency collections.

REFERENCES:

1. WIC Regulations: 246.18, Administrative Appeal of State Agency Decisions
2. FNS Instructions 802-2, Reassessment and Selection of Local Agencies

ATTACHMENTS:

1. Appeals Request for Local Agencies