

1.07 Fair Hearing Policy for Applicants and Participants

POLICY:

The State Agency will 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.

DEFINITIONS:

Hearing System: The State Agency will provide for either a hearing at the State level or a hearing at the local level which permits the individual to appeal a decision to the State Agency. The State Agency may adopt local level hearings in some areas, such as those with large caseloads, and maintain only State level hearings in other areas.

Request for a Fair Hearing: Any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority. *The State or Local Agency will not limit or interfere with the individual's freedom to request a hearing.*

PROCEDURE:

A. Notification of Right to Request a Fair Hearing

1. At the time of the claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the Program, the State or Local Agency will inform each individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.

B. Time Limit for Requesting a Fair Hearing

1. The State and Local Agency will provide individuals a reasonable period of time to request fair hearings.
2. Individuals will have 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action to request a hearing.

C. Denial or Dismissal of Request

1. The State or Local Agency will not deny or dismiss a request for a hearing unless:
 - a. The request is not received within 60 days from the date the agency mails or gives the applicant or participant the notice of adverse action;
 - b. The request is withdrawn in writing by the appellant or a representative of the appellant;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

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- 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.

D. Continuation of Benefits

1. Participants who appeal the termination of benefits within the 15 days advance adverse action notice period (see Policy **1.06 Participant Sanctions**) must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first.
2. Continuation of benefits does **not** apply to applicants denied benefits at initial certification, participants whose certification periods are expired, or participants who become categorically ineligible for benefits.
 - a. Applicants may appeal the denial or termination within 60 days timeframe (see **C. Time Limit for Requesting a Fair Hearing**) but will not receive benefits while awaiting the hearing or its results.

E. Rules of Procedure

1. The State Agency and the Local Agency will process each request for a hearing under uniform rules of procedure and will make these rules of procedure available for public inspection and copying.
2. Upon receipt of a request for a fair hearing, the State Agency designee, or Local Agency Director or a designee will complete the section of the **IG-BR-29 Hearing/Grievance Request Notification** form (<http://intranet.wvdhhr.org/oig/bor>) that is designated to be completed by a Department Representative.
3. The Local Agency will send or give the applicant/participant **Fair Hearing Procedures for the West Virginia WIC Program (WIC-29)** upon receipt of a request for a fair hearing.
4. The following must be sent to the Board of Review central office and the State Agency within forty-eight (48) hours upon receipt of a request for a fair hearing:
 - a. Completed **IG-BR-29 Hearing/Grievance Request Notification**;
 - b. Copy of ineligibility or disqualification notice that prompted the request; and
 - c. Copy of the claimant's hearing request, if written.
5. A copy of the above items will be retained by the State Agency Program Integrity Coordinator and the State Agency Policy and Procedure Coordinator.

F. WIC Personnel

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1. The State Agency Program Integrity Coordinator and/or the State Agency Policy and Procedure Coordinator will attend the hearing in order to explain why the appellant was disqualified from the WIC Program.
 - a. WIC personnel will appear at the hearing to testify regarding the disqualification.
 - b. WIC personnel will explain the decision-making process as it pertains to the appellant, how, and why the decision was made to disqualify said appellant from the Program.
 - c. WIC personnel will inform the Hearing Officer of the policy and procedure upon which they relied to make the decision regarding the appellant.

G. Hearing Officer

1. Hearings shall be conducted by an impartial official from the West Virginia DHHR Board of Review who does not have any personal stake or involvement in the decision and who was not directly involved in the termination of the action being contested.
2. The Hearing Officer will:
 - a. Have access to the **West Virginia WIC Policy and Procedure Manual** via the West Virginia WIC Program website at:
<https://dhhr.wv.gov/WIC/policyprocedure/Pages/default.aspx>;
 - i. A copy of this fair hearing policy will be included with the written notice to the appellant;
 - b. Administer oaths or affirmations if required;
 - c. Ensure that all relevant issues are considered;
 - d. Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;
 - e. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;
 - f. Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the State Agency; and
 - g. Render, a hearing decision which will resolve the dispute.

H. Conduct of the Hearing

1. The State Agency will ensure that the hearing location is accessible to the appellant and is held within three (3) weeks from the date the State of Local Agency received the request for a hearing.

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2. The State Agency will provide the appellant with a minimum of ten (10) days advance written notice of the time and place of the hearing and will enclose an explanation of the hearing procedures with the notice.
 - a. The appellant and/or representative will have an opportunity to reschedule a fair hearing date a maximum of two (2) times.
3. The State Agency shall also provide the appellant or representative an opportunity to:
 - a. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
 - b. Be assisted or represented by an attorney or other persons;
 - c. Bring witnesses;
 - d. Advance arguments without undue interference;
 - e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
 - f. Submit evidence to establish all pertinent facts and circumstances in the case.

I. Fair Hearing Decisions

1. Decisions of the hearing official shall be based upon the application of appropriate Federal Law, regulations and policy as related to the facts of the case as established in the hearing record.
2. The State Agency will retain the hearing record in accordance to **Policy 1.04 Record Retention** and will make these records available for copying and inspection to the appellant or representative at any reasonable time.
 - a. The record for a final decision by the hearing official can include the verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, along with all papers and requests filed in the proceeding.
3. The decision by the hearing officer will 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 will become part of the record.
4. Within forty-five (45) days of the receipt of the request for the hearing, the State Agency and appellant or representative will be notified in writing of the decision and reasons for the decision.
 - a. If the decision is in favor of appellant and benefits were denied or discontinued, benefits will begin immediately.
 - b. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency will terminate any continued benefits, as decided by the hearing official.

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- c. If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State Agency will resume its efforts to collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State Agency.

J. Appeal of Unfavorable Fair Hearing Decision

1. The appellant can appeal a Local hearing decision to the State Agency.
 - a. The request for appeal must be made within 15 days of the mailing date of the hearing decision notice.
2. If the decision being appealed concerns disqualification from the Program, the appellant will not continue to receive benefits while an appeal to the State Agency of a decision rendered on appeal at the Local level is pending.
3. The decision of the of a hearing official at the Local level is binding on the State and Local Agency unless it is appealed to the State level and overturned by the State hearing official.
4. The State Agency will make all hearing records and decisions available for public inspection and copying.
 - a. The names and addresses of participants and other members of the public will be redacted and kept confidential.

K. Judicial Review

1. If a State level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State Agency will explain any further State level rehearing process.
2. If these are either unavailable or have been exhausted, the State Agency will explain the right to pursue judicial review of the decision.

REFERENCES:

1. WIC Regulations 7 CFR 246.9, Fair Hearing Procedure for Participants
2. WIC Regulations 7 CFR 246.25, Records and Reports