

## Section II: Local Agency Procedure Manual

### VIII. Local Certification, Eligibility and Coordination

#### G. Fair Hearings

##### **Purpose**

Participants and vendors may request a fair hearing because of an adverse action by the program.

##### **Policy**

The WIC Program has defined procedures for individuals that request an administrative review of adverse actions.

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#### **1. Fair Hearing Procedure**

- A fair hearing procedure will be conducted for any entity who appeals a State or local agency action which results in a claim against the individual for:
  - Repayment of the cash value of improperly issued and/or redeemed benefits.
  - An action that results in the individual's disqualification from the WIC Program.

#### **2. State Responsibilities**

- All requested fair hearings will be conducted by DPHHS within three weeks of the date the Department received the request for a hearing.
  - Those requesting the hearing will be notified in writing a minimum of ten (10) days in advance of the time and place of the hearing and of the hearing procedure.
- The hearing will be conducted in accordance with 7 CFR 246.9 and Title 2, Chapter 4 of the Montana Code Annotated.
- The hearing will be conducted by a fair and impartial hearing official and the appellant will be notified in writing of the decision of the hearing official, and reasons for it, within 45 days of the receipt of the request for a fair hearing.
- All decisions will be based on facts found in the hearing record, and the parties will be notified of their right to appeal the decision to District Court within 15 days.
- The hearing official's decision is binding on the State WIC Office and local agency.
  - If in favor of the appellant, program benefits will begin for an applicant and continue for a participant within the 45-day limit.
  - If the decision is in favor of the appellant and benefits were denied or discontinued, benefits will begin immediately.
  - If the decision concerns disqualification and is in favor of the local agency, the local agency will terminate any continued benefits, as determined by the hearing official.
  - If the decision regarding repayment of benefits by the appellant is in favor of the local agency or the State WIC Office, these entities will resume their efforts to

collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State WIC Office.

- All records of the hearing will be retained in accordance with 7 CFR 246.18 and 7 CFR 246.25, and will be available to the appellant or representative.

### **3. Local Agency Responsibilities**

- Inform each program applicant or participant of their fair hearing rights at initial and subsequent certifications.
  - Advise them of the method for requesting the hearing and a summary of the fair hearing process.
  - Their right to be represented at the hearing by a relative, friend, legal advisor, or other representative of their choice.
- Appeal rights are provided at the time of a claim for repayment of the cash value of improperly issued and redeemed benefits or denial of participation or disqualification.
  - Notification will be made to the participant a minimum of 15 days prior to termination of program benefits or expiration of each certification period that the period is about to end.
    - Attachment *End of Certification/Notice of Ineligibility* will be used to communicate this information.
  - Applicants/Participants found ineligible due to fraud and/or abuse will have:
    - Documentation of the ineligibility will be kept in their chart.
      - ❖ Applicants who are denied benefits at initial or subsequent certifications will not receive benefits while awaiting the hearing.
      - ❖ Participants who become categorically ineligible during a certification period will not receive benefits while awaiting a hearing and results.
    - Applicants/Participants found ineligible have up to 60 days from notification of ineligibility to request a fair hearing from the Montana Department of Public Health and Human Services (DPHHS).
      - ❖ The request for hearing is defined as any clear expression by the individual, guardian or other representative that an opportunity to present its case to a higher authority is desired.
      - ❖ Local agencies should obtain legal counsel to represent the WIC program if a hearing is requested.
    - If a hearing is requested at any time during a certification period benefits will be continued or reinstated until:
      - ❖ A decision is reached in accordance with 7 CFR 246.9; or,
      - ❖ The certification period expires
  - Each participant found ineligible at any time during a certification period for reasons of fraud or abuse will have:

- Documentation kept in their chart to include:
  - ❖ The person against whom the collection of improperly issued benefits is undertaken.
  - ❖ Reason(s) for the claim.
  - ❖ The value of the improperly issued benefits.
  - ❖ Notification of their right to a fair hearing.
  - ❖ Attachment *End of Certification/Notice of Ineligibility* will be used to communicate this information.
- A request for hearing will be dismissed or denied if:
  - It is not received within 60 days from notification of ineligibility;
  - The request is withdrawn in writing by the appellant; the appellant or appellant's representative fails, without good cause, to appear at the scheduled hearing;
  - 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.

#### 4. Time Sequence for Fair Hearings

Step	Participant	State/Local Agency
Participant is notified of ineligibility for WIC benefits.	Has 60 days to request a fair hearing. *	Local Agency must provide participant with Notice of Ineligibility and follow procedures outlined in WIC State Plan.
Participant requests a fair hearing to the State WIC Agency within 60 days.	Will receive 10 days written notice of time and place of the fair hearing within 3 weeks of request.	Local Agency obtains legal counsel to represent the WIC program at the hearing within 3 working days of receipt of the hearing request.
Fair hearing is held in the county where the participant resides.	Will receive the decision of the hearing official within 45 days of the original request.	Within 45 days the State WIC Office sends the participant the decision of the hearing official.
Participant appeals decision.	Request must be made to the District Court within 15 days of receipt of written notification of the decision.	State WIC Office notifies Legal Division of appeals request.

\*The participant who is terminated during a certification period and requests a fair hearing within 60 days of termination will continue receiving benefits until a hearing decision is made or the certification period expires. Applicants denied at certification, participants who

become categorically ineligible during a certification period or whose certification period expires will not receive benefits while awaiting a hearing and results.