

8.06 Fair Hearing Policy for Vendors

POLICY:

The State Agency will provide a hearing procedure whereby a food Vendor 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 food Vendor's application to participate is denied or, during the course of the vendor agreement, when a Vendor is disqualified or other adverse action which affects participation is taken.
2. Expiration of a vendor agreement with a food Vendor and/or sanctions which do not pertain to disqualification will **not** be subject to appeal.
3. The Vendor must be informed in writing of their right to request a fair hearing and the method to request a fair hearing when they are found to be ineligible, or they are disqualified from participation in the WIC Program.

B. Notification of WIC Program Policies and Federal Regulations

1. The Vendor may request a pre-hearing conference to discuss the topic(s) prior to the actual fair hearing.
 - a) The pre-hearing conference is an informal meeting between the State Agency and the Vendor representative.
 - b) The State Agency will explain the reason(s) for the action taken and the Vendor representative will be allowed to share any pertinent information which the Vendor believes that the State Agency should be informed about.
 - c) The pre-hearing conference is an option offered to the Vendor to resolve misunderstandings or it may simply act to define or consolidate the issues to be addressed during the fair hearing.
2. If, as a result of the pre-hearing conference, the State Agency representative finds that the information upon which the State Agency based its action is incorrect, or if for any other reason the State Agency representative determines that the action taken is inappropriate, the State Agency may reverse or modify the action.
3. If the State Agency finds that the action was appropriate, the proposed action will remain in effect unless it is reversed at the fair hearing.
4. When the Vendor continues to want a fair hearing after the pre-hearing conference, the State Agency will distribute to the Vendor:

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agreement of the reason(s) for termination of the agreement.

1. When the Vendor appeals the termination of their vendor agreement within the fifteen (15) days advance adverse notice period, they may continue to accept food drafts from the WIC Program participants until the Hearing Officer reaches a decision.
 - a) The Vendor will **immediately** cease accepting food drafts and will be liable for all over charges and erroneous payments incurred both before and after the fifteen (15) days following the receipt of the notification of the adverse action if the hearing decision is against the Vendor.
 - b) Once a hearing decision to uphold the State Agency's action to terminate the vendor agreement has been made, the Vendor will be notified of the date that the disqualification will go into effect.
 - c) The Vendor will no longer be authorized to accept food drafts once the hearing decision to uphold the State Agency's action is rendered unless the vendor elects to proceed to the Judicial Review level.
 - d) No payments will be made for food drafts accepted after the termination date unless the vendor has elected to proceed to the Judicial Review level.
2. The Vendor has the option not to redeem food drafts during the hearing process.

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 8.06, Fair Hearing Policy for Vendors**, and the **Appeals Request form (see Attachment #1 8.06)** will be issued to the Vendor upon receipt of a request for a fair hearing.
2. The **Appeals Request form (see Attachment #1 8.06)** will be completed by the Vendor representative and sent to the State Agency to request a fair hearing.
3. The State Agency will immediately notify the State Board of Review of receipt of a request for a fair hearing.

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, assessed sanction points, disqualified, or terminated from the WV WIC Program. State Agency personnel will:

1. Appear at the fair hearing to testify regarding the sanction action, denial, disqualification, or termination.

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2. State exactly how they came about making the decision regarding the appellant.
3. Explain each step within the decision making process as it pertains to the appellant.
4. 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 Department Of Health And Human Resources, Office Of Inspector General, State 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. To 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 will be scheduled within thirty (30) days from the date the State Agency received the request for a fair hearing.
 - c) The Vendor may reschedule a hearing date a maximum of one (1) time. A third hearing date will be granted only if the State Agency determines that the Vendor has shown good cause for failure to attend the first two (2) hearings.
2. To 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.
3. To administer oaths of affirmation.
4. To ensure all relevant issues are considered.
5. To request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised.
6. To regulate the conduct of the fair hearing to be consistent and orderly.

I. Conduct of the Hearing

The Vendor or their representative will have an opportunity to:

- < Examine the evidence to support the decision under appeal prior to and during the hearing;

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- < Be assisted or represented by an attorney (at the Vendor'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, CFR §246.18, State WIC Policy, WV WIC Vendor Handbook, 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. The decision of the Hearing Officer will not be based upon the appropriateness of a State Agency policy, but instead will be made on the fair, correct and equitable application of established policies and procedures.
4. Within **ninety (90)** days of receiving the hearing request by the **Vendor**, the Vendor or the Vendor's representative and the State Agency Director will be notified in writing of the decision. The Vendor may continue to operate as an authorized West Virginia WIC Vendor when the decision is in their favor. **In accordance with §246.18(b)(9) this ninety (90) day timeframe is only an administrative requirement for the State Agency and does not provide a basis for overturning the State Agency's adverse action if a decision is not made within the specified timeframe.**
5. 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.
 - a) 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 proceeding.
6. **If the decision results in disqualification of the Vendor, the State Agency will also terminate the Vendor Agreement.**

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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 Office is unfavorable to the Vendor, the decision will include explanation of appellant's right to pursue Judicial Review.

L. Adverse Actions Subject to Administrative Appeal

1. Denial of authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods or on a determination that the vendor is attempting to circumvent a sanction;
2. Termination of an agreement for cause;
3. Disqualification; and
4. Imposition of a fine or a civil money penalty in lieu of disqualification.
5. Denial of authorization based on the vendor selection criteria for business integrity or for a current Food Stamp Program disqualification or civil money penalty for hardship;
6. Denial of authorization based on the State Agency's vendor selection criterion if the basis of the denial is a WIC vendor sanction or a Food Stamp Program withdrawal of authorization or disqualification;
7. Termination of an agreement because of a change of ownership or location or cessation of operations;
8. Disqualification based on a trafficking conviction; and
9. Disqualification based on the imposition of a Food Stamp Program civil money penalty for hardship.
10. Denial of authorization based on the vendor selection criteria for applicant vendors expected to meet the more than 50 percent criterion.

M. Adverse Actions Not Subject to Administrative Appeal

1. The validity or appropriateness of the State Agency's limiting or selection criteria and;
2. The validity or appropriateness of the State Agency's participant access criteria and the State Agency's participant access determinations;
3. The State Agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

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4. Denial of authorization if the State Agency's vendor authorization is subject to the procurement procedures applicable to State Agency:
5. The expiration of a vendor's agreement
6. Disputes regarding food instrument payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge (sic) or other error, as permitted by §246.12(k)(3); and
7. Disqualification of a vendor as a result of disqualification from the Food Stamp Program [§246.12(l)(1)(vii)].
8. The validity or appropriateness of the State agency's criteria for determining whether an applicant vendor is expected to meet the more than 50 percent criterion 246.18(a)(1)(iii)(B)].

REFERENCES:

1. WIC Regulation: CFR §246.18, Administrative Review of State Agency Actions

ATTACHMENTS:

2. Appeals Request

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Attachment #1 8.06

APPEALS REQUEST

THIS REQUEST MUST BE RECEIVED DURING THE TIME PERIOD NOTED IN THE DISQUALIFICATION/SANCTION LETTER WHICH SPECIFIES THE PROPOSED ACTION BEING TAKEN BY THE WV WIC PROGRAM. ANY PREVIOUSLY ASSESSED SANCTIONS WHICH THE VENDOR ELECTED NOT TO CHALLENGE, OR CHALLENGED BUT THEN ABANDONED OR THE AGENCY ACTION WAS UPHELD VIA THE APPEALS PROCESS WILL NOT BE CONSIDERED AT THIS OR ANY FURTHER ADMINISTRATIVE APPEALS PROCEDURE. DISQUALIFICATION FROM THE WV WIC PROGRAM WHICH IS A RESULT OF DISQUALIFICATION FROM THE FOOD STAMP PROGRAM IS NOT SUBJECT TO ADMINISTRATIVE OR JUDICIAL APPEAL UNDER THE WIC PROGRAM. STATE AGENCY DETERMINATION AS TO WHAT CONSTITUTES INADEQUATE PARTICIPANT ACCESS IS NOT SUBJECT TO ADMINISTRATIVE APPEAL.

On behalf of _____
(Store Name)

I wish to appeal the action outlined in the letter dated _____.
(Date of Letter)

(Signature of Vendor or Representative)

(Date)

Please check one:

- I request a pre-hearing conference to discuss this issue.
- I do not request a pre-hearing conference.

Please check one:

- I wish to continue to redeem WIC drafts during the hearing process. I understand that should the sanction proposed by the WV WIC Program be upheld that my disqualification/sanction period will be imposed, in full, at the end of the appeal.
- I do not wish to continue to redeem WIC drafts during the hearing process. I understand that should the sanction proposed by the WV WIC Program be upheld that my disqualification/sanction period will be considered to have begun on the date outlined in my notification letter.

Mail all appeal requests to: WV WIC Program
Attention: Vendor Unit
350 Capitol Street , Room 519
Charleston, WV 25301-3717

Revised 5/2005