

1.07 Fair Hearing Policy for Applicants and Participants

POLICY:

All applicants/participants or parents/guardians/caretakers, must be informed of the right to request a fair hearing when they are determined to be eligible, ineligible or disqualified from the WIC Program.

DEFINITION:

Request for a Fair Hearing: A clear written or verbal expression by the individual, their parent/guardian or other representative that he/she desires an opportunity to present his/her case to a higher authority.

PROCEDURE:

A. Notification of Right to Request a Fair Hearing

The applicant/participant must be informed, in writing, of their right to request a fair hearing and the method to request a fair hearing when:

- An applicant is found ineligible at initial certification;
- A participant is found ineligible at subsequent certification;
- A participant is disqualified from the WIC Program; or
- An applicant is placed on a waiting list.

B. Notification of WIC Program Policies and Federal Regulations

1. WIC Program policies will be discussed with the applicant/participant during each certification including: limited Program funding; priority system; waiting lists; and reasons for denial or termination from the Program.
2. During times of increased demand for fair hearings, such as times of budget constraints, the Local Agency may consider conducting a preliminary hearing with the applicant/ participant appealing the decision to discuss Program Federal Regulations and policy.

C. Time Limit for Requesting a Fair Hearing

An applicant/participant must request a fair hearing within sixty (60) days of the date Local Agency mails or gives written notification of adverse action to deny or terminate benefits.

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D. Denial or Dismissal of Request

The Local Agency will not limit or interfere with an applicant's/participant's right to request a fair hearing. A request for a fair hearing will not be denied or dismissed unless:

- The request is not received within the sixty (60) day time limit;
- The request is withdrawn in writing by the applicant/participant or representative;
- The applicant/participant has been denied participation at a previous hearing and cannot provide evidence that their Program eligibility has changed to justify a fair hearing.
- The appellant or representative fails, without good cause, to appear at the scheduled hearing.

E. Continuation of Benefits

1. A participant found ineligible for the Program during the certification period will be advised in writing fifteen (15) days before termination of eligibility and the reason(s) for ineligibility. If the participant appeals the termination of benefits within the fifteen (15) days advance adverse notice period, he/she will continue to receive eWIC benefits until a hearing decision is reached or the certification period expires, whichever occurs first.
2. An applicant/participant who is denied eWIC benefits at initial certification, or participants who become categorically ineligible for eWIC benefits, or because of the expiration of certification will not receive eWIC benefits while awaiting the hearing decision.
3. A participant who is dually enrolled will be **immediately** disqualified from one WIC clinic while awaiting the hearing decision.

F. Policy and Procedure

The Local 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. Upon receipt of a request for a fair hearing, the 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.

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2. 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.
3. 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:
 - Completed **IG-BR-29 Hearing/Grievance Request Notification**;
 - Copy of ineligibility or disqualification notice that prompted the request; and
 - Copy of the claimant's hearing request, if written.
4. A copy of the above items will be retained in the participant's chart.

G. WIC Personnel

WIC personnel who made the decision regarding the appellant will attend the hearing in order to explain why the appellant was disqualified from the WIC Program.

1. WIC personnel will appear at the hearing to testify regarding the disqualification.
2. WIC personnel will state exactly how they made the decision regarding the appellant.
3. WIC personnel will explain the decision making process as it pertains to the appellant.
4. WIC 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

The fair hearing 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 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, Local Agency Director **and** State Agency Director of the hearing location, date and time with a **minimum** of ten (10) days advance written notice.
 - a) The hearing location will be accessible to the applicant/participant.

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- b) The initial hearing date will be conducted within twenty-one (21) days from the date the Local Agency received the request for a fair hearing.
 - c) The applicant/participant will have an opportunity to reschedule a fair hearing date a maximum of two (2) times.
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.
 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.
 7. Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source satisfactory to both the applicant/participant and Local Agency.

I. Conduct of the Hearing

The applicant/participant or 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 the applicant's/participant'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 case facts and circumstances.

J. Hearing Decisions

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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 Local Agency and will summarize the facts of the case, specify reasons for the decision, identify supporting evidence and relevant regulations or policy. The decision will become a part of the record.
3. The applicant/participant or representative, Local Agency Director **and** State Agency Director will be notified in writing of the decision within forty-five (45) days of the request for the fair hearing. Benefits will begin or be reinstated immediately, if a decision is found to be in favor of the applicant/participant.
4. All Local Agency hearing records will be available to the appellant or representative within a 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 one-hundred fifty (150) day period, whichever is later.
 - b) The fair hearing records can include, but are not limited to: the verbatim transcript or recording of testimony; an official report containing 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 Appeals Hearing will be conducted in conformance with section 246.9, Fair Hearing Procedures for Participants, of the USDA Regulations.
2. If the decision of the Hearing Officer is unfavorable to the applicant/participant. The decision will include explanation of the appellant's right to pursue Judicial Review.
3. The participant has fifteen (15) days from receipt of the hearing decision to request an appeal.
4. The applicant/participant will not continue to receive benefits while a Judicial Review decision is pending.

L. Appeal to State Agency - Monetary Claims

1. A participant disqualified for misrepresenting their circumstances in order to obtain benefits and is required to pay back, in cash, the value of the over issued food benefits may request an appeals hearing at the State Agency.

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2. The participant has fifteen (15) days from receipt of a 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 section 246.9, Fair Hearing Procedures for Participants, of the USDA Regulations.

REFERENCES:

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