

<p style="text-align: center;"><b>Nutrition Services</b> <b>Department of State Health Services</b></p>
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Effective: December 1, 2008

Policy No. WV:13.0

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## **Right to Administrative Appeal**

### **Purpose**

To describe state agency (SA) procedures for providing the right of administrative appeal to a WIC vendor who has experienced an adverse action exercised by the SA.

### **Authority**

7 CFR Part 246.18, and the WIC Vendor Agreement

### **Policy**

The state agency shall provide a full administrative review to vendors that appeal any adverse action taken by the SA that affects their participation with the following exceptions:

- (1) expiration of the vendor agreement;
- (2) disqualification of a vendor as a result of disqualification imposed by the Supplemental Nutrition Assistance Program (SNAP) (formerly known as the Food Stamp Program);
- (3) a determination by the state WIC Program concerning whether disqualification of a vendor would result in inadequate participant access;
- (4) validity or appropriateness of the SA's vendor limiting or selection criteria;
- (5) validity or appropriateness of the SA's vendor peer group criteria and the criteria used to identify vendors that are above-50-percent vendors or comparable to above-50-percent vendors;
- (6) validity or appropriateness of SA's participant access criteria and the SA's participant access determinations;
- (7) SA'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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(8) denial of authorization if the SA's vendor authorization is subject to the procurement procedures applicable to the SA;  
(9) disputes regarding food instrument or cash-value benefit payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR Section 246.12(k)(3)).

### **Procedure**

- A. The state agency shall provide a vendor with written notification of an adverse action, the cause(s) for the action, the effective date of the action, and the right to appeal the adverse action.
- B. The state agency shall provide a vendor notice of an adverse action at least 15 days prior to the effective date of the action except when the adverse action results from conviction for trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, which is effective on receipt of the notice.
- C. A vendor shall provide the state agency with a written request for a hearing within 15 days of the receipt of the notice of denial or adverse action. The date of receipt by the vendor will be established from the signed/dated return slip for delivery of a certified letter, or in its absence, four days from the date the letter was mailed.

The vendor's request for a hearing must be physically received by the SA on or before the 15<sup>th</sup> day with responsibility for timely delivery residing with the affected vendor. The written request shall, at a minimum, describe the action being appealed.

- D. When a vendor appeals an adverse action the adverse action may, at the discretion of the State WIC Program, be postponed until a hearing decision is reached.

(1) Appealing an adverse action does not relieve a vendor permitted to continue participating in the program while an

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appeal is pending from the obligation of continued compliance with the terms of the written agreement or contract with the state agency.

(2) The State Agency will not postpone an adverse action pending a hearing decision if the adverse action is a disqualification for one year or more.

(3) The State Agency will not postpone the collection of an invoice audit disallowance pending a hearing decision.

E. The state agency shall provide a vendor appealing an adverse action the following:

(1) at least ten days advance notice of the time and place for the hearing;

(2) the opportunity to reschedule the hearing one time;

(3) the opportunity to review the case file, claim file, and any other documents or records prior to the hearing;

(4) the opportunity to be represented by counsel if desired;

(5) the opportunity to call witnesses and present documentary evidence;

(6) the opportunity to confront and cross-examine adverse witnesses except that such examination shall be conducted behind a protective screen or other device when necessary to protect the identity of WIC Program monitors;

(7) an impartial decision-maker who will prepare a written decision based solely on whether the state agency has correctly applied federal and state statutes, regulations, rules, policies and procedures governing the program according to the evidence presented at the hearing; and

(8) written notification of the final decision within 90 days from the date of receipt of the request for a hearing by a vendor. This 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 timeframes.

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- F. The state agency is not responsible for losses incurred by the vendor as a result of disqualification and/or denial of an application to participate.
  
- G. If the hearing results in a final decision adverse to the vendor, the appellant may seek judicial review of the decision to the extent authorized by state law. The state agency or its legal counsel shall not provide legal advice to adverse parties concerning judicial review of final decisions in administrative hearings. Appellants must seek advice from their own attorneys.