

TITLE 181 - NEBRASKA ADMINISTRATIVE CODE, CHAPTER 4

NEBRASKA DEPARTMENT OF HEALTH

FAIR HEARING PROCEDURES FOR APPLICANTS AND PARTICIPANTS IN SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM) AND THE COMMODITY SUPPLEMENTAL FOOD PROGRAM (CSFP) IN THE STATE OF NEBRASKA

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SPECIAL HEALTH PROGRAMS CHAPTER 4 - FAIR HEARING PROCEDURES FOR APPLICANTS AND PARTICIPANTS IN SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC PROGRAM) AND THE COMMODITY SUPPLEMENTAL FOOD PROGRAM (CSFP) IN THE STATE OF NEBRASKA.

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001 DEFINITIONS

001.01 As used in these fair hearing procedures, unless the context otherwise requires:

001.01A Adverse action shall mean any action by the local or State Agency which results in a) a claim against the participant for repayments of the cash value of improperly issued benefits, b) the denial of participation in the program to an applicant, or c) the participant's disqualification from the program.

001.01B Agency shall mean a local agency or the State Agency that administers the Special Supplemental Food Program for Women, Infants and Children (WIC Program) and the Commodity Supplemental Food Program (CSFP) in the State of Nebraska.

001.01C Applicant shall mean one who applies to be a participant in the WIC program or a recipient in the CSF program.

001.01D CSF Program shall mean the Commodity Supplemental Food Program administered by the United States Department of Agriculture or its successors.

002.01E Department shall mean the Department of Health.

001.01F Food Instrument shall mean a voucher, check, coupon, or other document used to obtain supplemental foods.

001.01G Health services shall mean routine pediatric and

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obstetric care which is ongoing, such as infant and child care and prenatal and postpartum examinations, or referral for treatment.

001.01H Local agency shall mean a public or private nonprofit health or human service agency that has been approved as a local agency by the Department and, by written agreement with the department, provides WIC program services, CSF program services, or both, either directly or through subagreements entered into in accordance with section 71-2209 to 71-2230 and the rules and regulations adopted and promulgated by the department.

001.01I Participant or recipient shall mean (a) as used in reference to any WIC program established pursuant to sections 71-2209 to 71-2230, an individual who is receiving supplemental foods or food instruments and shall include, but not be limited to, pregnant women, breast-feeding women, postpartum women, infants, and children; and (b) as used in reference to any CSF program established pursuant to sections 71-2209 to 72-2230, an individual who is receiving supplemental foods under such program and shall include, but not be limited to pregnant women, breast-feeding women, postpartum women, infants, children, and elderly persons.

001.01J Program shall mean the Special Supplemental Food Program for Women, Infants and Children (WIC Program) and/or the Commodity Supplemental Food Program (CSFP), as applicable.

001.01K State Agency shall mean the Department of Health of the State of Nebraska.

001.01L Supplemental foods shall mean (a) foods containing nutrients determined to be beneficial for infants, children, and pregnant, breast-feeding, or postpartum women as prescribed by the United States Department of Agriculture for use in the WIC program and W foods donated by the United States Department of Agriculture for use in the CSF program.

001.01M WIC program shall mean the Special Supplemental Food Program for Women, Infants, and Children as administered by the United States Department of Agriculture or its successors.

002 RIGHT OF FAIR HEARING

002.01 Fair Hearing Basis. The State agency shall grant the right of fair hearing whenever an applicant or a participant is the subject of

an adverse action by the local agency.

002.02 Written Notice of Appeal Rights. The local agency taking the adverse action shall inform each applicant or participant in writing of the adverse action, the right to a fair hearing, the method by which a fair hearing may be requested, and that any positions or arguments on behalf of the applicant or participant may be presented personally by the applicant or participant or by legal counsel, or that a relative, friend or other person may assist the applicant or participant at the hearing. In the event a participant is disqualified or a claim is made for cash repayment, notification of such action shall be given at least (15) days before the effective date of the adverse action. In the event of dual participation in WIC and CSF programs or in two or more WIC programs, the adverse action is effective immediately.

002.03 Request for Hearing. A request for hearing is defined as any clear expression, either verbal or written, by the applicant or participant, the applicant or participant's parent, caretaker, or other representative that he or she desires an opportunity to present his or her case to the Department or other higher authority.

002.03A The local agency shall not limit or interfere with the applicant or participant's freedom to request a hearing.

002.03B The oral or written request for a fair hearing shall be submitted to the local agency and then transmitted to the Department or may be submitted directly to the Department. The Local Program Director will be responsible for sending the request to the State Agency.

002.03C The request for hearing shall be signed by the applicant or the participant or the applicant or participant's parent, caretaker, or other representative and shall contain sufficient information to identify the applicant or participant and the adverse action regarding which the appeal is being made. No particular written form shall be required. The local or state agency shall put the request for a hearing in writing, if necessary.

003 NOTIFICATION OF ADVERSE ACTION

003.01 Written Notice - Initial Application/Denial- Whenever adverse action is taken against an applicant making initial application to participate in the Program, such applicant shall be provided with

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written notice of the adverse action, the cause or causes for such action the effective date of the action and applicant's appeal rights as set forth in subsection 002.02 above. Such notification shall be provided by the agency taking the adverse action.

003.02 Written Notice - Adverse Action. Whenever adverse action is taken against a participant disqualifying him or her from the Program, such participant shall be provided with 15 days advance written notice of the adverse action, the cause or causes for such action the effective date of the action and participant's appeal rights as described in subsection 002.02 above. If a claim is pursued against a participant seeking repayment of the cash value of improperly issued benefits, such participant shall be provided with the information stated above and, in addition, the reason(s) for the claim, and the value of the improperly issued benefits which must be paid. Such notification shall be provided by the agency taking the adverse action.

004 TIME LIMIT FOR REQUEST

004.01 Appeal period. An applicant or participant against whose adverse action has been taken by a local agency or State Agency action may appeal the action by requesting a fair hearing before the Department within sixty (60) calendar days from the date the agency taking the adverse action sails or gives the applicant or the participant the notice of adverse action.

004.02 Denial or Dismissal of Request. The State Agency shall not deny or dismiss a request for a fair bearing unless:

004.02A The request is not received within the time limit prescribed in subsection 004.01;

004.02B The request is withdrawn in writing by the appellant or a representative of the appellant;

004.02C The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

004.,02D The appellant has been denied participation by a previous bearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

004.03 Continuation of Benefits. A participant who appeals a disqualification notice before the disqualification takes effect shall

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continue to receive program benefits until the hearing official reaches a decision or the certification period expires whichever occurs first.

004.03A Section 004.03 shall not apply to participants whose certification period has expired.

004.03B Applicants who are denied benefits at initial certification or because of the expiration of their certification may appeal the denial, but shall not receive benefits while awaiting the hearing.

005 NOTICE OF HEARING

005.01 Contents of Notice. The Department shall prepare an official notice of hearing when a hearing is requested by an applicant or participant under 002 of these regulations. The notice shall include:

005.01A The time, date, and place of the hearing;

005.01B The name of the hearing officer, if known;

005.01C A statement that the applicant or participant has the right to be present, to offer evidence, to examine the case record prior to the hearing, to be represented or assisted by an attorney or other persons, and to make one request for a rescheduled bearing date according to the provisions of 006 of these regulations; and

005.01D A statement that an explanation of the hearing procedure is enclosed with the notice.

005.02 Timing of Notice and Hearing. The Department shall set the date, time and place of the hearing within seven (7) calendar days after it receives a request for a fair hearing.

005.02A The Department shall send the notice of hearing to the applicant or participant to ensure receipt no later than ten (10) calendar days before the bearing, using certified or registered mail.

005.02B A bearing shall be held within twenty-one (21) calendar days of receipt of the request for a fair hearing, unless the appellant requests a continuance or the hearing officer orders a continuance, as provided in 006 of these regulations.

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006 CONTINUANCES

006.01 Rescheduling Opportunity. An applicant or participant shall be provided with one opportunity to reschedule the hearing date upon specific written request submitted to the Department. The hearing date may also be rescheduled at the order of the hearing official or officer. Any continued hearing shall be hold within thirty-one (31) calendar days of the request for hearing, unless good cause is demonstrated for not holding the hearing within such period of time.

007 HEARINGS

007.01 Finality. The decision by the Department or the local agency to take adverse action against an applicant or a participant shall become final sixty (60) days after the mailing of the notice required by section 003 of these regulations unless the applicant or participant, within such sixty day period, shall request a hearing under section 002.03 of these regulations.

007.02 Conduct of Hearings. Hearings shall be conducted in accordance with the Rules of Practice and Procedure of the Department of Health, 184 NAC 1, sections 009 and 010, except where these regulations otherwise provide. A copy of 284 NAC 1 is attached as Attachment 1 and incorporated by reference in these regulations.

007.03 Rights of Applicant or Participant. The Department shall specifically provide the appellant or representative an opportunity to:

007.03A Examine, prior to and during the hearing, the documents and record appeal;

007.03B Be represented or assisted by a person other than the participant or applicant as follows:

007.03B1 Be represented by legal counsel. Legal counsel shall mean any person licensed to practice law in the State of Nebraska.

007.03B2 Be assisted by other persons, such as a relative or friend, except that such other person may not provide legal advice, serve as an advocate or spokesperson, question witnesses or otherwise assume duties customarily performed by persons engaged in the practice of law.

007.03C Bring witnesses;

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007.03D Advance arguments without undue interference;

007.03E Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

007.03F Submit evidence to establish all pertinent facts and circumstances in the case.

008.01 Fair Hearing Decisions. On the basis of the evidence presented at the hearing, the determination to take adverse action shall be affirmed, modified, or set aside. A copy of the decision setting forth the findings of fact and reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or participant at his or her last address of record within forty-five (45) days of the receipt of the request for a hearing. This decision shall become final thirty (30) days after the copy is mailed unless the applicant or participant appeals within such thirty day period in accordance with the Administrative Procedure Act, ' ' 84-901 to 84-920.

008.02 Records. The Department shall retain hearing records for a minimum of three (3) years following the date of submission of the final expenditure report for the period to which the report pertains.

008.03 Open Records. Hearing records and decisions shall be available for public inspection and copying; however, names and addresses of participants and other members of the public shall be kept confidential.

009 POST DECISION BENEFITS.

009.01 Decisions for Applicant or Participant. If the decision is in favor of the applicant or participant and benefits were denied or discontinued, benefits shall begin immediately.

009.02 Disqualification. If the decision concerns disqualification and is in favor of the agency, the local agency shall terminate continued benefits, as indicated in the decision, as soon as administratively feasible.

009.03 Repayment of benefits. If the decision regarding repayment of benefits by the participant is in favor of the agency, the state or local agency shall resume efforts to collect the claim, even dependency of judicial review.