Chapter 14
Administrative Appeals

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Administrative appeals allow applicants/participants, local agencies, and WIC-authorized vendors to appeal decisions made by either the Community Nutrition Services Section or by a local agency that affect their present or future participation in WIC. This chapter describes the types of decisions that may be appealed; who may appeal those decisions; procedures for appealing those decisions; denial or dismissal of hearing requests; and hearing official requirements and duties.

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Participant Fair Hearings

A "fair hearing" is the informal dispute resolution process through which an applicant or participant may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits, the individual's denial of participation in WIC, or the individual's disqualification from the WIC Program. Refer also to Chapter 6 for information on participant notifications, participant abuse, and recovery of funds.

It is a federal requirement that applicants/participants be informed of their right to a fair hearing.

Notification of the Right to a Fair Hearing

- **Fair Hearing Posters.** Local agencies must display a "fair hearing" poster where it may be read by those who receive WIC services. It may also be displayed in group or individual nutrition education areas. Posters can be ordered from the Community Nutrition Services Section using the CNSS requisition (refer to Chapter 1 for ordering information).

- **Written/Oral Notification of the Right to a Fair Hearing.** Local agency staff are required toinform every current and potential WIC participant of their right to a fair hearing:
  - in writing at the time of application;
  - in writing whenever the applicant/participant is determined ineligible;
  - in writing at least 15 days before suspension or disqualification due to abuse of the program;
  - in writing at the time of assessment of a claim for repayment of the cash value of improperly issued Program benefits; and
  - orally or in writing, at least 15 days before the expiration of each certification period.

  The content of the notice of fair hearing must include:
  - a statement of the right to a fair hearing;
  - the method by which a fair hearing may be requested, including the time limit; and
  - who may represent the individual; and
  - the civil rights statement.

- **Documentation of Notification of the Right to a Fair Hearing.** Local agencies must document the giving of this notification (oral or written) in the WIC Crossroads System (Refer to the WPM Chapter 6D Certification/Participation-Participation Notification for guidance on documenting notifications).

Request for a Fair Hearing

The request for a fair hearing may be made by the individual affected by the action or by the individual's parent, caretaker, or any other person acting on their behalf.

- **Who Can Receive a Fair Hearing Request?** The request for a fair hearing may be accepted by any of the following individuals:
  - Local Agency. The local health director and the WIC director are both authorized to accept a request for a fair hearing. Other staff members who receive such a request shall provide assistance by immediately forwarding the request to a person authorized to accept the request.
  - Community Nutrition Services Section. The Assistant Director of the Community Nutrition Services Section (who is also the State WIC Director) is authorized to accept a request for a fair hearing. If the applicant/participant makes the request of Community Nutrition Services Section staff other than the state WIC Director, the staff member must inform the state WIC Director immediately. Contact information is:

    State WIC Director
    Community Nutrition Services Section
    1915 Health Services Way
    Raleigh, NC 27607
    Telephone 919-707-5800

- **Time Frame of Request.** The request for a fair hearing must be made within 60 days from the date the applicant or participant is properly served with notice of the adverse action.

- **Documentation of Request.**
  - Written Requests. If the original request is made in writing to the local agency, the individual receiving the request shall retain a photocopy and send the original to the Community Nutrition Services Section immediately.
  - Verbal Requests. If a verbal request is received, the individual receiving the request shall document the request in writing, retain a photocopy of the request, and immediately send the original to the Community Nutrition Services Section. The documentation must include at a minimum:
    - the applicant's or participant's name;
    - the name of the individual making the request along with their mailing address, telephone number, and relation to the applicant or participant;
    - the date of the request;
    - the cause for the request; and
    - the name, title, and signature of the person writing the documentation.

■ **Denial or Dismissal of a Request for a Fair Hearing**

The Assistant Director of the Community Nutrition Services Section (serving as the hearing officer) may deny or dismiss a request for a fair hearing if:

- The local or State agency attorney should be consulted to ensure that proper service of notice has been made;

- The request is not received within 60 days of the date of proper service of the notice of the adverse action;

- The request is withdrawn in writing by the individual or their representative;

- The request is verbally withdrawn by the individual or the parent, caretaker, or any other person acting on their behalf during conversation with the agency official. Within 10 days of this verbal withdrawal request, the State WIC Director shall send a letter to the individual and the local WIC agency summarizing the events which lead to the withdrawal of the request. This letter shall include notification of the individual's right to reinstate the request for a fair hearing if the request to reinstate is made within 60 days of proper service of notice of the adverse action;

- The individual or the individual's parent, caretaker, or any other person acting on their behalf fails to appear at the scheduled hearing unless the failure to appear was due to circumstances beyond the control of the individual or the individual's representative;

- The request is made in reference to the tailoring of the food package;

- The initial action assessing a claim for the cash value of improperly issued Program benefits or denying participation or disqualifying from the program has been reversed by the local WIC agency or the state agency, resulting in the provision of program benefits to the individual; or

- The individual 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.

■ Continuation of WIC Program Benefits During an Appeal

- **When benefits can be continued.** WIC Program benefits shall be continued during appeal when the request for a hearing is received within 15 days of proper service of notice of one the following adverse actions:
  - disqualification from the program for abuse during a certification period; or
  - determination of ineligibility during a certification period due to a change in income or residential eligibility (due to a mid-certification reassessment).

  When benefits are continued during an appeal, the individual shall continue to receive benefits until an adverse hearing decision is reached or the certification period expires, whichever occurs first. The local or State agency attorney should be consulted to ensure that proper service of notice has been made.

- **When benefits cannot be continued**. WIC Program benefits shall <u>not</u> be continued when a fair hearing is requested:
  - more than 15 days after the date of proper service of notice of the adverse action;
  - by individuals who are denied benefits at the initial or subsequent determination of WIC eligibility if the previous certification period has expired; and/or
  - by applicants/participants who are or who become categorically ineligible.

■ Notice and Scheduling of the Fair Hearing

Within 10 days of being properly served with notice of the request for a fair hearing, the

Community Nutrition Services Section must notify the party requesting the hearing and the local WIC agency in writing that a request for a hearing has been received.

The Community Nutrition Services Section must hold a hearing within 21 days from the date the agency official receives the request at a place and time that is convenient for the individual who is requesting the hearing. Written notice of the hearing must be given to everyone involved at least 10 days in advance of the hearing.

The notice to the applicant/participant shall include a stamped envelope with the return address of the Community Nutrition Services Section with a request for response using the stamped envelope or by email indicating whether the time, date, and place for the hearing is satisfactory. If the arrangements are not satisfactory, the Community Nutrition Services Section shall set a new time and date for the hearing. If a response is not received at least 24 hours prior to the time proposed for the hearing, it will be assumed that the time, date, and place are satisfactory.

The written notice shall contain:

- A simplified explanation of the procedure for the hearing;
- A statement of the time, date, place, and nature of the hearing;
- A reference to the particular sections of the statutes and rules involved; and
- A short and plain statement of the factual allegations.

- **Hearing Officer**

The Director of the Division of Child and Family Well-Being shall designate a representative who did not participate in taking the action under appeal to be the hearing officer. The hearing officer shall:

- Preside over the informal proceeding;
- Ensure that all relevant issues are considered**;**
- Request, receive and insert into the hearing record all evidence determined to reach a decision;
- Conduct the meeting in accordance with due process and ensure an orderly hearing;
- Order, if relevant and necessary, an independent medical assessment or professional evaluation for the applicant/participant from a source mutually satisfactory to all parties to the hearing; and
- Issue a decision.

- **Hearing Procedure**
  The applicant/participant, the State WIC agency, and the local WIC agency may have witnesses. Any party to the hearing may:

  - Be assisted or represented by an attorney or other person;
  - Examine, prior to and during the hearing, the documents and records presented to support the action under the appeal;
  - Present any oral or documentary evidence and arguments;
  - Question or refute any testimony or other evidence; and
  - Submit evidence to establish pertinent facts and circumstances in the case.

  The individual requesting the hearing, or their representative shall have the right to request a continuance if they notify the hearing officer by telephone or in writing at least 48 hours before the original hearing date. If the individual requesting the hearing or the representative fails to attend the scheduled hearing or fails to request a continuance from the hearing officer by telephone or in writing at least 48 hours before the original hearing date, the individual waives any right to a hearing and the original action of the agency shall become final unless the failure to attend the hearing without requesting a continuance was due to circumstances beyond the control of the individual or the individual's representative.

- **Hearing Decision**
  The fair hearing decision shall be made by the hearing officer and shall be based only on the oral and documentary evidence presented at the hearing and applicable state statutes and rules and federal laws and regulations and shall be made a part of the hearing record by the hearing officer.

  - **Notification of the Decision.** The hearing officer shall notify in writing the applicant/participant or their designated representative, the local WIC agency, and the Community Nutrition Services Section of the decision within 45 days from the date of the request for the hearing.

  - **Impact of Decision.** The decision shall be binding on the local WIC agency.
    - If the decision is in favor of the applicant/participant and benefits were denied or discontinued, benefits shall begin within two business days after issuance of the decision.
    - If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, any continued benefits shall be terminated as decided by the hearing official.
    - If the decision is regarding repayment of benefits and is in favor of the agency, the agency shall resume its efforts to collect the claim.

  - **Report of Hearing.** The hearing officer shall prepare a recording of testimony and

exhibits, or an official report containing the substance of what transpired at the hearing which, together with all papers and requests filed in the proceeding and the written fair hearing decision, shall constitute the exclusive hearing record. All hearing records shall be retained.

- **Appeal Rights.** When the decision of the fair hearing is communicated to the applicant/participant, the communication will include information on any further appeal rights available to the applicant/participant.

Contested Case Hearings

In certain situations, the State WIC Program may decide to take adverse action against a vendor or local agency. In some cases, this action may be appealed by the vendor or local agency.

- **Notification of Action and the Right to a Contested Case Hearing**
  If the Community Nutrition Services Section decides to take action against a WIC vendor or local WIC agency or attempts to disqualify a vendor or local WIC agency, it will send a letter to that vendor or local agency describing the reason(s) for the action being taken, the effective date of the action, and his/her right to a Contested Case Hearing, if applicable. The Community Nutrition Services Section will provide information in the letter about how to file a petition for a Contested Case Hearing with the Office of Administrative Hearings (OAH). Information about the Office of Administrative Hearings can be found at: https://www.oah.nc.gov/.

- **Request for an Appeal**

  - **Vendor Appeals.** Vendors may request a contested hearing for a variety of State agency actions. Refer to Chapter 11 for more information on vendor appeals. The vendor who is appealing to the OAH must file the petition within 30 days after proper service of the notice of the action being contested. The vendor must also serve a copy of the petition on the Office of General Counsel for the Department of Health and Human Services.

  - **Local Agency Appeals.** Local agencies may request a contested hearing for three reasons; denial of a local agency's application, disqualification of a local agency, and any other adverse action that affects a local agency's participation. The local agency appealing to the OAH must file the petition within 30 days after proper service of the notice of the action being contested. A copy of the petition must also be served on the Office of General Counsel for the Department of Health and Human Services.

- **Continuation of Responsibilities**
  An appeal shall not relieve the authorized WIC vendor or local agency that is permitted to continue Program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement or contract with the state or local agency and WIC Program rules, regulations, and law.

- **Hearing Officer**
  The hearing officer for Contested Case Hearings is an administrative law judge assigned to the case by the Office of Administrative Hearings, a fully independent office within the North Carolina state government. The administrative law judge makes the final decision on each case.

- **Contested Case Hearing Procedure**
  Contested Case Hearings are conducted in accordance with the North Carolina General Statutes § 150B-23 and the Office of Administrative Hearings. A party may represent himself or be represented by an attorney at the hearing. A party may offer testimony and other

evidence relevant to the case. The administrative law judge issues a written final decision that is sent to all of the parties. The written final decision contains any further appeal rights available to the parties.

- **Local Agency Responsibilities During a Vendor Contested Hearing**
  Local agencies have several responsibilities regarding vendor contested case hearings. They must:

  - Provide information requested by the State agency or the attorney;
  - Testify at a contested case hearing if asked; and
  - Keep in touch with Community Nutrition Services Section about the progress of a contested case hearing.