

Chapter Sixteen

Hearing Procedures for Participants, Local Agencies and Vendors

Overview

Policy The State Agency will provide hearings for applicants or participants, Local Agencies, and vendors to appeal an adverse action.

In This Chapter This chapter is divided into five (5) sections and two (2) appendices which detail informal dispute resolution meetings and fair hearings for applicants or participants; fair hearings for Local Agencies and informal settlement conferences and fair hearings for Vendors.

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Section A

Hearing Procedures

Overview

All hearings will be held in accordance with Fair hearing procedures for participants (7 CFR § 246.9) and Administrative Review of State Agency actions (7 CFR § 246.18).

Pursuant to Federal Regulations, the total appeal process for applicants or participants will not exceed forty five (45) calendar days from the date of receipt by the State Agency of the request for a fair hearing.

Pursuant to Federal Regulations, the total appeal process for Local Agencies will not exceed sixty (60) calendar days from the date of receipt by the State Agency of the request for a fair hearing.

Pursuant to Federal Regulations, a final administrative decision will be rendered within ninety (90) calendar days from the date the Department receives a Vendor's request for a fair hearing.

NOTE: Any conflicts between Federal Regulations and State Law regarding hearing procedures should be resolved according to State Law.

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Section B

Informal Dispute Resolution for Applicants/Participants

Policy

The State Agency will make available an informal dispute resolution meeting to review and re-evaluate adverse actions at the appropriate Local Agency, when requested, in writing, by an applicant or participant.

Note: If so desired, the applicant/participant may decline participation in an informal dispute resolution meeting and exercise their right to a fair hearing.

Time frames

The applicant/participant has twenty (20) calendar days from receipt of ineligibility or the disqualification form to postmark a written request for an informal dispute resolution meeting addressed to:

- WIC Director
150 N. 18th Avenue, # 310
Phoenix, AZ 85007

Or hand delivered to:

- Local Agency Director, who will immediately forward to the WIC Director.
-

Notification

Within fifteen (15) calendar days of receipt of a request for an informal dispute resolution meeting, the Arizona WIC Director, or designated authority, will arrange with the Local Agency Director for the dispute resolution meeting.

The applicant/participant will be provided advance written notice, no less than ten (10) calendar days before the informal dispute resolution meeting. The notice will explain the informal dispute resolution meeting location, time and procedures.

Note: All parties will each have one (1) opportunity to reschedule the informal dispute resolution meeting date.

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Section B

Informal Dispute Resolution for Applicants/Participants (Continued)

Attendees

The informal dispute resolution meeting will include:

- The Local Agency director or designee
 - A State Agency representative
 - The applicant/participant and/or authorized representative
-

Procedures

The State Agency's designated representative will conduct the informal dispute resolution meeting.

- Provide the applicant/ participant or authorized representative the opportunity to present their case
 - Provide the State Agency the opportunity to present their case
 - Allow either party additional time to present its case if good cause is shown
 - Provide the State Agency the opportunity to clarify program regulations, if necessary
-

Conclusions/ Findings

At the conclusion of the informal dispute resolution meeting, the State Agency's representative will explain to the applicant/participant or authorized representative:

- The findings of the informal dispute resolution meeting.
- The applicant/participant's right to a fair hearing, if they are not satisfied with the results of the informal dispute resolution meeting.

Note: If the applicant/participant does request a fair hearing, they must follow procedures, including required time frames for a fair hearing.

The State Agency will take written notes of the informal dispute resolution meeting and maintain file copies of this information.

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Section C
Fair Hearings for Applicants/Participants

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Policy

The State Agency will provide a fair hearing for applicants or participants to appeal an adverse action.

Participants who appeal the termination of benefits within 15 calendar days of the written notification of termination of benefits shall continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification period has expired or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, or applicants who become categorically ineligible during a certification period (or whose certification period expires) may appeal the denial or termination, but shall not receive benefits while awaiting the hearing.

WIC program funds shall not be used to provide retroactive benefits to participants.

The State or Local Agency will not limit or interfere with an individual's request for a fair hearing and will help them to file a request for a fair hearing.

Note: If a fair hearing has been held and a participant's ineligibility to participate was confirmed by the Director's office, an applicant or participant may be denied a subsequent hearing on the same adverse action when there has been no change in the information (e.g., income, health data, dietary assessment or other information) used to determine their eligibility for WIC participation.

Request

The applicant/participant has sixty (60) calendar days from the date agency mails or gives notice of the adverse action, to postmark or hand deliver a written request for a fair hearing to:

Clerk of the Department
Arizona Department of Health Services
150 North 18th Avenue, Suite 500
Phoenix, Arizona 85007

A request for a fair hearing will be denied if the written request is postmarked more than sixty (60) calendar days from receipt of ineligibility or the disqualification form.

Local Agency staff shall help the participant/applicant to file including when a participant or caregiver needs or requests assistance with writing, the fair hearing request.

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Section C

Fair Hearings for Applicants/Participants (Continued)

Request (Continued)

The request must contain a statement of facts, the reasons the applicant/participant believes that they are entitled to a fair hearing, and the relief sought.

The ADHS Director's Office will notify the WIC Director of the request for a fair hearing. The WIC Director will notify the Local Agency director regarding the request.

A request for a fair hearing may be dismissed if the applicant/participant or their representative withdraws the request in writing or fails without good cause to appear for the hearing.

Appeal Rights Notification Process

At the time of denial of participation in or of disqualification from the program, the applicant/participant will be informed in writing of the right to a fair hearing.

All notifications will inform the applicant/participant of the right:

- To self-represent or to be represented by a relative, friend, legal counsel or other spokesperson and their right to bring witnesses
- To introduce arguments, question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses as well as submit evidence to support their case
- To examine all pertinent documents prior to or during the fair hearing

Note: As a matter of course, the Administrative Law Judge records all fair hearings.

Time Frame

The fair hearing will be held within 21 calendar days from the date the Agency receives the request for the fair hearing.

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Section C

Fair Hearings for Applicants/Participants (Continued)

ADHS Administrative Counsel

Fair hearing arrangements will be handled by the ADHS Administrative Counsel.

At least ten (10) calendar days advance written notice of the date, time, and place of the hearing will be sent by certified mail to the applicant/participant. This advance written notice will include an explanation of the fair hearing procedure. Failure to appear at a scheduled fair hearing without good cause may result in a decision in favor of the State Agency. If the applicant/participant requests an informal dispute resolution meeting, the Department will hold the meeting within fifteen (15) calendar days after receiving the request. This request must be filed no later than twenty (20) calendar days before the fair hearing date.

Note: All parties will each have one (1) opportunity to reschedule the fair hearing date.

The Administrative Law Judge may order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the applicant and the State Agency.

Time Frames for Fair-Hearing Decisions/Follow- Ups

The Administrative Law Judge shall issue a written decision within twenty (20) calendar days after the hearing is concluded. Within thirty (30) calendar days after the date the Administrative Law Judge's decision is sent to the head of the agency, the head of the agency may accept, reject or modify the decision.

The applicant/participant has thirty (30) calendar days from the date of receipt of the fair hearing decision to request rehearing or review of the adverse decision.

The request for rehearing or review will conform to the requirements of A.R.S. § 41-1092.09.

The applicant/participant may appeal the ADHS Director's final decision to the Superior Court pursuant to Title 12, Chapter 7, Article 6 of the Arizona Revised Statutes. However, appeal to Superior Court must be made on or before the thirty fifth (35th) calendar day after notification was received of the Director's final decision.

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Fair Hearings for Applicants/Participants (Continued)

Decision In Favor of the Participant

If the decision is in favor of the participant or the participant's authorized representative, the following will occur:

- The Local Agency will continue the benefits of participation until the end of the certification and modify the participant's record according to the findings of the fair hearing
 - or
 - The Local Agency will enroll the applicant immediately and provide benefits as appropriate
-

Decision in Favor of the State Agency

If the decision is in favor of the State Agency, the following will occur:

- The Local Agency will discontinue benefits as soon as administratively feasible
 - The State Agency will collect claims for benefits improperly issued
-

Availability of Fair Hearing Records

The State and Local Agency will make all fair hearing records and decisions available for public inspection and copying; however, the names and addresses of applicants/participants and other members of the public will be kept confidential in accordance with 7 CFR §246.9(k)(4).

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Section D

Fair Hearings for Local Agencies

Policy

The State Agency will provide a fair hearing for Local Agencies that appeal the following adverse actions:

- Denial of an application
- Disqualification
- Any other adverse action that affects a Local Agency's participation

The State Agency may not provide a fair hearing for Local Agencies that appeal the following actions:

- Expiration of the Local Agency's agreement
- Denial of an application if the selection is subject to procurement procedures

The State Agency will not limit or interfere with a Local Agency's right to request a fair hearing.

Note: A Local Agency that is permitted to continue in the program must continue to comply with the terms of its contract with ADHS.

Time Frame

The State Agency will provide the Local Agency with sixty (60) calendar days advance written notification of pending adverse action.

To contest an adverse action, a Local Agency must file a written request for a fair hearing within thirty (30) calendar days of receipt of the written notification of adverse action to:

Clerk of the Department
Arizona Department of Health Services
150 North 18th Avenue, Suite 500
Phoenix, Arizona 85007

A request for a fair hearing will be denied if the written request is postmarked more than 30 calendar days from the receipt of the written notification of adverse action.

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Section D

Fair Hearings for Local Agencies (Continued)

Procedures

The request for a fair hearing must contain a concise statement of the facts and the reason(s) the Local Agency believes it is entitled to a fair hearing and any relief sought. If the Local Agency elects to be represented by an attorney, the written request must also contain the name, address and telephone number of the attorney.

The Local Agency is entitled to introduce arguments, question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses, as well as submit evidence to support their case. All pertinent documents may be examined prior to the fair hearing.

The fair hearing will be conducted in accordance with Arizona Administrative Code R2-19-101 through R2-19-122.

A request for a fair hearing may be withdrawn in writing by the Local Agency.

Failure to appear at a scheduled fair hearing without good cause may result in a decision in favor of the State Agency.

Note: The State Agency and Local Agency will each have at least one (1) opportunity to reschedule the fair hearing date.

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Fair Hearings for Local Agencies (Continued)

ADHS Administrative Counsel

Fair hearing arrangements will be handled by the ADHS Administrative Counsel. The Local Agency requesting a fair hearing will be provided at least 10 calendar days advance written notice of the date, time, and place of the fair hearing. This advance written notice will include an explanation of the fair hearing procedure.

If the local agency requests an informal settlement conference the Department will hold the conference within fifteen (15) calendar days after receiving the request. This request must be filed no later than twenty (20) calendar days before the fair hearing date.

An Administrative Law Judge will decide the validity of the State Agency's action based solely on the evidence presented at the fair hearing and the statutory and regulatory provisions governing the program or contract between the parties. The basis for the decision will be stated in writing, and will contain formal findings of fact and conclusions of law. The decision will be presented to the ADHS Director in the form of a recommendation for a final decision.

Note: As a matter of course, the Administrative Law Judge records all fair hearings.

Decision Notification/ Follow-Up

The State Agency will provide the Local Agency with written notification of the Director's final decision concerning the appeal, within 60 calendar days of the date of receipt of the request for a fair hearing.

The Local Agency may request a rehearing or review after an adverse decision pursuant to A.R.S. § 41-1092.09. The Director's final decision may be appealed to the Superior Court pursuant to Title 12, Chapter 7, and Article 6 of the Arizona Revised Statutes.

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Section E

Vendor Appeal Rights and Hearings

Policy

Vendors shall have the right to appeal (request for a fair hearing) certain adverse actions of the Department as set forth in the Federal Regulations, Arizona WIC Program Policies and procedures and the Vendor Manual.

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Vendor Appeal Rights and Hearings (Continued)

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Actions Subject to Review

Adverse actions subject to administrative review include:

- Denial of authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods (§246.12(g)(3)(i) and (g)(3)(ii)) or on a determination that the vendor is attempting to circumvent a sanction (§246.12(g)(4))
- Termination of an agreement for cause
- Disqualification
- Imposition of a fine or a civil money penalty in lieu of disqualification
- 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 (§246.12(g)(3)(iii) and (g)(3)(iv))
- Denial of authorization based on a State agency established vendor selection criterion if the basis of the denial is a WIC vendor sanction or a Food stamp Program withdrawal of authorization or disqualification
- Denial of authorization based on the State agency's vendor limiting criteria (§246.12(g)(2))
- Denial of authorization because a vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under §246.12(g)(7)
- Termination of an agreement because of a change in ownership or location or cessation of operations (§246.12(h)(3)(xvii))
- Disqualification based on a trafficking conviction §246.12(l)(1)(i))
- Disqualification based on the imposition of a Food Stamp Program Civil money penalty for hardship (§246.12(l)(2)(ii))
- Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency (§246.12(l)(2)(iii))
- Determination of a Vendor's peer group status or status as an Above-50-Percent Vendor

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Vendor Appeal Rights and Hearings (Continued)

**Actions Not
Subject to Review**

Adverse actions not subject to administrative review (a fair hearing) include:

- The validity or appropriateness of the Department's Vendor limiting or selection criteria
- The validity or appropriateness of the Department's participant access criteria and the Department's participant access determinations
- The validity or appropriateness of the Department'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
- The Department'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
- Denial of authorization if the Department's Vendor authorization is subject to the procurement procedures applicable to the Department
- The expiration of the Vendor's Contract
- Disputes regarding food instrument payments and Vendor claims (other than the opportunity to justify or correct a Vendor overcharge or other error) as permitted by 7 CFR §246.12 (k) (3)
- Disqualification of a Vendor as a result of disqualification from the Food Stamp Program

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Vendor Appeal Rights and Hearings (Continued)

Vendor Remaining on Program

Except for violations that seriously affect public health, safety or welfare, as described below, a Vendor whose Contract is terminated before the expiration of the Contract or who is disqualified from the WIC Program may remain on the Program until the effective date of the final order or the date that the Vendor Contract expires, whichever occurs first. A request for a fair hearing (including the informal settlement conference) does not extend the Vendor's Contract beyond its expiration date nor does it require the Department to contract with the Vendor for the new contract cycle.

Trafficking Convictions

Contract denials and Vendor disqualifications due to a trafficking conviction or a conviction of selling firearms, ammunition explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments will be effective on the date the Vendor receives notice of the adverse action.

Violations that Affect Public Health, Safety or Welfare

If the Director finds that the Vendor has engaged in violations of the Contract, Federal Regulations or this Policy and Procedure Manual, and the activity affects the public health, safety or welfare, the Director may issue an order terminating the Vendor's Contract effective fifteen (15) calendar days from the date the Vendor receives the order. The Department shall provide the Vendor with the opportunity for a hearing. The hearing shall be promptly instituted and determined. The order shall contain the hearing date and time.

Conduct of Hearing

The hearing shall be conducted according to the standards established below. If there is a conflict between, Vendor Appeal Rights and Hearings, and A.R.S. §41-1092 through A.R.S. §41-1092.12, the Arizona Revised Statutes take precedence.

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Vendor Appeal Rights and Hearings (Continued)

**Important
Information**

The Arizona WIC Program sends out important information that can assist Vendors in maintaining compliance with the Arizona WIC Program Vendor Contract. Therefore, it is essential that Vendors accept/pick up **all** certified mail sent to them from the Department. Examples of items that may be sent via certified mail are replacement food instruments; contract related items (including some WIC Alerts); sanctions; lost/stolen food instruments; and training notices.

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Vendor Appeal Rights and Hearings (Continued)

Procedure for Administrative Appeals

The Department shall provide a certified written notice to the Vendor applicant of the denial of the Contract application and to the current Vendor of termination, administrative fine, civil money penalty, or disqualification, which includes the effective date of the action and the steps to request an administrative review. The written notice shall reflect all violations. The Department shall mail notification by certified mail to the Vendor Applicant or current Vendor at least thirty (30) calendar days before the effective date of the termination, administrative fine or disqualification.

The Vendor Applicant or current Vendor can request a fair hearing, which must be in writing and postmarked within thirty (30) calendar days of receiving the notice of denial of its WIC Vendor application, assessment of an administrative fine or when termination or disqualification of the Vendor Contract occurs. In addition to the fair hearing, pursuant to A.R.S. § 41-1092.06, the Vendor has the right to request an informal settlement conference.

The request for a fair hearing or informal settlement conference shall include a statement of the facts asserted and the relief sought. If the Vendor Applicant or current Vendor intends to be represented by an attorney, the name, address and phone number of the attorney should be included in the request.

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Vendor Appeal Rights and Hearings (Continued)

**Procedure for
Administrative
Appeals
(Continued)**

The request for a fair hearing shall be submitted to:

**Clerk of the Department
Arizona Department of Health Services
150 North 18th Avenue, Suite 500
Phoenix, Arizona 85007**

**Informal
Settlement
Conference
Request**

The request for an informal settlement conference shall be submitted to:

**WIC Program Integrity Manager
Bureau of USDA Nutrition Programs
Arizona Department of Health Services
150 North 18th Avenue, Suite 310
Phoenix, AZ 85007**

If a Vendor Applicant or current Vendor fails to request a fair hearing within the time and in the manner established in this Section, the Vendor Applicant or current Vendor shall waive its right to any administrative review to which it may otherwise be entitled. This waiver is construed as acceptance of the Department action. The Department will not accept fax copies in lieu of an original document.

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Fair Hearings

Acceptance of Request for Fair Hearing

The Clerk of the Department shall obtain a fair hearing date, time and place if it receives a timely written request for a fair hearing and the Vendor Applicant or current Vendor is entitled to a fair hearing according to the prerequisites established in this Section.

The Clerk of the Department shall send notice to the Vendor Applicant or current Vendor of the date, time and place of the fair hearing.

If the Vendor requests an informal settlement conference the Department will hold the conference within fifteen (15) calendar days after receiving the request. This request must be filed no later than twenty (20) calendar days before the fair hearing date.

The Director of the Department does not conduct the hearing. The Office of Administrative Hearings appoints an Administrative Law Judge to conduct the hearing and to make findings of facts, conclusions of law and a recommended decision, which is sent to the Director (A.R.S. § 41-1092.08.) The Director can accept, reject, or modify the Administrative Law Judge's decision within thirty (30) days after the date the Office of Administrative Hearings sent a copy of the recommended decision to the Director.

If the Director declines to review the decision within the prescribed thirty (30) day period, then the recommended decision becomes the final decision (A.R.S. § 41-1092.08.) The final administrative decision is subject to rehearing or judicial review as provided by A.R.S. § 41-1092.09 and § 12-901, *et. seq.*

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Vendor Appeal Rights and Hearings (Continued)

Denial of Request for Fair Hearing If the Director denies the request for a fair hearing, the Department shall provide the Vendor Applicant or current Vendor with a written copy of the decision stating the reasons for denial.

Service of Written Notice The Vendor Applicant or current Vendor and the Department shall assure that service of any written notice made is filed with:

**Clerk of the Department
Arizona Department of Health Services
150 North 18th Avenue, Suite 500
Phoenix, Arizona 85007**

Service shall be made by personal delivery or certified mail; return receipt requested to the last known address of the person or authorized representative of the Vendor Applicant or current Vendor as indicated on the Contract on file with the Department.

Service on the Department shall be made in person, or by registered, certified or first class mail to:

**WIC Program Integrity Manager
Bureau of USDA Nutrition Programs
Arizona Department of Health Services
150 North 18th Avenue, Suite 310
Phoenix, Arizona 85007**

Proof of service shall be filed with the Clerk of the Department at the address indicated above.

Appearances At a fair hearing, the Vendor Applicant or current Vendor may represent himself or herself. A Vendor Applicant or current Vendor who is a partnership may be represented by a partner. A Vendor Applicant or current Vendor shall pay for its own legal representation, if applicable.

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Vendor Appeal Rights and Hearings (Continued)

Pre-hearing Conferences

The Administrative Law Judge may schedule a pre-hearing conference upon his or her own motion or at the request of the Vendor Applicant or current Vendor or Department. The pre-hearing conference can be used to discuss settlement, stipulations, clarification of issues, rulings on the identity and limitations of the number of witnesses, objections to the admission of documents or the expertise of witnesses, the use of telephone testimony as a substitute for proceedings in person, the order of presentation of witnesses, rulings regarding the issuance of subpoenas, discovery orders and protective orders, and any other matter that will promote an orderly, fair and prompt hearing

The Administrative Law Judge shall issue an order following the pre-hearing conference to memorialize the matters determined at the conference. The Administrative Law Judge may authorize all or part of a pre-hearing conference to be conducted by telephone as long as each participant in the conference has an opportunity to participate in the entire proceeding

Pleadings, Legal Memoranda and Motions

The Administrative Law Judge may give the Vendor Applicant or current Vendor and the Department the opportunity to file legal memoranda, motions, objections, offers of settlement, pleadings, and proposed findings of fact and conclusions of law.

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Vendor Appeal Rights and Hearings (Continued)

Computation of Time

- In computing any time period established by this Section of the Policy and Procedure Manual, the time shall be computed in calendar days and no additional time shall be given for mailing
 - In computing any time period, the Office of Administrative Hearings shall exclude the day from which the designated time period begins to run. The Office of Administrative Hearings shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is ten (10) days or less, the Office of Administrative Hearings shall exclude Saturdays, Sundays, and legal holidays
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Vendor Applicant or Current Vendor's Right to Review Case File

The Vendor Applicant or current Vendor shall have the right to review the case file on which the Department bases its action prior to and during the fair hearing. It is at the discretion of the Administrative Law Judge whether to grant or deny a party's request for written interrogatories, requests for admission, depositions, and other forms of discovery. If all parties to a case stipulate to such discovery, it shall be conducted under the guidance of the Administrative Law Judge.

Continuances

Any request for a continuance must be in writing and addressed to the Administrative Law Judge with a copy sent to each party. A party shall file a written response stating any objection to the motion within five (5) days of service, or as directed by the Administrative Law Judge. It is at the discretion of the Administrative Law Judge to grant or deny the continuance.

Default

If a party fails to appear at a hearing, the Administrative Law Judge may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the agency for any further action.

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Vendor Appeal Rights and Hearings (Continued)

Subpoenas

The Administrative Law Judge may issue subpoenas at the request of any party.

A request for a subpoena shall be in writing, filed with the Office of Administrative Hearings. The request shall include:

- The caption and docket number of the matter
- A list or description of any documents sought
- The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed
- The date, time and place to appear or to produce documents pursuant to the subpoena
- The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena
- If required by the Administrative Law Judge, a brief statement of the relevance of testimony or documents

The person to whom a subpoena is issued shall comply with its provisions unless, prior to the hearing date, the Administrative Law Judge grants a written request to quash or modify the subpoena. Any request to quash or modify a subpoena shall state the reasons why the Administrative Law Judge should grant the request. The Administrative Law Judge shall grant or deny the request in an Order.

The party requesting the subpoena shall be responsible to serve it on the person to whom it is directed.

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Vendor Appeal Rights and Hearings (Continued)

**Stipulations;
Disposition of
Cases**

The parties to a proceeding may stipulate in writing about any fact involved in the controversy. The parties shall file the stipulation with the Administrative Law Judge. Such a stipulation shall be used as evidence at the fair hearing and shall be binding on all parties. Parties are requested to agree on facts when practicable.

**Ex-Parte
Communications**

Neither party, legal counsel or any person who may be affected by the outcome of a case may communicate, either directly or indirectly, with the Director, Department personnel who assist the Director in rendering a decision, or the Administrative Law Judge concerning any substantive issue related to the proceeding prior to the issuance of a final decision and order, except in the presence of all parties or their counsel, or if by written motion with copies to the Clerk of the Department, and all parties and their counsel.

Anyone receiving a prohibited communication shall file a copy of the communication or a summary of the oral communication with the Office of Administrative Hearings with a copy to each party and their legal counsel. The Administrative Law Judge shall give all other parties reasonable opportunity to respond to the communication.

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Section E

Vendor Appeal Rights and Hearings (Continued)

Official Record of the Proceeding

The Office of Administrative Hearings shall maintain an official record of the proceeding that shall include:

- Notices, pleadings, motions and memoranda filed by the parties and Orders of the Administrative Law Judge
- Evidence presented
- Matters officially noticed
- Any decision, opinion, recommended decision, order or report of the Administrative Law Judge and the Director

The Office of Administrative Hearings shall tape record the fair hearing. The recording of the hearing shall not be transcribed unless a party files an Administrative Review Action pursuant to Title 12 Chapter 7, Article 6 of Arizona Revised Statutes.

Evidence

All witnesses at a fair hearing shall testify under oath or affirmation. All parties shall have the opportunity to present testimony and documentary evidence and to conduct cross examination of witnesses. All relevant evidence is admissible, but the Administrative Law Judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence. The Administrative Law Judge can apply the rules of evidence to the proceeding and may admit hearsay.

The submitting party shall provide a copy of each exhibit to each party. All evidence offered shall be subject to appropriate and timely objection.

When ordered by the Administrative Law Judge, the parties shall exchange copies of exhibits prior to or at the fair hearing.

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Vendor Appeal Rights and Hearings (Continued)

Recommended Decision

The Administrative Law Judge shall render a recommended decision pursuant to A.R.S. 41-1092.08

The administrative law judge bases his/her decision solely on applicable statutes, regulations, policies and procedures, including the policies and procedures established by the Department. The administrative law judge applies these standards to the factual evidence presented at the hearing. The administrative law judge does not determine the validity of Federal or State requirements.

A recommended decision shall include separately stated findings of fact, conclusions of law, and the reasoning for the recommended decision.

The experience, technical competence, or specialized knowledge of the Administrative Law Judge may be utilized in evaluating evidence.

The Administrative Law Judge may allow the parties a designated amount of time after the hearing to submit proposed findings of fact and conclusions of law. The Administrative Law Judge shall issue a recommended decision to the Director within twenty (20) calendar days after conclusion of the hearing or after submission of proposed findings and conclusions.

The Director may transmit a copy of the recommended decision to each party who shall then have the time established by the Director to file a memorandum of objections or exceptions to it. The memorandum shall detail reasons why the recommended decision is in error, with appropriate citations to the record, statutes, rules and other authority. The Director may consider such memorandum in making a decision but shall not consider untimely or unsupported memoranda. A recommended decision shall not be subject to a request for review, rehearing or judicial review.

Director's Decision

Within thirty (30) calendar days after receipt of any recommended decision from the Administrative Law Judge, the Director will issue a decision.

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Chapter Sixteen

Hearing Procedures for Participants, Local Agencies and Vendors

Section E

Vendor Appeal Rights and Hearings (Continued)

Rehearing or Review of Decision

Any party to a hearing before the Department who is aggrieved by a final decision rendered in a case may file a motion with the Director, within thirty (30) calendar days from the date of service of the final administrative decision, a written motion for rehearing or review of the decision. The request shall specify the particular grounds for rehearing or review. The requesting party shall serve copies of the request upon all other parties.

The opposing party may file a response to the request for rehearing or review within fifteen (15) calendar days after the date the motion is filed with the Director. The Director may require the filing of supplemental memoranda on the issues raised in the motion and may provide for oral argument.

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Chapter Sixteen

Hearing Procedures for Participants, Local Agencies and Vendors

Section E

Vendor Appeal Rights and Hearings (Continued)

Rehearing or Review of Decision (Continued)

A rehearing or review of the decision may be granted for any of the following causes, which materially affect the requesting party's rights:

- Irregularity in the proceeding of the hearing or an abuse of discretion that deprived the party of a fair hearing
- Misconduct of the Administrative Law Judge or the prevailing party
- Accident or surprise which could not have been prevented by ordinary prudence
- Newly discovered material evidence, that could not with reasonable diligence have been discovered and produced at the original hearing
- Excessive or insufficient penalties
- Error in the admission or rejection of evidence or other errors of law occurring at the hearing
- The decision is not supported by the evidence or is contrary to law

The Director may affirm or modify the decision or grant a rehearing to the requesting party on all or part of the issues for any of the reasons set forth above. An order granting a rehearing shall specify the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at a rehearing.

Effectiveness of Orders

Unless otherwise stated in the Director's decision, a decision becomes a final administrative decision when the decision is rendered. The final administrative decision may be appealed pursuant to Title 12, Chapter 7, Article 6.

Appeal to Superior Court

The Director's final administrative decision after a fair hearing is subject to judicial review under Title 12, Chapter 7, Article 6. Appeal to Superior Court must be made on or before the thirty fifth (35th) calendar day after notification was received of the Director's final decision.

Chapter Sixteen

Hearing Procedures for Participants, Local Agencies and Vendors

Appendix A: Participant Appeal Procedure Forms

See Following Pages

Arizona WIC Program Participant Appeal Procedures Denials/Disqualifications

If you do not agree with this decision and wish to appeal, your appeal request must be submitted in writing, within twenty (20) calendar days for an informal dispute resolution meeting or sixty (60) calendar days for a fair hearing of receiving this notice. The request must include the facts you believe entitle you to relief, and the relief sought.

An **INFORMAL DISPUTE RESOLUTION MEETING** is an informal meeting between you, the Local Agency Director and a State Agency representative, who will conduct the meeting. A decision is made at the end of the meeting. You have the right to request an informal dispute resolution meeting. If you request an informal dispute resolution meeting, the agency shall notify you at least ten (10) calendar days before the meeting. The notice will explain the informal dispute resolution location, time and procedures. This request must be post-marked or hand-delivered to the Local Agency Director no later than twenty (20) calendar days from the date of receipt of this notice. Local Agency staff may assist you in filing your request in writing.

To request an Informal Dispute Resolution Meeting, submit the request in writing to:

**WIC Director
150 North 18th Avenue, Suite 310
Phoenix, AZ 85007**

Or hand deliver to Local Agency WIC Director who will immediately forward to the WIC Director.

If you do not wish to request an informal dispute resolution meeting, you may request a **FAIR HEARING**. A fair hearing may, also, be requested when a participant/authorized representative disagrees with the decision of the informal dispute resolution meeting. A fair hearing is an administrative hearing before an administrative law judge, and a decision is made within the forty five (45) calendar days following the initial request for the hearing. You have sixty (60) calendar days, from the date of receipt of this notice to post-mark or hand-deliver a written request for a fair hearing. The request must contain a statement of facts, the reasons you believe you are entitled to a fair hearing, and the relief sought. Local Agency staff may assist you in filing your request in writing

At a fair hearing, you have the right to self-representation or to be represented by a relative, friend, legal counsel or other spokesperson. You have the right to bring witnesses. The participant is entitled to introduce arguments, question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses as well as submit evidence to support their case.

To request a Fair Hearing, submit your request in writing to:

**Clerk of the Department
Arizona Department of Health Services
150 North 18th Avenue, Suite 500
Phoenix, AZ 85007**

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Arizona WIC Program Participant Appeal Procedures Claim for Repayment

If you do not agree with this decision and wish to appeal, your appeal request must be submitted in writing, within twenty (20) calendar days for an informal dispute resolution meeting or sixty (60) calendar days for a fair hearing of receiving this notice. The request must include the facts you believe entitle you to relief, and the relief sought.

An **INFORMAL DISPUTE RESOLUTION MEETING** is an informal meeting between you, the Local Agency Director, the Local Agency staff involved and a State Agency representative, who will conduct the meeting. A decision is made at the end of the meeting. You have the right to request an informal dispute resolution meeting. If you request an informal dispute resolution meeting, the agency shall notify you at least ten (10) calendar days before the meeting. The notice will explain the informal dispute resolution meeting location, time and procedures. This request must be post-marked or hand-delivered to the Local Agency Director no later than twenty (20) calendar days from the date of receipt of this notice. Local Agency staff may assist you in filing your request in writing.

To request an Informal Dispute Resolution Meeting, submit the request in writing to:

**WIC Director
150 North 18th Avenue, Suite 310
Phoenix, AZ 85007
or hand deliver to Local Agency WIC Director who will immediately forward to the WIC
Director.**

If you do not wish to request an informal dispute resolution meeting, you may request a **FAIR HEARING**. A fair hearing may, also, be requested when a participant/authorized representative disagrees with the decision of informal dispute resolution meeting. A fair hearing is an administrative hearing before an administrative law judge, and a decision is made within the forty five (45) calendar days following the initial request for the hearing. You have sixty (60) calendar days, from the date of receipt of this notice to post-mark or hand-deliver a written request for a fair hearing. The request must contain a statement of facts, the reasons you believe you are entitled to a fair hearing, and the relief sought. Local Agency staff may assist you in filing your request in writing

At a fair hearing, you have the right to self-representation or to be represented by a relative, friend, legal counsel or other spokesperson. You have the right to bring witnesses. The participant is entitled to introduce arguments, question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses as well as submit evidence to support their case.

To request a Fair Hearing, submit your request in writing to:

**Clerk of the Department
Arizona Department of Health Services
150 North 18th Avenue, Suite 500
Phoenix, AZ 85007**

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.