

XI. Civil Rights

11.1.030 Participant Fair Hearings

Authority 2008 7 CFR 246.7(j) & 246.9

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POLICY: The local agency (LA) and state agency (SA) shall assure that all applicants and participants are provided written notification of their right to appeal a state or LA action which results in denial of participation, disqualification from the program, or a claim for repayment of improperly issued benefits.

The notice shall be provided to participants not less than 15 days in advance in the case of disqualification during the certification period.

Hearings requests must be received within 60 days from the date the adverse action notice is mailed or given to the participant.

The SA or LA shall not limit or interfere with an individual's freedom to request a fair hearing and will refer the requestor to the Fair Hearing Official in writing.

The SA shall provide a Fair Hearing Official to conduct participant fair hearings to comply with federal regulations.

PROCEDURES:

- A. Notification of the right to a fair hearing (appeal) is not required for expiration of a certification period.
- B. A request for a hearing is any clear expression by the individual, individual's parent, guardian or other representative to present his/her case to a higher authority.
- C. If an appeal is requested within 15 days of notice of an adverse action, the participant will continue to receive benefits until the end of the certification period or until the hearing decision, whichever comes first. However, the following are not eligible for benefits during the appeal process:
 1. Applicants who are denied benefits at initial certification.
 2. Participants whose certification period has expired.
- D. The SA shall not deny a request for a fair hearing unless:
 1. The request is not received within 60 days of the adverse action notification.
 2. The request is withdrawn in writing by the appellant or representative.
 3. The appellant or representative fails, without good cause, to appear at the scheduled hearing.
 4. The appellant has been denied participation by a previous hearing and cannot provide evidence to illustrate changes relevant to program eligibility sufficient to justify a hearing.
- E. Upon receipt of a fair hearing request, the LA will contact and inform the SA of the request and provide details of the situation, including the participant's name and state ID

number.

F. The SA will:

1. Inform the individual of the procedures to submit a written fair hearing request to the Fair Hearing Official.
2. Ensure that the hearing is accessible to the appellant.
3. Provide the appellant with the opportunity to:
 - a. Examine, prior to the hearing, the documents and records presented to support the decision under appeal.
 - b. Be assisted or represented by an attorney or other individual(s) during the hearing at the participant's (appellant's) expense.
 - c. Bring witnesses to the hearing.
 - d. Question or refute any testimony or evidence presented at the hearing.
 - e. Confront and cross-examine adverse witnesses at the hearing.
 - f. Submit evidence to the hearing official to establish all pertinent facts and circumstances.

G. The department shall designate a fair hearing official who:

1. Is impartial.
2. Has no personal stake or involvement in the decision.
3. Was not directly involved with the initial determination of the action being contested.
4. Ensures the hearing is held within 21 calendar days from the date the request was received.
5. Provides the appellant with:
 - a. 10 calendar days advance written notice of the time and location of the hearing and the hearing procedures.
 - b. The hearing rules of conduct.
 - c. Their rights and responsibilities.
6. Ensures that all relevant issues are considered.
7. Requests, receives and makes part of the hearing record all evidence determined necessary to decide the issues being raised.
8. Regulates the conduct and course of the hearing consistent with due process to ensure an orderly hearing.
9. Orders, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the SA.
10. Renders a hearing decision that will resolve the dispute.

11. Establishes a record for the hearing that shall consist of:
 - a. The verbatim transcript or recording of testimony and exhibits.
 - b. All papers and requests filed in the proceeding.
 - c. The decision which shall do all of the following:
 - i. Summarize the facts of the case.
 - ii. Specify the reasons for the decision.
 - iii. Identify the supporting evidence.
 - iv. Identify the pertinent regulations or policy.
- H. The fair hearing decision shall be:
 1. Based upon the application of appropriate federal law, regulation and policy as related to the facts of the case established in the hearing record.
 2. Rendered within 45 days of the receipt of the request for the hearing.
 3. Sent to the appellant in writing, along with the reasons for the decision.
 4. Retained as a part of the hearing record.
- I. If the fair hearing decision is:
 1. In the favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately.
 2. In the favor of the agency and:
 - a. Concerns disqualification and benefits had been continued, the LA shall terminate any continued benefits as soon as is administratively feasible.
 - b. Is regarding repayment of benefits, the SA shall resume its efforts to collect the claim.
 - c. The participant requests a higher review, the state shall:
 - i. Explain the right to pursue judicial review of the decision.
- ii. Explain that benefits cannot continue during the judicial review process.