



SECTION: Local Program Operations 410
SUBJECT: ADMINISTRATIVE APPEALS FOR LOCAL PROGRAMS
DATE: September 7, 1994

POLICY: Local WIC programs may request a review of decisions made by the state WIC office when their participation in WIC is denied or disqualified, or when any action is taken that adversely affects their participation in the program.

PURPOSE: To give programs an opportunity to review (appeal) adverse decisions affecting them.

RELEVANT REGULATIONS: 7 CFR §246.18—Administrative Appeal of State Agency Decisions

DEFINITIONS:

<i>Adverse action (taken against local program)</i>	Any action taken by the state WIC office against the local program that would affect their participation the WIC program.
<i>Disqualification (of local WIC agency)</i>	The act of ending the WIC program participation of an authorized local agency whether as a primitive sanction or for administrative reasons.

PROCEDURES:

Notification of local program

- 1.0 Notification of adverse action:
 - 1.1 The state WIC office will provide the local program with written notification of disqualification at least 60 days prior to disqualification.
 - 1.2 Notification of adverse action and disqualification must include the following:
 - 1.2.1 the adverse action;
 - 1.2.2 the cause(s) for the action;
 - 1.2.3 the effective date of the action unless the action is denial of participation; and
 - 1.2.4 the opportunity to appeal within a specified time frame.

Request for hearing

- 2.0 Hearing procedure:
 - 2.1 A local program request to appeal the state program decision is defined by ORS 183.310 as a “contested case.” Therefore, the hearing will be conducted in accordance with the provisions of ORS c.183 and the Attorney General’s Model Rules of Procedure.
 - 2.2 A local program must request a hearing within the specified timeframe by contacting the state WIC program manager.
 - 2.3 Adequate advance notice of the time and place of the hearing shall be provided for all parties to prepare for the hearing.
 - 2.4 The local program may reschedule the hearing date once upon request.

ADMINISTRATION APPEALS FOR LOCAL PROGRAMS, cont.

- (Request for hearing:)*
- 2.5 The local program may review the case record prior to the hearing.
 - 2.6 The local program may be represented by an attorney.
 - 2.7 Witnesses may be required to testify. See ORS 183.425 “Depositions or subpoena of material witness; discovery” and Administrative Procedures Act.

Hearings officer 3.0

Hearings officer:

- 3.1 The hearing shall be conducted, and the order therein made, by a hearings officer who has been selected from a list of hearings officers under contract with the Oregon Health Division. The hearings officer shall be a person who does not have a personal stake in the outcome of the proceeding, and who did not participate in making the adverse decision under appeal.
- 3.2 The hearings officer will rule on all matters at the hearing.
- 3.3 The parties will be notified when written exception to the proposed order must be filed in accordance with the Administrative Procedures Act. They will also be notified when oral argument may be made to the Oregon Health Division Administrator, who will render the final order.

4.0 Appeal decision:

- 4.1 The decision shall be based solely on the evidence presented at the hearing and on the statutory and regulatory provisions governing the WIC program.
- 4.2 The basis for the decision shall be stated in writing. This final order will be rendered by the Oregon Health Division Administrator and will be issued within 60 days of the request for a hearing.

Petition for judicial review 5.0

Judicial review:

- 5.1 If the final order is adverse, the local program may file a petition for judicial review. A petition for judicial review must be filed with the Court of Appeals in Salem within 60 days following the date the order is served.
- 5.2 There will be no continuance or reopening of the hearing to additional evidence not known at the time of the hearing or that reasonable diligence would not have discovered prior to the hearing.

6.0 Continuing responsibilities:

- 6.1 When a participating local program files an appeal, the adverse action may not become effective until a hearing decision is reached.

ADMINISTRATION APPEALS FOR LOCAL PROGRAMS, *cont.*

*(Petition for
judicial review:)*

- 6.2 Appealing an action does not relieve the local program of the responsibility of continued compliance with the terms of any written agreement with the Oregon Health Division, including assurances to comply with all USDA regulations and the state WIC program Policy and Procedure Manual.
- 6.3 A local program whose application to participate in the WIC Program has been denied shall not be eligible to participate pending the appeal decision. ★