

## 350.30

### Participant Appeals

#### Overview

A WIC participant shall have the right to appeal whenever a decision or action of the department or contract agency results in the individual's denial of participation, disqualification, or termination from the WIC program.

#### Notification

Written notice of the right to appeal, and the process to appeal, must be given to:

- Applicants at the initial certification appointment,
- Applicants when eligibility is denied, including those placed on a waiting list,
- Participants at termination,
- Participants/families when they are disqualified, and
- Participants receiving notice of a claim being established for repayment of improperly issued benefits.

#### Notice

##### Form of notice

The Notice of the Right to Appeal must be posted in each clinic.

The appeals process is **must** be printed on the Notice of Termination, the Notice of Disqualification, and Notice of Ineligibility forms.

The Notice of the Right to Appeal must be mailed with return receipt requested.

#### Request for Hearing

##### Request for a hearing

A request for hearing by an individual or the individual's parent, guardian, or other representative must be made in writing or verbally. This person is referred to as the appellant. The request for hearing shall be made to the contract agency within 60 days from the date the individual receives notice of the decision or action that is the subject of appeal.

##### Denial or dismissal of appeal request

The request for hearing shall not be denied or dismissed unless:

- The request is not received within the required time frame,
- The request is withdrawn in writing by the appellant,
- The appellant has been denied participation by a previous hearing and cannot provide evidence for cause for a subsequent hearing.

**Benefits during appeal process**

A participant who was denied program benefits for one of the following reasons does not receive benefits during the appeal process:

- A finding of ineligibility at initial certification or subsequent recertification,
- Failure to reapply following notice of expiration of certification, or
- Categorical ineligibility (e.g., a child over five years old).

Participants may only continue to receive program benefits during the appeal process if the participant appeals the decision either verbally or in writing within the 15 days advance adverse action notice period. The participant may receive benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first.

A participant who was involuntarily terminated before the end of a certification period may receive program benefits during the appeal process **if** the participant completes subsequent recertifications as required.

**Restitution****Restitution**

If a participant appeals a claim for restitution, collection efforts are suspended pending the outcome of the appeal. If repayment of benefits is upheld, efforts to collect the claim are resumed during the process of appealing the local decision to the state WIC office. See Policy 225.80 for more information on restitution.

**Appeal process**

See 641 IAC 73 (in Policy 398.15) for the current appeal process.

**Hearing Officer during appeal hearing**

The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. If the party filing the appeal objects prior to a scheduled hearing to a contract agency director serving as a hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the state WIC office in the appointment of a hearing officer.

**Notice of hearing**

The hearing officer shall schedule the time, place, and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be

scheduled within three weeks from the date the contract agency received the request for a hearing, or as soon as possible thereafter, unless a later date is agreed upon by the parties.

### **Conduct of hearing**

The hearing shall be conducted in accordance with federal regulations found at 7 CFR 246.23 and 7 CFR 246.9. Copies of these regulations are available from the contract agency and the department. The

State or local agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure with the notice. At a minimum, the party requesting the hearing or the party's representative shall have the opportunity to:

- Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
- Be assisted or represented by an attorney or other person at the party's own expense;
- Bring witnesses;
- Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;
- Submit evidence to establish all pertinent facts and circumstances in the case;
- Advance arguments without undue interference.

### **Rescheduled hearing**

If a participant fails to attend the initial hearing, the agency will reschedule the hearing and give the participant 20 days' notice. The participant may have another person as the participant's designee. If neither the participant nor the designee attends the second hearing, the appeal will be closed.

### **Decision**

Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 45 days of the receipt of the request for a hearing, unless a longer period is agreed upon by the parties. The decision shall be mailed to the appellant by return receipt requested.

## **Appeal of Decision to Department**

### **Appeal of decision**

If either party to a hearing receives an unfavorable decision, that decision may be appealed to the Iowa Department of Public Health. Such appeals must be made within 15 days of the mailing date of the decision. Appeals shall be sent to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**Receipt of Benefits during Appeal to Department**

If the decision being appealed concerns disqualification from the WIC program, the appellant shall not continue to receive benefits while an appeal to the department of a decision rendered on appeal at the local level is pending.

**Contested case**

Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the Iowa department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the Iowa department of inspections and appeals.

**Notice of hearing**

Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible.

**Conduct of hearing**

The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246. Copies of these regulations are available from the department of inspections and appeals upon request.

**Decision of Administrative Law Judge**

The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken.

**Appeal to the Director**

Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**Record of hearing**

Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- All pleadings, motions, and rules.
- All evidence received or considered and all other submissions by recording or transcript.
- A statement of all matters officially noticed.
- All questions and offers of proof, objections and rulings thereon.
- All proposed findings and exceptions.
- The proposed decision and order of the administrative law judge.

### **Decision of Director**

An appeal to the director shall be based on the record of the hearing before the administrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

### **Exhausting administrative remedies**

It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

### **Petition for judicial review**

Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

### **Benefits after decision**

If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the state, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for benefits.