

900 KAR 10:130. Appeals of Eligibility for KHBE Participation and Insurance Affordability Programs.

RELATES TO: KRS 13B.050, 13B.080, 13B.090, 13B.110, 13B.120, 13B.140, 42 U.S.C. 18031, 26 C.F.R. 1.36B-4, 45 C.F.R. Parts 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of Health Benefit Exchange has responsibility to administer the Kentucky Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law. This administrative regulation establishes the policies and procedures relating to appeals of eligibility determinations for KHBE participation and insurance affordability programs on the Kentucky Health Benefit Exchange pursuant to and in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Right to Appeal an Individual Eligibility Determination or Redetermination.

(1) An applicant or an enrollee may make an appeal request of:

(a) An eligibility determination made in accordance with 45 C.F.R. 155.300 to 155.355 and 900 KAR 10:120, including:

1. An initial determination of eligibility for enrollment in a QHP or SADP, including the amount of APTC and CSR, made in accordance with the standards specified in 45 C.F.R. 155.305(a) through (h); or

2. A redetermination of eligibility, including the amount of APTC and CSR, made in accordance with 45 C.F.R. 155.330 and 155.335;

(b) A determination of eligibility for an enrollment period;

(c) A failure by the KHBE to provide within twenty (20) days notice of an eligibility determination pursuant to 45 C.F.R. 155.310(g), 155.330(e)(1)(ii), 155.335(h)(1)(ii), or 155.610(i); or

(d) A denial of a request to vacate dismissal made by DAH in accordance with 45 C.F.R. 155.530(d)(2), made pursuant to Section 8(3) of this administrative regulation.

(2) An appeal request that fails to meet the criteria in subsection (1) of this section shall not be considered an acceptable appeal request, and the division shall send written notice to the appellant to:

(a) State the appeal request has not been accepted and explain the nature of the defect in the appeal request; and

(b) Explain that the applicant or enrollee may cure the defect and resubmit the appeal request within ninety (90) days of the notice of action.

(3) Upon exhaustion of the appeal process established in this administrative regulation, an appellant may:

(a) Appeal to HHS in accordance with 45 C.F.R. 155.520(c); and

(b) Seek a judicial review of an appeal decision pursuant to KRS 13B.140.

(4) The DAH shall conduct an appeal of an individual eligibility determination, except for an eligibility determination for an exemption made in accordance with 45 C.F.R. 155.605.

(5) An appeal of an eligibility determination of an exemption shall be conducted by HHS.

Section 2. Individual Appeal Designation of a Representative.

(1) An appellant may represent himself or herself or be represented during an appeal process by:

- (a) Legal counsel;
 - (b) A relative;
 - (c) A friend; or
 - (d) Another individual not listed in paragraph (a), (b), or (c) of this subsection.
- (2) The division shall designate a representative to act on behalf of the division for the hearing.

Section 3. Individual Appeal Notice of Appeal Rights.

- (1) An applicant or an enrollee shall be notified of the right to appeal, timeframe to file an appeal, and how to file an appeal when:
- (a) The applicant submits an application; and
 - (b) A notice of eligibility determination is sent by KHBE under 45 C.F.R. 155.310(g) or 155.330(e)(1)(ii), or by HHS under 45 C.F.R. 155.610(i).
- (2) A notice described in subsection (1) of this section shall include:
- (a) An explanation of the applicant or enrollee's appeal rights in accordance with this administrative regulation;
 - (b) A description of the procedure and timeframe within which to request an appeal;
 - (c) Information on the applicant or enrollee's right to represent himself or herself or to be represented by legal counsel or other authorized person as identified in Section 2 of this administrative regulation;
 - (d) An explanation of the circumstances under which the appellant's or enrollee's eligibility may be maintained or reinstated pending an appeal decision in accordance with Section 7 of this administrative regulation; and
 - (e) An explanation that an appeal decision for one (1) household member may result in a:
 - 1. Change in eligibility for another household member; or
 - 2. Redetermination of eligibility in accordance with 900 KAR 10:120.

Section 4. Individual Appeal Requests.

- (1) An applicant or an enrollee may submit an appeal request:
- (a) By phone;
 - (b) By mail;
 - (c) In person; or
 - (d) Via the internet.
- (2) Upon request, the division or the DAH shall assist an applicant or enrollee in filing an appeal.
- (3) An applicant or enrollee's right to appeal shall not be limited or interfered with by an employee or representative of the division.
- (4) An applicant or enrollee shall have thirty (30) days from the date of notice of an eligibility determination or redetermination to submit an appeal request.

Section 5. Individual Appeal Informal Resolution Completed by the Division.

- (1) After receiving an appeal request, the division shall:
- (a) Conduct a desk review of an appeal prior to sending the appeal to the DAH; and
 - (b)1. Except established in subparagraph 2. of this paragraph, complete the review within fifteen (15) calendar days of receipt of the appeal request; or
 - 2. For an expedited appeal request submitted in accordance with Section 10 of this administrative regulation, complete the review within three (3) business days.
- (2) An appellant shall:
- (a) Have the right to a hearing if the appellant is dissatisfied with the outcome of the informal

resolution process; and

(b) Not have to provide duplicative information or documentation previously provided during the application process.

(3) The outcome of an informal resolution shall be final and binding and the appeal shall not advance to a hearing if the appellant:

(a) Is satisfied with the outcome of the informal resolution process; and

(b) Withdraws his or her appeal request in accordance with Section 11 of this administrative regulation.

(4) If an appellant is dissatisfied with the outcome of the information resolution process, KHBE shall send:

(a) The appeal request and all documents utilized by the division in the desk review to DAH no later than five (5) business days after the completion of the informal resolution process; and

(b) A written notice to the appellant that includes:

1. Notification that the appeal request has been sent to DAH for a hearing;

2. Information regarding the appellant's eligibility pending appeal in accordance with Section 7 of this administrative regulation; and

3. An explanation that any APTCs paid on behalf of a tax filer pending appeal are subject to reconciliation under 26 C.F.R. 1.36B-4.

Section 6. Individual Appeal Acknowledgement of Appeal Request and Eligibility Record by DAH.

(1) A request for an appeal sent by KHBE to the DAH shall be reviewed by DAH to ensure that the appeal request is valid.

(2) Upon receipt of a valid appeal request, the DAH shall:

(a) Send within thirty (30) days notice to the appellant of receipt of the valid appeal, to include the hearing requirements contained in Section 9 of this administrative regulation; and

(b) Confirm receipt of the records transferred by KHBE pursuant to Section 5(4)(a) of this administrative regulation.

(3) The DAH shall consider an appeal request valid if the request:

(a) Was incorrectly delivered or mailed to a department or division of the Cabinet for Health and Family Services; and

(b) Is otherwise valid.

(4) Upon receipt of an appeal request that is not valid, the DAH shall:

(a) Send written notice to the appellant and KHBE that the appeal request has not been accepted and of the nature of the defect in the appeal request; and

(b) Accept an amended appeal request as valid that meets the requirements of this administrative regulation.

Section 7. Individual Eligibility Pending Appeal.

(1) An appellant who has submitted an acceptable request as described in Section 1 of this administrative regulation of a redetermination of eligibility in accordance with Section 4 of this administrative regulation shall be considered eligible while the appeal is pending.

(2) If a tax filer or appellant accepts eligibility pending an appeal of an eligibility redetermination, the appellant's eligibility for an APTC or CSR or enrollment in a QHP or SADP as applicable shall be continued in accordance with the level of eligibility immediately before the redetermination being appealed.

(3) An appellant may waive receipt of APTCs pending the outcome of an appeal.

(4) The continued receipt of APTCs during an appeal may impact the amount owed or due by an appellant during the reconciliation process set forth in 26 C.F.R. 1.36B-4, depending up-

on the appeal decision.

(5) Eligibility pending appeal shall not be applicable to an appellant appealing an initial denial of eligibility for APTCs.

Section 8. Individual Dismissal of an Appeal.

(1) An appeal shall be dismissed by DAH if the appellant:

(a) Withdraws the appeal request in accordance with Section 11 of this administrative regulation;

(b) Fails to appear at a scheduled hearing without good cause;

(c) Fails to submit a valid appeal request as specified in Section 4 of this administrative regulation; or

(d) Dies while the appeal is pending.

(2) If an appeal is dismissed in accordance with subsection (1) of this section, DAH shall provide within thirty (30) days written notice to the appellant and the division that includes:

(a) The reason for the dismissal;

(b) An explanation of the effect of the dismissal on the appellant's eligibility;

(c) An explanation of how the appellant may show good cause why the dismissal should be vacated in accordance with subsection (3)(a) of this section;

(d) A statement of the eligibility determination to be implemented; and

(e) A statement discontinuing eligibility provided under Section 7 of this administrative regulation, if applicable.

(3) DAH shall:

(a) Vacate a dismissal under this section and proceed with the appeal if the appellant makes a written request within thirty (30) days of the date of the notice of the dismissal showing good cause why the dismissal should be vacated; and

(b) Provide within thirty (30) days written notice of the recommendation to the secretary of the Cabinet for Health and Family Services to deny the request to vacate a dismissal to the appellant, if the request is denied.

(4) Good cause for the purposes of this section shall include if the appellant:

(a) Was away from home during the entire filing period;

(b) Is unable to read or to comprehend the right to request a hearing on an adverse action notice;

(c) Moved, resulting in delay in receiving or failure to receive the adverse action notice;

(d) Had a household member who was seriously ill;

(e) Was not at fault for the delay of the request, as determined by the hearing officer; or

(f) Did not receive the notice.

Section 9. Individual Hearing Requirements.

(1) DAH shall provide written notice to the appellant and the division that:

(a) Acknowledges the appeal request as required by Section 6(2) of this administrative regulation; and

(b) Meets the notice requirements established by KRS 13B.050(3).

(2) An appellant may:

(a) Upon request, obtain from the division, copies of the appeal record, including all documents and records to be used at the hearing, prior to the date of the hearing, and during the hearing;

(b) Bring witnesses to testify;

(c) Establish all relevant facts and circumstances;

(d) Present an argument without undue interference; and

(e) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine an adverse witness.

(3) The DAH shall:

(a) Consider the information used to determine an appellant's eligibility;

(b) Consider additional relevant evidence presented during the course of the appeal, including at the hearing; and

(c) Review the appeal without deference to a prior decision in the appeal case.

(4) A hearing shall be conducted:

(a) In accordance with the requirements of KRS 13B.080 and KRS 13B.090;

(b) At a reasonable date, time, and location or format;

(c) After notice of the hearing provided pursuant to subsection (1) of this section;

(d) Consistent with subsection (3) of this section; and

(e) By one (1) or more impartial hearing officers who have not been directly involved in the eligibility determination or any prior appeal decision in the same matter.

Section 10. Individual Expedited Appeals.

(1) An appellant may make an expedited appeal if:

(a) There is an immediate need for a health service; and

(b) The standard appeal process established in Section 9 of this administrative regulation may seriously endanger the appellant's life, health, or ability to attain, maintain, or regain maximum function.

(2) An expedited appeal shall be requested in the same manner as a standard appeal as set forth in Section 4 of this administrative regulation.

(3) If an expedited appeal is requested, an appellant shall submit evidence of the reason for the expedited appeal.

(4) If an expedited appeal request under this section is denied by the DAH, the DAH shall:

(a) Conduct the appeal under the standard appeal process as set forth in Section 9 of this administrative regulation;

(b) Inform the appellant through electronic or oral notification, if possible, of the denial within the timeframes established by the secretary of HHS; and

(c) If notification is oral, follow up with the appellant by written notice.

(5) A written notice pursuant to subsection (4)(c) of this section shall include:

(a) The reason for the denial;

(b) An explanation that the appeal request shall be transferred to the standard process described in Section 9 of this administrative regulation; and

(c) An explanation of the appellant's rights under the standard process in Section 9 of this administrative regulation.

Section 11. Individual Withdrawal of an Appeal. If an appellant wants to withdraw an appeal, the appellant shall withdraw a request for an appeal:

(1) In writing;

(2) Orally to KHBE staff during an informal resolution process described in Section 5 of this administrative regulation; or

(3) Orally to the hearing officer during an appeal proceeding.

Section 12. Individual Hearing Decision.

(1) After the hearing is concluded or a decision is made not to reverse a dismissal of an appeal, the hearing officer shall issue a recommended order in accordance with the requirements of KRS 13B.110.

- (2) A recommended order rendered by the DAH shall be based only on the:
- (a) Information and evidence specified in 45 C.F.R. 155.535(e);
 - (b) Eligibility requirements in 900 KAR 10:120;
 - (c) Eligibility requirements under 45 C.F.R. 155.300 to 155.355; and
 - (d) Record of the appeal and hearing.
- (3) A recommended order shall:
- (a) Be sent to the appellant and the appellant's authorized representative, if applicable, and the division;
 - (b) State the decision;
 - (c) Include a plain language description of the effect of the decision on an appellant's eligibility;
 - (d) Summarize the facts relevant to the appeal;
 - (e) Identify the legal basis, including an administrative regulation that supports the decision; and
 - (f) State the effective date of the decision.
- (4) If either the appellant or the division is dissatisfied with the recommended order, either party shall have fifteen (15) days from the date the recommended order is mailed to file exceptions to the recommendations with the secretary of the Cabinet for Health and Family Services.
- (5) The secretary of the Cabinet for Health and Family Services shall consider the appeal record, including the recommended order and any exceptions filed to a recommended order, in accordance with KRS 13B.120.
- (6) The secretary of the Cabinet for Health and Family Services shall:
- (a) Accept the recommended order of the hearing officer and adopt it as the agency's final order;
 - (b) Reject or modify, in whole or in part, the recommended order; or
 - (c) Remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.
- (7) The secretary of the Cabinet for Health and Family Services shall:
- (a) Issue written notice of the final order to the appellant and include in that notice the appellant rights to a judicial review afforded under KRS 13B.140 within ninety (90) days of the date an appeal request under Section 4 of this administrative regulation is received;
 - (b) If an appeal request is submitted under Section 10 of this administrative regulation that is determined to meet the criteria for an expedited appeal, issue the final order as expeditiously as:
 1. The appellant's health condition requires; and
 2. Reasonably possible, consistent with the timeframe established by the secretary of HHS;
 and
 - (c) Provide notice of the appeal decision and instructions to cease pended eligibility to:
 1. The appellant, if applicable; and
 2. The division.
- (8) Upon receipt of a notice described in subsection (7)(a) of this section, the division shall:
- (a) Implement the appeal decision:
 1. Retroactive to the date the incorrect eligibility determination was made; or
 2. At a time determined under 45 C.F.R. 155.330(f); and
 - (b) Redetermine the eligibility of a household member who has not appealed an eligibility determination, but whose eligibility may be affected by the appeal decision, in accordance with the standards described in:
 1. 900 KAR 10:120; and
 2. 45 C.F.R. 155.305.

Section 13. Individual Right to Appeal to HHS.

(1) If an appellant disagrees with an appeal decision made in accordance with Section 12 of this administrative regulation or notice of denial of a request to vacate a dismissal under Section 8(3)(b) of this administrative regulation, the appellant may request an appeal from HHS within thirty (30) days of the date of the appeal notice.

(2) Upon receipt of a notice of an appeal under subsection (1) of this section, DAH shall transmit via secure electronic interface the appellant's appeal record, including the appellant's eligibility record received from KHBE, to HHS.

(3) An applicant or an enrollee denied a request for an exemption by HHS under 45 C.F.R. 155.625(b) may appeal the decision to HHS.

Section 14. Individual Appeal Release of Records.

(1) An appellant shall have access to the information used by the KHBE to determine his or her eligibility.

(2) An appellant shall have access to his or her appeal record:

(a) Upon written request;

(b) At a place and time convenient to the appellant; and

(c) Subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

(3) The public shall have access to an appeal decision, subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information. (47 Ky.R. 2214; 48 Ky.R. 56; eff. 7-21-2021.)