

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(Amendment)

902 KAR 18:040. Fair hearing procedures for participants.

RELATES TO: KRS Chapter 13B, 15.111, 194A.050, 194A.505, 194A.990, 205.231, 7 C.F.R. Part 246, 278.6, 21 U.S.C. 802

STATUTORY AUTHORITY: KRS 194A.050, 205.231, 211.180~~[211.090(3)]~~, 7 C.F.R. Part 246, 42 U.S.C. 1786

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 1786 and 7 C.F.R. Part 246 provide~~[for]~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to qualify for the receipt of federal funds. KRS 211.180(1)(e) and (f) authorize the cabinet to promulgate administrative regulations for the health of expectant mothers, infants, and preschoolers, and the improvement of health through better nutrition. This administrative regulation establishes the fair hearing procedures for participants for the Kentucky Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Section 1. Fair Hearing Procedures.

(1) In accordance with 7 C.F.R. 246.9, a local agency shall inform an individual in writing of the right to a fair hearing and the method by which a hearing may be requested when the person is:

- (a) Determined to be ineligible for the program;
- (b) Disqualified or suspended during a certification period; or
- (c) Issued a claim.

(2)

(a) ~~[In accordance with 7 C.F.R. 246.9, a]~~ A person shall request a fair hearing by contacting the state WIC agency within sixty (60) days from the date the person receives the adverse action letter by hand delivery, electronic mail, or ~~[by]~~ certified mail.

(b) Requests for a hearing shall be forwarded by the cabinet to the Office of Administrative Hearings within the Department of Law in accordance with KRS 15.111(2)(g), within two (2) working days of receipt.

(c) ~~[In accordance with 7 C.F.R. 246.9,]~~ The hearing shall be accessible to the appellant and shall be conducted as soon as practicable. Notice of the hearing shall be given to all involved parties not less than twenty (20) days advance of the date set for the hearing unless otherwise required by federal law~~[held within twenty one (21) days from the date a person requests a hearing, or the next regular work day if the twenty-first day is a holiday or weekend].~~

(d) ~~[(e)]~~ The Office of Attorney General hearing official shall provide the person with at least twenty (20)~~[ten (10)]~~ days advanced written notice of the time and place of the hearing.

(3) The request for a hearing shall not be denied or dismissed~~[state WIC agency shall not deny or dismiss a request for hearing]~~ unless:

- (a) The request is not received within the time limit set by subsection (2)(a) of this section;
- (b) The request is withdrawn in writing by the appellant or a representative of the appellant;

(c) The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

(d) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to the WIC program eligibility have changed in a way that would justify a hearing.

(4) The state or local agency shall refer complaints that allege discrimination based on race, color, national origin, sex, handicap, or age to the Secretary of Agriculture or the Director of the Office of Equal Opportunity.

(5) The hearing shall be conducted in accordance with KRS Chapter 13B, subject to any specific provisions set forth herein~~[the] partial exemption from that chapter, as certified by the Office of the Attorney General, a copy of which certification is available online at <http://chfs.ky.gov/dph/mch/ns/wic.htm>].~~

(6) ~~{(5)}~~

~~{(a)} [In accordance with 7 C.F.R. 246.9, The hearing officer shall complete and submit to the cabinet and the appellant or representative a written notification of the recommended order no later than forty-five (45) days after the cabinet's receipt of the request for the hearing, which shall include the findings of fact, conclusions of law, and recommended disposition, including recommended penalties, if any.]~~

~~{(b)} [In accordance with 7 C.F.R. 246.9,]~~ Decisions of the hearing official shall be based upon the application of KRS Chapter 194A, 42 U.S.C. 1786, 7 C.F.R. Part 246, 7 C.F.R. 278.6, or 902 KAR Chapter 18 as related to the facts of the case as established in the hearing record.

(7) ~~{(6)}~~

(a) Participants who appeal the termination of benefits within the fifteen (15) days advance adverse action notice period provided by 7 C.F.R. 246.7 shall continue to receive WIC program benefits until the hearing officer reaches a decision or the certification period expires, whichever occurs first.

(b) This shall not apply to:

1. Applicants who are denied benefits at initial certification;
2. Participants whose certification periods have expired; or
3. Participants who become categorically ineligible.

(c) If the hearing officer's recommended order concerns disqualification and is in favor to the state WIC agency, as soon as administratively feasible any continued benefits shall be terminated.

(d) If the decision regarding repayment of the benefits by the appellant is in favor of the state WIC agency, efforts to collect the claim shall be resumed, even during pendency of an appeal of a fair hearing decision.

(8) ~~{(7)}~~

~~{(a)} The appellant may appeal a hearing officer's decision [to the] ~~Appeal Board for Public Assistance~~ by filing exceptions to the recommended order with the~~[in accordance with KRS 13B.110(4).]~~~~

~~{(b)} [Exceptions shall be filed with or mailed to] Cabinet for Health and Family Services, Office of the Secretary, ~~Appeal Board for Public Assistance,~~ 275 East Main Street, 5W-A, Frankfort, Kentucky 40621.~~

(9) ~~{(e)}~~ Each party in the hearing shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order with the cabinet.

(10) ~~{(d)}~~ A party may file a response to an opposing party's exceptions within twenty-five (25) days from the date the recommended order is mailed.

(11) ~~{(e)}~~ Exceptions and responses to exceptions shall be considered filed on the date they are received by the cabinet.

(12) ~~(8)~~ Any party aggrieved by the decision of the Cabinet for Health and Family Services, Office of the Secretary~~[Appeal Board for Public Assistance]~~ may seek judicial review of the decision by filing a petition in the circuit court of the county where~~in which~~ the petitioner resides, in accordance with KRS 13B.140, 13B.150, and 13B.160.

(13) In accordance with 7 C.F.R. 246.8, complaints alleging civil rights discrimination for United States Department of Agriculture (USDA) funded programs, such as the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), WIC Farmers Market Nutrition Program and WIC Breastfeeding Peer Program, shall be filed with the USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TTY).

JOHN R. LANGEFELD, MD, Commissioner
STEVEN J. STACK, MD, MBA, Secretary

APPROVED BY AGENCY: September 17, 2025

FILED WITH LRC: February 3, 2026 at 11:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 27, 2026, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 20, 2026, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until April 30, 2026. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194A.050, 211.180, 7 C.F.R. Part 246, and 42 U.S.C. 1786.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in the Department for Public Health, Cabinet for Health and Family Services is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures:This administrative regulation does not impact expenditure for the promulgating agency.

Revenues:The WIC program receives approximately \$112 million dollars in grant funding from the U.S. Department of Agriculture (USDA).

Cost Savings:This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The funding from USDA to support the WIC program is depended on federal monies available.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Local health departments that operate a WIC program are affected local entities.

(a) Estimate the following for the first year:

Expenditures:The amendment to this administrative regulation will not impact expenditures for the local agencies who implement WIC.

Revenues:The state program provides funding from the grant dollars received to support the local agencies who implement WIC.

Cost Savings:This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Subsequent year expenditures, revenues and cost savings will be dependent on the amount of federal funding received from the USDA.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Additional regulated entities include WIC recipients.

(a) Estimate the following for the first year:

Expenditures:This administrative regulation may have result in minimal expenditures for WIC participants who file a request for an administrative hearing. Expenditures could include the resources needed to support their claim.

Revenues:This administrative regulation will not generate revenue for WIC participants.

Cost Savings:This administrative regulation will not result in cost savings for WIC participants.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Expenditures, revenue, and cost savings will not change in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This administrative regulation will have a budget neutral fiscal impact. This administrative regulation will not generate revenue for the promulgating agency or other impacted entities. Expenditures will not be increased or decreased as a result of this administrative regulation and there will be no costs savings.

(b) Methodology and resources used to determine the fiscal impact:

The amendment to this administrative regulation updates the procedures for participants who request a fair hearing.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This administrative regulation does not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

This administrative regulation is budget neutral.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

7 C.F.R. 246 and 42 U.S.C. 1786.

(2) State compliance standards.

KRS 194A.050 requires the secretary of the Cabinet for Health and Family Services to promulgate and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for federal funds.

(3) Minimum or uniform standards contained in the federal mandate.

7 C.F.R. 246 provides grant funding to states agencies to administer the Special Supplemental Nutrition Program for Women, Infants, and Children through local agencies at no cost to eligible recipients. 7 C.F.R. 246.9 requires states to have fair hearing procedures for participants. 42 U.S.C. 1786 requires states to submit a plan for operation and administration each fiscal year.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No, this administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.