

CABINET FOR HEALTH AND FAMILY SERVICES

**Department for Public Health
(Amended at ARRS Committee)**

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 ~~authorize~~~~provide~~~~for~~ grants for state operation of the Special Supplemental Nutrition Program for Women, Infants~~f~~ and Children (WIC). KRS 194A.050(1) ~~requires~~~~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~~f~~ 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 ~~if~~~~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 practical~~practicable~~. Notice of the hearing shall be given to all involved parties at least~~not less than~~ twenty (20) days in advance of the date set for the hearing unless otherwise required by 7 C.F.R. 246.9~~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 established~~set~~ by subsection (2) 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://ehfs.ky.gov/dph/meh/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) ~~day~~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) WIC program benefits ~~{This}~~ shall not be provided or continued with a filed appeal in the following situations~~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 ~~off~~of 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. The response shall be filed 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 wherein~~wherein~~ the petitioner resides. **Judicial review shall be**~~by~~ 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).

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