

Subject: Fair Hearings

Item: Fair Hearing Requests and Procedures

PURPOSE:

The purpose of this policy is to establish guidelines, timeframes and clearly define the actions needed by local agency (LA) staff to advise participants on fair hearings according to regulatory requirements.

POLICY:

- I. LAs must accept all requests for a fair hearing and immediately notify the Hearings and Appeals Unit Chief at CDPH/WIC within 24 hours (1 working day).

PROCEDURE(S):

- I. Right to request a hearing
 - A. Any applicant/participant who is the subject of a state or LA action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the applicant's/participant's denial of participation or disqualification from the Program has a right to a fair hearing. If the applicant/participant is alleging discrimination on the part of a LA in the agency's decision to deny participation or disqualify the participant from the Program, he/she has a right to a fair hearing. If the applicant/participant believes the discrimination is due to a violation of civil rights laws, refer to WPPM 510-50. There is no charge to the participant for the fair hearing.
 - II. Time frames and notification of the fair hearing process
 - A. Written notification of the time and place of the hearing must be sent to the applicant/participant (and his/her representative) by the Department of Health Services' Office of Administrative Hearings and Appeals (OAHA) not less than ten days prior to the hearing date. The hearing date must be scheduled within three weeks of the filing date.
 - III. Applicant/participant rights at hearing.
 - B. The applicant/participant must have the opportunity to:
 1. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
 2. Be assisted or represented by an attorney or other person if desired.
 3. Bring witnesses.
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4. Advance arguments without undue interference.
5. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
6. Submit evidence to establish all pertinent facts and circumstances in the case.

IV. Documentation

- C. LAs are encouraged to document in WIC management information system comments, all applicant/participant complaints, including those which are due to reasons other than denial of benefits. This documentation will assist the CDPH/WIC in preparation of the required position statement in the event of a fair hearing.

V. Where to file

- A. Requests for a fair hearing may be presented orally or in writing to either the LA or the Hearings and Appeals Unit Chief at CDPH/WIC.

VI. Deadline for filing of benefits

- A. The following are timeframe guidelines for filing of benefits:
 1. Requests for fair hearings: Requests must be made within 60 days from the date the LA or the CDPH/WIC Program Integrity Unit mails or gives the applicant/participant the notice of the adverse action. However, participants whose certification period has expired or participants who appeal the termination of benefits within the fifteen (15) calendar days advance adverse notice period must continue to receive Program benefits until the hearing officer reaches a decision, or the participant's certification period expires.
 2. Disqualification in Mid-certification period: Participants who appeal an agency decision to deny participation or disqualify the participant from the program within 15 calendar days of advance notice of the effective date of the adverse action, must continue to receive program benefits until the hearing official reaches a decision, or if the certification period expires prior to a decision being rendered, until the expiration of the certification period.
 3. Disqualification at Certification: Participants who are denied benefits during an initial certification or recertification visit or because they have been

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determined to be categorically ineligible may appeal the denial but must not receive benefits while awaiting the hearing.

VII. Denial of request

A. A request for a fair hearing may be denied or dismissed by OAHA for any one of the following reasons:

1. The request is not received within the time frame established by the Department.
2. The request is withdrawn in writing by the applicant/participant or a representative of the applicant/participant.
3. The applicant/participant or representative fails to appear at the hearing without good cause.
4. The applicant/participant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.
5. The sole basis for the hearing is categorical eligibility, and the applicant/participant is not contesting categorical status; or the Department has determined, in a prehearing review, that the applicant/participant is categorically ineligible.
6. The sole basis for the hearing is the applicant/participant request for retroactive benefits.

VII. Time frame for denial

A. Written notification of denial of a fair hearing request must be sent to the applicant/participant or representative within ten days following the date of determination, but no more than 45 days following the filing date.

VIII. Withdrawal of request

A. An applicant/participant may withdraw a request for a fair hearing.

IX. Hearing decision

A. The applicant/participant must receive, by mail, a written decision from OAHA. When a fair hearing decision is unfavorable to the applicant/participant, OAHA must explain the right to pursue judicial review.

PARTICIPANT RIGHTS

WPPM #520-10

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AUTHORITY:

[7 CFR §246.9\(d\) Request for hearing](#)

[22 CCR §40681\(e\) Notification of participant rights and responsibilities](#)

[22 CCR §40703 Fair hearing requests](#)

CROSS REFERENCE:

WPPM 510-50 Race and Ethnicity Data Collection