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**SECTION:** PARTICIPANT RIGHTS

**SUBJECT:** Fair Hearings

**ITEM:** *Fair Hearing Requests and Procedures*



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

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**Policy** Local agencies shall accept all requests for a fair hearing and immediately notify the Program Integrity Unit Chief at the State WIC Branch within 24 hours (1 working day).

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**Basis for policy** 7 CFR, Ch. 11, Section 246.9(d), 22 CCR, Section 40703 (d), and Section 40681(e)

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**Right to request a hearing** Any applicant/participant who is the subject of a state or local agency 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 local agency 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 WPM Section 510-50. There is no charge to the participant for the fair hearing.

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**Time frames and notification of the fair hearing process** Written notification of the time and place of the hearing shall 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 shall be scheduled within three weeks of the filing date.

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**Applicant/  
participant  
rights at  
hearing**

The applicant/participant 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 if desired,
  - bring witnesses,
  - advance arguments without undue interference,
  - question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses, and
  - submit evidence to establish all pertinent facts and circumstances in the case.
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**Other  
Complaints**

If the alleged dispute does *not* result in denial of benefits, the applicant/participant may file a verbal or written complaint with the State WIC Branch. Such complaints will *not* result in a fair hearing.

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**Documenta  
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Local agencies are encouraged to document in ISIS comments, all applicant/participant complaints, including those which are due to reasons other than denial of benefits. This documentation will assist the State WIC Branch in preparation of the required position statement in the event of a fair hearing.

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**Where to  
file**

Requests for a fair hearing may be presented orally or in writing to either the local agency or the Program Integrity Unit Chief at the State WIC Branch.

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**Deadline  
for filing of  
benefits**

The following are timeframe guidelines for filing of benefits:

- Requests for fair hearings: Requests must be made within 60 days from the date the local agency or the State WIC Branch's 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 shall continue to receive Program benefits until the hearing officer reaches a decision, or the participant's certification period expires.
  - 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
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**Deadline for filing of benefits (cont'd)**

adverse action, shall 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.

- Disqualification at Certification: Participants who are denied benefits during an initial or subsequent certification visit or because they have been determined to be categorically ineligible may appeal the denial but shall not receive benefits while awaiting the hearing.
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**Denial of request**

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

- The request is not received within the time frame established by the Department,
  - The request is withdrawn in writing by the applicant/participant or a representative of the applicant/participant,
  - The applicant/participant or representative fails, to appear at the hearing without good cause,
  - 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,
  - 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, or
  - The sole basis for the hearing is the applicant/participant request for retroactive benefits.
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**Time frame for denial**

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

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**Withdrawal of request**

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

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**Hearing decision**

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

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