

1.0 Administration

Effective Date: 7/7/09

1.08 Administrative Appeal of State Agency Decisions

PURPOSE: To detail steps by which a WIC local agency may appeal a decision made by MDCH WIC Division regarding the eligibility of such local agency for participation in the Special Supplemental Food Program for Women, Infants and Children or regarding an adverse decision which has affected the local agency's status.

A. POLICY:

1. Requesting the Administrative Appeal

- a. A request for an administrative appeal is defined as any clear expression that an opportunity to present the matter to a higher authority is desired. A request for an administrative appeal shall be submitted within sixty (60) calendar days from the date the notice of ineligibility for program participation or other adverse decision was mailed to the local agency. If a request for an administrative appeal is made within the period described in this paragraph, the local agency may remain authorized by MDCH to provide WIC services until notified of the decision following the hearing.
- b. The request for an administrative appeal shall be made in writing and submitted to:

**Director, WIC Division
Michigan Department of Community Health
Lewis Cass Building
320 South Walnut
Lansing, Michigan 48913**

The request shall describe the decision that is being appealed and the matters asserted.

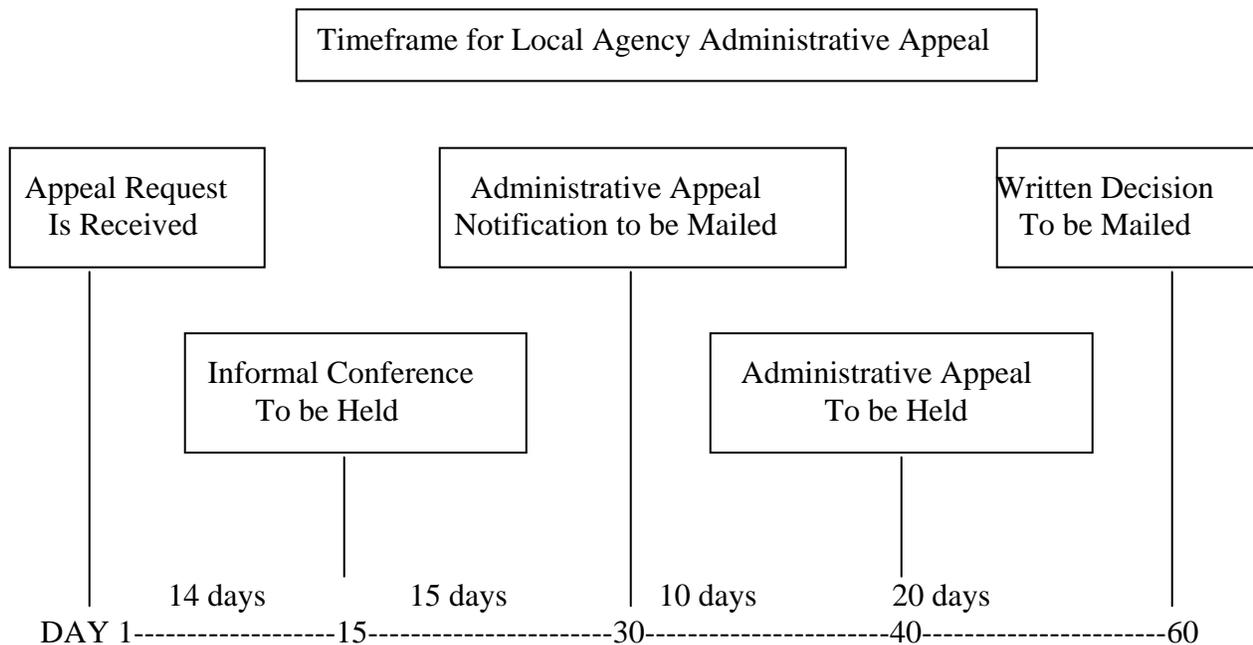
- c. Within fifteen (15) calendar days following receipt of a request for an administrative appeal, MDCH WIC Division shall provide the local agency with an opportunity for an informal conference at the offices of MDCH or at a mutually agreeable place.
 - d. If matters giving rise to the appeal are not resolved to the agreement of all parties at the informal conference, an administrative appeal shall be scheduled within forty (40) calendar days from the date of the request for an administrative appeal.
- ##### 2. Establishing the Administrative Appeal
- a. Upon determination that an administrative appeal is necessary, an administrative officer or panel shall be appointed by the Director of the MDCH WIC Division. Neither the administrative officer nor any member of a panel shall have participated in making the decision under appeal or in any previously held conferences regarding the appeal.

- b. Written notification of the administrative appeal shall be sent to the local agency at least ten (10) calendar days prior to the scheduled administrative hearing date. This notification shall be sent via certified mail and shall specify the time and place of the administrative appeal and the name(s) of the administrative officer or panel members.
 - c. The administrative appeal may be rescheduled once based upon the written request of the local agency, providing the written request is received by the Director prior to the date of the scheduled hearing.
 - d. The local agency or its representative shall be offered an opportunity to examine, prior to, and during the administrative hearing, the documents and records presented to support the decision under appeal.
3. The Administrative Appeal
- a. An opportunity shall be provided for the local agency and to MDCH WIC Division or its representative to present oral or documentary evidence and arguments supporting their position.
 - b. During the administrative appeal, the local agency shall be afforded the opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses.
 - c. The local agency may be represented by counsel or other person of its choice.
4. Decision of the Administrative Officer or Panel
- a. The decision of the administrative officer or panel shall be based on the oral and documentary evidence presented at the administrative appeal. This decision shall be made a part of the administrative appeal record.
 - b. After the administrative appeal, the administrative officer or panel shall, within twenty (20) calendar days from the date of the administrative appeal, notify the local agency or its representative of the decision in writing.
 - c. If the decision upholds the adverse action against the local agency, the local agency or its representative shall be informed in writing of the ability to pursue judicial review of the decision.

5. The Written Appeal Record

- a. A written record will be prepared with respect to the administrative appeal and will include:
 - The decision under appeal.
 - The administrative appeal notification.
 - Any documentation evidence admitted.
 - A summary or verbatim transcript of any oral testimony presented at the administrative appeal.
 - The decision of the administrative officer or panel and reasons for the decision.
 - A copy of the notification to the local agency or its representative of the decision of the administrative officer or panel.

- b. The written record of the administrative appeal shall be kept on file at MDCH for a period of three (3) years and 150 days and shall be made available for examination by the local agency or its representative at any reasonable time and place during the three (3) year and 150 day period.



B. DEFINITION:

Local Agency - Any agency contracted by MDCH to provide WIC services.

Reference:

Federal Regulations, 246.18

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1.09 Civil Rights

PURPOSE: To assure that the civil rights of applicants and clients on the WIC Program are protected.

A. POLICY

1. Local agencies shall include this statement on all local WIC agency developed materials used for WIC applicants and clients that mention WIC:

“In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.”

If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the rest of the text, that “This institution is an equal opportunity provider.”

Include the statement on the following:

- a. Application forms
- b. Termination Notice
- c. Notice of Ineligibility
- d. WIC Outreach flyers, brochures, letters, posters, and web sites
- e. WIC Newsletters
- f. Other materials developed by the local agency with WIC funds where WIC is mentioned.
- g. Paid advertisements in newspapers where WIC is mentioned.

For radio and television public service announcements, the statement “WIC is an equal opportunity provider” is sufficient. Nutrition education and breastfeeding promotion and support materials that strictly provide a nutrition message with no mention of the WIC Program, are not required to contain the non-discrimination statement.

2. Local agencies shall display the USDA non-discrimination poster, “...And Justice for All” (Form AD - 475C, Revised 12-99) or an FNS approved substitute in a prominent place, in each clinic site. This poster shall be in English and in languages appropriate to the local population.

3. Local agencies shall collect and report racial and ethnic data on each WIC client.
4. Applicants or clients who choose not to identify a USDA racial/ethnic category shall not be denied WIC benefits. They shall be advised, however, that if they do not self identify an agency employee will assign a category based on perception.
5. If there is a significant population of non-English speaking applicants:
 - a. Local agencies shall assure that appropriate staff, volunteers or other interpretation or translation resources are available to serve clients or applicants.
 - b. Local agencies shall provide written materials and required program information in appropriate language, and read all rights and responsibilities listed on the Michigan WIC Client Agreement (DCH-0172) to applicants in the appropriate language.
6. Discrimination complaints should be forwarded to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, S.W., Washington, DC 20250-9410.
7. All local agency staff shall be trained annually in areas of civil rights compliance that shall include, but not be limited to, the following:
 - a. Collecting and using racial/ethnic data.
 - b. Effective public notification systems.
 - c. Complaint procedures.
 - d. Compliance review techniques.
 - e. Resolution of non-compliance.
 - f. Requirements for reasonable accommodation of persons with disabilities.
 - g. Requirements for language assistance.
 - h. Conflict resolution.
 - i. Customer Service.
8. WIC forms that request racial/ethnic identification shall also include a statement that the following question is optional. “Your answer will be used for reporting purposes. If you choose not to answer, an agency employee will assign a category to you based on perception.”

9. All new staff shall work through the Civil Rights Self-Instructional Module (DCH-0297) and take the Mastery Test upon completion. The passing grade is 70%. Staff may also use the Blackboard Module #3 on Civil Rights. Staff may take the quiz online and provide a copy to their WIC Coordinator showing a 90% or better score. Names of those passing the test shall be reported annually with the Nutrition Services Plan.
10. Annual Civil Rights policy refresher - those staff who have previously taken and passed the test shall review the Civil Rights policy contents once a year.

B. GUIDANCE

1. Clients should be asked to identify their ethnicity and one or more racial categories that apply to them or their children. If a client declines to identify herself or her children, ethnicity and racial categories may be determined by staff observation.
2. Nutrition Education materials handed out to WIC clients in the program, and not used for outreach purposes, that are not developed or produced by the local agency are not required to contain the non-discrimination statement. If these materials were used for the purpose of outreach to potential applicants and mention the WIC Program, then the non-discrimination statement would be required.
3. Local agency web sites describing the WIC Program should contain the non-discrimination statement.

References:

Federal Regulations 246.8
FNS Instruction 113-1
USDA WIC Program Final Policy Memorandum #2006-3, January 18, 2006.
Civil Rights Training Module, DCH-0297

Exhibit:

1.09A, Discrimination Complaint Form

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Exhibit A

State of Michigan WIC Program/WIC Division Discrimination Complaint Form

Name of Complainant: _____

Address: _____

Phone: _____

Name of Person filing complaint (if different than complainant):

Address: _____

Phone: _____

Name of Local Agency: _____

Contact Person: _____

Address: _____

Phone: _____

Basis for alleged discrimination - Circle all those that apply:

Race Color National Origin Age Sex Disability

Date(s) alleged discrimination occurred: _____

List names, titles, and business address(es) of any person(s) who may have knowledge of the discriminatory action:

Describe, in as much detail as possible, the nature of the incident that led to the filing of this complaint.
(Attach additional sheets, if needed.):

Submit this form to both: Director
USDA-Office of Adjudication and
Compliance
1400 Independence Ave., SW
Washington, DC 20250-9410

Director, Nutrition Program & Evaluation Section
MDCH, WIC Division
Lewis Cass Building
320 South Walnut
Lansing, MI 48913

DCH-0297a (rev. 6/08)

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1.10 Voter Registration

PURPOSE: This policy describes the process local agencies must follow in order to comply with the National Voter Registration Act of 1993 (NVRA). NVRA requires WIC agencies to offer clients the opportunity to register to vote.

A. POLICY:

1. WIC agencies shall offer voter registration services to all WIC clients and authorized persons who are at least 18 years of age (by election day), and document the response in MI-WIC.
2. The offer of voter registration shall be made at certification and recertification appointments, and when a change of address occurs.
3. Each person eligible for voter registration shall be given form #NSP-938B, Voter Registration Application. The top portion of this form is commonly referred to as the "declination form." (See Exhibit 1.10A for a copy of this form.)
 - a. If the person indicates on the form that he or she does not wish to register to vote, or if the person does not check either the "yes" or "no" box, he or she should sign and provide address. Should the person refuse to do this, the WIC staff must initial and date the "declination" portion of the form (top right hand corner). The form is then filed according to local agency procedures.
 - b. If the person indicates that he or she wishes to register to vote, the person shall be given the Voter Registration Application to complete. (See 1.10A Voter Registration Form)
4. Persons requesting assistance to complete voter registration forms shall receive the same assistance that would be given to a person completing any other agency forms. This might include reading aloud or translation.
5. Persons may choose to complete the form outside of the WIC office and mail it themselves, or they may give the completed form to WIC agency staff to mail. Local agency staff shall accept all voter registration forms for mailing, if requested by the individual completing the form.
6. Local Agency staff shall submit completed forms to the clerk of the County, City or Township of the applicant's residence within seven days of application. Addresses for County Clerks are printed on the back of the Voter Registration Application.

If the application is completed within seven days of the "close of registration" for an August primary or November general election, completed registration forms shall be forwarded to the appropriate clerk within one business day.

7. Local agency staff providing voter registration services shall not:
 - a. Seek to influence an applicant's party preference.
 - b. Display any political preference or party allegiance.
 - c. Make any statement or take any action to discourage the applicant from registering to vote.
 - d. Make any statement or take any action that leads the applicant to believe that a decision whether or not to register to vote has any bearing on the availability of services or benefits through the WIC program.
8. Information on voter registration shall be kept strictly confidential. No information regarding a person's declination to register may be used for any purpose other than voter registration. Similarly, if an individual does register to vote, the local agency at which the applicant submits a Voter Registration Application may not be publicly disclosed.
9. Declination forms shall be retained by the local agency for 24 months before discarding.

B. GUIDANCE:

1. Intake and certification staff who record demographic information should conduct voter registration. The voter registration process might take place when the Michigan WIC Client Agreement is reviewed and signed.
2. If a client does not check either the "yes" or "no" box on the declination form, and the client declines to record his/her name and address, local agency staff should initial, date and file the declination form.
3. Voter Registration Forms may be ordered using the WIC E-form ordering process. **The form number is #NSP-938-B.** Forms come in packets of 250.

References:

National Voter Registration Act of 1993 (NVRA)

Cross-References:

1.06 Records Retention and Destruction

Exhibits:

1.10A Voter Registration Form (#NSP-938-B)

