

**Michigan Department of Community Health
ADMINISTRATIVE HEARING PROCEDURES FOR VENDORS**

**Special Supplemental Food Program
for Women, Infants and Children (WIC)**

Section 1. PURPOSE

To establish a process for food vendors to appeal certain adverse actions of the Michigan Department of Community Health to an Administrative Hearing (also called Full Administrative Reviews).

Section 2. LEGAL BASIS

42 USC 1786, 7 CFR 246.18

Section 3. RIGHT TO APPEAL TO AN ADMINISTRATIVE HEARING

A vendor has the right to appeal the following adverse actions taken by the Department.

- A. Denial of the vendor's application for authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods or on a determination that the vendor is attempting to circumvent a sanction.
- B. Termination of an agreement for cause.
- C. Disqualification from the WIC Program.
- D. Imposition of a fine or a civil money penalty in lieu of disqualification.

Section 4. ACTIONS NOT SUBJECT TO ADMINISTRATIVE HEARING

The following adverse actions taken by the Department are not subject to an administrative hearing:

- A. The validity or appropriateness of the Department's vendor limiting or selection criteria.
- B. The validity or appropriateness of the Department's participant access criteria and the Department's participant access determinations.
- C. The Department's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware, did not approve of, and was not involved in the conduct of the violations.

- D. Denial of authorization if the Department’s vendor authorization is subject to the procurement procedures applicable to the Department.
- E. The expiration of a vendor’s agreement.
- F. Disputes regarding food instrument payments and vendor claims.
- G. Disqualification of a vendor as a result of disqualification from the Food Stamp Program.

Section 5. NOTIFICATION OF ADVERSE ACTION AND EFFECTIVE DATE

- A. The Department shall provide to the vendor written notification of the adverse action that includes: (1) the procedures to follow to obtain an administrative hearing; (2) the reasons for the adverse action; (3) the effective date of the adverse action, if applicable.
- B. Notification of the adverse action shall be mailed to a vendor at least 21 calendar days in advance of the effective date of action except as provided in Section 6 below for 15-day Termination Orders.
- C. The effective date of the termination and permanent disqualification of a vendor as the result of a conviction of the vendor for trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substance Act – 21 USC 802) in exchange for food instruments shall be on the date of receipt of the notice of adverse action by the vendor. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such termination and disqualification.
- D. Except as provided in paragraph C above and in Section 7 below, a vendor who has timely appealed an adverse action by the Department may be allowed to remain on the WIC Program until the effective date of the final order or the contract expires, whichever occurs first. An appeal shall not require that the Department enter into a new contract with the vendor after expiration of the current contract.

Section 6. PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

- A. An appeal is commenced by filing a request for an administrative hearing with the Department. The request shall be addressed to:

State Office of Administrative Hearings and Rules
For the Department of Community Health
Michigan Department of Community Health
P.O. Box 30763
Lansing, MI 48909

- B. A request for an administrative hearing shall be made in writing and shall include a statement of the facts asserted, the relief sought, and if the vendor is represented by legal counsel, the name, address and telephone number of the attorney.
- C. A request for an administrative hearing shall be received by the Department within 21 calendar days of the date of mailing of the notice of the adverse action by the Department. Any request for an administrative hearing received later than 21 days after the date of mailing of the adverse action notice is untimely and an administrative hearing will not be conducted.

Section 7. 15-DAY TERMINATION ORDERS

- A. Upon a finding that the vendor has violated its contract, the regulatory or statutory provisions governing the WIC Program or the State Plan of Program Operation and Administration approved by the United States Department of Agriculture which seriously affect the public health, safety or welfare or the integrity of the WIC Program, the Department may issue an order terminating a vendor's WIC contract effective 15 days from the date of service of the order. The order shall incorporate the Department's findings.
- B. Upon issuance of a 15-Day Termination Order, the Department shall provide the vendor with an opportunity for a hearing within five business days after the service of the Order. "Business day" means a day of the year, exclusive of a Saturday, Sunday or a State holiday. The hearing date, time and location shall be specified in the 15-Day Termination Order. Except as modified by this section, the hearing shall be conducted in accordance with these Administrative Hearing Procedures for Vendors.
- C. The conduct of a hearing under this section shall not suspend the effectiveness of the Department's 15-Day Termination Order.
- D. A 15-Day Termination Order may include sanctions in addition to contract termination, such as disqualification of the vendor from the WIC Program.

Section 8. INITIATION OF HEARINGS

- A. Following timely receipt of a written request for an administrative hearing, the Department shall provide the vendor with an opportunity for a hearing at the offices of the Michigan Department of Community Health.
- B. Notification of the hearing shall be sent certified mail and shall include
 - 1. The time and location of the hearing.
 - 2. The name of the presiding Hearing Officer.

- C. The notice of hearing must be mailed at least 10 calendar days prior to the scheduled administrative hearing date.

Section 9. SERVICE OF DOCUMENTS

Unless otherwise specified, service of a document upon any party shall be made by personal delivery or mailing by registered, certified, or first class mail to the last known address of the party or the authorized representative of a party as indicated on the records of the Department. Proof of service shall be filed with the Department.

In order to maintain a complete record of the administrative proceedings, copies of all documents and correspondence sent to the presiding officer shall also be sent to the Department at the address stated in Section 6 above.

Section 10. APPEARANCES

A party may appear in person, or by legal counsel.

Section 11. PLEADINGS

All pleadings, including a request for appeal, must be in writing and shall contain the vendor's name and vendor number, if any.

Section 12. COMPUTATION OF TIME

If any filing deadline falls on a Saturday, Sunday or State holiday, the filing deadline shall be extended to the next business day following the Saturday, Sunday or State holiday.

Section 13. PRESIDING OFFICER

The individual presiding during the appeal shall not have participated in making the decision that is under appeal.

Section 14. VENDOR'S RIGHTS AT AN ADMINISTRATIVE HEARING

- A. The opportunity to be represented by legal counsel.
- B. The opportunity prior to the administrative hearing to examine the evidence upon which the Department's action is based.
- C. The opportunity to present its case and at least one opportunity to reschedule the administrative hearing date upon specific request.
- D. The opportunity to cross-examine adverse witnesses. When necessary to protect the identity of WIC Program investigators, such examination may be

conducted behind a protective screen or other device (also referred to as an “in camera” examination).

- E. An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied Federal and State statutes, regulations, policies and procedures governing the Program, according to the evidence presented at the review.
- F. Written notification of the hearing decision, including the basis for the decision, within 90 days from the date of receipt of a vendor’s request for an administrative hearing. The time frame of 90 days is only an administrative requirement for the Department and does not provide a basis for overturning the Department’s adverse action if a decision is not made within the specified time frame.

Section 15. FINAL ORDER

The Final Order constitutes the Department’s final decision on the appeal. A copy of the Final Order shall be sent by certified mail or served personally upon the vendor. If the adverse action under review has not already taken effect, the Final Order becomes effective on the date of receipt of the Final Order.

Section 16. JUDICIAL REVIEW

Disqualification of a vendor from the WIC Program as a result of disqualification from the Food Stamp Program is not subject to judicial review.

The vendor may be able to pursue judicial review of the Final Order in accordance with MCL 600.631; MCR 7.101; 7.103 and MCR 7.104(A).

Section 17. ADDITIONAL INFORMATION - MDCH ADMINISTRATIVE HEARINGS POLICY AND PROCEDURES

For additional information or for questions on the Administrative Hearing Procedures for Vendors, please contact the State Office of Administrative Hearings and Rules For the Department of Community Health, P.O. Box 30763, Lansing, Michigan 48909 or by telephone at 1-877-833-0870. A copy of the Michigan Department of Community Health’s Administrative Hearings Policy and Procedures can be obtained at the above address and telephone number or contact them for their web site address.