

## 7.0 Vendor Appeals

Effective Date: 08-01-2021

### 7.02 Adverse Actions Subject to Appeal

**PURPOSE:** To establish those adverse actions and WIC Vendor Application denials which may be appealed through administrative review, administrative hearing, or are not appealable.

#### DEFINITIONS:

*Administrative hearing* means a formal proceeding held before an administrative law judge to resolve disputes between a Vendor or Vendor Applicant and the Department.

*Administrative review* means an appeal process that is solely a review of written documents and does not involve an administrative hearing in front of a judge.

*Sanction* means a punitive or adverse action taken against a WIC Vendor for identified program violations. Sanctions may include, but are not limited to, termination, disqualification, and civil money penalties in lieu of disqualification.

*Trafficking* means at least one incidence of buying or selling WIC benefits for cash.

*WIC benefits* means electronic benefits that can be used to purchase WIC-approved food items from authorized WIC Vendors using a WIC electronic benefits transfer (EBT) card.

#### A. POLICY:

1. *Administrative Review.* A Vendor or Vendor Applicant (Vendor) has the right to appeal the following adverse actions taken by the Department via administrative review:
  - a. Denial of a WIC Vendor Application for the following: (See Exhibit 2.01B WIC Vendor Application (MDHHS-5942-V) and 2.01C WIC Pharmacy Vendor Application (MDHHS-5942-P).)
    - i. Failure to meet WIC Vendor Selection Criteria, unless the Vendor failed to meet minimum stock requirements or attempted to circumvent a sanction. (See Policy 2.02 Vendor Selection Criteria.) This includes, but is not limited to, the following criteria:
      1. Business integrity. (See Federal Regulations 7 CFR Part §246.12 (g).)
      2. Authorization and good standing in the Supplemental Nutrition Assistance Program (SNAP). This includes denial based on a SNAP civil money penalty for hardship.
      3. Competitiveness of prices for WIC-approved foods. (See Policy 2.03 Vendor Peer Groups.)

4. Total WIC sales for any 12-month period that do not exceed 50% of the Vendor's total annual food sales.
    - ii. A current or previously applied sanction, such as disqualification from the program.
    - iii. The Department's WIC Vendor Limitation Policy. (See Policy 2.04 Vendor Limitation Policy.)
    - iv. An incomplete or untimely application.
    - v. Failure to attend a required training. (See Policy 4.02 Initial Training of New Vendors and 4.03 Training for Authorized Vendors.)
    - vi. False statements on an application, contract, or any other communication to the Department.
  - b. Termination of a WIC Vendor Contract for the following: (See Exhibit 2.01A WIC Vendor Contract and 2.05B WIC Pharmacy Vendor Contract.)
    - i. False statements on an application, contract, or any other communication to the Department.
    - ii. Change in ownership or location, or cessation of operations.
  - c. Disqualification based on:
    - i. A trafficking conviction.
    - ii. A civil money penalty for hardship imposed by SNAP.
  - d. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency.
2. *Administrative Hearing.* A Vendor has the right to appeal the following adverse actions taken by the Department via an administrative hearing:
  - a. Denial of a WIC Vendor Application for the following:
    - i. Failure to maintain mandatory minimum stock, as identified on a WIC Vendor Application or documented during a preauthorization site visit. (See Exhibit 2.01B WIC Vendor Application (MDHHS-5942-V), 2.01C WIC Pharmacy Vendor Application (MDHHS-5942-P), 2.01D Pre-authorization Report (MDHHS-5940-V), 2.01E Quality Exception Pre-authorization Report (MDHHS-

5940-Q), 2.01F Pharmacy Pre-authorization Report (MDHHS-5940-P), and 2.02A WIC Vendor Minimum Stock Requirements.)

- ii. Determination that the Vendor has attempted or is attempting to circumvent a sanction.
  - b. Termination of a WIC Vendor Contract for cause, as outlined in the WIC Vendor Sanction Schedule, with exception of the following sanctions: *WIC Vendor Sanction Schedule, Section II, Items 1, 5, 7, 8, 9, 10, and 14.* (See Exhibit 6.01A WIC Vendor Sanction Schedule.)
  - c. Disqualification from the WIC Program, unless the disqualification is based on a disqualification from the Supplemental Nutrition Assistance Program (SNAP).
  - d. Imposition of a fine or a civil money penalty in lieu of disqualification.
3. *Not Subject to Appeal.* Actions taken by the Department that are not subject to appeal include, but are not limited to, the following:
- a. The validity or appropriateness of the Department's:
    - i. WIC Vendor Limitation Policy or WIC Vendor Selection Criteria. (See Policy 2.02 Vendor Selection Criteria and 2.04 Vendor Limitation Policy.)
    - ii. Exercise of its discretion to apply exceptions to the WIC Vendor Limitation Policy. (See Policy 2.04 Vendor Limitation Policy.)
    - iii. Criteria employed during the process for ranking the competitiveness of Vendor Applicants.
    - iv. Criteria for establishing peer groups. (See Policy 2.03 Vendor Peer Groups.)
    - v. Assessment of the competitiveness of prices.
    - vi. Criteria used to identify whether a Vendor's WIC sales exceed 50% of its total annual food sales.
    - vii. Criteria for making participant access determinations or any outcome of a participant access determination. (See Policy 2.04 Vendor Limitation Policy.)
    - viii. Prohibition of incentive items.
  - b. The Department's decision:
    - i. To include or exclude an infant formula manufacturer, wholesaler,

distributor, or retailer from any list provided to Vendors as acceptable sources for purchasing infant formula.

- ii. Whether to notify a Vendor in writing when an investigation reveals an initial violation for which a pattern of violations is required to be established before a sanction can be imposed.
  - iii. Whether a Vendor had an effective policy and program in effect to prevent trafficking and whether the Vendor's owning entity was aware of, approved of, or was involved in trafficking.
- c. The expiration of a WIC Vendor Contract. (See Policy 2.06 Contract Expiration & Termination.)
  - d. Disputes regarding WIC benefit payments and Vendor claims.
  - e. Disqualification of a Vendor from WIC based on a disqualification from SNAP.

#### References:

- [7 CFR Part §246.12 \(g\)](#)
- [7 CFR Part §246.18 \(a\)](#)

#### Cross-references:

- [2.02 Vendor Selection Criteria](#)
- [2.03 Vendor Peer Groups](#)
- [2.04 Vendor Limitation Policy](#)
- [2.06 Contract Expiration & Termination](#)
- [4.02 Initial Training of New Vendors](#)
- [4.03 Training for Authorized Vendors](#)

#### Exhibits:

- [2.01B WIC Vendor Application](#)
- [2.01C WIC Pharmacy Vendor Application](#)
- [2.01D Pre-authorization Report](#)
- [2.01E Quality Exception Pre-authorization Report](#)
- [2.01F Pharmacy Pre-authorization Report](#)
- [2.02A WIC Vendor Minimum Stock Requirements](#)
- [2.05A WIC Vendor Contract](#)
- [2.05B WIC Pharmacy Vendor Contract](#)
- [6.01A WIC Vendor Sanction Schedule](#)