

7.0 Vendor Appeals

Effective Date: 02-01-2024

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.

Civil money penalty (CMP) means a monetary fine that is calculated in lieu of termination and disqualification when a sanction or adverse action is being taken against a Vendor.

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 Exhibits 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 (refer to Item 2a below). (See Vendor Policy 2.02 Vendor Selection Criteria.) This includes, but is not limited to, the following criteria:
 1. Business integrity. This includes, but is not limited to, false statements on an application, contract, or any other communication to the Department. (See Federal Regulation 7 CFR Part §246.12 (g).)
 2. Authorization and good standing in the Supplemental Nutrition

Assistance Program (SNAP). This includes denial based on a current SNAP disqualification or civil money penalty (CMP) 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.
 5. Compliance history with WIC program policies, rules and regulations. (E.g., a current or previously applied sanction, such as disqualification from the program, or failure to attend a required training.) (See Policy 4.01 Training of WIC Vendors.)
- ii. The Department's WIC Vendor limiting criteria. (See Policy 2.04 Vendor Limitation Policy.)
 - iii. An incomplete or untimely application.
- b. Termination of a WIC Vendor Contract for the following: (See Exhibits 2.01A WIC Vendor Contract and 2.05B WIC Pharmacy Vendor Contract.)
- i. Change in ownership or location.
 - ii. Cessation of operations.
 - iii. Failure to attend the required interactive training (i.e., at least once every three (3) years.) (See Policy 4.01 Training of WIC Vendors and Exhibits 2.05A WIC Vendor Contract and 2.05B WIC Pharmacy Vendor Contract.)
- c. Disqualification based on:
- i. A trafficking conviction.
 - ii. A CMP for hardship imposed by SNAP.
- d. Disqualification or a CMP imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency.
- e. A CMP imposed in lieu of disqualification based on a SNAP disqualification under 7CFR Part § 246.12(l)(1)(vii).
- f. The application of the Department's:
- i. Peer group criteria.

- ii. Criteria used to identify whether a Vendor's WIC sales exceed 50% of its total annual food sales.
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-V2.01D Pre-authorization Report (MDHHS-5940-V), 2.01E Quality Exception Pre-authorization Report (MDHHS-5940-Q), 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 Sections II and III of the WIC Vendor Sanction Schedule unless specified as appealable via administrative review above (e.g., termination due to change in ownership or location, or cessation of operations). (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) (see item 3(e) below) or a CMP for hardship imposed by SNAP (see item 1(c)(ii.) above).
 - d. Imposition of a fine or a CMP 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 limiting criteria or WIC Vendor selection criteria. (See Vendor Policies 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 Vendor 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 Vendor 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 Vendor Policy 2.06 Contract Expiration & Termination.)
- d. Disputes regarding WIC benefit payments and Vendor claims (other than the opportunity to justify or correct an overcharge or error, as permitted by 7 CFR § 246.12(k)(3)).
- 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](#)

[4.01 Training of WIC Vendors](#)

Exhibits:

[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 \(MDHHS-5940-P\)](#)
- [2.02A WIC Vendor Minimum Stock Requirements](#)
- [2.05A WIC Vendor Contract](#)
- [2.05B WIC Pharmacy Vendor Contract](#)
- [6.01A WIC Vendor Sanction Schedule](#)