

MI-WIC POLICY

Administration

1.0 Administration

Effective Date: 05/31/2018

1.04 Fair Hearing

PURPOSE: This policy establishes the procedures under which an individual, parent, guardian and/or other representative may appeal an adverse action made by the State or a local WIC agency. State and local agencies shall process each request for a hearing under uniform rules of procedure and shall make these rules of procedure available for public inspection and copying.

A. POLICY:

1. Availability of Hearings

- a. The local agency shall provide a fair hearing for an adverse action made by the agency. Adverse actions include one or more of the following:
 - i. a claim against the individual for re-payment of the cash value of improperly issued benefits;
 - ii. results in the individual's denial of participation;
 - iii. disqualification from the WIC program.

2. Notification to Clients and Applicants

- a. At the time an adverse action is imposed, the local agency shall inform each individual in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Notification of the right to a fair hearing is not required at the expiration of a certification period.
- b. The local WIC agency shall provide the client with an opportunity for an informal meeting at the offices of the local WIC agency Coordinator or their delegate or at a mutually agreeable place or by phone. If the client is interested, the informal meeting must be held within seven (7) calendar days following the receipt of the request for a fair hearing.
- c. The issue shall be resolved at the informal meeting, if one of the following applies:
 - i. Client and local agency agree the sanction is appropriate. The applicant/client shall sign the Settlement Agreement Form, and the sanction becomes final. Refer to MI-WIC Policy 9.01 - Client Restitution Settlement Agreement Form.
 - ii. The client and local agency both agree sanction is inappropriate, the sanction is removed and benefits begin immediately if applicable.

NOTE: In either case it is not necessary to provide a fair hearing.

- d. If a client disagrees with the informal meeting decision or does not attend the informal meeting a fair hearing shall be scheduled within twenty-one (21) calendar days from the date of the original request for a fair hearing. The local agency shall insure the hearing is accessible to the client. The local agency shall provide the client with a minimum of ten

(10) calendar days advance written notice of the time and place of the hearing and shall enclose an explanation of the Fair Hearing Procedure for WIC Clients. Refer to MI-WIC Policy Exhibit 1.04A.

3. Request for a Fair Hearing

- a. A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present his or her case to a higher authority, when an adverse action is determined.
- b. Local agency staff shall provide a copy of the Fair Hearing Procedure for WIC Clients who request a fair hearing or more information about fair hearings.
- c. The local agency shall not limit or interfere with the individual's freedom to request a fair hearing.
- d. The client and/or representative shall be provided an opportunity to:
 - i. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
 - ii. Be assisted or represented by an attorney or other persons (at the client's expense).
 - iii. Bring witnesses.
 - iv. Advance arguments without undue interference.
 - v. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses and circumstances in the case.
 - vi. Submit evidence to establish all pertinent facts and circumstances in the case.
- e. The Local agency shall appoint an impartial hearing official to conduct the hearing. This person should not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. In cases where the appointed hearing official is not available, a backup official must be appointed.
- f. The hearing official shall:
 - i. Ensure that all relevant issues are considered.
 - ii. Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised.
 - iii. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing.
 - iv. Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the client and/or representative and the local agency.
 - v. Render a hearing decision which will resolve the dispute.

4. Time Limit for Request

- a. A request for a fair hearing must be made within **60 calendar days** from the date of the notice of adverse action.

- b. If the request is made within 15 calendar days from the date of the notice of adverse action, refer to #6 for continuation of benefits.

5. Denial or Dismissal of Request. A fair hearing request may be denied or dismissed for the following reasons:

- a. The request does not meet the criteria for a fair hearing. See #1.
- b. The request is received more than 60 calendar days after the notification of the adverse action.
- c. The individual withdraws the request in writing.
- d. The individual does not appear at the scheduled hearing (without good cause).
- e. The individual was denied participation by a previous hearing and cannot provide evidence that circumstances have changed enough to justify a hearing.

6. Continuation of Benefits

- a. Clients who appeal the termination of benefits within 15 calendar days of the date of the adverse notice must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, clients whose certification period has expired or clients who become categorically ineligible for benefits.
- b. Applicants who are denied benefits at initial certification, or clients who become categorically ineligible during a certification period (or whose certification period expires), may appeal the denial or termination, but must not receive benefits while awaiting the hearing or its results.
- c. There will be no retroactive benefits. If a hearing decision is rendered which supports the client, then he/she will be provided benefits prospectively.

7. Decision of Fair Hearing

- a. Decisions of the hearing official shall be based upon the application of appropriate Federal and State law, regulations, and policy as related to the facts of the case as established in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by the hearing official. The decision by the hearing official shall summarize the facts of the case, specify the reason for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.
- b. Within 45 calendar days of the receipt of the request for the hearing, the local agency shall notify the client or representative in writing of the decision and the reasons for the decision in accordance with this document. If the decision is in favor of the client and

benefits were denied or discontinued, benefits shall begin immediately. If the decision confirms disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits as decided by the hearing official. If the decision regarding repayment of benefits by the client is in favor of the agency, the State or local agency shall resume its efforts to collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State agency.

- c. The client may appeal a local hearing decision to the State agency, provided that the request for appeal is made within 15 calendar days of the mailing date of the hearing decision notice. If the decision being appealed concerns disqualification from the program, the client shall not continue to receive benefits while an appeal to the state agency is pending. The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official. The appeal to the state WIC Program shall be addressed to:

Michigan Department of Health and Human Services
Director, WIC Program
Lewis Cass Building
320 S. Walnut
Lansing, MI 48913

- d. The State and local agency shall make all hearing records and decisions available for public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.
- e. If the state level upholds the agency action and the client expresses an interest in pursuing a higher review of the decision, the State agency shall explain the right to pursue judicial review of the decision.

8. Retention of Fair Hearing Records

- a. The local agency is responsible for retention of all documents related to the fair hearing for a period of three years plus 150 days following the close of the fiscal year in which the hearing was concluded. The State or local agency shall retain the hearing records and make these records available, for copying and inspection, to the client and or representative at any reasonable time. (See MI-WIC Policy 1.06, Records Retention and Destruction).

9. Fair Hearing Procedure

- a. The local agency shall conduct the hearing in accordance with the requirements in Exhibit 1.04A, Fair Hearing Procedure for WIC Clients.

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References:

Federal Regulations - 246.9 Fair Hearing Procedures for Participants, 246.25 Records and Reports
Federal Regulations - 246.7(j) (6)
FNS Instructions 819-2, 10-22-82

Cross References:

1.06 Records Retention and Destruction
2.18 Notification of Client Rights and Responsibilities

Exhibits:

1.04A Michigan Fair Hearing Procedure for WIC Clients