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Title 22@ Social Security

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Division 2@ Department of Social Services-Department of Health Services

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Part 2@ Health and Welfare Agency-Department of Health Services Regulations

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Subdivision 6@ Preventive Medical Services

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Chapter 6@ California Special Supplemental Food Program for Women, Infants and Children

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Article 4@ Fair Hearing Procedures for Participants

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Section 40703@ Fair Hearing Requests

40703 Fair Hearing Requests

(a)

A hearing process shall be provided to any participant who appeals (1) The Department's or local agency's action which results in the participant's denial of participation or disqualification from the Program, or (2) The Department's request for repayment of the cash value of program benefits overissued as a result of the participant intentionally misrepresenting information.

(1)

The Department's or local agency's action which results in the participant's denial of participation or disqualification from the Program, or

(2)

The Department's request for repayment of the cash value of program benefits overissued as a result of the participant intentionally misrepresenting information.

(b)

Requests for a fair hearing may be made on behalf of the applicant or participant by a parent, guardian, caretaker, or other representative.

(c)

The Department or local agency shall provide participants up to sixty (60) calendar days to request a fair hearing from the date the Department or the local agency mails or gives the participant the notice to deny participation, the notice of disqualification, or the request for repayment.

(d)

The Department and local agency shall not deny the right to, or dismiss a request for, a hearing unless: (1) The request is not received within the timeframes established by the Department. (2) The request is withdrawn by the appellant or representative of the appellant. (3) The appellant or representative fails to appear at the hearing without good cause. (4) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing. (5) The sole basis for the hearing is categorical eligibility, and the appellant is not contesting the categorical status of the participant, or the Department has determined in a prehearing review that the appellant is categorically ineligible. Categorical ineligibility shall be documented and the documentation shall be maintained on file at the local agency. (6) The sole basis for the hearing is the appellant's request for retroactive benefits.

(1)

The request is not received within the timeframes established by the Department.

(2)

The request is withdrawn by the appellant or representative of the appellant.

(3)

The appellant or representative fails to appear at the hearing without good cause.

(4)

The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

(5)

The sole basis for the hearing is categorical eligibility, and the appellant is not

contesting the categorical status of the participant, or the Department has determined in a prehearing review that the appellant is categorically ineligible. Categorical ineligibility shall be documented and the documentation shall be maintained on file at the local agency.

(6)

The sole basis for the hearing is the appellant's request for retroactive benefits.

(e)

Except for participants whose certification period has expired, participants who appeal the termination of benefits within the fifteen (15) calendar days advance adverse notice period provided for in Section 40681 of these regulations shall continue to receive Program benefits until the hearing officer reaches a decision, or the participant's certification period expires, which ever occurs first. However, applicants who are denied benefits at initial certification or because of the expiration of their current certification, or because they have been determined to be categorically ineligible, may appeal the denial, but shall not receive benefits while awaiting the hearing.

(f)

A written notice of hearing shall be sent to the appellant or representative and the local agency at least 10 calendar days prior to the scheduled date of the hearing.

(g)

The notice of hearing shall: (1) Specify the date, time, and place of the hearing; (2) Explain the manner in which the hearing will be conducted; (3) Apprise the petitioner of the rights stipulated in Section 40705(b) of these regulations; (4) State that failure to appear at the hearing without good cause shall constitute waiver of the hearing; (5) Advise the appellant whether WIC Program benefits will be continued pending the fair hearing decision.

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Specify the date, time, and place of the hearing;

(2)

Explain the manner in which the hearing will be conducted;

(3)

Apprise the petitioner of the rights stipulated in Section 40705(b) of these regulations;

(4)

State that failure to appear at the hearing without good cause shall constitute waiver of the hearing;

(5)

Advise the appellant whether WIC Program benefits will be continued pending the fair hearing decision.

(h)

The fair hearing shall be conducted by an impartial hearing official who does 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.

(i)

The fair hearing shall be held within three weeks from the date the Department received the request for a hearing.

(j)

The hearing official shall take the matter under submission at the conclusion of the hearing. A proposed decision shall be submitted to the Chief of the Department's Family Health Division (Division Chief) or designee. Upon submission to the Division Chief, a copy of the proposed decision shall be delivered to the Department's representative.

(k)

The Division Chief may adopt the proposed decision without change, prepare a decision based upon the hearing record, or remand the matter back for further hearing and decision.

(l)

The decision shall be final upon adoption by the Division Chief. Copies of the decision of the Division Chief shall be sent by certified mail to the local agency and delivered to the Department's representative.

(m)

The appellant shall be notified in writing of the hearing decision within forty-five (45) calendar days from the date on which the request for the hearing was received by the Department. This timeframe may be extended if the petitioner has requested and been granted a postponement of the hearing. A fair hearing decision unfavorable to the appellant shall explain the right to pursue judicial review of the decision. Benefits shall not continue during judicial review of a fair hearing decision.

(n)

If the decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. No retroactive benefits shall be provided. If the decision 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 appellant is in favor of the agency, the 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 Department.

(o)

All hearing records and decisions shall be made available for public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.

(p)

There shall be no right to reconsideration of the decision adopted by the Division Chief.