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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 7@ Food Delivery System

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Section 40751@ Administrative Appeals for Food Vendors of Departmental Decisions

40751 Administrative Appeals for Food Vendors of Departmental Decisions

(a)

A food vendor may request an appeal in writing to examine any adverse action affecting food vendor participation. The appeal shall be addressed to Administrative Hearings and Appeals at the location stated in the correspondence from the Program. The following shall not constitute an adverse action and shall not be subject to appeal or administrative review: (1) Expiration of a food vendor agreement with a food vendor. (2) Disqualification of a food vendor who has received a final determination by USDA of disqualification from the Food Stamp Program. (3) Determinations by the Program regarding the adequacy of participant access to food vendors.

(1)

Expiration of a food vendor agreement with a food vendor.

(2)

Disqualification of a food vendor who has received a final determination by USDA of disqualification from the Food Stamp Program.

(3)

Determinations by the Program regarding the adequacy of participant access to food vendors.

(b)

An adverse action against a food vendor shall be effective on the date determined by the Program after the fifteen (15) calendar day advance notification period has elapsed except for a disqualification based on Section 40740(c) of this Article, which becomes effective on the date of receipt of the notice of disqualification. The food vendor shall not be permitted to redeem food instruments after the effective date of the disqualification, even if there is an appeal pending, unless the Program postpones the effective date of the disqualification until after the appeal process, subject to the limitations as set forth in (d) of this Section.

(c)

If a food vendor agreement will expire during the administrative appeal process involving disqualification of a food vendor, the disqualification shall be effective no later than the expiration date of the food vendor agreement.

(d)

Postponement of the effective date of a disqualification until a hearing decision is rendered may be granted to the food vendor if the food vendor has filed an appeal within the time frames specified in (e)(2) of this Section and: (1) the proposed disqualification is not a result of any violation of Section 40740 of this Article; and (2) the food vendor has not committed prior violation(s) which resulted in a previous disqualification; and (3) the food vendor has not committed additional violations after receiving the Program's notice of a proposed adverse action. If additional violations occur, the disqualification shall take effect no sooner than fifteen (15) days after the Program's notice to the food vendor that the additional violations have occurred.

(1)

the proposed disqualification is not a result of any violation of Section 40740 of this Article; and

(2)

the food vendor has not committed prior violation(s) which resulted in a previous disqualification; and

(3)

the food vendor has not committed additional violations after receiving the Program's notice of a proposed adverse action. If additional violations occur, the disqualification shall take effect no sooner than fifteen (15) days after the Program's notice to the food vendor that the additional violations have occurred.

(e)

The Department shall, at a minimum, provide the following food vendor appeal procedure: (1) Written adequate notice of the adverse action, the reasons for the action, and the effective date of the action. Such notice shall be provided to participating food vendors not less than fifteen (15) calendar days in advance of the effective date of the action, except for a disqualification based on Section 40740 (c) of this Article, which becomes effective on the date of receipt of the notice of disqualification. (2) The food vendor shall have thirty (30) calendar days following the written notice of the action to request an appeal in writing. The request may be amended at any time during the thirty (30) calendar day period. (3) Any requests for an appeal received beyond thirty (30) calendar days shall be denied and the adverse action deemed final. (4) The request for appeal shall be known as the "Statement of Disputed Issues." It shall be in writing, signed by the food vendor or the authorized agent, and shall state the address and telephone number of the food vendor and of the agent, if any agent has been designated. A food vendor shall specify the name and address of the individual authorized on behalf of the food vendor to receive any and all documents, including the final decision of the Director, relating to proceedings conducted pursuant to this Section.

The Statement of Disputed Issues need not be formal, but it shall be specific as to each issue in dispute, setting forth the food vendor's contentions as to those issues and the estimated amount each issue involves, if applicable. Only those issues raised in the Statement of Disputed Issues shall be considered at the hearing. (5) Written notice of the time and place of appeal shall be mailed to each party at least thirty (30) calendar days before the date of the appeal hearing. This period may be shortened with the consent of the parties. (6) If written position statements are filed, they shall be served on the hearing auditor and the other parties at least ten (10) calendar days prior to the hearing. (7) The hearing shall be conducted by an impartial party designated by the Director. (8) The proceeding shall be electronically recorded. (9) Upon specific request, the Department shall allow either party one opportunity to reschedule the hearing. The hearing shall be rescheduled within thirty (30) calendar days of the original hearing date. No other continuances shall be granted. (10) Any number of proceedings may be coordinated for hearing or decision when the facts and circumstances are similar and no substantial right of any party will be prejudiced. (11) Testimony shall be taken only on oath, under penalty of perjury. (12) Each party shall have the right to: (A) Be represented by counsel, if desired. (B) Call and examine parties and witnesses. (C) Introduce exhibits. (D) Question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination. (E) Impeach any witness, regardless of which party first called the witness to testify. (F) Rebut the evidence against him. (13) The food vendor shall not be called to testify during presentation of the Department's prima facie case. A food vendor who thereafter fails to testify, in the food vendor's behalf, may be called and examined by the Department as if under cross-examination. (14) The appeal hearing need not be conducted according to technical rules relating to evidence

and witnesses. (A) Relevant evidence, including hearsay, shall be admitted if it is the sort of evidence which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. (B) Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (C) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. (D) The following additional exception to the "best evidence" rule, Evidence Code Section 1500, applies: 1. A duplicate is admissible to the same extent as an original unless: a. A genuine question is raised as to the authenticity of the original or the duplicate. b. It would be unfair to admit the duplicate in lieu of the original. (E) A hearing auditor may question any party or witness, and may admit any relevant and material evidence. (F) The hearing auditor shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing auditor shall set forth the order in which evidence will be received. (15) The Department has the initial burden of proof and, therefore, shall present its audit findings and evidence first at the hearing. Once the Department has presented a prima facie case, the burden of proof shifts to the food vendor to demonstrate that the food vendor's position regarding disputed issues is correct. (16) The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence. (17) The food vendor hearing shall be conducted in the English language. (18) The hearing auditor may require any party to submit written memoranda pertaining to any or all issues raised in the appeal hearing within the above time frames. (19) The hearing

auditor shall take the matter under submission at the conclusion of the hearing. A proposed decision shall be submitted to the Director for adoption by the Director or designee. Upon submission to the Director, a copy of the proposed decision shall be mailed by certified mail to the designated representative of the food vendor and delivered to the Department's representative. (20) The Director or his designee may: (A) Adopt the proposed decision without reading or hearing the record. (B) Reject the proposed decision and have a decision prepared based upon the documentary and electronically recorded record, with or without taking additional evidence. (C) Refer the matter back to Administrative Hearings and Appeals to take additional evidence. If the case is so assigned, the hearing auditor shall prepare a proposed decision upon the additional evidence and the documentary and electronically recorded record of the prior hearing. A copy of such proposed decision shall be furnished to each party and to each party's representative. (21) The decision shall be final upon adoption by the Director. Copies of the decision of the Director shall be mailed by certified mail to the designated representative of the food vendor. (22) An appeal shall be dismissed if a food vendor fails to appear. The notice of dismissal shall be mailed to each party. (23) The Director may vacate any dismissal if the food vendor makes an application in writing, within ten (10) calendar days after personal service or receipt of such dismissal, showing good cause for failure to appear at the hearing. (24) The parties shall be given written notice of an order granting or denying any application to vacate a decision. (25) Once the Director's decision has been adopted, there shall be a right to reconsideration of amounts identified by audit as overpayments. (26) The food vendor shall have a right to submit a Petition for Reconsideration of such overpayments. The Petition for Reconsideration shall be submitted to the Director within thirty (30) calendar days of the adoption of the Director's decision. (27) The

Petition for Reconsideration shall set forth the changes in material facts, circumstances, or other information which have bearing on the Director's decision.

(28) There shall be no right to reconsideration of a decision by the Department to disqualify the food vendor or terminate the food vendor agreement. (29) Any right to judicial review shall be communicated to the food vendor in the event that the Department renders an appeal decision which is adverse to the food vendor.

(1)

Written adequate notice of the adverse action, the reasons for the action, and the effective date of the action. Such notice shall be provided to participating food vendors not less than fifteen (15) calendar days in advance of the effective date of the action, except for a disqualification based on Section 40740 (c) of this Article, which becomes effective on the date of receipt of the notice of disqualification.

(2)

The food vendor shall have thirty (30) calendar days following the written notice of the action to request an appeal in writing. The request may be amended at any time during the thirty (30) calendar day period.

(3)

Any requests for an appeal received beyond thirty (30) calendar days shall be denied and the adverse action deemed final.

(4)

The request for appeal shall be known as the "Statement of Disputed Issues." It shall be in writing, signed by the food vendor or the authorized agent, and shall state the address and telephone number of the food vendor and of the agent, if any agent has been designated. A food vendor shall specify the name and address of the individual authorized on behalf of the food vendor to receive any and all documents, including the final decision of the Director, relating to proceedings conducted pursuant to this Section.

The Statement of Disputed Issues need not be formal, but it shall be specific as to each issue in dispute, setting forth the food vendor's contentions as to those issues and the estimated amount each issue involves, if applicable. Only those issues raised in the Statement of Disputed Issues shall be considered at the hearing.

(5)

Written notice of the time and place of appeal shall be mailed to each party at least thirty (30) calendar days before the date of the appeal hearing. This period may be shortened with the consent of the parties.

(6)

If written position statements are filed, they shall be served on the hearing auditor and the other parties at least ten (10) calendar days prior to the hearing.

(7)

The hearing shall be conducted by an impartial party designated by the Director.

(8)

The proceeding shall be electronically recorded.

(9)

Upon specific request, the Department shall allow either party one opportunity to reschedule the hearing. The hearing shall be rescheduled within thirty (30) calendar days of the original hearing date. No other continuances shall be granted.

(10)

Any number of proceedings may be coordinated for hearing or decision when the facts and circumstances are similar and no substantial right of any party will be prejudiced.

(11)

Testimony shall be taken only on oath, under penalty of perjury.

(12)

Each party shall have the right to: (A) Be represented by counsel, if desired. (B) Call and

examine parties and witnesses. (C) Introduce exhibits. (D) Question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination. (E) Impeach any witness, regardless of which party first called the witness to testify. (F) Rebut the evidence against him.

(A)

Be represented by counsel, if desired.

(B)

Call and examine parties and witnesses.

(C)

Introduce exhibits.

(D)

Question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination.

(E)

Impeach any witness, regardless of which party first called the witness to testify.

(F)

Rebut the evidence against him.

(13)

The food vendor shall not be called to testify during presentation of the Department's prima facie case. A food vendor who thereafter fails to testify, in the food vendor's behalf, may be called and examined by the Department as if under cross-examination.

(14)

The appeal hearing need not be conducted according to technical rules relating to evidence and witnesses. (A) Relevant evidence, including hearsay, shall be admitted if it is the sort of evidence which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory

rule which might make improper the admission of such evidence over objection in civil actions. (B) Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (C) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. (D) The following additional exception to the "best evidence" rule, Evidence Code Section 1500, applies:1. A duplicate is admissible to the same extent as an original unless:a. A genuine question is raised as to the authenticity of the original or the duplicate. b. It would be unfair to admit the duplicate in lieu of the original. (E) A hearing auditor may question any party or witness, and may admit any relevant and material evidence. (F) The hearing auditor shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing auditor shall set forth the order in which evidence will be received.

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Relevant evidence, including hearsay, shall be admitted if it is the sort of evidence which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(B)

Hearsay evidence shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(C)

The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

(D)

The following additional exception to the "best evidence" rule, Evidence Code Section 1500,

applies:1. A duplicate is admissible to the same extent as an original unless:a. A genuine question is raised as to the authenticity of the original or the duplicate. b. It would be unfair to admit the duplicate in lieu of the original.

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(E)

A hearing auditor may question any party or witness, and may admit any relevant and material evidence.

(F)

The hearing auditor shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing auditor shall set forth the order in which evidence will be received.

(15)

The Department has the initial burden of proof and, therefore, shall present its audit findings and evidence first at the hearing. Once the Department has presented a prima facie case, the burden of proof shifts to the food vendor to demonstrate that the food vendor's position regarding disputed issues is correct.

(16)

The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

(17)

The food vendor hearing shall be conducted in the English language.

(18)

The hearing auditor may require any party to submit written memoranda pertaining to any or all issues raised in the appeal hearing within the above time frames.

(19)

The hearing auditor shall take the matter under submission at the conclusion of the hearing. A proposed decision shall be submitted to the Director for adoption by the Director or designee. Upon submission to the Director, a copy of the proposed decision shall be mailed by certified mail to the designated representative of the food vendor and delivered to the Department's representative.

(20)

The Director or his designee may: (A) Adopt the proposed decision without reading or hearing the record. (B) Reject the proposed decision and have a decision prepared based upon the documentary and electronically recorded record, with or without taking additional evidence. (C) Refer the matter back to Administrative Hearings and Appeals to take additional evidence. If the case is so assigned, the hearing auditor shall prepare a proposed decision upon the additional evidence and the documentary and electronically recorded record of the prior hearing. A copy of such proposed decision shall be furnished to each party and to each party's representative.

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Adopt the proposed decision without reading or hearing the record.

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Reject the proposed decision and have a decision prepared based upon the documentary and electronically recorded record, with or without taking additional evidence.

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Refer the matter back to Administrative Hearings and Appeals to take additional evidence. If the case is so assigned, the hearing auditor shall prepare a proposed decision upon the additional evidence and the documentary and electronically recorded record of the prior hearing. A copy of such proposed decision shall be furnished to each party and to each party's representative.

(21)

The decision shall be final upon adoption by the Director. Copies of the decision of the Director shall be mailed by certified mail to the designated representative of the food vendor.

(22)

An appeal shall be dismissed if a food vendor fails to appear. The notice of dismissal shall be mailed to each party.

(23)

The Director may vacate any dismissal if the food vendor makes an application in writing, within ten (10) calendar days after personal service or receipt of such dismissal, showing good cause for failure to appear at the hearing.

(24)

The parties shall be given written notice of an order granting or denying any application to vacate a decision.

(25)

Once the Director's decision has been adopted, there shall be a right to reconsideration of amounts identified by audit as overpayments.

(26)

The food vendor shall have a right to submit a Petition for Reconsideration of such overpayments. The Petition for Reconsideration shall be submitted to the Director within thirty (30) calendar days of the adoption of the Director's decision.

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The Petition for Reconsideration shall set forth the changes in material facts, circumstances, or other information which have bearing on the Director's decision.

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