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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 9@ ADMINISTRATIVE APPEAL OF DEPARTMENTAL DECISIONS AFFECTING LOCAL AGENCIES

## **40781 Administrative Appeal of Departmental Decisions**

Section 40781@ Administrative Appeal of Departmental Decisions Affecting Local Agencies

### **Affecting Local Agencies**

#### **(a)**

A local agency shall be provided a hearing procedure whereby a local agency adversely affected by a State action may appeal the action. (1) The right of appeal shall be granted in the following circumstances: (A) When a local agency's application to participate is denied; or (B) When a local agency is disqualified during the course of the contract or agreement. (2) Expiration of the Department's contract or agreement with a local agency shall not be subject to appeal. (3) The adverse action affecting a local agency specified in subsection (a)(1)(B) above shall be postponed until a hearing decision is reached.

#### **(1)**

The right of appeal shall be granted in the following circumstances: (A) When a local agency's application to participate is denied; or (B) When a local agency is disqualified during the course of the contract or agreement.

#### **(A)**

When a local agency's application to participate is denied; or

#### **(B)**

When a local agency is disqualified during the course of the contract or agreement.

#### **(2)**

Expiration of the Department's contract or agreement with a local agency shall not be

subject to appeal.

**(3)**

The adverse action affecting a local agency specified in subsection (a)(1)(B) above shall be postponed until a hearing decision is reached.

**(b)**

The hearing procedure shall be conducted by the Chief of the Department's Family Health Division (Division Chief), or designee.

**(c)**

The hearing procedure shall provide for the following: (1) Written notification of the adverse action, the cause(s) for and the effective date of the action. The Department shall provide the local agency not less than sixty (60) calendar days advance notice of the impending action. (2) The opportunity to appeal the adverse action, in writing, within thirty (30) calendar days of receipt of written notification of the action. (3) The local agency's request to appeal must be in writing and must state the issues in dispute, the legal authority or other basis for the applicant's position, and the remedy sought. (4) Written notice of the time and place of the appeal hearing shall be mailed to the local agency at least twenty (20) calendar days before the date of the appeal hearing. This period may be shortened with the consent of both the Department and the local agency. The appeal hearing shall be held in Sacramento. (5) 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. (6) The opportunity to present its case. (7) The opportunity to confront and cross-examine adverse witnesses. (8) The opportunity to be represented by counsel, if desired. (9) The opportunity to review the case record prior to the hearing. (10) The Department shall take the matter under submission

at the conclusion of the hearing. A proposed decision shall be submitted to the Director, or designee, within twenty (20) calendar days from the date that the hearing concluded. Upon submission to the Director, a copy of the proposed decision shall be mailed by certified mail to the local agency and delivered to the Department's representative. (11) The Director, or designee, shall adopt the proposed decision without change, reject the decision and prepare his own decision based upon the hearing record, or remand the matter back for further hearing and decision. (12) There shall be no right to reconsideration once the proposed decision has been adopted by the Director, except as may be provided for in State statute. (13) Written notification of the decision concerning the appeal, within sixty (60) days from the date of the Department's receipt of the request for a hearing. (14) Appealing an action does not relieve a local agency from the responsibility of continued compliance with the terms of its contract with the Department. (15) An appeal shall be dismissed if the local agency fails to appear. The notice of dismissal shall be mailed to each party. (16) The Division Chief or designee may vacate any dismissal if the agency makes an application in writing within ten (10) calendar days after receipt of such dismissal, showing good cause for failure to appear at the hearing. (17) The appeal procedures set forth above do not apply to audit findings.

**(1)**

Written notification of the adverse action, the cause(s) for and the effective date of the action. The Department shall provide the local agency not less than sixty (60) calendar days advance notice of the impending action.

**(2)**

The opportunity to appeal the adverse action, in writing, within thirty (30) calendar days of receipt of written notification of the action.

**(3)**

The local agency's request to appeal must be in writing and must state the issues in dispute, the legal authority or other basis for the applicant's position, and the remedy sought.

**(4)**

Written notice of the time and place of the appeal hearing shall be mailed to the local agency at least twenty (20) calendar days before the date of the appeal hearing. This period may be shortened with the consent of both the Department and the local agency. The appeal hearing shall be held in Sacramento.

**(5)**

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.

**(6)**

The opportunity to present its case.

**(7)**

The opportunity to confront and cross-examine adverse witnesses.

**(8)**

The opportunity to be represented by counsel, if desired.

**(9)**

The opportunity to review the case record prior to the hearing.

**(10)**

The Department shall take the matter under submission at the conclusion of the hearing. A proposed decision shall be submitted to the Director, or designee, within twenty (20) calendar days from the date that the hearing concluded. Upon submission to the Director, a copy of the proposed decision shall be mailed by certified mail to the local agency and delivered to the Department's representative.

**(11)**

The Director, or designee, shall adopt the proposed decision without change, reject the decision and prepare his own decision based upon the hearing record, or remand the matter back for further hearing and decision.

**(12)**

There shall be no right to reconsideration once the proposed decision has been adopted by the Director, except as may be provided for in State statute.

**(13)**

Written notification of the decision concerning the appeal, within sixty (60) days from the date of the Department's receipt of the request for a hearing.

**(14)**

Appealing an action does not relieve a local agency from the responsibility of continued compliance with the terms of its contract with the Department.

**(15)**

An appeal shall be dismissed if the local agency fails to appear. The notice of dismissal shall be mailed to each party.

**(16)**

The Division Chief or designee may vacate any dismissal if the agency makes an application in writing within ten (10) calendar days after receipt of such dismissal, showing good cause for failure to appear at the hearing.

**(17)**

The appeal procedures set forth above do not apply to audit findings.

**(d)**

The hearing procedure for appeals pursuant to the findings of a financial audit where a claim for recovery is involved shall provide for the following:(1) The local agency shall be informed, in writing, of its right to request an appeal hearing at the

time of the initial demand for repayment of the questioned costs. (2) The local agency shall have thirty (30) calendar days following the written notice of the action to request an appeal in writing. The appeal shall be addressed to Administrative Hearings and Appeals. (3) The request for appeal shall be known as the "Statement of Disputed Issues" (SDI), shall be in writing, and shall be signed by the local agency or the local agency's authorized agent. The SDI need not be formal, but it shall be specific as to each issue in dispute, setting forth the local agency's contentions as to those issues and the estimated amount each issue involves, if applicable. Only those issues raised in the SDI shall be considered at the hearing. (4) The local agency shall be notified in writing that the request for appeal has been received and whether the request has been accepted as sufficiently specific to each issue in dispute. (5) If the agency's request for appeal is not sufficiently specific, the agency shall be granted fifteen (15) calendar days after the date of the mailing of the notice of deficiency to the local agency within which to file an amended Statement of Disputed Issues. (6) Written notice of the date, time, and location of the appeal hearing shall be mailed to each party at least thirty (30) calendar days before the date of the appeal. This period may be shortened with the consent of the parties. (7) 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. To facilitate the hearing process, the parties are encouraged to resolve issues prior to the hearing. (8) The hearing shall be electronically recorded for review purposes. (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) The opportunity to present its case. (11) The opportunity to confront and cross-examine adverse witnesses. (12) The opportunity to be

represented by counsel, if desired. (13) The opportunity to review the case record prior to the hearing. (14) An impartial decision maker, whose decision as to the validity of the Department's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law. (15) The hearing auditor shall take the matter under submission at the conclusion of the hearing. A proposed decision shall be submitted to the Director or designee. Upon submission to the Director, a copy of the proposed decision shall be mailed by certified mail to the local agency and delivered to the Department's representative. (16) The Director or his designee may adopt the proposed decision without change, prepare his own decision based upon the hearing record, or remand the matter back for further hearing and decision. (17) 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 local agency. (18) An appeal shall be dismissed if the local agency fails to appear. A notice of dismissal shall be mailed to each party. (19) The Director may vacate any dismissal if the local agency makes an application in writing within ten (10) calendar days after receipt of such dismissal, showing good cause for failure to appear at the hearing. (20) There shall be no right to reconsideration once the Director's decision has been adopted, except as provided for in State statute.

**(1)**

The local agency shall be informed, in writing, of its right to request an appeal hearing at the time of the initial demand for repayment of the questioned costs.

**(2)**

The local agency shall have thirty (30) calendar days following the written notice of the action to request an appeal in writing. The appeal shall be addressed to Administrative

Hearings and Appeals.

**(3)**

The request for appeal shall be known as the "Statement of Disputed Issues" (SDI), shall be in writing, and shall be signed by the local agency or the local agency's authorized agent. The SDI need not be formal, but it shall be specific as to each issue in dispute, setting forth the local agency's contentions as to those issues and the estimated amount each issue involves, if applicable. Only those issues raised in the SDI shall be considered at the hearing.

**(4)**

The local agency shall be notified in writing that the request for appeal has been received and whether the request has been accepted as sufficiently specific to each issue in dispute.

**(5)**

If the agency's request for appeal is not sufficiently specific, the agency shall be granted fifteen (15) calendar days after the date of the mailing of the notice of deficiency to the local agency within which to file an amended Statement of Disputed Issues.

**(6)**

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

**(7)**

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. To facilitate the hearing process, the parties are encouraged to resolve issues prior to the hearing.

**(8)**

The hearing shall be electronically recorded for review purposes.



**(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)**

The opportunity to present its case.

**(11)**

The opportunity to confront and cross-examine adverse witnesses.

**(12)**

The opportunity to be represented by counsel, if desired.

**(13)**

The opportunity to review the case record prior to the hearing.

**(14)**

An impartial decision maker, whose decision as to the validity of the Department's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing, although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.

**(15)**

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

**(16)**

The Director or his designee may adopt the proposed decision without change, prepare his own decision based upon the hearing record, or remand the matter back for further

hearing and decision.

**(17)**

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 local agency.

**(18)**

An appeal shall be dismissed if the local agency fails to appear. A notice of dismissal shall be mailed to each party.

**(19)**

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

**(20)**

There shall be no right to reconsideration once the Director's decision has been adopted, except as provided for in State statute.

**(e)**

When it is established, upon audit, that overpayment has been made to a local agency, the Department shall begin liquidation of the overpayment to the local agency thirty (30) calendar days after issuance of the first repayment demand following the issuance of the audit report establishing such overpayment. The overpayment shall be recovered by any of the following methods: (1) Lump sum payment by the local agency. (2) A repayment agreement executed between the local agency and the Department. (3) Any other method of recovery available to and deemed appropriate by the Director.

**(1)**

Lump sum payment by the local agency.

**(2)**

A repayment agreement executed between the local agency and the Department.

**(3)**

Any other method of recovery available to and deemed appropriate by the Director.

**(f)**

Interest shall be charged on sums owed the Department. The Department may negotiate the rate of interest charged; however, the rate shall not be less than the rate set forth in applicable rule or statute.

**(g)**

The Department shall postpone recovery of overpayments to a local agency pursuant to the findings of a financial audit until an appeal hearing decision is issued by the Director, if applicable.