Section: Fair Hearing

106-01 Fair Hearing Requests by Applicants/Participants

106-02 Fair Hearing Request by Local Agency

SECTION: Fair Hearing

SUBJECT: Fair Hearing requests by Applicants or Participants

Federal Regulations: §246.9

POLICY

Local agency staff shall assist and not limit nor interfere with an individual's freedom to request a fair hearing.

When a fair hearing is requested, give the individual the Notice of Participant Action form and a copy of the Fair Hearing request form and procedures. If necessary instruct the participant on completion of the form and remind them to mail the request to the State WIC agency within 60 days from the date the form was signed.

Continuation of Benefits

If a participant is notified of ineligibility during a certification period and a fair hearing is requested within the 15 days adverse notice period, the participant shall continue to receive WIC benefits until the fair hearing officer reaches a decision.

Applicants who are denied benefits at initial certification or at a subsequent certification may appeal the denial but shall not receive benefits while awaiting the hearing.

Connecticut Department of Public Health
WIC Program

REQUEST FOR A FAIR HEARING

_____

NAME	WIC ID or DOB
MAILING ADDRESS	
CITY/ZIP	PHONE #

I AM REQUESTING A HEARING AS PROVIDED IN THE WIC PROGRAM REGULATIONS.

THE FOLLOWING ARE MY REASONS FOR REQUESTING A HEARING:

PARTICIPANT SIGNATURE DATE

Please review the back of the form for information on Fair Hearing Procedures.

A hearing will be scheduled within ten days from the date of receipt of the request. You will be notified at least ten days prior to your scheduled hearing as to the time, date, and place where the hearing is to be held. You have the right to be assisted or represented by an attorney or other person. Additional information on Fair Hearing Procedures may be obtained by contacting the State WIC Co-Directors.

State of Connecticut - Department of Health-WIC Program
Attention State WIC Director
410 Capitol Avenue MS 11-WIC
P.O. Box 340308
Hartford, CT 06134-0308

The WIC Program is an Equal Opportunity Provider. If you believe you have been discriminated against because of race, color, national origin, age, sex or disability, write immediately to the Secretary of Agriculture, Washington, D.C. 20250 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY).

FAIR HEARING PROCEDURES

I. **Time Limits**

1. A hearing shall be held within three weeks from the date the State WIC Program receives the request.
2. The appellant shall be provided with a minimum of ten days notice of the time and place of the hearing.
3. Within 45 days of the receipt of the request for the hearing, the appellant or representative shall be notified, in writing, of the decision and the reasons for the decision.

II. **Hearing**

1. The hearing shall be held within the geographic area served by the local WIC Program that received the fair hearing request.
2. The hearing shall be conducted by an impartial official.
3. An official record containing a summary of what occurred at the hearing and all papers and requests filed shall be retained for three years and will be available for public inspection and copying with the names and addresses of the participants and other members of the public deleted.
4. A decision by the hearing official shall be binding on the local WIC Program.
5. If the appeal is denied, the appellant will be notified of how to pursue further appeal through state action or judicial review.

III. **Appellant Rights**

1. The appellant has the right to:
    a. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal.
    b. Be assisted or represented by an attorney or other persons.
    c. Bring witnesses.
    d. Advance arguments without undue interference.
    e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
    f. Submit evidence to establish all pertinent facts and circumstances in the case.

Fair Hearing Request Procedures

Request for a Fair Hearing:

A Request for a Fair 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 its case to a higher authority.

The State or local agency shall not limit or interfere with the individual's freedom to request a hearing (7 CFR &246.9, (d)). Hearing requests by appellants can be made verbally, or in writing and delivered or sent to the State or local agency.

When possible, an **Agency Conference** should be held to resolve the problem on the local level. The State Agency may adopt Local Level Hearings (agency conferences) in some areas, such as those with large caseloads, and maintain only State Level Hearings in other areas.

Agency Conference:

An Agency Conference is defined as problem resolution discussion with the supervisory personnel of the clinic and the participant. The State Agency will have a representative present at all Agency Conferences (TBD). In participating in the Agency Conference, the participant agrees to try and resolve the problem. If the Agency Conference does not resolve the problem to the applicant's satisfaction, or if the applicant does not want an Agency Conference, she/he has the right to a Fair Hearing with the State Department of Health Hearing Officer.

The participant must be informed that the Agency Conference is optional and that they have a right to a Fair Hearing instead.

Notification of Appeal Rights:

The local agency shall provide to all applicants and participants the statements on the appropriate forms that outline their rights to an Agency Conference or Fair Hearing, including instructions for making the appeal. Applicants and participants shall also be informed of their rights to be represented by a relative, friend, legal counsel, or other spokesperson.

Copies of the Agency Conference/Fair Hearing form shall be given to each person at the time of denial of participation or termination, one given to the individual, the other retained in their chart.

This notification is not to be given at the expiration of a certification period, unless their benefits may be jeopardized at the next certification visit (as would be the case when Priority System was being used by a local agency).

Time Limit for Request:

Agency Conference/Fair Hearing must be requested within sixty (60) days from the date of the notice of adverse action was mailed or given to the applicant by the local agency (7 CFR &246.9, (e)).

The Agency Conference should be held within two (2) weeks of the request. A Fair Hearing must be held within three (3) weeks of receipt of request by the State Agency.

Written notification of the decision made in the Conference must be made to the appellant by registered mail within fifteen (15) days; in the case of a Hearing, notification must be made within forty five (45) days.

If the appellant is not satisfied with the Conference decision, she/he may request a Fair Hearing; this request must be made within sixty (60) days from the effective date of the original adverse action taken by the local agency.

Denial or Dismissal of Request:

The State and local agencies shall NOT deny or DISMISS a request for a hearing unless:

a. The request is not received within the sixty (60) working day limit set above.

b. The request is withdrawn in writing by the appellant or a representative of the appellant;

c. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or

d. 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.

Continuation of Benefits:

Participants who appeal the termination of benefits within the period of time provided as defined by this section **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:

a. Applicants denied benefits at initial certification;

b. Participants whose certification period has expired; or

c. Participants who become categorically ineligible for benefits;

Under the three circumstances stated above, applicants or participants may appeal the denial or termination, but **MUST NOT** receive benefits while awaiting the Hearing (7 CFR &246.9, (g)).

Uniform Rules of Procedures:

State and local agencies shall process each request for a Conference/Hearing under uniform rules of procedure and shall make these rules of procedure available for public inspection and copying. At a minimum, such rules shall include:

a. the time limits for requesting and conducting a Conference/Hearing;

b. all advance notice requirements;

c. the rules of conduct at the Conference/Hearing; and

d. the rights and responsibilities of the appellant.

These rules shall not be unduly complex or legalistic (7 CFR &246.9, (h)).

Hearing Official:

The Conference/Hearing shall be conducted by an impartial official who has no personal stake or involvement in the decision, and who was not directly involved in the initial determination of the action being contested.

The **Hearing Official** shall (7 CFR &246.9, (i)):

a. administer oaths or affirmations if required by the State;

b. ensure that all relevant issues are considered;

c. request, receive and make part of the Hearing record all evidence determined necessary to decide the issues being raised;

d. regulate the conduct and course of the Hearing consistent with due process to ensure an orderly hearing;

e. order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the agency; and

f. render a Hearing decision which will resolve the dispute.

Conduct of the Agency Conference / Hearing:

The Hearing Official shall mail a notice of the Hearing, which includes an explanation of the procedure and the date, time, and place and reason for the Conference to the appellant and the appellant's representative.

a. State or local agency shall ensure that the Hearing is accessible to the appellant and is held within three (3) weeks from the date the State or local agency received the request for a hearing. The Conference should be held within two (2) weeks of the request.

b. The State or local agency shall provide the appellant with a minimum of ten (10) days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure with the notice.

c. Local agency staff that has knowledge of the dispute should be in attendance as well as legal counsel for the agency if the agency desires. The local agency shall have the opportunity to present oral and documentary evidence and to examine, question, or refute any testimony or other evidence, including the opportunity to confront and cross-examine witnesses.

d. The agency representative shall conduct the Conference without unduly complex or legalistic procedures, taking into consideration the appellant's background and education.

e. The Hearing Official (State or local agency – in Federal regulations) shall also provide the appellant or representative an opportunity to:

    1. examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

    2. be assisted or represented by an attorney or other persons;

    3. bring witnesses;

    4. advance arguments without undue interference;

    5. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

    6. Submit evidence to establish all pertinent facts and circumstances in the case.

Timeframe for Fair Hearing Official's Decision:

Written notification of the decision made in the Conference must be made to the appellant by registered mail within fifteen (15) days; in the case of a Hearing notification must be made within forty five (45) days.

The decision by the hearing official shall:

1. summarize the facts of the case;
2. specify the reasons for the decision; and
3. identify the supporting evidence and the pertinent regulations or policy;
4. the decision shall become part of the record.

Decisions of the hearing official shall be based upon the application of appropriate Federal 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 State or local agency shall retain the hearing record for three (3) years (&246.25) and make them available for copying and inspection, to the appellant or representative at any reasonable time.

Fair Hearing Decisions:

When a State or local agency pursues collection of a claim against an individual participant who has been improperly issued benefits, the person shall be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits, which must be repaid, and of the right to a fair hearing.

1. If the decision is **IN FAVOR** of the appellant and benefits were denied or discontinued, benefits shall begin immediately.
2. If the decision concerns **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.
3. If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State or local agency shall collect the claim, even during pendency of an appeal of a local-level fair hearing decision to the State Agency.

4. The appellant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within fifteen (15) days of the mailing date of the hearing decision notice.

5. If the decision being appealed concerns **DISQUALIFICATION** from the program, the appellant shall **NOT** continue to receive benefits while an appeal to the State Agency of a decision rendered on appeal at the local-level 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.

Judicial Review:

If a State-level decision upholds the agency action and the appellant expresses an interest in pursuing a higher review of the decision, the State Agency shall explain any further State level review of the decision and any State level rehearing process. If these are either unavailable or have been exhausted, the State Agency shall explain the right to pursue the judicial review of the decision.

State of Connecticut
Department of Public Health
WIC Program

NOTICE OF PARTICIPANT ACTION FORM

Date of Notice: _____

NAME	**WIC ID or DOB**
ADDRESS	
CITY/ZIP	**PHONE # ( ) -**

Ineligibility and Termination Section:

☐ You or your infant/child **do not qualify** (ineligible) for the WIC Program because:
☐ You or your infant/child **no longer qualify** (terminated) from the WIC Program because:

☐ Your income is too high	☐ Breastfeeding woman that stopped breastfeeding before one year	☐ Do not have a medical/nutritional health problem
☐ Not in a category WIC serves: Pregnant, postpartum, breastfeeding woman infant or child up to 5 years old	☐ Breastfeeding woman that reached WIC limit of 12 months	☐ Missed your certification appointment for the Program
☐ Postpartum woman 6 months past your delivery date	☐ Child turning five (5) years old	☐ Voluntary removal from the Program ☐ Other

Suspension Section: You are being suspended from the WIC Program for _____ because you broke the following rules(s):
(amount of time)

_____

_____

Fair Hearing Section

You have the right to a fair hearing if you do not agree with the reason for your ineligibility, termination, suspension or disqualification. A request for a fair hearing must be made within 60 days of the date of this notice. Fair hearing requests should be addressed to:

State of Connecticut - Department of Public Health-WIC Program
Attention: State WIC Director
410 Capitol Avenue MS # 11WIC
P.O. Box 340308
Hartford, CT 06134-0308

The local WIC Program staff will assist you in preparing the fair hearing request form if you ask for help. Written rules for fair hearings are included on the fair hearing request form.

_____ _____
PARTICIPANT/PAYEE SIGNATURE **WIC PROGRAM REPRESENTATIVE SIGNATURE/TITLE**

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, sex, disability, gender identity, religion, reprisal and where applicable political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.) If you wish to file a Civil Rights program complaint of discrimination complete the USDA Program Discrimination Complaint Form (PDF), found online **http://www.ascr.usda.gov/complaint_filing_cust.html,** or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, DC 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov. Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). El USDA es un proveedor y empleador que ofrece igualdad de oportunidades.

Departamento de Salud Pública de Connecticut
Programa WIC

NOTIFICACIÓN DE TERMINACIÓN

Fecha de Notificación: _____

NOMBRE	**Número de Identificación o Fecha de Nacimiento**
DIRECCIÓN	
CIUDAD/CÓDIGO POSTAL	**TELÉFONO ( )**

SECCIÓN PARA SOLICITANTES INELEGIBLES/TERMINACIÓN

☐ Usted o su hijo(a) no son elegibles para el Programa WIC por las razones siguientes:
☐ Usted o su hijo(a) han dejado de ser elegibles (dados de baja) para el Programa WIC por las razones siguientes:

☐ Ingresos demasiado altos para el Programa WIC.	☐ Interrumpió la lactancia antes del primer año.	☐ No presenta una condición clínica ni trastorno de salud nutricional.
☐ No pertenece a una categoría elegible de WIC: Mujer embarazada, postparto, madre lactante, hijo(a) de hasta 5 años de edad	☐ Madre lactante que alcanzó el límite de 12 meses establecido bajo los requisitos del Programa WIC.	☐ Faltó a la cita de certificación/re-certificación.
☐ Mujer postparto después de 6 meses de la fecha del parto.	☐ Hijo(a) que va a cumplir cinco (5) años de edad.	☐ Se retiró voluntariamente del programa.
		☐ Otro:

Sección Sobre Suspensión: Se le descalifica del programa WIC durante _____ porque usted infringió la(s) regla(s) del Programa WIC:
(periodo de tiempo)

_____

_____

Sección de Audiencia Imparcial

Usted tiene derecho a una audiencia imparcial si no está de acuerdo con las razones que determinan su inelegibilidad, terminación, suspensión o descalificación. Usted deberá presentar una petición de audiencia imparcial dentro de los sesenta (60) días siguientes a la fecha de notificación. Las peticiones se deben enviar a:

State of Connecticut – Department of Public Health – WIC Program
Attention: State WIC Director
410 Capitol Avenue MS #11 WIC
P.O. Box 340308
Hartford, CT 06134-0308

El personal del Programa de WIC local le ayudará a rellenar el formulario de petición de audiencia imparcial si usted lo solicita. El formulario incluye las normas para la petición de audiencias imparciales.

_____ _____
FIRMA DE LA PARTICIPANTE **FIRMA/TÍTULO DEL REPRESENTANTE DE WIC**

El Departamento de Agricultura de los Estados Unidos (por sus siglas en inglés "USDA") prohíbe la discriminación contra sus clientes, empleados y solicitantes de empleo por raza, color, origen nacional, edad, discapacidad, sexo, identidad de género, religión, represalias y, según corresponda, convicciones políticas, estado civil, estado familiar o paternal, orientación sexual, o si los ingresos de una persona provienen en su totalidad o en parte de un programa de asistencia pública, o información genética protegida de empleo o de cualquier programa o actividad realizada o financiada por el Departamento. (No todos los criterios prohibidos se aplicarán a todos los programas y/o actividades laborales). Si desea presentar una queja por discriminación del programa de Derechos Civiles, complete el USDA Program Discrimination Complaint Form (formulario de quejas por discriminación del programa del USDA), que puede encontrar en internet en http://www.ascr.usda.gov/complaint_filing_cust.html, o en cualquier oficina del USDA, o llame al (866) 632-9992 para solicitar el formulario. También puede escribir una carta con toda la información solicitada en el formulario. Envíenos su formulario de queja completo o carta por correo postal a U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, por fax al (202) 690-7442 o por correo electrónico a program.intake@usda.gov. Las personas sordas, con dificultades auditivas, o con discapacidad del habla pueden contactar al USDA por medio del Federal Relay Service (Servicio federal de transmisión) al (800) 877-8339 o (800) 845-6136 (en español).

SECTION: Fair Hearing

SUBJECT: Fair Hearing request by Local Agency

Federal Regulations: §246.18 (a)(3)(i)

POLICY

A local agency, whose application to participate as a local agency is denied, whose participation is terminated, whose contract is not renewed by the State agency, or when any other adverse action is taken, has the right to request a fair hearing.

If a fair hearing is requested, the adverse action shall be postponed until a hearing decision is made.

Submit a written request for a fair hearing to the State agency within five (5) working days from the date of action causing dissatisfaction. Cite the decision being appealed and explain why a hearing is being requested.

Continue to comply with the terms of the contract with the State agency while appealing the decision.