

Department of Human Service
Division of Child Care and Early Childhood Education
Health and Nutrition Unit

APPEAL
PROCEDURES
CHILD AND ADULT CARE FOOD PROGRAM



In accordance with federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating based on race, color, national origin, sex, age, or disability.

REQUIREMENTS:

Department of Human Service (DHS) has established these appeal procedures to be followed by Institutions/Sponsoring Organizations in requesting a review of adverse action taken by DHS/Health & Nutrition Programs (HNP). The procedures contained in the following sections comprise the official hearing procedures relative to Child and Adult Care Food Program (CACFP). These procedures will be provided to all institutions annually through a mass email alert, at annual training and to an institution and any responsible party when DHS takes any adverse action that allows an appeal. The procedures outlined below apply to all CACFP institutions

REASON FOR REQUESTING A REVIEW: 7 CFR Part 226.6(k)

The Appeals and Hearing Section of the Office of Policy and Legal Service (OPLS) has been delegated the responsibility for conducting Administrative Review.

Actions subject to Administrative Review: 7 CFR 226(k)(2)(i-xii)

- Denial for a new or renewing institution's application for participation.
- Denial of an application submitted by a sponsoring organization on behalf of a facility/site for participation.
- Proposed termination of an institution's agreement.
- Proposed disqualification of a responsible principal or responsible individual.
- Suspension of an institution's participation.
- Denial of an institution's application for start-up or expansion payments.
- Denial of a request for an advance payment.
- Recovery of all or part of an advance more than the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.
- Denial of all or part of an institution's claim for reimbursement (except for a denial based on a late submission which is not an appealable action).
- Denial by HNP to forward an exception request to FNS of a late claim or a request for an upward adjustment to a claim.
- Demand for the remittance for an overpayment.
- Any other section of HNP affecting the participation of an institution in the program or the institution's claim for reimbursement.

Actions not subject to administrative review: 7 CFR 226(k)(3)(i-vii)

- ***FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.***
- **Determination of serious deficiency.**
- **State agency determination that corrective action is inadequate**
- **Disqualification and placement on State agency list and National disqualified list.**
- **Termination of an institution's agreement, including terminations based on the disqualification of the institution by another State agency or FNS**
- **State agency or FNS decision regarding removal from the National disqualified list.**

- **State agency's refusal to consider an application submitted by an institution or facility on the State or National disqualified list.**

Note: If the Institution didn't request an appeal, or the hearing official has made a final decision. No new appeal rights are granted when DHS requests repayment.

INSTITUTION'S RIGHT TO APPEAL:

At the time of any adverse action, the institution's executive director and chairman of the board of directors and the responsible principals and responsible individuals must be advised in writing by notice of action, sent certified mail, return read receipt requested and must contain the following:

- The action being taken or proposed.
- The basis for the adverse action.
- A statement indicating the right to appeal.
- The address to which to route the appeal.
- A copy of the appeal procedures.
- The right to legal counsel or to be represented by another person.
- The right to file written information and the right to request a hearing in addition to, or in lieu of, a review of written information (appellant must state specifically if he/she wishes to have an in-person hearing).
- The right to file written information to be considered by the Review/Hearing Official within 30 calendar days from the date the notice of action.

REQUESTING THE HEARING:

A request for review/hearing must be submitted in writing to the Appeals and Hearings Section, the Office of Policy and Legal Services, P.O. Box 1437, Slot N-401, Little Rock, Arkansas 72203, within the timeframes set below:

The written request for review/hearing must be filed no later than 15 calendar days from the date of receipt of the notice of Action. After five day of being sent via USPS mail, fax, or electronic email to the last known addressee's mailing address, the notice will be considered received by the institution and RP/RI.

DENIAL OR DISMISSAL OF REQUEST FOR REVIEW:

The Appeals and Hearings Section will not deny or dismiss a request for review except under the following circumstances:

- The request was not received within the specified timeframe for requesting review.
- The request was withdrawn in writing, by the appellant or its representative.

When the appellant has requested a hearing in lieu of a review of written information and fails to appear for the scheduled hearing, the decision will be based solely on the available information unless a rescheduled date is agreed upon and granted by the administrative review official. Due to the stringent time frames mandated by the federal regulations a hearing will not be rescheduled except in the most unusual circumstances. Discretion for rescheduling a hearing lies solely with the administrative review official.

THE ADMINISTRATIVE REVIEW PROCESS

BEGINNING THE ADMINISTRATIVE REVIEW PROCESS:

When a request for review is received, the Appeals and Hearings Section will request from the Health and Nutrition Unit to verify whether the request has been filed timely. If not, the appellant or representative will be notified by letter from the Appeals and Hearings Section that the request for review is being denied.

THE ADMINISTRATIVE REVIEW/HEARING FILE:

The Health and Nutrition Unit will prepare a hearing file and provide a copy to the Appeals and Hearings Section. The file will consist of the following:

- The Notice of Action.
- All documentary evidence used to support the Notice of Action upon which the request for review is based.
- A complete summary of the action taken, the basis for the action and the Child and Adult Day Care regulation(s) used in the decision to take adverse action.

ACKNOWLEDGEMENT OF RECEIPT OF REQUEST FOR REVIEW:

Within ten (10) calendar days of the request for a review, the Appeals and Hearings Section must acknowledge the request in writing.

STATUS OF ADVERSE ACTION DURING REVIEW/HEARING PROCESS:

The action taken by the Health and Nutrition Unit remains in effect during the appeal process. Unless the Institution/Sponsoring Organization has been suspended, they may continue to participate and receive program reimbursement for eligible meals served and allowable administrative costs incurred until the administrative review is completed.

PROCEDURE RESULTING FROM REQUEST FOR REVIEW OF WRITTEN INFORMATION:

An appellant is afforded the right to an impartial review and may submit written information to the review official for consideration. Any information on which the State agency's action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review. The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than 30 days after receipt of the notice of action.

PROCEDURE RESULTING FROM REQUEST FOR A HEARING:

An appellant may choose to attend a hearing before an impartial hearing official and be represented by legal counsel at the appellant's expense. A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if

the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review. If the institution's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the administrative review official. If a hearing is requested, the institution, the responsible principals and responsible individuals, and the State agency must be provided with at least 10 days advance notice of the time and place of the hearing.

SUBPOENA OF WITNESS:

With the acknowledgement of the receipt of a request for review, the appellant will be sent a form on which to subpoena witnesses.

SCHEDULING THE HEARING:

The hearing must be scheduled ten (10) calendar days in advance. The advance written notice of the time and location of the hearing is sent by certified mail, return receipt requested.

THE HEARING OFFICER:

The Appeals and Hearing Section will designate all hearing officers. The hearing officer must be independent and impartial and not have any personal or financial interest in the case or have had any involvement in the contested action that resulted in the request for an appeal/administrative review. The institution and the responsible principals and responsible individuals must be given the contact information and be permitted to contact the administrative review official directly if they so desire.

CONDUCT OF THE HEARING:

The hearing will be conducted by a designated hearing official. The appellant may be represented by legal counsel or a designated representative. Health and Nutrition Unit will be represented by legal counsel, if the appellant has legal counsel or a designated representative.

The representative from Health and Nutrition Unit will explain the basis for the adverse action and present any documentation (including witnesses) to support this action.

The appellant or representative will be given the opportunity to present witnesses, advance arguments, offer additional evidence and to question or refute any testimony or evidence. All parties will be given the right to cross examine witnesses. Questioning of all parties will be confined to the issue(s) involved. The hearing official has the right to question participants any time during the proceedings.

THE REVIEW/HEARING DECISION:

Final administrative action must be taken within sixty (60) calendar days of receipt of a request

for a review/hearing. The hearing decision is based upon documentary evidence at the hearing, if conducted. This timeframe is an administrative requirement for DHS and may not be used as a basis of overturning DHS's action, if a decision is not made within the specified timeframe.

The review/hearing official must decide based solely on the information provided by DHS, the institution and the RP/RI and based on federal and state laws, regulations, policies, and procedures governing the program. The decision represents final administrative action by the Department of Human Services (DHS) and is binding by the Health and Nutrition Unit of the Division of Childcare and Early Childhood Education. The decisions will be sent via certified mail.

In the case of a suspension, if the hearing official overturns DHS's proposed suspension, DHS cannot suspend the institutions participation or withhold reimbursement payments for the suspension period. DHS will still proceed with the proposed termination and proposed disqualification.

NOTIFICATION OF HEARING DECISIONS:

Once a hearing decision is rendered, both the appellant and Health and Nutrition Unit will be notified in writing of the decision, sent via certified mail. Health and Nutrition Unit will notify the Appeals and Hearing Section within ten (10) calendar days of any action by this unit because of the hearing decision.

SUSPENSION REVIEW:

A suspension review is an abbreviated appeal that is available to institutions before a suspension for submission of false or fraudulent claims takes effect. It consists of a review of written documents, instead of an in-person hearing, to determine whether program payments will continue. It does not resolve any appeal option that the institution may request of DHS's proposed termination and disqualification of the institution. The institution may request a regular appeal if they are dissatisfied with the result of the suspension appeal.

If an institution requests a suspension review, the request must be made within ten (10) calendar days of the receipt of the notice of proposed suspension. The appeal request should include the reasons the institution disagrees with the suspension. The institution may submit documentation to support its appeal.

The suspension review official must be an individual who is independent and impartial. DHS must be notified immediately of the institution's request for a review. DHS must provide the suspension review official with the original proposed suspension and any other supporting documentation. The suspension review official must render a decision within ten (10) calendar days after receiving the institution's documentation opposing the suspension. The institution (including the board chair, the executive director, and the responsible principals and individuals) must be promptly notified of the suspension review official's decision. If the review official upholds the suspension, program payments are suspended effective on the date that the review official renders his/her decision.

The Appeals and Hearing Section of the Office of Policy and Legal Service (OPLS) has been delegated the responsibility for conducting all administrative reviews.

There are only two (2) State agency actions for which an institution can be suspended:

PART I - Imminent Threat to Health and Safety

Once it has been determined that an imminent health or safety violation has occurred, DHS must notify the institution and all RP/RI that the institution's participation, including program payments has been suspended [7 CFR 226.6(c)(5)(i)].

The Notice Must State:

- That the institution can appeal the suspension, the proposed termination and disqualification;
- That the institution's program participation including all program payments are suspended with a specific start date until an appeal is concluded;
- That DHS is prohibited from offering a review (appeal) of the suspension prior to the suspension being effective;
- If the hearing official overturns the suspension, the institution may claim reimbursement for eligible meals served during the suspension;
- Unless overturned by a review official, the suspension will remain in effective throughout the serious deficiency process;
- Termination from the program will result in placement of the institution and RP/RI on the NDL;
- If the institution voluntarily terminates its agreement with DHS after having been notified that it is seriously deficient and suspended from the program. The serious deficiency will still result in the institution and RP/RI formal termination by DHS and placement on the NDL.
- The notice must include DHS's appeals procedures.

PART II - Submission of False or Fraudulent Claims

When DHS proposes to suspend an institution's participation, including program payments for the submission of a false or fraudulent claim, DHS must issue a combined notice of serious deficiency and proposed suspension. DHS will update their SA list, and notify the regional office. The institution and RP/RI must be notified in writing that DHS intends to suspend the institution's participation (including all program payments) unless the institution requests a review of the proposed suspension. The notice must state:

- The serious deficiencies found;
- DHS is proposing to suspend the institution's and RP/RI's program participation, including the payment of claims;
- The effective date of the suspension (it cannot be earlier than ten (10) calendar days after the institution receives the notice);
- The institution can appeal the proposed suspension;
- The contact information for the suspension review official;
- A suspension review must be requested within ten (10) calendar days of receipt of the notice;
- The request must be sent in writing to: **Appeals and Hearings Section, the Office of Policy and Legal Services, P.O. Box 1437, Slot N-401, Little Rock, Arkansas 72203**
- If the hearing official overturns the proposed suspension, the institution may claim reimbursement for eligible meals served during the proposed suspension;

- If the institution voluntarily terminates its agreement with DHS after having been notified that it is seriously deficient and suspended from the program, it will still result in the institution and RP/RI's formal termination by DHS and placement on the NDL.
- Include DHS's appeal procedures for suspensions and terminations.
- The notice should also state, if the Suspension Review Official overturns the proposed suspension, the institution is still required to submit a corrective action to fully and permanently correct the serious deficiency(ies).

The institution also has the right to appeal the suspension through the regular appeal process. The maximum time for suspension of participation is one hundred and twenty (120) calendar days following the suspension review decision., the institution's appeal should be heard within the one hundred and twenty (120) calendar days and a decision rendered either overturning the serious deficiency, suspension and proposed termination and disqualification, or the institution and RP/RI should be terminated. If a suspension appeal exceeds more than one hundred and twenty (120) calendar days, DHS must pay any valid claims received by the institution starting on the one hundred and twenty first (121) calendar day [**7 CFR 226.6(c)(5)(ii)(F)**].

When a sponsoring organization is suspended for the submission of a false or fraudulent claim, DHS is required to make sure that payments to the sponsored DCHs for eligible meals served are still made. DHS may work with another sponsoring organization to process the claims during the suspension process or DHS may temporarily make meal payments directly to the sponsored facilities during the period of the sponsoring organization's suspension. DHS should contact the FNS Regional Office for additional guidance with this emergency and temporary procedure.

If the hearing official overturns the State agency's proposed suspension, the State agency cannot suspend the institution's participation or withhold reimbursement payments for the suspension period. The State agency must still proceed with the proposed termination and proposed disqualification. [**7 CFR 226.6(c)(5)(ii)(A)**].

ABBREVIATED ADMINISTRATIVE REVIEW:

An abbreviated review is limited to a review of *written* submissions by the appellant and may not include an in-person hearing. There are two State agency actions that if appealed, result in an abbreviated review:

- DHS's proposal to terminate an institution's agreement because of the submission of specific false or disqualifying information on its application;
- The accuracy of DHS's determination to deny an application based on an institution and/or an individual being disqualified.

If a State agency finds that the following has been submitted by a new or a participating institution upon renewal of its application, it must deny the application and offer the institution and RP/RI an abbreviated review:

- The information submitted on the application is false;
- The institution, one of its sponsored facilities, or one of its principals is on the NDL;
- The institution one of its sponsored facilities, or one of its principals has been declared to be ineligible for another publicly funded program during the prior seven years; or

- The institution, one of its sponsored facilities, or one of its principals has been convicted of an activity in the past seven years that indicated a lack of business integrity [[7CFR 226.6\(k\)\(9\)](#)].

JUDICIAL REVIEW:

Appellants not satisfied with an administrative hearing decision have the right to pursue Judicial Review through the Administrative Procedure Act.

A petition must be filed in the Circuit Court of the county of residence of the petitioner or in Pulaski County within thirty (30) calendar days from the date the administrative hearing decision was received. Copies of the petition are served to DHS and other parties of record by personal delivery mail.

Within thirty (30) calendar days from the date of service of the petition of DHS (or additional time granted by the Court not to exceed ninety (90) calendar days total), the Office of Policy and Legal Service must transmit to the court the original or a certified copy of the entire record of the Hearing under review. Judicial Review is conducted by the court without jury and is confined to the record.

(Appeals Procedures – 2019)