

APPEAL PROCEDURES

USDA SPECIAL NUTRITION PROGRAMS

Administered by the Arkansas Department of Human Services



Summer Food Service Program (SFSP)

**APPEAL PROCEDURES FOR USDA NUTRITION PROGRAMS
ADMINISTERED BY SPECIAL NUTRITION PROGRAMS**

REQUIREMENTS

Each State Agency shall establish an appeal procedure to be followed by a sponsor requesting a review of adverse action taken by Health & Nutrition Programs (HNP). The procedures contained in the following sections comprise the official hearing procedures to be followed for Hearings relative to the Summer Food Service Program (SFSP).

REASONS FOR REQUESTING AN APPEAL

The Appeals and Hearing Section of the Office of Policy and Legal Service (OPLS) has been delegated the responsibility for conducting reviews of a sponsor aggrieved by the following actions:

1	Denial of a new or renewing sponsor application for participation.
2	Denial of a sponsoring organization's application for a site.
3	The termination of the sponsor or a site.
4	Denial of a request for an advance payment.
5	A State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim.
6	Denial of a sponsors claim for reimbursement (except for late submission under 225.9 (d)(5)).
7	A claim against a sponsor for remittance of a payment.
8	Denial of a FSMC application for registration if applicable.
9	The revocation of FSMC's registration.

NOTE: In the event that the hearing process was not invoked or the State Agency's action was upheld, requests for repayment by Health & Nutrition Programs do not constitute grounds for review/hearing.

SPONSORING ORGANIZATION OR FSMC RIGHT TO APPEAL

At the time of any adverse action, the sponsor or food service management company (FSMC) must be advised in writing by notice of action, sent certified mail, return requested and must contain the following:

1	The basis for the adverse action.
2	A statement indicating the right to appeal.
3	The address to which to route the appeal.
4	A copy of the appeal procedures.
5	The right to legal counsel or to be represented by another person.
6	The right to file written information and the right to request a hearing (appellant must state specifically if he/she wishes to have a hearing).
7	The right to file written information to be considered by the Review/Hearing Official within seven days after submission of the appeal for appeals relative to the Summer Food Service Program.
8	The requirement that Summer Food Service Program appeals must include photocopy of the notice of action issued by SNP.

REQUESTING THE HEARING

A request for review/hearing must be submitted in writing to the Appeals and Hearing Section of the Office of Policy and Legal Service, P.O. Box 1437, Slot N-401, Little Rock, Arkansas 72203 no later than 7 days from the date on which the Notice of Action is received (established by the certified mail receipt).

DENIAL OR DISMISSAL OF REQUEST FOR REVIEW

The Appeals and Hearing Section of the Office of Policy and Legal Service will not deny or dismiss a request for review except under the following circumstances:

1	The request was not received within the specified timeframe for requesting review.
2	The request was withdrawn, in writing, by 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 written information unless the appellant requests and is granted a rescheduling date by the Appeals and Hearing Section of the Office of Policy and Legal Service prior to the hearing date. There is no extension of timeframes granted in completing final administrative action on a case and due to the stringent timeframe mandated by Federal Regulations; a hearing will not be rescheduled except in the most unusual circumstances. Discretion for rescheduling a hearing lies solely with the Appeals and Hearings Section.

The Administrative Review Process

BEGINNING THE ADMINISTRATIVE REVIEW PROCESS

When a request for review is received, the Appeals and Hearing Section of the Office of Policy and Legal Service will request the Administrator of Health & Nutrition Programs to verify whether or not the request has been filed timely. If not, the appellant or representative will be notified by letter from the Appeals and Hearing Section of the Office of Policy and Legal Service that the request for review is being denied.

THE ADMINISTRATIVE REVIEW/HEARING FILE

Upon notice by the Appeals and Hearing Section of the Office of Policy and Legal Service that a request for review has been filed and after a determination that the request was timely, Health & Nutrition Programs will prepare a copy and forward the documentation to the Appeals and Hearing Section of the Office of Policy and Legal Service of the following:

1	The Notice of Action.
2	All documentary evidence used to support the Notice of Action upon which the request for review is based.
3	A complete summary of the action taken, the basis for the action and the regulation used in the decision to take adverse action.

STATUS OF ADVERSE ACTION DURING REVIEW/HEARING PROCESS

The State agency's action remains in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action.

PROCEDURE RESULTING FROM REQUEST FOR REVIEW OF WRITTEN INFORMATION

An appellant is afforded the right to an impartial review of the record and may submit written information to be considered by the Review Official.

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.

SUBPOENA OF WITNESS

With the Acknowledgement of Receipt of Request for Review is sent to the appellant who has requested a hearing, he/she will be sent a form on which to subpoena witnesses and a copy of the Hearing File. This packet of information is sent certified mail, return receipt requested.

SCHEDULING THE HEARING

If a hearing has been requested, the appellant and the Health & Nutrition Programs shall be provided with at least 5 days advance written notice sent by certified mail, return receipt requested, of the time and place of the Hearing.

THE HEARING OFFICER

The Appeals and Hearing Section of the Office of Policy and Legal Service will designate all Hearing Officers. The Hearing Officer must not have any personal interest in the case or have had any involvement in the contested action that resulted in the request for a Hearing. The review official is independent of the original decision-making process.

CONDUCT OF THE HEARING

The hearing will be conducted by a designated hearing official. The hearing will be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with the paragraphs (b) (4) and (5) of 7 CFR 225.13. The appellant may be represented by legal counsel or a designated representative.

A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official.

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.

Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.

THE HEARING DECISION

Within 5 working days after the appellant's hearing or within 5 days after receipt of written documentation, if no hearing is held, the reviewing official shall make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested.

The Review/Hearing Officer must make a determination based solely on the information provided by the State Agency, the appellant and the responsible principals and responsible individuals and based on Federal and State laws, regulations, policies and procedures governing the program. The decision will be signed by the Administrator, the Appeals and Hearing Section of the Office of Policy and Legal Service or a designated representative. The decision represents final administrative action by the Office of Chief Counsel and is binding by the Health & Nutrition Programs of the Division of Childcare and Early Childhood Education. The decisions will be sent certified mail, return receipt requested.

NOTIFICATION OF HEARING DECISIONS

Once a hearing decision is rendered, both the appellant and Health & Nutrition Programs will be notified in writing of the decision, sent by certified mail, return receipt requested. Health & Nutrition Programs will notify the Appeals and Hearing Section of the Office of Policy and Legal Service within 10 days of any action taken by this Unit as a result of the hearing decision. The determination by the State review official is the final administration determination to be afforded to the appellant.