

APPEAL PROCEDURES USDA CHILD NUTRITION PROGRAMS

SCHOOL BREAKFAST PROGRAM
NATIONAL SCHOOL LUNCH
SPECIAL MILK PROGRAM



03/31/2014

**APPEAL PROCEDURES
FOR USDA CHILD NUTRITION PROGRAMS
ADMINISTERED BY THE HEALTH AND NUTRITION SECTION
OF THE ARKANSAS DEPARTMENT OF HUMAN SERVICES**

REQUIREMENTS

Each state agency shall establish an appeal procedure to be followed by a school food authority (SFA) requesting a review of a denial or all or part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the state agency. The procedures contained in Section I comprise the official hearing procedures to be followed for such appeals.

The procedures contained in Section II comprise the official hearing procedures to be followed for appeals arising from administrative or follow-up review activity conducted by USDA Food and Nutrition Service (FNS).

SUMMARY OF REGULATORY RESPONSIBILITIES

SFA's may appeal DHS, Health and Nutrition or FNS findings in two areas:

- (1) the denial of all or part of a claim for reimbursement,
- (2) withholding of payments, resulting from a review required under 7 CFR Part 210 Subpart D, Section 210.18.

DHS, Health and Nutrition is required to provide written notice to the SFA which:

- ◆ detail grounds on which denial of all or part of claim for reimbursement or withholding payment is based,
- ◆ includes statement that the SFA may appeal the denial of all or a part of a claim for reimbursement or withholding of payment,
- ◆ informs the SFA the entity (i.e. DHS, FNS) to which the appeal should be directed,
- ◆ specifies the appeal procedures for DHS, Health and Nutrition findings according to 210.18 (q) and for FNS findings provide a copy of appeal procedure found in 210.29 (d).

This notice shall be sent by certified mail, return receipt requested.

SUMMARY OF REGULATORY RESPONSIBILITIES (continued)

DHS, Health and Nutrition must assure the SFA of:

- ◆ A fair and impartial hearing before an independent official at which they may be represented by legal counsel,
- ◆ Decisions rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review,
- ◆ The right to either a review of the record with the right to file written information or a hearing of which they may attend in person.

The DHS Health and Nutrition shall give adequate notice of the time, date, place and procedures of the hearing.

Regulatory authority

7CFR Part 210 Subpart D

Interim Rule 8/26/92

Section 210.18 (j)

Section 210.18 (q)

SECTION I

APPEAL PROCEDURES OF DHS, HEALTH AND NUTRITION FINDINGS

The School Food Authority (SFA) may appeal the Arkansas Department of Human Services, Health and Nutrition findings by filing a written request with the Office of Policy and Legal Services, Appeals and Hearings Section, P.O. Box 1437, Slot N-401, Little Rock, Arkansas 72203-1437.

◆ The written request for a review of the record shall be postmarked within 15 calendar days of the date the SFA received the notice of the denial of all or a part of the claim for reimbursement or withholding payment and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW". The DHS Office of Policy and Legal Services will acknowledge the receipt of the request for appeal within 10 calendar days.

◆ The SFA may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the SFA received the notice. The SFA may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the SFA only if the SFA so specifies in the letter of request for review. Failure of the SFA's representative to appear at a scheduled hearing shall constitute the SFA's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the DHS, Health and Nutrition Section shall be allowed to attend the hearing to respond to the SFA's testimony and to answer questions posed by the review official.

◆ If the SFA has requested a hearing, the SFA and the DHS, Health and Nutrition Section shall be provided at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date and place of the hearing.

◆ Any information on which the DHS, Health and Nutrition Section's action was based shall be available to the SFA for inspection from the date of receipt of the request for review.

◆ The review official shall be a hearing officer designated by the Office of Policy and Legal Services, an independent and impartial official other than and not accountable to any person authorized to make decisions that are subject to appeal under the provisions of this section.

◆ The review official shall make a determination based on information provided by the State Agency and the appellant and on Program regulations.

◆ Within 60 calendar days of the DHS's receipt of the request for review, the review official shall, by written notice, sent by certified mail, return receipt requested, inform the DHS, Health and Nutrition representative and the SFA of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the SFA. Health and Nutrition Programs will notify the Office of Policy and Legal Services within 10 days of any action taken by this Unit as a result of the hearing decision.

APPEAL PROCEDURES OF DHS, HEALTH AND NUTRITION FINDINGS (continued)

◆ The action being appealed shall remain in effect during the appeal process.

◆ The determination of the DHS review official is the final administrative determination to be afforded to the SFA.

**SAMPLE NOTICIFATION LETTER TO SCHOOL FOOD AUTHORITY
RIGHT TO APPEAL DHS, HEALTH AND NUTRITION FINDINGS
TO DENY PAYMENT OF ALL OR PART OF CLAIM**

A part of your (month) claim for reimbursement was denied. (State the reason for denial.)

The decision to deny payment of all or part of this claim for reimbursement may be appealed to an impartial hearing officer by filing a written request with the Arkansas Department of Human Services Office of Policy and Legal Services.

If you appeal this decision, follow the procedures stated in the enclosed "Appeal Procedures of DHS, Health and Nutrition Findings," Section I.

**SAMPLE NOTIFICATION LETTER TO SCHOOL FOOD AUTHORITY
RIGHT TO APPEAL DHS, HEALTH AND NUTRITION FINDINGS
TO WITHHOLD PAYMENT**

The (month) claim for reimbursement made by your SFA is being withheld. (State the reason for withholding claim.)

The decision to withhold payment of this claim may be appealed to an impartial hearing officer by filing a written request with the Arkansas Department of Human Services Office of Policy and Legal Services

If you appeal this decision, follow the procedures stated in the enclosed, "Appeal Procedures of DHS, Health and Nutrition Findings," Section I.

Regulatory authority –7CFR Part 210, Subpart D8/26/92, Interim Rule, Section 210.18 (q)

SECTION II

APPEAL PROCEDURES FOR FNS FINDINGS

The School Food Authority (SFA) may appeal the FNS findings by filing a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, in accordance with the appeal procedures specified below.

◆ The written request for a review of the record shall be postmarked within 15 calendar days of the date the SFA received the notice of the denial of all or a part of the claim for reimbursement or withholding payment and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW". FNS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FNS Administrative Review Officer (ARO) reviewing the case. FNS will also notify the State agency of the request for appeal.

◆ The SFA may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the SFA received the notice. The SFA may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the SFA only if the SFA so specifies in the letter of request for review. Failure of the SFA's representative to appear at a scheduled hearing shall constitute the SFA's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. An FNS representative shall be allowed to attend the hearing to respond to the SFA's testimony and to answer questions posed by the ARO.

◆ If the SFA has requested a hearing, the SFA shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing.

◆ Any information on which FNS' action was based shall be available to the SFA for inspection from the date of receipt of the request for review.

◆ The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section.

◆ The ARO shall make a determination based on information provided by FNS, the SFA and on program regulations, within 60 calendar days of the receipt of the request for review, by written notice, sent by certified mail, return receipt requested. The ARO shall inform FNS and the State agency on the determination of the ARO. The final determination shall take effect upon receipt of the written notice of the final decision by the SFA.

The action being appealed shall remain in effect during the appeal process.

◆ The determination by the ARO is the final administrative determination to be afforded to the SFA.

**SAMPLE NOTIFICATION LETTER TO SCHOOL FOOD AUTHORITY
RIGHT TO APPEAL FNS FINDINGS
TO DENY PAYMENT OF ALL OR PART OF CLAIM**

A part of your (month) claim for reimbursement was denied. (State the reason for denial).

The decision to deny payment of all or part of this claim for reimbursement may be appealed to the U.S. Department of Agriculture, Food and Nutrition Service.

If you appeal this decision, follow the procedure stated in the enclosed, "Appeal Procedure of FNS Findings." Section II

**SAMPLE NOTIFICATION LETTER TO SCHOOL FOOD AUTHORITY
RIGHT TO APPEAL FNS FINDINGS
TO WITHHOLD PAYMENT OF CLAIM**

The (month) claim for reimbursement made by your SFA is being withheld. (State the reason for withholding claim.)

The decision to withhold payment of the claim for reimbursement may be appealed to the U.S. Department of Agriculture, Food and Nutrition Service.

If you appeal this decision, follow the procedure stated in the enclosed, "Appeal Procedure of FNS Findings," Section II.

Regulatory authority
7CFR Part 210 Subpart F
Interim Rule 8/26/92
Section 210.30 (d) 3
Section 210.18 (q)

