

4617.0100 APPEALS.**Subpart 1. Procedures for appeals by applicants and participants.**

A. An applicant or participant may appeal an action which results in a claim for repayment of the cash value of vouchers and cash-value vouchers redeemed in violation of Code of Federal Regulations, title 7, part 246, or this chapter; a finding of ineligibility; the denial of benefits; or disqualification from the program.

B. An appeal by or on behalf of an applicant or participant must be received by the commissioner not more than 60 days after notice of adverse action was mailed or given to the applicant or participant or the applicant's or participant's parent or legal guardian.

C. An appeal by an applicant or participant of an action cited in item A will be decided according to this part and procedures established by the commissioner according to Code of Federal Regulations, title 7, part 246.9, and approved by USDA in the state plan submitted by the commissioner.

Subp. 1a. Procedures for appeals by local agencies, local agency applicants, vendors, and vendor applicants.

A. A local agency, local agency applicant, vendor, or vendor applicant against whom the commissioner takes adverse action that affects participation in the WIC program may appeal the action, except that the following actions by the commissioner are not subject to appeal:

(1) a notice of violation under part 4617.0084 is not subject to appeal unless the violation results in the vendor's disqualification, the termination of the vendor agreement, a civil money penalty imposed on the vendor, or denial of the vendor's reauthorization application;

(2) disqualification under part 4617.0084, subpart 10, item A;

(3) the commissioner's determination of whether disqualification would result in inadequate participant access under part 4617.0084, subpart 15; or

(4) the commissioner's return of an application to a vendor applicant under part 4617.0065, subpart 3, item C or E; or 4617.0066, subpart 3, item B.

The denial of a vendor application for the vendor applicant's failure to meet the requirement of part 4617.0067, subpart 6, item C, subitem (3), is subject to appeal. The validity and appropriateness of the criteria referenced in part 4617.0067, subpart 6, item C, subitem (3), are not subject to administrative review.

B. An appeal by a vendor, vendor applicant, local agency, or local agency applicant must be in writing and be received by the commissioner not more than 30 days after notice of adverse action was mailed. An appeal by a local agency, local agency

applicant, vendor, or vendor applicant must be decided according to this part; parts 1400.5100 to 1400.8401; Minnesota Statutes, sections 14.57 to 14.62; and Code of Federal Regulations, title 7, section 246.18, as amended. Expiration of a contract or agreement with a local agency or vendor is not subject to appeal.

C. All appeals by local agencies and local agency applicants are subject to full administrative reviews under item D. Appeals by vendors and vendor applicants are subject to full administrative reviews under item D, except that appeals of the following actions by the commissioner are subject to abbreviated administrative reviews under item E:

- (1) denial of authorization based on the vendor applicant's failure to comply with part 4617.0067, subpart 6, item B; C, subitems (1) and (2); D; or E, subitem (1);
- (2) termination of a vendor agreement under part 4617.0066, subpart 2; and
- (3) disqualification of a vendor under part 4617.0084, subpart 2 or 10, item B.

D. Full administrative reviews shall be conducted under the contested case provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14, and rules adopted thereunder. The commissioner shall provide an appellant not less than ten days' advance written notice of the time and place of a hearing. The appellant must be given one opportunity to request that a hearing date be rescheduled.

E. Abbreviated administrative reviews shall be conducted in writing, without a hearing, according to the following procedures in subitems (1) to (3).

(1) The commissioner shall appoint a decision maker who had no involvement in the initial determination to take adverse action against the vendor.

(2) After receiving the appellant's appeal, the decision maker shall notify the appellant and the WIC program who the decision maker is and shall require the WIC program to mail to the appellant and provide to the decision maker a letter setting forth the WIC program's basis for the action being appealed, attaching copies of any supporting documentation. The appellant shall then have 30 days to serve on the WIC program and file with the decision maker a written response to the WIC program's letter, along with any documentation to support the response. The appellant and the WIC program may be, but need not be, represented by counsel.

(3) The decision maker shall determine whether to uphold the WIC program's action based solely on whether the WIC program has correctly applied federal and state statutes, rules, regulations, policies, and procedures governing the WIC program, according to the information provided to the appellant concerning the cause for the adverse action and the appellant's response. The decision maker shall notify the WIC program and the appellant in writing of the decision maker's determination, including the basis for the determination. If the decision maker is unable to make a determination on the basis of the

information filed, the decision maker shall notify the WIC program and the appellant that the procedures described in item D should be followed in connection with the appeal.

Subp. 2. **Judicial review.** An applicant, participant, local agency, local agency applicant, vendor, or vendor applicant aggrieved by the decision of the commissioner or other decision maker on an appeal is entitled to a judicial review of the decision under Minnesota Statutes, sections 14.63 to 14.69.

Subp. 3. **Burden of proof.** A local agency applicant or vendor applicant that appeals the commissioner's denial of an application to participate has the burden of proving the facts at issue by a preponderance of the evidence. When an applicant, participant, local agency, or vendor appeals a disqualification or other sanction, the commissioner has the burden of proof.

Statutory Authority: *MS s 144.11; 145.891 to 145.897*

History: *13 SR 1190; 22 SR 266; 25 SR 555; 29 SR 1202; 34 SR 790*

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