

**CHAPTER 1111. APPLICANT AND PARTICIPANT APPEALS**

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**Cross References**

This chapter cited in 28 Pa. Code § 1101.2 (relating to definitions); and 28 Pa. Code § 1109.1 (relating to applicability of general rules).

**§ 1111.1. Applicant and participant appeal rights.**

This chapter applies to applicants, participants and their authorized representatives, in pursuing appeals from decisions that adversely impact upon the participation of applicants and participants in the WIC Program.

**§ 1111.2. Notification of appeal rights.**

(a) At the time of the denial of an application to become a participant, removal from the WIC Program as a participant, or placement on a waiting list to become a participant, the local agency shall inform in writing the adult applicant or participant, or the parent or guardian of a child or infant applicant or participant, of the right to appeal the decision, of the method by which an appeal may be filed, and that any positions or arguments on behalf of the applicant or participant may be presented personally or by an authorized representative, such as a relative, friend, legal counsel or other spokesperson. The expiration of the participant's certification period occurs automatically and is not appealable.

(b) The local agency shall use forms provided by the Department to provide notice of appeal rights to the adult applicant or participant, or the parent or guardian of an infant or child applicant or participant.

**§ 1111.3. Appeal of a local agency decision.**

(a) An appeal is any clear expression by the applicant, participant or authorized representative, that the decision of the local agency is contested and that an opportunity to challenge the decision and to present the case of the applicant or participant to a higher authority is desired. The Department or local agency will not limit or interfere with the freedom of the applicant, participant or authorized

representative to appeal the decision and will provide whatever assistance is necessary to reduce an oral appeal to writing.

(b) When an appeal is made orally, the local agency shall docket it as being filed when the local agency receives the oral communication.

#### **§ 1111.4. Time for appeal of a local agency decision.**

The applicant, participant or authorized representative shall appeal within 90 days after the date the local agency mails or delivers to the adult applicant or participant, or parent or guardian of an infant or child applicant or participant, written notice of the action to deny or terminate benefits under the WIC Program. An appeal is timely filed if it is received by the local agency within the 90-day period.

#### **Cross References**

This section cited in 28 Pa. Code § 1111.6 (relating to denial or dismissal of appeal).

#### **§ 1111.5. Scheduling the hearing.**

(a) *Appointment of a hearing examiner.* The local agency shall appoint a hearing examiner to preside over the appeal. The hearing examiner shall be an impartial official who does not have a personal stake or involvement in the decision, and who was not directly involved in the action being contested.

(b) *Notification of the appeal.* The local agency shall notify the hearing examiner of the appeal and the date on which it was docketed.

(c) *Time frame for scheduling a hearing.* The hearing examiner shall schedule the hearing within 3 weeks from the docketed date of the appeal. The hearing examiner shall provide the appellant participant or authorized representative with a minimum of 10 days advance written notice of the time and place of the hearing.

(d) *Standards for scheduling the hearing.* The hearing examiner shall use the following standards in scheduling a hearing:

(1) The place of the hearing may not be further from the residence of the applicant or participant than the county seat of the county in which the applicant or participant resides. If the county seat is unsuitable due to the health of the applicant or participant, transportation problems, convenience of witnesses or for other legitimate reasons, an alternative place of hearing shall be a location convenient to the home of the applicant or participant.

(2) If the applicant, participant or authorized representative wants to postpone the hearing, that individual shall contact the hearing examiner, and the local agency and provide them with a reason for postponement. If the hearing is postponed by the hearing examiner, the hearing examiner shall reschedule it as soon as possible.

(3) An applicant, participant or authorized representative may withdraw the appeal at any time before a decision is issued by the hearing examiner. This withdrawal shall be in writing and directed to the hearing examiner.

(4) If the applicant or participant fails to appear at the scheduled hearing in person or by authorized representative, without good cause as determined by the hearing examiner, the appeal shall be considered abandoned and shall be discontinued.

(e) *Independent assessment.* The hearing examiner shall order, when relevant and necessary, an independent medical assessment or professional evaluation of the applicant or participant from a source mutually satisfactory to the applicant or participant or its authorized representative, and the local agency.

(f) *Supersession.* Subsection (d)(3) supersedes 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

**§ 1111.6. Denial or dismissal of appeal.**

The hearing examiner may not deny or dismiss an appeal unless one of the following occurs:

(1) The appeal is not received by the local agency within the time limit in § 1111.4 (relating to time for appeal of a local agency decision).

(2) The appeal is withdrawn in writing by the applicant, participant or authorized representative.

(3) The applicant, participant or authorized representative fails, without good cause, to appear at the scheduled hearing.

**§ 1111.7. Continuation of benefits.**

(a) If at any time during a participant's certification period, the local agency finds the participant to be ineligible to continue enrollment in the WIC Program, the local agency shall advise the participant in writing not less than 15 days before termination of the reason for ineligibility and of the right to appeal. If an appeal is received within 15 days after service of the notice of ineligibility, benefits shall continue until the hearing examiner reaches a decision or the certification period expires, whichever occurs first.

(b) An applicant denied initial enrollment, or an authorized representative of the applicant, may appeal the denial, but the applicant may not receive benefits while awaiting disposition of the appeal.

**§ 1111.8. Rights of the appellant.**

(a) When an appeal is filed, the local agency shall inform the applicant or participant denied benefits, or an authorized representative, of the rights set forth in subsection (b).

(b) An applicant or participant who files an appeal, or on whose behalf the appeal is filed, has the following rights:

(1) To appear in person at the hearing.

- (2) To represent himself, or to be represented by an authorized representative such as an attorney, friend or other person at the hearing.
  - (3) To receive an explanation that he may contact the local bar association for assistance in locating legal services.
  - (4) To present oral or documentary evidence, witnesses and arguments to support the position of the applicant or participant in accordance with procedures established by the hearing examiner.
  - (5) To request a subpoena from the hearing examiner for the production of evidence or witnesses that the applicant, participant or authorized representative, determines are important to establish necessary facts
  - (6) To request that the local agency provide an interpreter at the hearing if an adult applicant or participant, or the parent or guardian of an infant or child applicant or participant, does not understand English or is hearing impaired.
  - (7) To examine upon request, both before and during the hearing, the materials which the Department or local agency has on file relative to the case which are not confidential.
  - (8) To be provided with the names of the local agency staff members and witnesses who will be present at the hearing.
  - (9) To question or refute any testimony or other evidence presented against the applicant or participant and to confront and cross-examine adverse witnesses.
  - (10) To examine, prior to and during the hearing, documents and records that will be presented to support the decision under appeal.
  - (11) To further appeal the final decision of the hearing examiner to the Secretary within 15 days of the mailing date of the hearing examiner's decision.
  - (12) To appeal the adjudication and order of the Secretary or agency head designated by the Secretary to the Commonwealth Court within 30 days of the mailing date of the adjudication and order.
- (c) *Supersession.* Subsection (b)(1) supplements 1 Pa. Code § 31.21 (relating to appearance in person). Subsection (b)(2) supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings). Subsection (b)(5) supplements 1 Pa. Code § 35.142 (relating to subpoenas).

### § 1111.9. Hearing record.

- (a) *Contents of the 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, shall constitute the hearing record. This record shall be available to the applicant, participant or authorized representative, for copying and inspection at any reasonable time
- (b) *Retention of the record.* This record shall be retained for 3 years.

(c) *Public inspection of the record.* Department and local agency hearing records and decisions shall be available for public inspection and copying, provided the names and addresses of participants and other members of the public are kept confidential.

(d) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.131 (relating to recording of proceedings).

**§ 1111.10. Hearing examiner decisions.**

(a) The hearing examiner shall render a decision based exclusively on the evidence contained in the hearing record.

(b) The decision of the hearing examiner shall comply with applicable Federal law, and Federal and State regulations.

(c) A decision by the hearing examiner shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record. A decision adverse to the position of the local agency shall be binding on the local agency.

(d) Within 45 days after the filing date of the appeal, the hearing examiner shall provide the applicant, participant, or authorized representative, and the local agency, a copy of the hearing examiner's decision.

(e) If the decision of the hearing examiner is in favor of the applicant or participant and benefits had been denied or discontinued, the local agency shall begin or resume providing benefits immediately upon the mailing date of the decision.

(f) If the decision is in favor of the local agency, the notice accompanying the decision of the hearing examiner to the applicant, participant or authorized representative shall include notice of the right to appeal to the Secretary. Immediately upon the date of the hearing examiner's decision, the local agency shall discontinue providing any benefits which had been continued pending issuance of the hearing examiner's decision.

(g) Subsection (a) supersedes 1 Pa. Code § 35.201 (relating to certification of record without proposed report).

**Cross References**

This section cited in 28 Pa. Code § 1109.3 (relating to time limits for action).

**§ 1111.11. Appeal to the Secretary.**

If the applicant, participant or authorized representative, chooses to appeal the decision of the hearing examiner, that individual shall file a written appeal with the Secretary within 15 days of the mailing date of the decision of the hearing examiner. The appeal shall contain a statement of reasons for reversing the decision of the hearing examiner. If the appeal asks for permission to present additional evidence, it shall:

- (1) Identify the additional evidence.
- (2) Explain why it was not previously introduced.
- (3) Explain its materiality unless it is obvious.

**§ 1111.12. Adjudication and order procedures.**

(a) In reaching a decision on the appeal, the Secretary or an agency head designated by the Secretary may:

- (1) Reconsider the decision on the basis of the evidence in the record.
- (2) Admit additional evidence.
- (3) Order a new hearing.

(b) In cases in which the hearing examiner's decision has resulted in a termination of benefits to the participant, there shall be no reinstatement of benefits upon filing of an appeal to the Secretary. The reinstatement of benefits, if granted, shall be solely as a result of the adjudication and order of the Secretary or designated agency head.

**§ 1111.13. Judicial review.**

The Secretary or designated agency head will issue an adjudication and order after considering the appeal. If the adjudication and order is adverse to the interest of the applicant or participant, the adjudication and order shall state, or be accompanied by a notice stating, that the applicant or participant has the right to appeal the adjudication and order to Commonwealth Court within 30 days after the mailing of the adjudication and order.

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