



State of New Jersey

DEPARTMENT OF AGRICULTURE
Division of Food & Nutrition
PO Box 334
TRENTON NJ 08625-0334

APPEAL PROCEDURE

PURPOSE: TO ALLOW ANY APPLICANT/PARTICIPATING INSTITUTION IN THE CHILD AND ADULT CARE FOOD PROGRAM (STATE AGENCY) AN AVENUE OF APPEAL WHEN:

1. The institution's application for participation is denied;

Denial of a new or renewing institution's application for participation (see paragraph (b) of this section, on State agency review of an institution's application; and paragraphs (c)(1) and (c)(2) of this section, on State agency denial of a new or renewing institution's application);

2. An application for participation submitted by a sponsoring organization, on behalf of a facility is denied;

3. The State Agency is proposing to terminate a sponsor's participation in the program.

Notice of proposed termination. Proposed termination of an institution's agreement (see paragraphs (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

Notice of proposed disqualification of a responsible principal or responsible individual. Proposed disqualification of a responsible principal or responsible individual (see paragraphs (c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

Start-up or expansion funds denial. Denial of an institution's application for start-up or expansion payments (see § 226.7(h));

4. The institution's agreement is suspended;

Suspension of an institution's participation (see paragraphs (c)(5)(i)(B) and (c)(5)(ii)(D) of this section, dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

5. All or part of the institution's claim for reimbursement or an upward adjustment to a claim is denied;

Denial of all or a part of an institution's claim for reimbursement (except for a denial based on a late submission under § 226.10(e)) (see §§ 226.10(f) and 226.14(a));

6. Demand for remittance of an overclaim or overpayment;

7. Any other action of the State Agency affecting the participation of an institution in the program or the institution's claim for reimbursement.

ACTIONS NOT SUBJECT TO ADMINISTRATIVE REVIEW

1. FNS decisions on claim deadline exceptions;

2. Determination of serious deficiency. A determination that an institution is seriously deficient (see paragraphs (c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

3. State agency determination that corrective action is inadequate (see paragraph (k)(3) of this section);

4. State agency or FNS decision regarding removal from the National disqualified list (see paragraph (k)(3) of this section); or

5. State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list (see paragraph (k)(3) of this section).

6. Disqualification and placement on State agency list and National disqualified list. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list (see paragraphs (c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C) of this section, dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations); or
7. Termination. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS (see paragraphs (c)(3)(i) and (c)(7)(ii) of this section).

PROCEDURE: NOTIFICATION OF DENIAL, PROPOSED TERMINATION, OR REQUEST FOR REMITTANCE

1. Whenever the Bureau of Child Nutrition Programs takes such action, which may affect the participation of an institution in the program, or notifies a sponsor that program funds must be remitted (see above), the Bureau will inform the sponsor in writing. The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals will receive the notice of action and the grounds upon which the Bureau based its final determination. State agency adverse action notifications are faxed and mailed, via overnight delivery, to the last known addresses filed by the institution. Notices sent by fax are considered received on the date they are sent. If a notice is undeliverable, it is considered to have been received 5 days after it was sent to the last known mailing address or fax number filed with the state agency.
2. Upon receipt of the Bureau's letter of final determination, the appellant must ensure the written request for a hearing is received by the Department no later than 15 calendar days from the date the notice of action was received. Written correspondence must clearly indicate if both the institution and the listed responsible principals/individuals are included in the request for appeal; if the institution or responsible principals/individuals will be represented by another person, or retain legal counsel; or if the listed responsible principals/individuals will exercise their right to self-representation. All listed responsible principals/individuals must be noted as copied on the request for appeal in accordance with the definition of "notice " requirements in 7 CFR 226.2. If any party decides to appeal the proposed actions, make sure the appeal procedures are followed exactly because the failure to do so could result in the denial of the request for an appeal.

The request for a hearing must be sent directly to the hearing officer, via certified mail, with a carbon copy sent to the Director, Division of Food and Nutrition.

ALL REQUESTS FOR APPEALS MUST BE SENT VIA CERTIFIED MAIL TO:

LEGAL SPECIALIST
 NEW JERSEY STATE DEPARTMENT OF AGRICULTURE
 JOHN FITCH PLAZA
 MARKET AND NEW WARREN STREETS
 P.O. BOX 330
 TRENTON, NJ 08625-0330

ALL COPIES OF REQUESTS FOR APPEALS MUST BE SENT TO:

DIRECTOR
 DIVISION OF FOOD AND NUTRITION
 NEW JERSEY STATE DEPARTMENT OF AGRICULTURE
 P.O. BOX 334
 TRENTON, NJ 08625-0334

OVERNIGHT DELIVERY ADDRESS:
 DIRECTOR
 DIVISION OF FOOD AND NUTRITION
 22 S. CLINTON AVE., BLDG 4, 3RD FLOOR
 TRENTON, NEW JERSEY 08625-0334

3. The hearing officer will acknowledge the receipt of the appeal request within 10 calendar days; the appellant will be provided with at least 10 calendar days advance written notice of the time and place of the hearing. The notice will be sent certified mail, return receipt requested.
4. The appellant may refute the charges in person and/or by written documentation to the hearing officer. In order to be considered, written documentation must be filed with the hearing officer not later than the scheduled hearing date, or 30 calendar days after the notice of action was received, whichever is first.
5. The appellant may retain legal counsel or may be represented by another person.

Any information on which the State Agency's action was based will be available to the appellant for inspection from the date of receipt of the request for appeal.

Review of record. 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 appeal.

Opposition. 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 hearing official. In order to be considered, written documentation must be submitted to the hearing official no later than 30 days after receipt of the notice of action.

IMPORTANT NOTE: The request must include the name, address, title and signature of the person requesting the appeal and should include telephone and fax numbers; a copy of the State Agency letter in which the action being appealed is described; the date the letter was received; a specific request for a face to face hearing if one is desired, (otherwise, a review of the records will be conducted); and a statement of the relief being requested.

If your request is determined to be timely (within the 15 day period), you will receive acknowledgment of that fact from the Hearing Official. If your request is determined not to be filed timely, you will be notified that no review will be conducted and that the original determination is final.

FINAL

DETERMINATION

The New Jersey Department of Agriculture has appointed an impartial and independent hearing officer who will be solely responsible for making a final determination. The hearing official must not have been involved in the action that is the subject of the appeal, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals may contact the administrative review official directly if they so desire.

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 hearing official, unless the official agrees to reschedule the hearing. A representative of the State agency is allowed, but not required, to attend the hearing to respond to the testimony of the institution, the responsible principals, and the responsible individuals, and to answer questions posed by the hearing official. If a hearing is requested, the institution, the responsible principals and responsible individuals, and the State agency will be provided with at least 10 days advance notice of the time and place of the hearing.

Basis for decision. The hearing official will make a determination based solely on the information provided by the State agency, the institution, and the responsible principals and responsible individuals based on Federal and State laws, regulations, policies, and procedures governing the Program.

Within 60 days of the hearing, the hearing officer will make a determination based on information provided by the State Agency and the appellant, and on program regulations. The Bureau of Child Nutrition and the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals will be notified in writing of the hearing officer's final determination.

Final decision. The determination made by the administrative review official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

RECORD OF

RESULT OF APPEAL:

THE STATE AGENCY MUST MAINTAIN SEARCHABLE RECORDS OF ALL ADMINISTRATIVE REVIEWS AND THEIR DISPOSITION.

Combined hearings for responsible principals and responsible individuals. The State agency will conduct the hearing of the proposed disqualification of the responsible principals and responsible individuals as part of the appeal of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the hearing official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

Abbreviated Appeal. The State agency will limit the appeal to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because:

the information submitted on the application was false (see paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A) of this section);

the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List (see paragraph (b)(12) of this section);

the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the Program (see paragraph (b)(13) and (c)(3)(ii)(S) of this section); or

the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (see paragraphs (b)(14) and (c)(3)(ii)(T) of this section).

**EFFECT OF
STATE AGENCY
ACTION:**

The State agency's action will remain in effect during the administrative review. The effect of this requirement on particular State agency actions is as follows:

Overpayment demand. During the period of the administrative review, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

Program payments. The availability of Program payments during the appeal process for the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of this section.