

**NEW JERSEY DEPARTMENT OF HEALTH
WIC PROGRAM**

STATE POLICY

Policy & Procedure Number: 1.45

Effective Date: May 20, 2022

Functional Area: I. VENDOR MANAGEMENT

Subject: Vendor Violations, Vendor Sanctions and Administrative Reviews

A. POLICY:

This policy is about Vendor Violations, Vendor Sanctions and Administrative Reviews:

1. A *Vendor Violation* means any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement or Federal or State statutes, regulations, policies, or procedures governing the Program as defined in PP 1.31-I Vendor Agreement, Appendix A: Vendor Violations.
2. A *Vendor Sanction* means the specific action taken against a vendor in relation to violations or abuse as defined in PP 1.31-I Vendor Agreement, Appendix A: Vendor Violations.
3. An *Administrative Review* (also referred to as an *Administrative Appeal*) is the State Agency's Administrative review procedures allowing affected Vendors who file an appeal concerning one of the actions listed in the Vendor Agreement, Appendix A an opportunity to have a review of the decision made by the WIC program.
4. An *Impartial Decision-Maker* means the person(s) designated for the purpose of conducting an administrative review. The decision-maker must be free of influence, ensuring no bias, real or perceived. The Impartial Decision-Maker's decision is based solely on whether the State Agency has correctly applied NJ WIC program policies and procedures, according to the evidence presented at the review and the Federal statutory and regulatory provisions governing the Program. An Impartial Decision-Maker may be representative(s) of the Grant Appeal Board or another impartial party.
5. An *Administrative Hearing* is the process whereby the involved parties provide facts, evidence, and arguments toward a resolution. The administrative hearing involves disputes of Federal or State statutes, regulations, policies, or procedures governing the NJ WIC Program. The administrative hearing establishes a record of facts.
6. A *Judicial Review* means the power of the courts to examine the actions of the administrative appeal and to determine whether such actions are consistent with the WIC federal regulations and the NJ WIC Policies and Procedures and whether the administrative review decision was accurate.
7. A *Civil Money Penalty (CMP)* is a monetary fine issued as a penalty in lieu of disqualification or termination of a Vendor.

B. PROCEDURE:

1. Vendor Violations

- a. The State Agency (also referred to as SA) may sanction a Vendor for program abuse and failure to adhere to Federal and State rules and regulations. The SA will make a determination of actions when the Vendor has committed a vendor violation.
- b. Federally Mandated and State Violations with corresponding sanctions and/or disqualifications are contained in Appendix A. Federally mandated sanctions are in 7 CFR Part 246.
- c. For violations requiring a pattern of occurrences to impose a sanction, the SA must notify the Vendor after investigation establishes the pattern of occurrences necessary to impose a sanction for the violation, unless notification would compromise an investigation.
- d. The SA must notify the Vendor of an initial violation in writing.

2. Vendor Sanctions

- a. The SA will impose Sanctions to the Vendor based on the violation committed by the Vendor as defined in accordance with the Vendor Agreement, Appendix A, Vendor Violations.
- b. The SA will notify the Vendor in writing of the details of the committed violation and the sanction to be imposed.
- c. The Vendor shall be responsible for the actions of its owners, officers, managers and employees and/or independent contractors in the handling of electronic benefits and the selling of authorized foods and shall be liable for any actions of his/her employees, agents or representatives that violate the terms and conditions of this Agreement or State Agency rules, regulations, policies and procedures, as amended and supplemented.
- d. As an alternative sanction and when the State Agency determines there to be a WIC participant access issue, a civil money penalty (CMP) may be assessed against a Vendor in lieu of disqualification to allow the Vendor to continue to serve an otherwise uncovered participant group. (Policy and Procedure 1.46 Vendor Termination)

3. Administrative Reviews

- a. The Vendor has the right to request an administrative appeal as described in CFR 246.18 (Refer to Appendix B, C and D of the Vendor Agreement).
- b. A request for a hearing must be made by the Vendor or his/her representative in writing or in person to the Grants Appeal Board stating the reasons for the request within fifteen (15) business days of the date of notification of adverse action. The

address to which the Vendor may file its appeal shall be provided by the State Agency on the Notice of Termination. See Appendix B of the Vendor Agreement, Administrative Appeal of State Agency Decisions against Vendors, incorporated herein by reference.

- c. The SA may appoint a reviewing official (impartial decision-maker), such as a chief hearing officer or judicial officers to review appeal decisions to ensure that they conform to approved policies and procedures.
- d. All parties will be provided adequate advance notice of the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing. Also, all parties will be provided an opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal. For example: pertinent regulations, policy or specific section of the Vendor Agreement.
- e. All parties will be provided an opportunity to present their case and advance arguments without undue interference.
- f. All parties have at least one opportunity to reschedule the hearing date upon request. The SA may allow more than the minimum of two hearing dates based on extenuating circumstances.
- g. All parties will have the opportunity to be represented by counsel, bring witnesses, question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

4. Types of Administrative Reviews

- a. There are two types of Administrative Reviews:
 - A *full administrative review* consists of a hearing with impartial decision-makers. During a full administrative review, the SA claims against the Vendor will be presented by WIC representatives and or their designees.
 - An *abbreviated administrative review* is based on written documentation and other materials submitted to an official by both parties. Abbreviated reviews do not include a hearing.
- b. The SA must provide a **full administrative review** for Vendors that appeal the following adverse actions:
 1. Denial of authorization based on the Vendor Selection Criteria for competitive price or for minimum variety and quantity of authorized supplemental foods, or on a determination that the Vendor is attempting to circumvent a sanction. (See Vendor Selection Criteria, Appendix E)
 2. Denial of authorization based on the Vendor Selection Criteria for minimum stock requirements, (See Vendor Selection Criteria, Appendix E)

3. Termination of an agreement for cause
 4. Disqualification
 5. The imposition of a fine or a civil money penalty in lieu of a disqualification
- c. The SA must provide **abbreviated administrative reviews** for Vendors that appeal the following adverse actions, unless the State agency decides to provide full administrative reviews for any of these types of adverse actions:
1. Denial of authorization based on the Vendor Selection Criteria for business integrity or for a current SNAP disqualification or civil money penalty for hardship (§246.12(g)(3)(ii) and (g)(3)(iii))
 2. Denial of authorization based on the application of the Vendor Selection Criteria for competitive price (§246.12(g)(4))
 3. The application of the State agency's Vendor peer group criteria and the criteria used to identify vendors that are above-50-percent Vendors or comparable to above-50- percent Vendors
 4. Denial of authorization based on a SA established Vendor Selection Criteria if the basis of the denial is a WIC Vendor sanction or a SNAP withdrawal of authorization or disqualification
 5. Denial of authorization based on the State agency's Vendor Selection Criteria (§246.12(g)(2))
 6. Denial of authorization because a Vendor submitted or failed to complete its application outside the timeframes during which applications are being accepted and processed as established by the State agency under §246.12(g)(8)
 7. Termination of an agreement because of a change in ownership or location or cessation of operations (§246.12(h)(3)(xvii))
 8. Disqualification based on a trafficking conviction (§246.12(l)(1)(i))
 9. Disqualification based on the imposition of a SNAP civil money penalty for hardship (§246.12(l)(2)(ii))
 10. Disqualification or a civil money penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC State agency (§246.12(l)(2)(iii))
 11. A civil money penalty imposed in lieu of disqualification based on a SNAP disqualification under §246.12(l)(1)(vii)

12. Disqualification of a Vendor because of disqualification from the SNAP and the State Agency's determination regarding participant access are not subject to review.
- d. The SA shall not provide administrative reviews pursuant to Vendors that appeal the following actions:
1. The validity of appropriateness of the State Agency's Vendor Selection Criteria.
 2. The validity or appropriateness of the State Agency's participant access determinations.
 3. The State Agency's determinations whether a Vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the Vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.
 4. Denial of authorization if the State Agency's Vendor authorization is subject to the procurement procedures applicable to the State Agency.
 5. The expiration of the Vendor's NJ WIC Vendor Agreement.
 6. Disputes regarding WIC transaction processing, settlements or eWIC claims.
 7. Disqualification of a Vendor as a result of disqualification from SNAP and the SA determination regarding participant access are not subject to review.
 8. The SA's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required pursuant to §246.12(g)(10)(i).
 9. The SA's determination whether to notify a Vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction pursuant to §246.12(1)(3).

5. Administrative Review Decisions

- a. The impartial decision maker, whose decision as to the validity of the SA's action, shall rest solely on the evidence presented at the administrative review/hearing and the statutory and regulatory provisions governing the WIC Program. The basis for the decision shall be stated in writing.
- b. The decision by the impartial decision maker shall summarize the facts of the

case, specify the reasons for the decision, and identify the supporting evidence and the documents and records presented to support the decision under appeal. The decision shall become a part of the appeal record.

- c. The SA will provide written notification of the administrative review decision within 30 days of the completion of the administrative review.
- d. If the Grant Appeal Board was found in favor of the retailer, the following will occur.
 - If the vendor requested an appeal based on denial of authorization, termination or disqualification, the Vendor will be authorized as soon as administratively feasible, after receipt of the review decision.
 - If the vendor requested an appeal, based on violations and sanctions the adverse actions will be removed from the Vendor's record.
- e. If the Grant Appeal Board was found in favor of the SA, the following will occur.
 - If the vendor requested an appeal based on denial of authorization, termination or disqualification, the Vendor will be terminated as soon as administratively feasible, after receipt of the review decision.
 - If the decision is regarding a Civil Money Penalty, efforts to collect the penalty will resume immediately as referenced in P&P 1.46, Vendor Terminations and Disqualifications.
- f. The SA will notify FNS of SNAP reciprocal disqualifications.
- g. The SA will notify WIC Local Agencies of the Vendor contract termination or disqualification from accepting NJ WIC benefits.
- h. The Vendor will be required to return NJ WIC owned Stand Beside/Single function equipment, if applicable.
- i. If the Vendor expresses an interest in pursuing a further review of the decision, the SA shall explain further State level review hearing processes. If further hearing processes are not available or have been exhausted, the SA shall explain the right to pursue judicial review of the decision.
- j. The effective date of any disqualification, not including disqualification for the violations listed in 7 CFR 246.18(a)(iii)(k)(2), shall be twenty (20) days after the date of written notice and shall be designated in the letter of notification of disqualification. An administrative appeal of the disqualification by the Vendor shall automatically postpone the effective date of the disqualification until the Grant Appeal Board renders a final decision.

7. Judicial Review

- a. If the Administrative Review decision upholds the adverse action against the vendor, farmer or farmers' market or local agency, the State Agency must inform the vendor or local agency that it may be able to pursue judicial review of the decision.
- b. The Administrative Review Outcome Notice must inform the Vendor that they may pursue Judicial review.
- c. If the decision is reversed as a result of a judicial review the NJ WIC Program must implement the decision within the timeframe as specified within the final orders of the court or as soon as administratively feasible, after receipt of the review decision.

8. Withdrawal or Default of an Appeal

- a. A withdrawal of an appeal occurs when the Vendor states, in writing, that an appeal is no longer desired.
- b. A default of an appeal occurs when:
 - i. The Vendor fails to appear at the full administrative review without good cause as determined by the impartial decision makers.
 - ii. The Vendor fails to submit written grounds for the appeal and documentation supporting the appeal by the deadline established in the appeal notification
 - iii. The Vendor cannot be located through his or her last contact information on record.

9. Continuing Responsibilities

- a. Appealing an adverse action does not relieve a vendor from responsibility for continued compliance with the terms of the Vendor Agreement during the appeal pending process. The SA may impose sanctions for vendor violations, separate and apart from those of the standing appeal process.
- b. If the Impartial Decision Maker's determination of the first appeal was made in favor of the retailer this action will have no bearing subsequent Grant Appeal requests.
- c. If the Impartial Decision Maker's determination of the first appeal was made in favor of the SA for denial of authorization, termination or disqualification, no further appeal action will be permitted.

Attachment(s):

PP 1.46 Vendor Terminations and Disqualifications

PP 1.46 A-J Decision of Termination Letters

PP 1.31 I Vendor Agreement, Appendix A: Vendor Violations

PP 1.31 I Vendor Agreement, Appendix B: Full Administrative Appeal of State Agency
Decisions against Vendors

PP 1.31-I Vendor Agreement, Appendix C: Abbreviated Administrative Appeal of State Agency
Decisions against Vendors

PP 1.31-I Vendor Agreement, Appendix D: Administrative Review of State Agency Actions