

WAC 246-790-125 Vendor appeal process. (1) The following department actions may not be appealed:

(a) The validity or appropriateness of the department's limiting criteria or the vendor selection criteria for minimum variety and quantity of WIC approved foods, business integrity, and current SNAP disqualification or civil monetary penalty instead of disqualification;

(b) The validity or appropriateness of the department's selection criteria for competitive price including, but not limited to, the peer group criteria and the criteria used to identify above fifty percent vendors;

(c) The validity or appropriateness of the department's participant access criteria and the department's participant access determinations;

(d) The department's determination whether or not to include an infant formula manufacturer, wholesaler, or distributor on the approved infant formula provider list;

(e) The validity or appropriateness of the department's prohibition of incentive items;

(f) The department's determination whether to notify an authorized vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established;

(g) The department's determination whether the authorized vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the authorized vendor was not aware of, did not approve of, and was not involved in the violation;

(h) The expiration of the authorized vendor contract;

(i) Disputes regarding food instrument payments and claims (other than the opportunity to justify or correct an overcharge or other error);

(j) Disqualification as a result of a disqualification from SNAP.

(2) Except as provided in WAC 246-790-125(1), applicant or authorized vendor may file an appeal for the department's decision to decline an application, terminate a contract, impose a sanction, or other adverse action.

(3) The request for appeal must be filed in conformance with the following:

(a) A request for appeal must be filed with the Department of Health, Adjudicative Service Unit (ASU), P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the department's WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886;

(b) The request must be in writing, state the issue, contain a summary of the applicant or authorized vendor's position on the issue, and include a copy of the department's notice of adverse action;

(c) If applicable, a notice of appearance by the applicant or authorized vendor's attorney;

(d) The request must be filed no later than twenty-eight days from the date the applicant or authorized vendor receives the notice unless otherwise specified in the department's notification of adverse action.

(4) Proceedings under this chapter shall be in accordance with chapter 246-10 WAC as modified by the following:

(a) Within thirty days from the date ASU receives the request for appeal, the ASU or other designee of the secretary shall approve or deny the request. The notice of approval shall include a scheduling order setting forth a date, time, and place for a prehearing conference and the hearing.

(b) Without discovery request by the appellant, the department shall deliver its record of the decision to the appellant within thirty days from the issuance of the scheduling order.

(c) At the time provided in the scheduling order, the presiding officer shall conduct a telephonic prehearing conference. Following the prehearing conference, the presiding officer will issue a prehearing order defining conduct at hearing, which will establish the procedure for the hearing.

(d) At the time provided in the scheduling order, the presiding officer will conduct an in-person hearing in which the appellant and program will each have an opportunity to present its case and cross-examine adverse witnesses.

(e) The presiding officer shall decide the case based solely on whether the program has correctly applied federal and state statutes, regulations, policies, and procedures governing the WIC program, according to the evidence presented at the review.

(5) If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.

[Statutory Authority: RCW 43.70.120. WSR 14-21-110, § 246-790-125, filed 10/16/14, effective 11/16/14; WSR 11-23-125, § 246-790-125, filed 11/21/11, effective 12/22/11.]