

DEPARTMENT OF HUMAN RESOURCES FAMILY INVESTMENT ADMINISTRATION	FOOD SUPPLEMENT PROGRAM MANUAL	
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460.1 Purpose

This section describes the administrative hearings policy and procedures.

460.2 Availability of Hearings

The Department of Human Resources (DHR) will provide access to an administrative hearing for any household aggrieved by any action of the local department that affects the household's participation in the Food Supplement Program (FSP).

460.3 Notification of the Right to Request an Administrative Hearing

The local department will:

- A. At the time of application inform each household in writing:
 - 1. Of its right to an administrative hearing;
 - 2. Of the method by which the household may request an administrative hearing; and
 - 3. That a household member or a representative, such as legal counsel, relative, friend or other spokesperson may present the household's case.

NOTE: Appeals information is in the rights and responsibilities section of FIA application forms and in the myDHR application.

- B. Remind a household of its right to an administrative hearing any time the household expresses to the local department that it disagrees with the local department's action. Offer to help the household to request a hearing.
- C. Inform the household of any individual or organization that provides free legal representation.

460.4 Time Period for Requesting an Administrative Hearing

- A. Allow a household to request an administrative hearing on any action by the local department or loss of benefits that occurred in the prior ninety days.
- B. Action by the local department includes a denial of the request for restoration of any benefits lost more than ninety days but less than a year prior to the request.
- C. A household may request an administrative hearing to dispute its current level of benefits at any time within a certification period.

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460.5 Request for an Administrative Hearing

- A. A request for an administrative hearing is any clear expression (verbally or in writing) by the household or its representative that it wishes to present its case to a higher authority.
- B. Normally, a household requests an administrative hearing by completing and returning to the local department the *DHR/FIA 334, Appeal for Administrative Hearing* form.
- C. All requests for an administrative hearing must be reported immediately to the local department's designated hearings coordinator.
- D. Ask that the household clarify its grievance if it is unclear from the household's request what action it wishes to appeal.
- E. Do not limit or interfere in any way with the household's freedom to make such a request.
- F. The local department will forward the request for an administrative hearing to the Office of Administrative Hearings (OAH) at the following address:

Office of Administrative Hearings
Administrative Law Building
11101 Gilroy Road
Hunt Valley, Maryland 21031-1301

460.6 Agency Responsibilities on Administrative Hearing Requests

- A. Upon request, the local department will make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing.
- B. Upon request, the local department will assist the household with its hearing request.
- C. The local department will reduce an oral appeal request to writing within seven calendar days of the request. The date of the oral request is the filing date of the hearing request.
- D. Within five days of the filing date the local department will forward requests for an administrative hearing to OAH. The request must include the following information:
 - 1. The date of the request;
 - 2. The name and address of the appellant;

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460.6 Agency Responsibilities on Administrative Hearing Requests (continued)

3. The action being appealed;
 4. The date of the action being appealed;
 5. The date the advance notice was mailed to the appellant; and
 6. Whether, pending the appeal, benefits will be continued at the same level.
- E. The local department must prepare a summary of the facts pertinent to the case and its basis for action. Forward the summary and copies of all documents to be presented at the hearing to the appellant and OAH at least six calendar days before the hearing date.
- F. Advise the household of any legal services available that can provide representation at the hearing.
- G. Expedite hearing requests from households such as migrant farm workers that plan to move from the jurisdiction of the hearing official before a hearing decision would normally be reached.
- H. Process hearing requests from households described in 460.6G faster than others if necessary to enable them to receive a restoration of benefits (if the decision so indicates) before they leave the area.
- I. The local department will provide bilingual staff or interpreters who speak the appropriate language if the individual making the hearing request speaks a language other than English.
- J. Offer the household a pre-hearing conference.

Note: Timeliness is essential as the USDA Food and Nutrition Service requires that the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision **within 60 days** of receipt of a request for a fair hearing.

460.7 Pre-hearing Conferences

- A. The local department will offer agency conferences to households that wish to contest the denial, closure or reduction of benefits.

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460.7 Pre-hearing Conferences (continued)

- B. The local department will advise households that the use of an agency conference is optional and that it will in no way delay or replace the administrative hearing process.
- C. The case manager may attend the agency conference. A Family Investment Program supervisor and/or the local department assistant director or director and the household and/or its representative must attend the conference.
- D. Agency conferences may lead to an informal resolution of the dispute. Unless the household makes a written withdrawal of its request for a hearing, the local department conference will in no way replace the administrative hearing process.
- E. The local department will schedule agency conferences for households contesting a denial of expedited service within two working days, unless the household requests that it is scheduled later or states that it does not wish to have an agency conference.

460.8 Notification of Time and Place of Hearing

- A. The Office of Administrative Hearings will notify the appellant and the local department of the date, time and location of the hearing. The notice is provided to the parties within fifteen calendar days before the scheduled hearing. The household may request less advance notice to expedite the scheduling of the hearing.
- B. The hearing notice will:
 1. Advise the household or its representative of the name, address and phone number of the appropriate person to notify in the event that it is not possible for the household to attend the scheduled hearing;
 2. Specify that the hearing official will dismiss the hearing request if the household or its representative fail to appear for the hearing without good cause;
 3. Explain that the household or its representative may examine the case file prior to the hearing; and
 4. Include the hearing procedures and any other information that provides the household with an understanding of the proceedings and contributes to the effective presentation of the household's case.

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460.9 Household Request for Postponement

- A. A household may request and is entitled to receive a postponement of a scheduled hearing.
- B. The postponement will not exceed thirty days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if the household postpones a hearing for ten days, the final action is required within seventy days from the date of the request for a hearing.

460.10 Attendance at Hearing

- A. A local department representative and the household and/or its representative will attend the hearing.
- B. Friends or relatives of the household may attend the hearing if the household chooses.
- C. The hearing official has the authority to limit the number of persons in attendance at the hearing if space is limited.

460.11 Consolidated Hearings

- A. The hearing official may respond to a series of individual requests for hearings by conducting a single group hearing.
- B. The hearing official may consolidate cases when related issues of State and/or Federal law, regulation or policy are the sole issues raised and only when individual issues of fact are not disputed.
- C. In all group hearings, follow the policies governing individual hearings.
- D. Each individual household is allowed to present its own case or have the case presented by its representative.

460.12 Denial or Dismissal of a Request for an Administrative Hearing

The hearing official cannot deny or dismiss a request for an administrative hearing unless:

- A. The request is not received within the specified time period;
- B. The request is withdrawn in writing by the household or its representative;

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460.12 Denial or Dismissal of a Request for an Administrative Hearing (continued)

1. The local department is prohibited from coercion or actions, which would influence the household or its representative to withdraw the household's request for an administrative hearing.
 2. The local department must provide written notice to the household confirming the household's request to withdraw the administrative hearing request.
 3. The written notice must point out that the household has 10 days from the date it receives the notice to request an administrative hearing or to advise the State of the household's desire to reinstate the hearing request.
- C. The household or its representative fails, without good cause, to appear at the scheduled hearing.

460.13 Household Rights During the Hearing

Since the household may not be familiar with administrative hearings procedures, it may be necessary to make efforts to present the facts of the case in a way that makes the household most at ease. The local department will:

- A. Give the household or its representative an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing (give the household a copy of the relevant portions of the case record at least 6 days before the hearing date);
- B. Make available the contents of the case file (including the application form and documents used to establish the household's eligibility and allotment), provided that confidential information such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecution is not released;
- C. Not introduce as evidence:
 1. Confidential information that is protected from release; or
 2. Other documents or records that the household has not had the opportunity to contest or challenge before the hearing or that can affect the hearing official's decision.
- D. Provide the household the opportunity to:
 1. Present its case or have it presented by a legal counsel or other person;

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460.13 Household Rights During the Hearing (continued)

2. Bring witnesses;
3. Advance arguments without interruption;
4. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses; and
5. Submit evidence to establish all pertinent facts and circumstances in the case.

460.14 Designation of the Hearing Official

The hearing official will be:

- A. An employee of the Office of Administrative Hearings;
- B. An individual under contract with the Office of Administrative Hearings;
- C. An employee of another agency designated by the Office of Administrative Hearings;
- D. A member or official of a statutory board or other legal entity designated by the Office of Administrative Hearings to conduct hearings; or
- E. An executive officer of the Office of Administrative Hearings, a panel of officials of the Office of Administrative Hearings, or a person or persons expressly appointed to conduct State and/or local level hearings.

460.15 Powers and Duties

The hearing official will:

- A. Administer oaths or affirmations as required;
- B. Ensure that all relevant issues are considered;
- C. Request, receive and make part of the record all evidence determined necessary to decide the issue raised;
- D. Regulate the conduct and course of the hearing consistent with due process;

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460.15 Powers and Duties (continued)

- E. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the local department; and
- F. Provide a hearing record and recommendation for a final decision by the hearing authority, or if the hearing official is the hearing authority, render a hearing decision in the name of the State agency, which will resolve the dispute.

460.16 Hearing Decisions

- A. Decisions by the hearing official will comply with federal law or regulations and will be based on the hearing record.
- B. The following constitutes the exclusive record of a final decision by the hearing authority:
 - 1. The verbatim transcript or recording of testimony and exhibits;
 - 2. An official report containing the substance of what transpired at the hearing; and
 - 3. All papers and requests filed during the proceeding.
- C. The hearing record will be available at any reasonable time to the household or its representative for copying and inspection.
- D. A decision by the hearing official is binding on the local department, and will:
 - 1. Summarize the facts of the case;
 - 2. Specify the rationale for the decision; and
 - 3. Identify the supporting evidence and pertinent Federal and State regulations or policy.
- E. The decision is made part of the case record.
- F. The household and local department will each be notified of the following:
 - 1. The decision;
 - 2. The rationale for the decision;
 - 3. The available appeal rights; and

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460.16 Hearing Decisions (continued)

4. That the household's benefits are terminated or issued as decided by the hearing authority.

460.17 Timely Action on Hearings

- A. The Office of Administrative Hearings will ensure that:
 1. A hearing is conducted;
 2. A decision is reached; and
 3. The local department and the household are notified of the decision within sixty days of the receipt of a request for an administrative hearing.
- B. The local department will reflect decisions resulting in an increase in household benefits in the allotment within ten days of the receipt of the hearing decision, even if the local department must provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle.
- C. The local department may take longer than ten days if it elects to make the decision effective in the household's normal issuance cycle, provided the issuance occurs within sixty days from the household's request for a hearing.
- D. Decisions resulting in a decrease in household Food Supplement Program (FSP) benefits are reflected in the next scheduled issuance following receipt of the hearing decision.

460.18 Implementation of Hearing Decisions

The local department will:

- A. Ensure that all final hearing decisions are reflected in the household's allotment within the time limits specified in Section 460.17;
- B. Provide lost FSP benefits to households in accordance with Section 470 Restoration, when the hearing authority determines that a household was improperly denied FSP benefits or issued a lesser amount than was due;
- C. Restore FSP benefits to households that are leaving the project area before the departure whenever possible;

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460.18 Implementation of Hearing Decisions (continued)

- D. Accept an authorization and issue the appropriate benefit if the notice is presented in a new project area by the household or received directly from another project area; and
- E. Prepare a claim against the household for any over-issuance when the hearing official upholds the local department's action.

460.19 Continuation of Food Supplement Program Benefits

- A. Except as described in 460.19 B, below, the local department will automatically continue or reinstate FSP benefits if a household requests a administrative hearing within ten calendar days of the later of:
 - 1. The mailing of timely and adequate notice;
 - 2. The date of the agency's action if the agency failed to give timely notice; or
 - 3. The date the agency was required to act on an application or make an adjustment to FSP benefits and failed to act.
- B. The local department will not continue or reinstate benefits pending appeal if:
 - 1. The household requests that benefits not be continued or reinstated; or
 - 2. Its certification period has expired.
- C. When benefits are reduced or terminated due to a mass change, reinstate participation on the prior basis only if the issue being contested is that eligibility or FSP benefits were improperly computed or that Federal law or policy is being misapplied or misinterpreted by the local department.
- C. If a household requests a hearing send the household DHR/FIA 334 (Appeal for Administrative Hearing Form) for completion and return.
 - 1. Assume that the household desires the continuation of FSP benefits and issue them accordingly if the form does not positively indicate that the household has waived the continuation of benefits.
 - 2. Establish a claim against the household for all over-issuances if the local department's action is upheld by the hearing decision.
 - 3. Reduce or terminate the household's benefits (as provided by the advance notice) if a hearing request is not made within the advance notice period.

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460.19 Continuation of Benefits (continued)

NOTE: If the household establishes that its failure to make the request within the advance notice period is for good cause, reinstate the benefits on the prior basis.

- H. Once continued or reinstated, do not reduce or terminate FSP benefits prior to the receipt of the official hearing decision, unless:
1. The certification period expires. (The household may reapply and determined eligible for a new certification period with a FSP benefit amount as determined by the local department.);
 2. The hearing official makes a preliminary determination (in writing and at the hearing) that:
 - (a) The sole issue is one of Federal law, regulation or policy; and
 - (b) The household's claim that the local department computed the benefit incorrectly or misinterpreted or misapplied such law, regulation or policy is invalid;
 3. A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or
 4. A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending.

NOTE: The local department informs the household in writing if benefits are reduced or terminated pending the hearing decision.