

## Section III: State Agency Procedure Manual

### I. State Vendor and Farmer Management

#### E. Administrative Review

##### Purpose

The WIC Program must impose sanctions on vendors for non-compliance with program regulations, policies, and procedures.

##### Policy

A retailer may request an administrative review to contest a punitive decision rendered by the Montana WIC Program.

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#### 1. Introduction

- The Montana WIC Program will provide, upon request, a full administrative review to a retailer seeking to appeal the following adverse actions:
  - Denial of authorization based on:
    - Retailer selection criteria for minimum variety and quantity of authorized supplemental foods
    - An imposed sanction
    - Termination of an agreement for cause
    - Disqualification, and
    - Imposition of a fine or a Civil Money Penalty (CMP) in lieu of a disqualification.
  - The Montana WIC Program will provide, upon request, an abbreviated administrative review to a retailer who has received the following adverse actions:
    - Denial of authorization based on:
      - Vendor selection criterion for business integrity.
      - Vendor selection criterion for current SNAP disqualification or CMP for hardship.
      - State agency-established vendor selection criteria related to WIC vendor sanctions or SNAP authorization.
      - State agency's vendor limiting criteria.
    - Disqualification based on any of the following:
      - Trafficking conviction
      - Imposition of a SNAP CMP for hardship
      - Disqualification or CMP instead of a disqualification based on a mandatory federal sanction imposed by another WIC State agency.
      - Application of criteria used to identify vendors that are "Above 50%" vendors or comparable to "Above 50%" vendors.
      - Termination of an agreement because of a change in ownership, location, or cessation of operations.
      - A WIC CMP imposed instead of disqualification based on a SNAP disqualification.

#### 2. General Conditions

- At the time an adverse action is invoked, a written notice will be sent to the retailer. The notice will contain the effective date, the procedure to follow to obtain an administrative review (the

notice must specify which type of review may be requested) and the timeframe for the request. If the adverse action is related to disqualification, the notice will contain the following statement: "This disqualification from Montana WIC may result in disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP."

- The retailer has sixty (60) days from the date of receipt of the written notice of adverse action to request an administrative review. The request for an administrative review may be made to the Montana WIC State Office. The request may be written or verbal. The Montana WIC Program will determine the type of administrative review.
- If a retailer can continue operation as a Montana WIC Retailer during the process of an administrative review, the terms of the Montana WIC Retailer Agreement are still in force and the retailer must comply with the terms.
- A disqualification because of a conviction of trafficking will be effective immediately.
- If the decision of the administrative review upholds the adverse action, this will be the final action taken by the Montana WIC Program. Any adverse action related to the administrative review which has not already taken effect, must do so on the date the retailer receives the notification of the decision.
- The retailer may appeal the administrative review decision in District Court in the First Judicial District of the State of Montana, in and for the County of Lewis and Clark within thirty (30) days of receiving the written decision.

### **3. Procedure for Administrative Reviews**

- The Montana WIC Program will set the date for a full or abbreviated administrative review within three weeks of the receipt of the request.
- The retailer will be notified in writing within a minimum of ten (10) days in advance of time and place of the full administrative review.
- All full administrative reviews will be held in the county in Montana in which the business in question is physically located. Abbreviated administrative reviews may be conducted remotely.
- The full administrative review will be conducted by a fair and impartial official according to 7 CFR 246.18 and applicable portions of Title 2, Chapter 4 Montana Code Annotated, whose decision will rest solely on the evidence presented at the hearing and the state's approved policies and procedures governing the Montana WIC Program.
- The abbreviated administrative review will be conducted by a decision maker using the available information to determine whether the State Agency has correctly applied federal and state statutes, regulations, policies, and procedures governing the program. The decision maker may be WIC staff, but will be somebody other than the person that made the initial decision on the action.
- In both abbreviated and full administrative reviews, the retailer will have the opportunity to:
  - Review the case file prior to the administrative review;
  - Retain representation by legal counsel;
  - Cross-examine adverse witnesses (protection of the identity of investigators may result in the examination being conducted "in camera" or with the witness behind a protective screen);
  - Present their case; and,
  - Reschedule the full administrative review date once upon request.

- The retailer will be notified of the decision of the full or abbreviated administrative review within ninety (90) days of the receipt of the retailer's request for an administrative review. The notification must include the basis for the decision. Failure on the State's part to meet the decision notification timeframe is not grounds for overturning the adverse action.

#### **4. Denial of Administrative Review**

The Montana WIC Program will not grant an administrative review if requested by the retailer and the basis of the request is:

- The validity or appropriateness of:
  - Montana's retailer selection criteria
  - Montana's participant access criteria and the participant access determination
  - Peer group criteria
  - "Above 50% Vendor" identification methods
  - Prohibition of incentive items
- The determination by the Montana WIC Program as to whether the retailer had an effective policy and program in place to prevent trafficking and the retailer was not aware of, did not approve of and was not involved in the commission of the violation.
- Denial of authorization if the State Agency's vendor authorization is subject to the procurement procedures applicable to the State Agency.
- Expiration of the agreement.
- Disqualification from the Montana WIC Program because of disqualification from SNAP.
- Disputed eWIC payments.
- The Montana WIC Program's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the State Agency list.
- The Montana WIC Program's determination whether to notify a retailer in writing when an investigation reveals an initial violation for which a pattern must be established in order to impose a sanction.