

**DEPARTMENT OF PUBLIC INSTRUCTION
CHILD AND ADULT CARE FOOD PROGRAM**

(rev. 02/2015)

Appeal Procedures

The following appeal procedures were established in accordance with Section 226.6(k) of the Child and Adult Care Food Program regulations must be followed by an institution or individual requesting an administrative review of any of the appealable items listed below.

There are twelve circumstances that are subject to an appeal. A new, renewing or participating institution and/or responsible principal or individual may appeal the following actions: (i) Denial of a new or renewing institution's application for participation; (ii) denial of an application submitted by a sponsoring organization on behalf of a facility; (iii) notice of proposed termination of an institution's agreement; (iv) notice of proposed disqualification of a responsible principal or responsible individual; (v) suspension of an institution's participation because of health or safety violations or submission of a false or fraudulent claim; (vi) denial of an agency's application for start-up or expansion payments; (vii) denial of a request for an advance payment; (viii) recovery of all or part of an advance in excess of the claim for the applicable period; (ix) denial of all or a part of an institution's claim for reimbursement unless the denial is based on a late claim submission; (x) decision by the Department of Public Instruction (DPI) not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim; (xi) demand for the remittance of an overpayment; (xii) any other action of the DPI affecting an agency's participation or its claim for reimbursement.

An agency cannot appeal the following actions: (i) a decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim; (ii) a determination that an institution is seriously deficient; (iii) a determination by the DPI that the corrective action taken by an institution or by a responsible principal or individual does not completely and permanently correct a serious deficiency; (iv) disqualification of an institution or responsible principal or responsible individual, and the subsequent placement on the State agency list and the National Disqualified List (NDL); (v) a termination of a participating institution's agreement, including termination of a participating institutions agreement based on disqualification of the institution by another State agency or FNS; (vi) determination by either the DPI or FNS that the corrective action taken by an institution or a responsible principal or individual is not adequate to warrant the removal of the institution or the responsible principal or individual from the NDL; (vii) the DPI's refusal to consider an institution's application to participate in the CACFP when either the institution or one of its principals are on the NDL, or the DPI's refusal to consider an institution's submission of application on behalf of a facility when either the facility or one of its principals is on the NDL.

The institution or individual shall be advised in writing of the action being proposed or taken and the basis for the action. The notice will include a statement indicating that the institution or individual has the right to appeal the action. The notice of action shall be sent by certified mail, by facsimile, or by email, and is considered to be received by the institution or day care home when it is delivered by certified mail, sent by facsimile, or sent by email, whichever date is first. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

Appeal Procedures:

1. Any written request for an administrative review shall be submitted in writing by each appellant using the attached *DPI Appeal Request Form (PI-1453)* and post marked not later than 15 calendar days from the date of this notice.
 - i) In order to be considered, the completed *DPI Appeal Request Form (PI-1453)* and corresponding support documentation must be addressed to: **Department of Public Instruction, Community Nutrition Program, Attention: Cari Ann Muggenburg, PO Box 7841, Madison, WI 53707-7841.**
 - ii) The completed *DPI Appeal Request Form (PI-1453)* will also be accepted by email to cari.muggenburg@dpi.wi.gov and facsimile at 608-267-0363.
 - iii) All sections of the *DPI Appeal Request Form (PI-1453)* must be completed and any additional information must be submitted along with the completed form to be considered a complete request.
 - iv) The form must be signed and dated by either the appellant or the attorney that has been retained to represent the appellant.
2. The DPI will acknowledge the receipt of the request for an appeal within 10 calendar days from the date of the DPI receives the request.
3. An independent and impartial administrative law judge (administrative review official) will be assigned by the Department of Administration Division of Hearing and Appeals to preside over the appeal request.
4. Along with the completed *Appeal Request Form (PI-1453)* the appellant may refute the charges contained in the notice of action in person (hearing).
 - i) Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the administrative law judge agrees to reschedule the hearing.
 - ii) A representative of the DPI shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.
 - iii) The appellant may retain legal counsel or may be represented by another person.
 - iv) If the appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice of the time and place of the hearing. Notice may be provided by email.
5. Any information on which the DPI's action was based shall be available to the appellant for inspection from the date of receipt of the *Appeal Request Form (PI-1453)*.
6. The administrative law judge shall make a determination based on information provided by the DPI and the appellant and on federal and state laws, regulations, policies and procedures governing the Program.
7. Within 60 calendar days of the DPI's receipt of the completed *Appeal Request Form (PI-1453)*, the administrative law judge shall inform the DPI and the appellant of the determination of the review.
8. The DPI's action shall remain in effect during the appeal process. However, open and currently licensed/regulated participating institutions and facilities may continue to operate under the Program during an appeal of termination unless the action is based on imminent dangers to the health or welfare of children. If the institution or facility has been terminated for this reason, the DPI shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the DPI's action is upheld.
9. The determination by the Administrative law judge is the final administrative determination to be afforded to the appellant.