

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

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SUMMER FOOD SERVICE PROGRAM APPEAL RIGHTS AND PROCEDURES

The following rights and procedures are in accordance with the 7 CFR Part 225.13 of the Code of Federal Regulations for the Summer Food Service Program (SFSP) regarding Appeal Procedures. All sponsors and food service management companies will be notified in writing of the grounds upon which the New Mexico Children, Youth and Families Department (NMCYFD) based its action. The notice will inform the sponsor of its right to appeal. The NMCYFD will provide a copy of the appeal procedures to each potential sponsor upon applying for Summer Food Service Program participation and to each food service management company upon applying for registration.

(a) Appeal Rights for the New Mexico Children, Youth and Families Department SFSP Applicants

The New Mexico Children, Youth and Families Department (NMCYFD) shall notify the applicant sponsor in writing of the grounds upon which an appeal may be filed. Actions which may be appealed are:

- (1) A denial of an application for SFSP participation;
- (2) A denial of a sponsor's request for an advance payment;
- (3) A denial of a sponsor's claim for reimbursement, except for late submission under 7 CFR Part 225.9 (d) (5);
- (4) A State agency's refusal to forward to Food and Nutrition Service (FNS) an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;
- (5) A claim against a sponsor for remittance of a payment;
- (6) The termination of a sponsor's (or site) participation;
- (7) A denial of a sponsor's application for a site;
- (8) A denial of a food service management company's application for registration; or revocation of a food service management company's registration; if applicable.

Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under 7 CFR Part 225.9(d) (5).

(b) Appeal Procedures for the New Mexico Children, Youth and Families Department SFSP Applicants

- (1) The sponsor or food service management company will be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;
- (2) The sponsor or food service management company has fourteen calendar days from the date on which the notice of action is received to request an appeal.
- (3) The appellant be allowed the opportunity to review any information upon which the action was based;

- (4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;
 - (5) A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant specifies in the letter appealing the action. The appellant may retain legal counsel, or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing constitutes the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;
 - (6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;
 - (7) The hearing be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraph (b)(4) and (5) of this Part;
 - (8) The review official be independent of the original decision-making process;
 - (9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;
 - (10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official must make a determination based on a full review of the administrative record and informs the appellant of the determination of the review by certified mail, return receipt requested;
 - (11) The State agency's action remains in effect during the appeal process. However, participating sponsors and sites may continue to operate under the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and
 - (12) A determination by the State review official is the final administrative determination to be afforded to the appellant.
- (c)** The State agency shall send written notification of the complete appeal procedures and the actions which can be appealed, as specified in paragraph (a) of this Section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with 7 CFR Part 225.6(g).
- (d)** A record regarding each review shall be kept by the State agency, as required under 7 CFR Part 225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

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