

CHAPTER 1107. SANCTIONS

- Sec.
1107.1. Imposition of sanctions.
1107.1a. Disqualifications.
1107.2. Civil money penalties.

Cross References

This chapter cited in 28 Pa. Code § 1101.2 (relating to definitions).

§ 1107.1. Imposition of sanctions.

(a) The Department may disqualify a WIC authorized store or impose a civil money penalty in lieu of disqualification for reasons of WIC Program abuse. In the case of fraud, trafficking, sale of alcohol or alcoholic beverages or tobacco products the Department will not provide the store with a prior warning that violations were occurring before imposing the sanctions. For other serious program violations or offenses, the Department may choose to not provide the store with prior warning that violations were occurring before imposing the sanctions. The store may appeal a Department decision pertaining to disqualification, denial of authorization or reauthorization, or other adverse action that affects the store's status as a WIC authorized store in accordance with § 1113.1 (relating to right to administrative appeal). Expiration of authorization, disqualification of a store as a result of disqualification from the Food Stamp Program, and the Department's determination regarding inadequate participant access are not subject to review.

(b) The Department will disqualify a store which has been disqualified from the Food Stamp Program unless the Department determines that the disqualification of the store would result in inadequate participant access under § 1103.7 (relating to inadequate participant access). If the Department determines that disqualification of the store would result in inadequate participant access under § 1103.7, the Department will give the store the option of paying a civil money penalty in lieu of disqualification.

(c) The Department will disqualify a store that has been assessed a civil money penalty in lieu of disqualification under the Food Stamp Program unless disqualification of the store from the WIC Program would result in inadequate participant access or would otherwise adversely affect the interest of participants. If the Department disqualifies a store under this subsection, the length of the disqualification will correspond to the period for which the store would otherwise have been disqualified from participating in the Food Stamp Program.

(d) The Department will disqualify a store for WIC Program violations in § 1107.1a (relating to disqualifications) unless the Department determines that disqualification of the store under § 1107.1a(b)—(d) would result in inadequate participant access. In that case, the Department will give the store the option of paying a civil money penalty in lieu of disqualification. The Department will not give the store the option of paying a civil money penalty in lieu of disqualifica-

tion for third or subsequent violations. A violation committed during a prior authorization period will support a disqualification.

(e) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program under regulations governing the Food Stamp Program. Applicable Federal regulations may prohibit administrative or judicial review of a disqualification from the Food Stamp Program based upon a disqualification from the WIC Program.

(f) In addition to imposing a sanction against a WIC authorized store that commits fraud or abuse of the WIC Program, the Department may prosecute or make a referral of the WIC authorized store to a criminal prosecution agency for prosecution under applicable Federal, State, or local laws.

(g) A WIC authorized store that has a sanction imposed against it by the Department for accepting a WIC check for an item other than those specified on the WIC check shall also reimburse the Department for moneys it receives through the WIC check redemption process after accepting a WIC check for the purchase of the item.

(h) The Department may impose a sanction against a WIC authorized store for failing to remit any amount demanded due to violations of statutes or regulations governing its participation in the WIC Program within the time frame imposed by regulation or in the notice given to the store by the Department of the store's obligation to reimburse the Department.

Authority

The provisions of this § 1107.1 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1107.1 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900. Immediately preceding text appears at serial pages (272451) to (272452).

Cross References

This section cited in 28 Pa. Code § 1103.4 (relating to selection criteria for authorization and reauthorization); 28 Pa. Code § 1103.7 (relating to inadequate participant access); 28 Pa. Code § 1105.3 (relating to terms and conditions of participation); 28 Pa. Code § 1105.6 (relating to monitoring of WIC authorized stores); and 28 Pa. Code § 1107.2 (relating to civil money penalties).

§ 1107.1a. Disqualifications.

(a) *Permanent disqualification.* The Department will permanently disqualify a WIC authorized store convicted of trafficking in WIC checks or selling firearms, ammunition, explosives or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C.A. § 802)) in exchange for WIC checks. The Department will not compensate the store for revenues lost as a result of the violation.

(b) *Six-year disqualification.* The Department will disqualify a WIC authorized store for 6 years for either of the following:

- (1) One incidence of buying or selling WIC checks for cash (trafficking).
- (2) One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in section 102 of the Controlled Substances Act, in exchange for WIC checks.

(c) *Three-year disqualification.* The Department will disqualify a WIC authorized store for 3 years for any of the following violations:

- (1) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC checks.
- (2) A pattern of claiming reimbursement for the sale of an amount of a specific allowable food, which exceeds the store's documented inventory of that specific allowable food for a specific period of time. A pattern may be established during a single inventory audit encompassing a 2-month period when a WIC authorized store's records indicate that the WIC authorized store's WIC check redemptions for a specific allowable food exceed the WIC authorized store's documented inventory for that allowable food.
- (3) Two or more incidences of overcharges.
- (4) Two or more incidences of receiving, transacting or redeeming a WIC check that the store is not authorized to receive, transact or redeem.
- (5) Two or more incidences of charging for allowable food not received by the participant.
- (6) Two or more incidences of providing credit or nonfood items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in section 102 of the Controlled Substances Act, in exchange for WIC checks.

(d) *One-year disqualification.* The Department will disqualify a WIC authorized store for 1 year for any of the following violations:

- (1) Two or more incidences of providing a food item other than an allowable food in exchange for WIC checks.
- (2) Two or more incidences of providing an allowable food in excess of the amount authorized for purchase on the WIC check.
- (3) Having a stale-dated allowable food on the sales floor.
- (4) Failing to maintain on the premises, at all times minimum inventory requirements of an allowable food at or below the current competitive price applicable to the store's peer group for that food.
- (5) Two or more incidences of failing to request a WIC identification card prior to accepting a WIC check.
- (6) Failing to maintain a clean and sanitary store.
- (7) Failing to properly store or refrigerate an allowable food.
- (8) Closure of the store by a city, local or county health department.

- (9) Charging or demanding that a participant or authorized representative pay for an allowable food with money or with another WIC check for purchases made with a WIC check.
- (10) Two or more incidences of securing the signature of the participant or authorized representative prior to completing the “Pay Exactly” box on the WIC check.
- (11) Two or more incidences of charging the WIC Program sales tax.
- (12) Giving monetary change to the person who tenders a WIC check.
- (13) Failing to reimburse the Department for overpayments, overcharges or other improper charges within the specified time frame.
- (14) Physically altering or changing on the face of a WIC check the store name, food type or quantity, participant information, date, or printed dollar amount.
- (15) Failing to have at least one representative of the store attend required training.
- (16) Providing false information on the application for authorization or reauthorization.
- (e) *Second mandatory sanction.* If a WIC authorized store, which previously has been assessed a sanction for any of the violations in subsections (b)—(d), receives another sanction for any of these violations, the Department will double the second sanction. The Department will double civil money penalties up to the limits allowed under § 1107.2(c) (relating to civil money penalties).
- (f) *Third or subsequent mandatory sanction.* If a WIC authorized store, which previously has been assessed two or more sanctions for any of the violations listed in subsections (b)—(d), receives another sanction for any of these violations, the Department will double the third sanction and all subsequent sanctions. The Department will not permit the store to pay a civil money penalty in lieu of disqualification for third or subsequent violations listed in subsections (b)—(d).
- (g) *Multiple violations during a single investigation.* When during the course of a single investigation the Department determines a WIC authorized store has committed multiple violations, the Department will disqualify the WIC authorized store for the period corresponding to the most serious violation. However, the Department will include all violations in the notice of disqualification.
- (h) *Disqualification based on a Food Stamp Program disqualification.* The Department will disqualify a WIC authorized store which has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, but may begin at a later date than the Food Stamp Program disqualification. Under 7 CFR 246.12(k) (1)(vii) (relating to food delivery systems) and § 1113.1(b)(3) (relating to right to administrative appeal), the WIC Program disqualification is not subject to administrative or judicial review.

(i) *Voluntary withdrawal or nonrenewal of agreement.* The Department will not accept voluntary withdrawal of the WIC authorized store from the WIC Program as an alternative to disqualification for the violations listed in subsections (a)—(d), but will enter the disqualification on the record. The Department will not permit the store to use expiration of authorization as an alternative to disqualification.

(j) *Other violations.* For a violation of a statute or regulation governing the store's participation in the WIC Program which is not specifically classified in subsections (a)—(d), the Department will determine the appropriate type and level of sanction to be imposed upon the store based upon the nature and severity of the violation. A disqualification imposed under this subsection will not exceed 1 year.

(k) *Advance notice.* The Department will provide a WIC authorized store at least 30 days advance notice of the effective date of a disqualification. The notice will include the store's appeal rights, if applicable.

(l) *Authorization following expiration of disqualification period.* A store that has been disqualified from the WIC Program may apply for authorization following expiration of the disqualification period. If the store chooses to apply for authorization after expiration of the disqualification, the Department will not consider the prior disqualification when determining eligibility. The Department will consider the store's application in accordance with § 1103.4 (relating to selection criteria for authorization and reauthorization).

Authority

The provisions of this § 1107.1a amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1107.1a adopted December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (300354) to (300357).

Cross References

This section cited in 28 Pa. Code § 1105.1 (relating to training); 28 Pa. Code § 1105.2 (relating to overcharge recovery system); 28 Pa. Code § 1107.1 (relating to imposition of sanctions); 28 Pa. Code § 1107.2 (relating to civil money penalties); and 28 Pa. Code § 1113.1 (relating to right to appeal).

§ 1107.2. Civil money penalties.

(a) *Option available in lieu of a disqualification or denial of reauthorization.* The Department may offer to a WIC authorized store the option of paying a civil money penalty in lieu of a denial of reauthorization or a disqualification required under § 1107.1 (relating to imposition of sanctions), only if the Department finds inadequate participant access as set forth in § 1103.7 (relating to inadequate participant access). The Department will not provide this option for third or subse-

quent violations under § 1107.1a(b)—(d) (relating to disqualifications) or for any permanent disqualifications under § 1107.1a(a).

(b) *Calculation of civil money penalty.*

(1) For a civil money penalty in lieu of a disqualification under § 1107.1a(b), (c) or (d)(1) and (2), the Department will calculate the civil money penalty for each violation identified by multiplying 10% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(2) For a civil money penalty in lieu of disqualification under § 1107.1a(d)(3)—(15), the Department will calculate the civil money penalty for each violation identified by multiplying 5% of the average monthly total value of WIC checks redeemed for the most recent 6-month period by the number of months the store would be disqualified under § 1107.1. For a store to which the Department may deny reauthorization and for which this option is available, the Department will multiply 5% of the average monthly total value of WIC checks for the most recent 6-month period by 6 months to determine the civil money penalty to be paid. If 6 months of information relating to the monthly value of WIC checks redeemed is not available, the Department will calculate the monthly average based upon the number of months for which information is available.

(c) *Limitation of penalties.* The amount of the civil money penalty will not exceed \$10,000 for each violation. If, during the course of a single investigation, the Department determines a store has committed multiple violations, the Department will impose a civil money penalty for each violation. The total civil money penalty for all violations investigated as part of a single investigation will not exceed \$40,000.

(d) *Written agreement.* If the Department offers and the store agrees to pay a civil money penalty in lieu of disqualification, the Department and store shall set forth the terms of the agreement in writing. The terms may include a probationary period during which the Department may conduct monitoring to ensure action has been taken by the store to correct problems. The agreement will be effective when it is signed by the Director of the Division of WIC or the Director's designee.

(e) *Payment of the civil money penalty.* If a WIC authorized store does not pay, only partially pays, or fails to timely pay a civil money penalty assessed in lieu of disqualification, the Department will disqualify the WIC authorized store for the length of the disqualification authorized for the violation for which the civil money penalty was assessed. If a civil money penalty is assessed for more than one violation, the Department will impose the disqualification for the period

authorized for the most serious violation. The Department may permit payment of a civil money penalty by installments.

(f) *Outstanding financial liabilities.* Payment of the civil money penalty, unless specifically provided for in a written agreement between the Department and the store, does not relieve the store of any other past or future financial liability incurred by the store by reason of its participation in the WIC Program. This includes, by way of example, reimbursement to the Department of overpayments.

Authority

The provisions of this § 1107.2 amended under section 2102(g) of The Administrative Code of 1929 (71 P.S. § 532(g)).

Source

The provisions of this § 1107.2 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (300357) to (300359).

Cross References

This section cited in 28 Pa. Code § 1107.1a (relating to disqualifications).

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