

CHAPTER 1113. STORE APPEALS

- Sec.
1113.1. Right to administrative appeal.
1113.2. Administrative procedures.
1113.3. Adjudication and order.
1113.4. Continuing responsibilities.
1113.5. Judicial review.

Cross References

This chapter cited in 28 Pa. Code § 1101.2 (relating to definitions); and 28 Pa. Code § 1109.2 (relating to scope and purpose).

§ 1113.1. Right to administrative appeal.

(a) A store has the right to appeal an adverse action of the Division of WIC that affects the store's participation in the WIC Program as a WIC authorized store. Adverse actions include:

- (1) Termination of authorization or reauthorization in accordance with § 1103.1(d) (relating to authorization and reauthorization process and requirements).
- (2) Denial of an application for authorization or reauthorization.
- (3) Refusal to accept an application for authorization or reauthorization.

(b) A store may not appeal the following:

- (1) The expiration of authorization or reauthorization.
- (2) The validity or appropriateness of selection criteria.
- (3) The validity or appropriateness of the Department's participant access criteria and the Division of WIC's participant access determination.
- (4) The validity or appropriateness of the Department's store peer group system criteria and the criteria used by the Department to identify stores that qualify as an above-50-percent-store or that are comparable to above-50-percent-stores.
- (5) Disqualification from the WIC Program as a result of disqualification from the Food Stamp Program.

(6) The resolution of an overpayment dispute under § 1105.2(d) (relating to price adjustment) or the resolution of an overcharge dispute under § 1105.3(d) (relating to terms and conditions of participation).

(c) A denial of authorization under § 1103.1(b)(7) and a disqualification imposed under § 1107.1a(a) (relating to disqualifications) shall be effective on the date of the store's receipt of notice of the adverse action. All other adverse actions shall be effective on the date set forth in the written notice.

Authority

The provisions of this § 1113.1 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1113.1 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900; amended September 11, 2009, effective immediately, 39 Pa.B. 5292. Immediately preceding text appears at serial pages (303225) to (303226).

Cross References

This section cited in 28 Pa. Code § 1107.1 (relating to imposition of sanctions); and 28 Pa. Code § 1107.1a (relating to disqualifications).

§ 1113.2. Administrative appeal procedures.

(a) *Notification.* The Division of WIC will provide to the store written notice of the adverse action, the procedures to follow to appeal the adverse action and the cause for and the effective date of the action.

(b) *Form of administrative appeal.* The appeal shall be made by the store or its authorized representative, in writing, stating the reasons for the appeal.

(c) *Time for and effect of filing an administrative appeal.* The appeal shall be filed with the Director of the Division of WIC within 30 days from the date the notice of adverse action is mailed. The filing of an appeal shall serve to stay the Department's adverse action pending issuance of an adjudication and order by the hearing examiner under § 1113.3 (relating to adjudication and order). The stay shall be lifted upon receipt of the hearing examiner's adjudication and order affirming the adverse action, or upon receipt of the store's written notice of withdrawal of the appeal.

(d) *Scheduling the hearing.*

(1) The Director of the Division of WIC shall forward the appeal to the office of the hearing examiner.

(2) The hearing examiner shall set a time, date and place for the hearing.

(3) The hearing examiner shall send notice to the store, or its authorized representative, at least 10 days in advance of the date of the hearing.

(4) The hearing examiner shall schedule the hearing to be held within 21 days after the date of receipt by the Division of WIC of the store appeal.

(5) The Division of WIC or the store may request in writing that the hearing be rescheduled for another time or date and the hearing examiner shall consider the request.

(e) *Hearing examiner.* The Secretary will appoint a hearing examiner to preside over the appeal. The person shall be an impartial decision-maker, whose determination is based solely on whether the Division of WIC has correctly applied Federal and State statutes, regulations, policies and procedures governing the WIC Program, according to the evidence presented at the hearing.

(f) *Hearing procedures.*

(1) The store may be assisted or represented by an attorney or other authorized representative.

(2) The store, or its authorized representative, may examine, prior to and during the hearing, the documents and records considered by the Division of WIC in reaching its decision under appeal.

(3) The hearing shall be open to the public.

(4) Each party shall have the opportunity to present and cross-examine witnesses.

(5) Each party may present oral or documentary evidence and arguments to support its position in narrative form.

(6) Each party may object to or attempt to refute any testimony or other evidence presented by the other party.

(g) *Supersession.* Subsection (d) supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking procedures). Subsection (e) supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers). Subsection (f) supplements 1 Pa. Code § 31.21 (relating to appearance in person) and supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney; and other representation prohibited at hearings).

Authority

The provisions of this § 1113.2 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1113.2 amended December 22, 2000, effective December 23, 2000, 30 Pa.B. 6853; amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900. Immediately preceding text appears at serial pages (272458) to (272459).

§ 1113.3. Adjudication and order.

(a) The adjudication and order shall include findings of fact and conclusions of law. The findings of fact shall be based only on the oral and documentary evidence in the hearing record.

(b) The hearing examiner shall provide the Director of the Division of WIC and the store, or its authorized representative, with the adjudication and order within 60 days after the date of the receipt by the Division of WIC of the appeal, adjusted for any continuance of the hearing that causes it to be held more than 21 days after the date the appeal was filed.

(c) If the hearing examiner upholds the Department's adverse action, the adverse action shall be effective as of the date of the store's receipt of written notice of the hearing examiner's adjudication and order.

(d) The hearing examiner shall maintain a written record of the hearing. The record shall include a docket number and caption for the appeal, any documentary evidence submitted, the transcript of the testimony presented at the hearing, the adjudication and order of the hearing examiner, and a copy of the document transmitting the adjudication and order to the store, or its authorized representative.

(e) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.131, 35.201, 35.202 and 35.205.

Authority

The provisions of this § 1113.3 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1113.3 amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900.

Cross References

This section cited in 28 Pa. Code § 1109.3 (relating to time limits for action); and 28 Pa. Code § 1113.2 (relating to administrative appeal procedures).

§ 1113.4. Continuing responsibilities.

Appealing an action does not relieve the store from the responsibility of continued compliance with regulations under this part applicable to a WIC authorized store.

Authority

The provisions of this § 1113.4 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1113.4 amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900. Immediately preceding text appears at serial page (272459).

§ 1113.5. Judicial review.

If the adjudication and order of the hearing examiner upholds the Department's adverse action, the hearing examiner will inform the store within the adjudication and order, or by notice accompanying the adjudication and order, of the right to pursue judicial review of the adjudication and order.

Authority

The provisions of this § 1113.5 amended under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)).

Source

The provisions of this § 1113.5 amended October 3, 2003, effective October 4, 2003, 33 Pa.B. 4900. Immediately preceding text appears at serial page (272460).

[Next page is 1131-1.]