

Chapter 15

Fair Hearings

1500 Availability of Hearings

Any household aggrieved by any action of the agency, which affects the participation of the household in the Food Assistance Program has the right to request a fair hearing.

1501 Hearing System

Fair hearings are conducted and decisions rendered by staff of the Food Assistance Division of the State Department of Human Resources. State staff also determines if a hearing request is denied or dismissed.

1502 Timely Actions on Hearings

Within 60 days of the receipt of a request for a fair hearing, the State agency shall assure the hearing is conducted, a decision is reached, and the household and county department is notified of the decision. However, the decision must be issued no later than 30 days from the date the hearing is conducted.

If the household timely requests reinstatement of a hearing that was orally withdrawn, the agency will have an additional 60 days from the date the reinstatement was requested to complete the hearing process.

Decisions, which result in an increase in household benefits, shall be reflected in the coupon allotment within 10 days of the receipt of the hearing decision even if a supplemental allotment must be authorized.

Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

The household may request a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit, 60 days, for action on the decision may be extended for as many days as the hearing is postponed.

1503 Agency Conferences

The county department shall offer agency conferences to households, which wish to contest a denial of expedited service or an agency action which adversely affected the household.

Note: An agency conference for households contesting a denial of expedited service shall be scheduled within 2 working days, unless the household requests that it be scheduled later or states it does not wish to have an agency conference.

The household shall be advised that the use of an agency conference is optional and that it shall in no way delay or replace the hearing process. The conference shall be attended by the worker's immediate supervisor and/or program supervisor or director and by the household and/or its representative. The worker responsible for the case action may also attend.

1504 Consolidated Hearings

The State Agency may respond to a series of individual requests for hearings by conducting a single "group" hearing. Only cases where individual issues of fact are not disputed and where related issues of State and/or Federal law, regulation or policy are the sole issues being raised may be consolidated. In all group hearings, the regulations governing individual hearings must be followed. Each individual household shall be permitted to present its own case or have its case presented by a representative.

1505 Notification of Right to Request Hearing

At the time of application each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as legal counsel, a relative or a friend. In addition, any time the household expresses disagreement with agency action the household shall be reminded of the right to request a hearing. If there is an individual or organization that provides free legal representation, the household shall be informed of the availability of that service.

1506 Time Period for Requesting Hearing

A household shall be allowed to request a hearing:

1. On any agency action or loss of benefits which occurred in the prior 90 days.
2. Denial of restoration of benefits lost more than 90 days but less than a year prior to the request for a restoration.
3. Any time within a certification period to dispute its current level of benefits.

1507 Request for Hearing

A request for a hearing is defined as a clear expression, oral or written; by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. The agency may request the household to clarify its grievance when the request is unclear. However, the freedom to make a request for a hearing shall not be limited or interfered with in any way. The household may use form PSD-BFA-865 to submit a written request for a hearing.

1508 County Responsibilities on Hearing Requests

Upon receipt of a hearing request and during the hearing process the county must do the following:

1. Within 10 days of the request notify Food Assistance Division.
Use form titled "Notification of Hearing Request" for this purpose.
2. Offer a conference with the household and/or its representative.
3. Upon request, make available without charge specific materials necessary for a household to prepare for a hearing.

Note: When a non-household member or non-authorized representative requests a review of case information to determine whether a hearing should be requested, written permission of the household is required.

4. Upon request, assist the household in preparing for the hearing.
5. Advise the household of the availability of legal services.
6. Advise Food Assistance Division of the need of an expedited hearing process such as for migrant farm workers that plan to move prior to the normal time the decision would be reached.
7. Advise Food Assistance Division of changes, such as address of household, obtaining legal counsel, request for postponement or rescheduling of the hearing, and written withdrawals of the hearing request.
8. Review the case in question for agency compliance with policies and procedures.
9. Prepare the agency's testimony, including copies of documents to be presented as evidence at the hearing.

1509 Denial or Dismissal of Request for Hearing

The agency shall not deny or dismiss a request for a hearing unless:

1. The request is not received within the time specified in [Section 1506](#).
2. The household or its representative withdraws the request in writing.
3. The household or its representative orally withdraws the request and the hearing officer confirms the withdrawal in writing.
 - a) The household's right to verbally withdraw a hearing request may be discussed with the household or its representative when the issues related to the hearing have been resolved. However, coercion or actions which would influence the household or its representative to withdraw the fair hearing request are prohibited.
 - b) The household has 10 days from the date it receives written notification of the verbal withdrawals to advise the county department or Food Assistance Partnership of its desire to request reinstatement of the hearing.

The household has one opportunity after it verbally withdraws its hearing request to ask for a reinstatement of the hearing and remain eligible for continuation of benefits. Failure to request a reinstatement does not interfere with the household's rights to subsequently request a hearing on the same issue within 90 days of the original action. It also does not interfere with the household's rights to request a hearing and possible continuation of benefits on a new issue.

- c) The county staff must notify the Food Assistance Partnership immediately upon receipt of a verbal withdrawal or a request to reinstate the hearing.
4. Subsequent to the hearing request, mail sent to the household by the agency (county or state) is returned as "moved – no forwarding address", "addressee unknown", "no such

address”, or “unclaimed”. The county must notify the Hearing Officer as soon as possible of the situation with a copy of the envelope and documentation of efforts to clarify/locate the household.

5. The agency action cited is specifically excluded from the hearing process, such as:
 - a) The request is merely to dispute an order by FNS to reduce, suspend or cancel benefits.
 - b) The request is based solely on the issue of non-compliance with another program’s requirements. The determination of non-compliance must be made by the other program.
6. The household or its representative fails without good-cause to appear at the scheduled hearing or fails to arrange a postponement.

1510 Continuation of Benefits

If a household requests a fair hearing within the period provided by the Notice of Adverse Action and its certification period has not expired, the household’s participation in the program will continue on the basis authorized immediately prior to the Notice of Adverse Action. The household must specifically waive the continuation of benefits for the proposed action to be implemented.

Benefits must be continued through the period allowed for reinstatement of a hearing that was orally withdrawn. See [Section 1509](#). If there is no request for reinstatement of the hearing or the agency’s action is upheld by a hearing decision, a claim against the household must be established for all over-issuances, including ABAWD ineligibility, except for work registration sanctions for which a disqualification will be applied as a result of the hearing decision.

If a hearing request is not within the period provided by the Notice of Adverse Action, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes good cause for its failure to make the request within the advance notice period, the agency shall reinstate the benefits to the prior basis.

For Semi-Annual Reporting households, benefits will be continued on the previously authorized basis if the request for a hearing is due to a decrease or termination of benefits based on information on the six month report and the request for a hearing is made within 10 days of the date of the Notice of Action. However, benefits will not be continued if the case is terminated for failure to submit the Six Month Report or failure to submit necessary information to complete the Semi-Annual Reporting process.

When benefits are reduced or terminated due to a mass change, participation of the prior basis shall be reinstated only if the issue being contested is that food assistance eligibility or benefits were improperly computed or that Federal law or regulation is being misapplied or misinterpreted.

Once continued or reinstated benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

1. The certification period expires. The household may reapply and be determined eligible for a new certification period based on current household circumstances.
2. A change affecting the household’s eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent Notice of Adverse Action.

3. A mass change affecting the household eligibility or basis of issuance occurs while the hearing decision is pending.
4. The household, or its representative, orally withdrew its request for a fair hearing and did not advise the county/State of its desire to reinstate the fair hearing within the timeframe specified in [Section 1509](#).

1511 Notification of Time and Place of Hearing

The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household. At least 10 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. In addition the notice:

1. Advises the household of the name, address and phone number to contact in the event it is not possible for the household to attend the scheduled hearing.
2. Includes a copy of the State agency's hearing procedures.
3. Explains that the household or representative may examine the case file prior to the hearing.
4. Advises the household that failure to appear for the hearing or failure to arrange a delay will result in the hearing being dismissed.

1512 Hearing Official

Hearings shall be conducted by an impartial official(s) who does not have any personal stake or involvement in the case, was not directly involved in the initial determination of the action which is being contested, and was not the immediate supervisor of the eligibility worker who took the action.

The hearing official shall be an employee of Food Assistance Division, State Department of Human Resources. The hearing official shall have the following powers and duties:

1. Administer oaths or affirmations.
2. Insure that all relevant issues are considered.
3. Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised.
4. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing.
5. To decide on the admissibility of evidence.
6. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the agency,
7. Provide a hearing record and render a hearing decision in accordance with [Section 1516](#).

8. To sign and issue subpoenas to witnesses or for the production of papers and writings.
9. To grant or deny and set time and place for continuances, postponements, or further submission of evidence, arguments or briefs.
10. To grant or deny petitions or motions to amend, intervene or apply for rehearing.
11. To reprimand, exclude, or limit the presence of witnesses or other persons at the hearing because of improper conduct, space limitations or a sequestering request by a party or on his/her own motion.

1513 Hearing Authority

The hearing authority shall be the person designated to render the final administrative decision in a hearing. The same person may act as both the hearing official and the hearing authority. The hearing authority shall be subject to the requirements specified in [Section 1512](#).

1514 Attendance at Hearing

The hearing shall be attended by a representative(s) of the county department and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household if the household so chooses. The hearing official shall have the authority to limit the number of persons in attendance at the hearing if space limitations exist. Failure of the household and/or its representative to appear or to arrange for a delay or reschedule will result in the hearing being dismissed and no decision rendered.

1515 Household Rights during Hearing

The household or its representative must be given adequate opportunity to:

1. Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

Note: Confidential information such as, names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecution, is protected from release to the household.

2. Confidential information and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing.
3. Present the case or have it presented by a legal counsel or other person.
4. Bring witnesses.
5. Advance arguments without undue interference.
6. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
7. Submit evidence to establish all pertinent facts and circumstances in the case.

1516 Hearing Decisions

Decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. The recording of testimony or verbatim transcripts and exhibits, together with all papers and requests filed in the preceding, shall constitute the exclusive record for a final decision by the hearing authority. This record is available to the household or its representative at any reasonable time for copying and inspection.

The household and the county department shall each be notified in writing of:

1. The decision.
2. A summary of the facts of the case.
3. Specific reasons for the decision and support evidence.
4. Identify pertinent Federal regulations.
5. The right to request a rehearing, including the right of the household to pursue judicial review if the decision upholds the agency action.

The decision shall become a part of the hearing record.

1517 Implementation of Hearing Decisions

The county department is responsible for insuring that all final hearing decisions are reflected in the household's allotment within the time limits specified in [Section 1502](#).

When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided in accordance with [Chapter 16](#). The agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the agency shall forward an authorization to the benefits to the household or to the new project area if this information is known.

The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

When the hearing authority upholds the county department's action, a claim against the household for any over-issuance shall be prepared, except for work registration sanction. (See [Claims Against Households Manual](#))

If the hearing is dismissed and benefits were continued in accordance with [Section 1510](#) rather than the proposed reduction/termination, the county department will take the following actions:

1. The planned reduction/termination will be effective the first of the following month.
2. A **letter** will be sent to the household advising of the reduction/termination and the effective month (not a Notice of Adverse Action).
3. A claim will be prepared for the months benefits were continued, except for work registration sanction.
4. If the certification period has expired or will expire before the planned action can be implemented or other changes have occurred which offset the original intended action, then only a claim will be prepared for the month(s) the original action would have been effective.

5. If the household established good cause for failing to appear, benefits will be continued at the original level until/unless a change is reported, a mass change occurs, the certification period expires or a decision is rendered.
6. Notify Food Assistance Division of the good cause. A rehearing will be scheduled, conducted and a decision rendered.
7. If the rehearing decision finds for the agency, implement the action and prepare claim.

1518 Appeals of Hearing Decisions

A. Rehearing

The household, the county department or their representative may file an application for a rehearing within 15 days of the final decision. The application shall specify in detail the grounds for the relief sought and authority in support thereof. The filing of such an application shall not extend, modify, suspend or delay the effective date of the decision unless or until said decision shall be suspended, modified or set aside. Copies of the application for a rehearing shall be served on all parties who may file replies thereto within 10 days.

The application for a rehearing may be granted only if the final decision meets one of the following:

1. In violation of constitutional or statutory provisions.
2. In excess of the statutory authority of the department.
3. In violation of a rule of the department.
4. Made upon unlawful procedure.
5. Affected by other error of law.
6. Clearly erroneous in view of the reliable probative and substantial evidence on the whole record.
7. Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Within 30 days after the filing of an application for a rehearing, the hearing officer may in his/her discretion enter a decision to set a hearing on the application; to rule on the application without a hearing; or to grant or to deny the application.

If the decision is to schedule a rehearing, the decision will be issued within 30 days of the rehearing schedule date.

Failure of the party requesting the rehearing to appear for or arrange for a delay of the scheduled rehearing without good cause will result in the rehearing being dismissed and the original decision will stand. If no decision is entered within 30 days after the filing of an application for a rehearing, the application shall be deemed denied.

Note: The above procedures do not apply to State Appeals of County Administration Disqualification Hearings. There is no further administrative remedy after a state ADH appeal decision is issued.

B. Judicial Review

The aggrieved household or its representative has the right to pursue judicial review through the court system. If the household or its representative declares an interest in pursuing judicial review, they shall be advised to seek legal counsel through a private attorney or the appropriate office of Legal Services Corporation of Alabama.

1519 Adjustments for EBT Accounts

Due to the nature of electronic transaction, system generated errors may occur in which a purchase by a food assistance recipient is not debited from the recipient's EBT account. These results in the merchant are not being paid for the food obtained by the food assistance recipient. When this happens, a merchant may request payment for the purchase resulting in an adjustment to the recipient's food assistance EBT account.

Recipients are sent a notice that these benefits are being removed from their EBT account, and that they have the right to request an administrative fair hearing. The recipient may request a fair hearing by contacting the food assistance office or the Food Assistance Partnership within 90 days from the date of the EBT Notice. Any hearing request received by the county food assistance office due to an adjustment notification should be immediately faxed to the Food Assistance Partnership. If the request is within 10 days of the date of the EBT Notice, the benefits on hold will be placed back into the household's account. If the recipient loses the hearing or withdraws the request, the amount of the purchase will be taken from the recipient's account and paid to the merchant. If the recipient fails to request a hearing within 10 days, the amount of the purchase will be paid to the merchant and will only be given to the recipient if the hearing decision is in the household's favor.

A system error is not an error such as the cashier entering an incorrect amount for the purchase that causes an erroneous amount of benefits to be debited from the recipient's account.

In order to meet all notification time frames, it is imperative that all client requests due to the EBT Adjustment Notice be communicated to the Food Assistance Partnership on the day received in the county office.