

## POLICY MANUAL

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### 1. GENERAL ADMINISTRATION.

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#### 1.03 Abuse, Fraud Prevention and Investigation

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#### Policy Overview:

The PA WIC Program (Program) shall strive to prevent program abuse and/or fraud, investigate expeditiously any such allegations made, and sanction any participant and/or staff with findings of substantiated abuse and/or fraud. Local agencies (LA) in conjunction with the State Agency (SA) are responsible for the detection and prevention of dual participation.

#### A. Definitions:

Close friend: cannot be defined in a way that fits every situation; therefore, LAs have authority to determine if a WIC applicant or participant is a close friend of a LA WIC employee. This includes other friends living in the household with the WIC employee.

Relative: persons who include spouse, parents, children, grandchildren, grandparents, brothers, sisters, aunts, uncles, first cousins, nieces, nephews, stepparents, stepchildren, stepbrothers and stepsisters by blood or marriage. This includes other relatives living in the household with the WIC employee.

Separation of Duties: staff who determines income eligibility and medical or nutritional risk cannot be the same person. Either person may issue food benefits, check identification or residency.

#### B. Policy:

##### 1. Abuse and/or Fraud Prevention

- a. The LA shall review and offer the endorser or proxy a copy of the "Participant Rights and Responsibilities" at each certification/recertification.
- b. Separation of Duties:
  1. If a LA cannot achieve acceptable separation of duties, the items listed below are required:
    - a. Certification of oneself, relatives or close friends:
      - (1) Certification of relatives and close friends by the related WIC employee may only occur with prior approval of SA staff.
      - (2) Certification of oneself is never allowed.
      - (3) An individual other than the certifier (e.g. the WIC LA Director or designee) must conduct a supervisory post review of all such records within two weeks of certification to assure compliance with program regulations. Documentation of this review must be maintained on file at

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the LA for review during program evaluations.

- (4) The LA maintains a list of all participants related to employees or living in the same household as the employee or that are close friends of the employee including: the participant's name, the employee's name, the relationship to the employee, the certification date(s), the family identification number and the approval date(s).
- b. WIC employees as proxies:
- (1) WIC employees may act as proxies for any WIC participant with the approval of the LA WIC Director or designee.
  - (2) WIC employees acting as a proxy shall not participate in the certification or FI issuance of persons for whom they act as proxies.
  - (3) The LA maintains in the central file a list of all WIC employees acting as proxies including: the employee's name, name of the endorser, name of clinic site, the family identification number and the approval date.
- c. When a clinic has only one staff person to determine eligibility for all certification criteria and issue food benefits for all participants in a clinic:
- (1) An individual other than the certifier (e.g. the WIC LA Director or designee) must conduct a supervisory post review of all participants listed on the weekly Separation of Duties Report for that time period within two weeks of the certification to assure compliance with program regulations. Documentation of this review must be maintained on file at the LA for review during program review.
  - (2) It is recommended that staff is rotated so that the same staff person is not the only person that is known to the clinic.
- d. Clinics with multiple WIC staff that allow one staff person to perform all eligibility and certification functions including issuing food benefits:
- (1) This may only occur with prior SA approval.
  - (2) An individual, other than the certifier (e.g. the WIC LA Director or designee), must conduct a post review of all participants listed on the Separation of Duties Report for that time period within two weeks of the certification.
  - (3) An additional file review of 10 percent of each clinic's certification files must be conducted every six months by the WIC LA Director or designee. Documentation of both reviews must be maintained on file at the LA for review during program evaluations.

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2. All post-reviews are required to be done by a supervisor and by someone who has the authority to change an eligibility decision. If the LA does not have a person to conduct the review (for example when the LA Director is working in a clinic and separation of duties does not occur), the LA should contact the SA to determine how to meet the requirement.

#### 2. Complaint and Abuse/Fraud Investigation

- a. The LA will investigate all suspected misuse of food instruments (FIs).
- b. The LA shall cooperate with all fraud investigations including reporting potential fraud to the SA and other appropriate authorities.
- c. The LAs must follow all Federal and State regulations and guidance documents, as well as SA policies and procedures.
- d. Investigating complaints received from a WIC applicant or endorser regarding program operations:

##### (1) LA Responsibilities:

- (a) Complete all appropriate sections in the Management Information System (MIS).
- (b) Ask the complainant how they would like to see this situation resolved.
- (c) Tell the complainant you or someone from the WIC office will investigate the complaint and call back. Give the complainant a definite time to expect your call. Confirm the telephone number where the complainant can be reached and ask if WIC may leave a message if the complainant is not available.
- (d) Begin the investigation within three business days of receiving the complaint and resolve the complaint within thirty calendar days.
- (e) If staff was involved in the incident, ask staff to explain what happened.
- (f) Review the participant's file, refer to the SA policy and procedure manual if applicable, and contact the SA for guidance if necessary.
- (g) Decide on a resolution based on the results of the investigation, and follow-up with the complainant through a call or sending a letter indicating the investigation has closed. NOTE: If complaint involved a staff person do not disclose name or disciplinary action taken. Only indicate appropriate follow-up has occurred.

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(h) Update the MIS with all pertinent information.

### 3. FI Misuse Investigations

- a. The LA shall notify all allegations of FI misuse to the SA within two business days.
- b. The LA will investigate all allegations regardless of source (verbal, written, internal procedures, Legislative, USDA, etc.) and begin the investigation of the alleged fraud within five business days of receiving the reported alleged fraud and complete the investigation within sixty calendar days.
- c. The SA will maintain a desk manual on how to process all fraud investigations.

### 4. Sanctions and Disqualification Following Investigation

- a. The following abuses shall result in a mandatory one-year disqualification unless the LA requests a waiver and is granted a waiver by the SA :
  - (1) Intentionally making false or misleading statements, or intentionally misrepresenting, concealing, or withholding facts to obtain benefits.
  - (2) Dual participation, deliberate simultaneous participation in WIC in one or more clinics, or in one or more states.
  - (3) Receiving cash, credit and/or other goods and/or services for WIC food, formula, and/or FIs.
  - (4) Giving away WIC food, formula, and/or FIs, selling or exchanging FIs, food or formula for cash, other goods or services; or receiving cash or credit from the retail store for food, formula or FI's or advertising items for sale.
  - (5) Stealing FIs from the LA or participants.
  - (6) Verbally or physically abusing WIC or retail store staff or any person with whom they come into contact with while using WIC benefits.
  - (7) Any abuse of FIs, food or formula. Participants may not be disqualified for abuse of breast pumps as they are not considered a direct program benefit. However, participants can be required to reimburse the Program for the value of the pump.
- b. Endorsers shall not be disqualified for receiving and/or redeeming FIs due to clinic error.
- c. The following abuses shall result in education/counseling and/or Notice of Program Violation. Repeat offenses of any of the below abuses can result in disqualification.

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- (1) Reporting FIs lost or stolen more than once within a certification period.
- (2) Deliberately damaging or destroying FIs.
- (3) Purchasing unauthorized foods or formula.
- (4) Allowing unauthorized persons to pick-up or redeem FIs.

- d. If the individual requests a hearing, process the request per Policy Manual 1.03 (C.)(5.), Appeal Procedures.

#### 5. Appeal Procedures

- a. At the time of a claim against any individual for improperly receiving or redeeming benefits, denial of participation, disqualification, or placement on a waiting list, the investigating agency shall inform them in writing of:
  - (1) Their right to a hearing,
  - (2) The method by which a hearing may be requested, and
  - (3) That any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel, or other spokesperson.
- b. A request for a hearing is defined as any clear expression by an individual, the individual's parent, caregiver, or other representative, that he or she desires an opportunity to present his or her case to a higher authority.
- c. The investigating agency shall not limit or interfere with the individual's freedom to request a hearing.
- d. The investigating agency shall use the Hearing Notice to notify the individual of their appeal rights.
- e. The appellant shall be given a reasonable period of time to request a hearing, but not later than 90 calendar days from the date the investigating agency mails or gives the appellant the notice of adverse action.
- f. The investigating agency shall not deny or dismiss a request for a hearing unless:
  - (1) The request is not received within the 90 calendar day time limit,
  - (2) The request is withdrawn in writing by the appellant or a representative of the appellant.

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- (3) The appellant or representative fails to appear, without good cause, at the scheduled hearing.
- g. Participants who appeal the termination of benefits within 15 calendar days must continue to receive program benefits until the hearing officer reaches a decision or the certification period expires, whichever comes first.
- h. Applicants who are denied benefits at certification or because of the expiration of their certification may appeal the denial but shall not receive benefits while awaiting the hearing decision.
- i. Within 45 calendar days of receipt of the hearing date, the LA shall notify the appellant or representative in writing of the decision and the reason for the decision.
- j. If the decision is in favor of the investigating agency and concerns disqualification, the investigating agency shall terminate any continued benefits as soon as administratively possible.
- k. If the decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately; however, program regulations prohibit issuing any retroactive benefits.
- l. The appellant may appeal a hearing decision by the LA to the Secretary of Health (Secretary) in writing within 15 calendar days of the mailing date of the hearing examiner's decision stating the reason for the rehearing. Benefits shall not be issued during an appeal to the Secretary or to the Commonwealth Court.
  - (1) The Secretary has three calendar weeks after the filing date to make a decision, and notify the appellant in writing of the decision.
  - (2) If the request is denied, the Secretary informs the appellant that they have the right to appeal to Commonwealth Court of Pennsylvania within 30 calendar days after the date of the decision of the Secretary.

#### 6. LA Hearing Procedures

##### a. LA Responsibilities

- (1) Accepts and documents any written or oral request for a hearing.
- (2) Designates the hearing examiner. Hearings shall be conducted by an impartial official
- (3) Designates the hearing examiner. Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the

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decision and who was not directly involved in the initial determination of the action being contested. The hearing examiner shall not be a WIC employee.

- (4) Schedules the hearing within five business days of receipt of the request.
  - (a) Schedules the date of the hearing so it is held within three calendar weeks but no sooner than 10 calendar days from the date the request is received.
  - (b) Schedules the hearing at a location not farther from the residence of the Appellant than the county seat of the county in which the appellant resides. If the county seat is unsuitable due to the health of the appellant, transportation problems, convenience of witnesses, or for other legitimate reasons, selects an alternative place that is convenient for the appellant.
- (1) Sends the Hearing Notice to the appellant by First Class Mail 10 calendar days prior to the hearing and sends a copy to the SA.
- (2) Sends the staff that made the adverse decision to the hearing to explain the reason(s) for the decision.
- (3) Provides the hearing examiner with a copy of the regulation, policy, or record that was used to make the decision.
- (4) Notifies the appellant in writing of the decision and the reason for the decision within 45 calendar days.
- (5) If the decision supports the LA's action, inform the appellant that they have a right to appeal the decision within 15 calendar days of the mailing date of the hearing decision letter by writing to:

Secretary  
Pennsylvania Department of Health  
625 Forster Street 8<sup>th</sup> Floor,  
Health & Welfare Building  
Harrisburg, PA 17120
- (6) Maintains a copy of the hearing record for a minimum of four years following the date of submission of the final expenditure report for the period to which the report pertains, or if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the four-year period, keep the records until all issues are resolved.
- (7) The LA shall retain the hearing record and make all hearing records and decisions available for copying and inspection by the appellant or representative

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at any reasonable time. For public inspection and copying; however, the names and addresses of participants and other members of the public shall be kept confidential.

b. SA Responsibilities

- (1) Reviews the copy of the letter sent to the appellant to determine that the hearing date is in accordance with program regulations.
- (2) Reviews the hearing decision for compliance with program regulations, and maintains the decision in the LA's hearing file.
- (3) Monitors timeline to assure that guidelines are being adhered to.

c. Responsibilities of Hearing Examiner

- (1) Conducts the hearing within three calendar weeks but no sooner than 10 calendar days from the date the LA received the request for a hearing.
- (2) Decisions of the hearing official shall be based upon the application of appropriate Federal law, regulations and policy as related to the facts of the case as established in the hearing record.
- (3) Reschedules the hearing if the appellant expresses a need to do so and reschedules as soon as possible.
- (4) Dismisses the appeal and notifies the appellant in writing of the reason for dismissal if the appellant or the representative fails to appear at the scheduled hearing without good cause as determined by the hearing examiner.
- (5) Accepts any written request for withdrawal of the request for a hearing if it is received before the hearing date.
- (6) Adheres to the instructions contained in Hearing Examiner Instructions in conducting the hearing.
- (7) Orders, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and to the LA.
- (8) Renders a decision based exclusively on the hearing record, Federal and State law, regulation, and policies governing the Program.
- (9) Summarizes the facts of the case, specifies the reason for the decision, and



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identifies the supporting evidence and the pertinent regulation or policy.

- (10) Notifies the LA and the SA in writing of the decision and the reason for the decision within 45 calendar days of receipt of the hearing date.
- (11) Submits to the LA the verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceedings.

### 7. Dual Participation

#### a. Interstate Dual Participation

- (1) The SA will complete an initial investigation and provide the names of participants, date of birth, sex, address, endorser name, initial certification date, certification end date, and other information to the extent necessary to detect dual participation and to establish counts of out-of-State participation within 30 calendar days of receipt of the initial report.
- (2) The SA will contact the LA to inform them that potential Interstate dual participation has occurred and will share contact information for the other State's LA.
- (3) If the participant is found to have been dual participating in two states, a disqualification notice shall be issued.
- (4) If the investigation identifies program abuse, the LA shall refer to section 4 above to determine the appropriate action required.
- (5) All investigations shall be completed within 90 calendar days of receipt of the interstate dual participation information. This includes any applicable follow-up, sanctions, disqualifications, and education. This information must be placed in the participant's file and a copy provided to the SA.

#### b. Intrastate Dual Participation

- (1) Intrastate dual participation matches will be identified monthly and available for review in the MIS.
- (2) If the dual participation is between two different agencies, it will appear on both LA's listings.
- (3) The LA shall investigate each potential match by referring to the MIS, the participant's file, benefit issuance and contacting other LAs when applicable to determine the reason for being identified.

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- (4) Record the results of each investigation and any action(s) taken in the MIS.
- (5) If the investigation identifies program abuse, the LA shall refer to section 4 above to determine the appropriate action required.
- (6) All investigations shall be completed within 30 calendar days. This includes any applicable follow-up, sanctions, disqualifications, and education. This information must be placed in the participant's file and a copy provided to the SA.

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#### References:

- 1. WIC Regulations: 7 CFR Parts 246.2, 246.7(l)
- 2. WIC Regulations: 7 CFR Part 246.8.
- 3. WIC Regulations: 7 CFR Part 246.9
- 5. USDA Memo dated August 19, 2016
- 6. Department of Health Information Circular, February 1993.
- 7. FNS 113, dated November 8, 2005.
- 8. 28 Pa. Code §8.51-8.62.

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#### Policy Status:

- 1. This Policy supersedes P&P Number 1.03, date October 2, 2017.
- 2. This P&P supersedes P&P Number 1.03, dated February 11, 2008.
- 3. This P&P supersedes P&P Number 1.06, dated April 11, 2013.
- 4. This P&P supersedes P&P Number 1.11, dated September 9, 2013.
- 5. This P&P supersedes P&P Number 1.15, dated June 1, 1997.
- 6. This P&P supersedes P&P Number 1.19, dated September 9, 2013.