

## **APPEAL PROCEDURE**

### **National School Lunch Program**

### **School Breakfast Program**

### **Special Milk Program**

In accordance with regulations for the National School Lunch Program at 7 Code of Federal Regulations (CFR) 210.18(q), regulations for the School Breakfast Program at 220.13(f)(2), and regulations for the Special Milk Program at 215.11(b)(2), a school food authority (SFA) participating in one or more of these programs must follow this procedure to request review of an action arising from administrative or follow-up review activity conducted under 7 CFR 210.18 by the Minnesota Department of Education (MDE) to:

- Deny all or part of a claim for reimbursement, or
- Withhold payment.

All other MDE actions are not subject to appeal, including denial of a claim because it was submitted more than 60 days after the last day of the month claimed, and denial of an adjustment to an already-submitted claim because the adjustment was submitted more than 90 days after the last day of the month claimed.

To appeal an MDE action:

- Read and follow the information in the Procedure section below. Your appeal request must include all of the information described in Section 4 of the procedure.
- Submit your appeal request in writing to: Director of Food and Nutrition Service, Minnesota Department of Education, 1500 Highway 36 West, Roseville, MN 55113. Your appeal request must be postmarked no later than 15 calendar days after the date you received the notice of denial of all or part of a claim for reimbursement or notice of withholding of payment.
- MDE strongly recommends that SFA send the appeal request, and any additional written documentation, in a manner that provides SFA with documentation of MDE receipt of the appeal request, such as certified mail-return receipt requested.

MDE's action remains in effect during the appeal procedure.

## **DEFINITIONS**

Appeal Panel: A three-person panel acting as the review official required in 7 CFR 210.18(q)(5).

Program: National School Lunch Program, School Breakfast Program, or Special Milk Program.

School Food Authority or SFA: The governing body which is responsible for the administration of one or more schools and has the legal authority to operate the program therein or be otherwise approved by USDA-FNS to operate the program. For the Special Milk Program only, the term also includes a non-profit agency to which such governing body has delegated authority for the operation of a milk program in a school. (Definitions of "school food authority" from 7 CFR 210.2 and 215.2)

## **PROCEDURE**

This appeal procedure is included with MDE's final or closeout letter to SFA and describes the steps for an SFA to appeal an MDE action.

### **(1) Notice of Action**

When MDE denies all or part of SFA's claim for program reimbursement or withholds program payment to SFA, arising from administrative or follow-up activity, MDE provides notice of the action to SFA.

### **(2) Appeal Request and Deadline**

SFA may appeal the MDE action by submitting a written appeal request within 15 calendar days after receipt of notice of the MDE action to the address shown above. MDE will acknowledge the receipt of an appeal request within 10 days after its receipt of the request.

### **(3) Representation**

SFA may retain legal counsel or may be represented by another person.

### **(4) Opposition and Hearing**

SFA may refute the action specified in the notice in person and by written documentation to the Appeal Panel. In order to be considered, written documentation must be filed with the Appeal Panel not later than 30 calendar days after SFA received the notice of MDE action.

An appeal request must include:

- Name, address, telephone number and, if applicable, e-mail address for SFA representative.
- Identification of MDE action(s) being appealed.
- The appeal request must be signed and dated.

A hearing shall be held in addition to, or in lieu of, a review of written information submitted by SFA only if SFA so specifies in its appeal request to MDE.

Failure of SFA's representative to appear at a scheduled hearing shall constitute SFA's waiver of the right to a personal appearance before the Appeal Panel, unless the Appeal Panel agrees to reschedule the hearing. An MDE representative shall be allowed to attend the hearing to respond to SFA's testimony and to answer questions posed by the Appeal Panel.

### **(5) Notice of Hearing**

If SFA has requested a hearing, SFA shall be provided with at least 10 calendar days advance written notice, sent by certified mail-return receipt requested, of the time, date and place of the hearing.

**(6) Availability of Information**

Any information on which MDE's action was based shall be available to SFA for inspection from the date of MDE's receipt of the appeal request.

**(7) Appeal Panel**

The members of an Appeal Panel will be independent, impartial, and not accountable to any person authorized to make decisions that are subject to appeal. To this effect, the Appeal Panel will be made up of MDE staff from outside the Food and Nutrition Service (FNS) unit that initiated the MDE action. The Appeal Panel will be composed of three MDE staff from a pool of available members. The pool includes:

- Manager and selected staff of MDE-FNS Internal Operations,
- Manager and selected staff of MDE-FNS Policy and Analysis,
- MDE financial and administrative specialists, assistant commissioner, Office of Student Support Services.

The Appeal Panel will select one of its members who may be contacted directly by SFA.

**(8) Basis for Decision**

The Appeal Panel will make a determination based solely on the information provided by SFA, information provided by MDE, federal and state laws, regulations, and policies and procedures governing the program. The decision of a majority of the members of the Appeal Panel is the decision of the Appeal Panel.

**(9) Time for Issuing Decision**

The Appeal Panel will issue a final decision within 120 days of its receipt of the appeal request.

**(10) Final Decision**

The determination made by the Appeal Panel is the final administrative determination to be afforded the SFA.

**(11) Record**

MDE maintains searchable records of appeals and results, subject to the Minnesota Government Data Practices Act.