

**Administrative Review (Appeal) Process for Day Care Homes
CHILD AND ADULT CARE FOOD PROGRAM (CACFP)**

A Day Care Home may request an Administrative Review (Appeal) from the Office of Fair Hearings if it receives a notice of “Intent to Terminate” or “Suspension” of their participation in the CACFP.

1. Written Request:

A day care home must request an Administrative Review in writing. The written request must be received by the **Office of Fair Hearings** within 15 calendar days of receipt of the notice of “Intent to Terminate” or notice of “Suspension” by the day care home. The written request must include the date the notice of “Intent to Terminate” or notice of “Suspension” was received by the day care home.

Submit the Request for an Administrative Review, (Appeal) to:

Office of Fair Hearings
PO Box 202953
Helena, MT 59620-2953

2. Provide written documentation:

The day care home may refute the findings contained in the notice of “Intent to Terminate” or notice of “Suspension” by submitting written documentation to the administrative review official at the Office of Fair Hearings. [Ref: 7 CFR 226(l)(5)(iii)]

In order for documentation to be considered, the day care home must submit written documentation to the administrative review official at the Office of Fair Hearings no later than 30 calendar days after receipt, by the day care home, of the notice of “Intent to Terminate” or notice of “Suspension”. The sponsor must submit written documentation to the administrative review official at the Office of Fair Hearings no later than 15 calendar days after the date the sponsor receives the acknowledgement of the hearing request from the Office of Fair Hearings. [Ref: 7 CFR 226(l)(5)(v)]

3. Administrative Review:

When a request for an Administrative Review from a day care home is received by the Office of Fair Hearings, the Office of Fair Hearings will:

- A. acknowledge receipt by notifying the State Agency, the Sponsor, and the Day Care Home of the request for Administrative Review within 5 calendar days, and
- B. include the final date for rendering a decision.

4. Review of Written Documentation:

A review of written documentation will take place. The administrative review official will consider only written documentation submitted by the sponsor and the day care home or their authorized representatives. Documentation may be submitted to the Office of Fair Hearings only once. The first submission of documentation is the only written documentation from the day care home and sponsor that may be reviewed by the administrative review official. No other submitted written documentation will be considered. Providers and sponsors will not be contacted for additional information. The decision will be based entirely upon the written documentation provided to the Office of Fair Hearings within the time limits stated in #2 above, and on Federal and State laws, 7 CFR 226, rules, regulations, the requirements stated in the sponsor/provider agreement, and policies and procedures governing the Program.

5. Decision:

The Office of Fair Hearings will render a final decision within 60 calendar days of receipt of the written request for an administrative review from the day care home provider. [Ref: 7 CFR 226(l)(5)(vi)]

This time limit is a federal administrative requirement for the State agency and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

6. **Final decision:** The determination made by the administrative review official is the final administrative determination to be afforded the day care home. [Ref: 7 CFR 226(l)(5)(vi)]

Note: An Administrative Review is not available if or when a day care home is or has been terminated for convenience by their sponsor.

Administrative Reviews, (Appeals) for Day Care Homes 7 CFR 226.6(l)

7 CFR 226.6(l)(2)

The State agency or sponsoring organization must offer an administrative review to a day care home that appeals a notice of Intent to Terminate their agreement for cause or a Suspension of their participation [see Secs. 226.16(l)(3)(iii) and (l)(4)(ii)].

7 CFR 226.6(l)(3)

Actions not subject to administrative review. Neither the State agency nor the sponsoring organization is required to offer an administrative review for reasons other than those listed in paragraph (l)(2) of this section.

7 CFR 226(l)(5)(ii)

Representation. The day care home may retain legal counsel, or may be represented by another person.

7 CFR 226(l)(5)(iii)

Review of record and opposition. The day care home may review the record on which the decision was based and refute the action in writing. The administrative review official is not required to hold a hearing.

7 CFR 226(l)(5)(iv)

Administrative review official. The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee of the State agency or an employee or board member of the sponsoring organization, he/she must not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review;

7 CFR 226(l)(5)(v)

Basis for decision. The administrative review official must make a determination based on the information provided by the sponsoring organization and the day care home and on Federal and State laws, regulations, polices, and procedures governing the Program.

7 CFR 226(l)(5)(vi)

Time for issuing a decision. The administrative review official must inform the sponsoring organization and the day care home of the administrative review's outcome within the period of time specified in the State agency's or sponsoring organization's administrative review procedures. This timeframe is an administrative requirement for the State agency or sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.

7 CFR 226(l)(5)(vii)

Final decision. The determination made by the administrative review official is the final administrative determination to be afforded the day care home.

Refer to Page One For Required Timeframes