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United States
Department of
Agriculture

Food and
Consumer
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

SUBJECT: Final WIC Policy Memorandum: #98-2
WIC Vendor Disqualifications Resulting from Permanent
Disqualification from the Food Stamp Program

TO: Regional Directors
Supplemental Food Programs
All Regions

Regional Directors
Food Stamp Program
All Regions

The purpose of this policy memorandum is to provide clarification regarding the effective date of Special Supplemental Nutrition Program for Women, Infants and Children (WIC) vendor disqualification's that result from the permanent disqualification of a vendor from the Food Stamp Program (FSP).

Section 845 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, generally known as the Welfare Reform Act, requires that **permanent disqualification** of a firm from the FSP be effective from the date of receipt of the notice of disqualification. As such, the disqualification becomes effective before an administrative or judicial decision is rendered. The law further provides that if the FSP disqualification is reversed through administrative or judicial review, USDA is not liable for the value of any revenues lost during the disqualification period.

This change in the FSP law raises new issues for the WIC Program regarding the effective date of a reciprocal WIC vendor disqualification based on a disqualification from the FSP. In the past, this has not been an issue for WIC because the WIC disqualification always occurred **after** all FSP administrative appeal rights have been exhausted.

The FSP retailer disqualification process involves two written communications from the Food and Consumer Service (FCS) field offices- a charge letter and a letter of determination. In the past, the letter of determination did not actually effectuate the permanent disqualification since the effective date of the FSP action to disqualify a firm was held in abeyance pending the possibility of administrative appeal. Now, however, the letter of determination issued by FCS field offices effectuates the permanent disqualification. The retailer may appeal the action to permanently disqualify the firm, and, upon winning the appeal, be reinstated for participation in the FSP, but the actual disqualification takes effect upon receipt of the determination letter.

WIC State agencies which have implemented Section 246.12 (k)(1)(iii) of the WIC Program regulations, which allows disqualification from WIC because of disqualification from another FCS Program, should proceed with caution on reciprocal WIC disqualifications based on a FSP permanent disqualification because there are no WIC legislative protections from liability for the value of lost revenues. As such, the WIC reciprocal disqualification should not take effect until all FSP appeal actions have been exhausted and a final decision upon administrative or judicial review has been rendered.

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If an appeal has been filed by the vendor, no WIC action can be taken until all administrative or judicial appeal rights have been exhausted. The FCS field office will notify the WIC State agency of the final administrative or judicial decision at which time the State agency may take action as appropriate.

If an appeal has not been filed within 10 days of the date of the determination letter, the determination letter will be forwarded to the WIC State agency notifying them that this firm has been disqualified.

Those State agencies which have not implemented the option at 246.12(k)(1)(iii) of the WIC Program regulations **cannot** disqualify the vendor from WIC solely on the basis of the FSP disqualification. Although the Welfare Reform Act contained a provision requiring the disqualification of WIC vendors who have been disqualified from the FSP, we must first establish criteria in WIC Program regulations before implementing this provision. The proposed rule establishing such criteria is currently in clearance.


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