
FOOD AND NUTRITION SERVICES CERTIFICATION
HEARINGS
Fair Hearings

FNS 705 HEARINGS
Change #2-2014
August 1, 2014

705.01 AVAILABILITY OF FAIR HEARINGS

An opportunity for a fair hearing must be provided to any household "aggrieved" by any action of the county department of social services (DSS) or coupon-issuing agency which affects the participation of the household in Food and Nutrition Services (FNS). A State Hearing Officer from the Department of Health and Human Services will hold a hearing in accordance with North Carolina General Statutes (NCGS) 108A-79.

705.02 TIMELY ACTION ON HEARINGS

The hearing must be conducted, the final decision rendered, and the household and the county department notified of the decision within 60 days of receipt of a request for a fair hearing.

- A. The date of receipt of a request is the date the oral or written request is received by the county and is the date entered on the DSS-1473 in the blank beside "Date of Appeal Request". See also 705.09, Time Period for Requesting Hearing, and the DSS-1473, Request for State Appeal. If it is unclear from the household's request what action it wishes to appeal, then the county department should request the household to clarify its grievance so the action being appealed is clearly stated on the DSS-1473.
- B. If the decision results in a decrease in the FNS unit's benefits, make the change in the next scheduled issuance following receipt of the hearing decision.
- C. If the decision results in an increase in the FNS unit's benefits, make the change in the allotment within ten calendar days of the date of receipt of the hearing decision. Issue a supplement, if necessary, to meet this requirement. However, the county department may take longer than ten calendar days if the FNS unit's normal issuance cycle will occur within 60 days from the date of the FNS unit's request for a hearing.

705.03 HOUSEHOLD REQUEST FOR POSTPONEMENT

The FNS unit may request and is entitled to receive a postponement of the scheduled hearing. The postponement cannot exceed 30 days, and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a hearing is postponed for ten days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

705.04 NOTIFICATION OF RIGHT TO REQUEST HEARING

Each FNS unit is informed on the application 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 FNS unit member or a representative, such as a legal counsel, a relative, a friend, or other spokesperson. In addition, whenever the FNS unit expresses disagreement with a county department action, it must be reminded of the right to request a fair hearing. If an individual or organization is available that provides free legal representation, the FNS unit must also be informed of the availability of that service.

705.05 LOCAL CONFERENCE

The county department must offer a local (agency) conference to households that wish to contest a denial of expedited service under the procedures given in Section 320.02 B. 1.

- A. The county must advise that an agency conference is optional and that it will in no way delay or replace the fair hearing process.

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- B. At a minimum, the local conference must include the FNS supervisor and/or the county director and a member of the FNS unit and/or its representative. The caseworker may also attend the conference.
- C. If the local conference resolves the dispute, request that the FNS unit make a written withdrawal of its request for a hearing. Otherwise, a fair hearing must still be held.
- D. Conferences for households contesting a denial of expedited service will be scheduled within two working days, unless the household requests that it be scheduled later or states that it does not wish to have a conference.
- E. If the conference is agreed to by the recipient, it will normally be held in a county office. However, if a member of the household is bedfast or has great difficulty in traveling to the county office, the conference may be held where the individual resides or in such other place mutually agreed to.
- F. At the conference, the household or household's representative must be given an explanation of the proposed action, be allowed to question the proposed action, and present any information that may affect the decision.
- G. If, in a county conference, the county and the recipient agree that the latter is entitled to restoration of lost benefits, the recipient may be authorized this without a fair hearing or any action on the part of the State.

705.06 AGENCY CONFERENCES

A. Mandatory Agency Conferences

County agencies are required to offer agency (local) conferences to any household wishing to contest a denial of expedited service under the procedures in Section 320.02 B. 1. These conferences (contesting a denial of expedited service) will be scheduled within two working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

B. Optional Agency Conferences

The county department is highly encouraged to offer a conference to any household which disagrees with an agency action. This is a valuable method of resolving problems at the local level and eliminating State level hearings where nothing can be done to help the household (such as cases with high medical expenses or shelter costs). If a hearing has been requested but the conference resolves the issue, the hearing request can be withdrawn as stated in **705.10, Denial or Dismissal of Request**.

These "optional" conferences need not be as formal as outlined above. The point is to review the case with the client, fully explain the situation and the reason for the action taken, and, if appropriate, obtain a written withdrawal of the hearing request. This can best be done if the conference is held at the agency.

705.07 GROUP HEARINGS

The county may respond to a series of individual requests for hearings by conducting a single group hearing. The county may consolidate only cases in which the sole issue is one of State/and or Federal law, regulation or policy, and individual issues of fact are not disputed. In all group hearings, the policies governing hearings must be followed. Each individual household will be permitted to present his own case or be represented by legal counsel or other spokesperson.

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705.08 HEARING REQUEST

A request for a hearing is defined as any clear expression, oral or written, that the household wishes to present its case to a higher authority to appeal a decision. A FNS unit member, the authorized representative, or some other person acting on the household's behalf, such as a legal representative, relative, or friend, may make the request. The right to make such a request shall not be limited or interfered with in any way.

- A. If the FNS unit's reason for requesting a hearing is unclear, the FNS unit should be contacted to clarify its grievance. At this time, the possibility of a local conference can be explored with the household. The **clear** request is the basis for the "date of request" shown on the request form, DSS-1473.
- B. The county DSS should complete the DSS-1473, Request for State Appeal form and forward it along with the relevant documents to the Hearings and Appeals Section, NC Department of Health and Human Services, within five calendar days of receipt of the hearing request. The time span for timely action is crucial since a hearing must be conducted and a decision rendered within 60 calendar days from the date of the request for State Appeal. (The DSS-1473 form can be found in NC FAST and at <http://info.dhhs.state.nc.us/olm/forms/dss/dss-1473-ia.pdf>. All sections of the form should be completed correctly and all required documents attached before submitting the form to the Hearings and Appeals office.)
- C. Distribute copies of the DSS-1473 as indicated on the form.
- D. Upon request, provide documents and the specific materials necessary for the FNS unit or its representative to determine whether a hearing should be requested or to prepare for a hearing. Advise the FNS unit of any legal services available that can provide representation at the hearing.
- E. The county department must process each request for a hearing under uniform rules of procedure that are consistent to the Federal Regulations. The uniform rules of procedures should be made available to any interested party.
- F. If the individual making the hearing request speaks only a language other than English, the county department is required by **Section 140.04, Bilingual Requirements**, to provide bilingual staff or interpreters who speak the appropriate language. The county department must ensure that the hearing procedures are verbally explained in that language.
- G. The county department must expedite hearing requests from households, such as migrant farmworkers, that plan to move from the county before the hearing decision would normally be reached. It must be clearly indicated on the DSS-1473 that the hearing needs to be expedited for a migrant farmworker. Hearing requests from these households will be processed faster than others if necessary to enable them to receive a decision before they leave the county.

705.09 TIME PERIOD FOR REQUESTING HEARING

A request for a fair hearing must be made within 90 calendar days of the action or loss of benefits FNS unit wishes to appeal. This includes the denial of a request for restoration of benefits lost more than 90 days but less than a year before the request. In addition, at any time within a certification period, a household may request a fair hearing to dispute its level of benefits.

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705.10 DENIAL OR DISMISSAL OF REQUEST

A request for a fair hearing can be denied or dismissed for the following reasons:

- A. The hearing request was not received within the time period specified in 705.09, Time Period for Requesting Hearing.
- B. The hearing request is withdrawn in writing by the FNS unit or its representative.
- C. The FNS unit or its representative fails, without good cause, to appear at the scheduled hearing.
- D. The household or representative orally withdraws the request.

705.11 CONTINUATION OF BENEFITS

If the FNS unit requests a fair hearing within the ten-day advance notice period for the Notice of Adverse Action, continue benefits on the basis authorized immediately prior to the Notice of Adverse Action, as long as the certification period is not expired and the FNS unit does not waive continuation of benefits.

- A. Unless the hearing request indicates that the household has waived continuation of benefits, the county department must continue the benefits.
- B. If a hearing request is made after the expiration of the ten-day advance notice period provided by the Notice of Adverse Action, reduce or terminate benefits as proposed in the notice.
- C. If the FNS unit establishes that its failure to make the request within the advance notice period was for good cause, reinstate the benefits to the prior level.
- D. When benefits are reduced or terminated due to a mass change, reinstate benefits to the prior level only if the issue is that eligibility or benefits were computed incorrectly or that federal law or policy is being misapplied or misinterpreted.
- E. Do not continue benefits at the prior rate when the hearing request is the result of recertification.
- F. Do not continue benefits at the prior rate once a certification period ends.
- G. Do not end continuation of benefits because a local conference finds in favor of the county when the recipient has not withdrawn his/her request for a State Level Hearing.

705.12 REDUCTION OR TERMINATION PRIOR TO HEARING DECISION

If the FNS unit requests a fair hearing regarding an overissuance claim, do not proceed with an allotment reduction; place an "X" in the Appeal Indicator on the Debtor Detail screen in EPICS. Remove the "X" once the hearing is decided, or the hearing is denied or dismissed. While a fair hearing decision is pending an action regarding any action other than one regarding an overissuance claim, do not reduce or terminate continued or reinstated benefits unless:

- A. The certification period expires. The FNS unit may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the county department;

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- B. The Hearing Officer makes a preliminary determination, in writing and at the hearing, that the sole issue is one of federal law, regulation, or policy and that the FNS unit's claim that the county department improperly computed the benefits or misinterpreted or misapplied such law, regulation, or policy is invalid;
- C. A change affecting the FNS unit's eligibility or basis of issuance occurs while the hearing decision is pending, and the FNS unit fails to request a hearing after the subsequent Notice of Adverse Action; **or**
- D. A mass change affecting the FNS unit's eligibility or basis of issuance occurs while the hearing decision is pending.

705.13 NOTIFICATION

The county must promptly inform the claimant in writing if benefits are reduced or terminated pending a hearing decision.

705.14 NOTIFICATION OF TIME AND PLACE OF HEARING

A State Hearing Officer from the Department of Health and Human Services will schedule a hearing at the county DSS. The county DSS household and/or representative will be notified in writing at least 10 days prior to the hearing of the date and time that the hearing will be conducted at the county DSS. However, the FNS unit may request less advance notice to expedite the scheduling of the hearing.

- A. Advise the FNS unit or its representative of the name, address, and telephone number of the person to notify in the event that it is not possible for the FNS unit to attend the scheduled hearing.
- B. Specify that the hearing request will be dismissed if the FNS unit or its representative fails to appear for the hearing without good cause.
- C. Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and would contribute to the effective presentation of the household's case.
- D. Explain that the household or representative may examine the case file prior to the hearing.

705.15 ARRANGEMENTS FOR THE HEARING

The responsibilities of the county department in preparation for the hearing include the following.

- A. Arranging a suitable place for the hearing. Though the hearing will normally be held in the offices of the county department, it may be held in some other mutually acceptable place. The location should not entail any undue travel expense to the appellant. The room should be physically comfortable, afford as much privacy as possible, and be furnished with such equipment as necessary to ensure the efficiency of the proceedings. Any problems and handicaps, such as illness or deafness, will be taken into consideration in making the arrangements. When the appellant's physical and/or mental state would seem to significantly hinder his participation in the hearing or the hearing itself might aggravate his condition, encourage the participation of a representative.
- B. Prepare the following information and attach it to the DSS-1473 which is being sent to the Hearings and Appeals Section within five calendar days of the county's receipt of the hearing request.

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1. Copy of County's notification letter to grant, deny, terminate, or modify assistance which prompted the appeal.
 2. Copy of relevant documents related to appeal.
 3. Copy of appeal summary if available at time DSS-1473 is submitted and any other pertinent information helpful in establishing facts. The information presented at the hearing must clearly document the reasons for county action.
- C. On the day of the hearing, the responsible worker for the hearing should:
1. Check the lobby a few minutes prior to the scheduled hearing time and escort the client to the hearing room at the scheduled hearing time. If the client fails to appear at the DSS, the county worker must report to the hearing room to testify that the client has not appeared.
 2. Bring to the hearing, the original and two copies of the appeal summary which should be a brief report of facts about the action.
 3. Bring to the hearing, the original and two copies of all other supportive material and information helpful in establishing facts, including relevant copies of the application/recertification/affidavits/screen shots from NC FAST showing relevant amounts/information keyed in the system, and notices sent to the household. Information presented at the hearing must clearly document the reasons for the county's action(s).

705.16 ATTENDANCE AT THE HEARING

The hearing will be attended only by persons directly concerned with the issue and will not be open to the public unless specifically requested by the appellant. The appellant may bring any friends or witnesses, as well as legal counsel at his expense. Persons required to be in attendance are:

- A. The appellant and/or his representative;
- B. The worker or workers directly involved in the issue; **and**
- C. The worker's supervisor.

705.17 RIGHTS AND DUTIES OF THE HEARING OFFICER

The Hearing Officer will:

- A. Administer an oath to all participants;
- B. Ensure that all relevant issues are considered;
- C. Request, receive, and make part of the record all evidence determined necessary to decide the issues being appealed;
- D. Regulate the conduct and course of the hearing consistent with the appellant's rights to ensure an orderly hearing;
- E. Limit the number of persons in attendance at the hearing if space limitations exist;

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- F. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the county department; **and**
- G. Provide a hearing record and recommendation for the decision.

705.18 RIGHTS AND RESPONSIBILITIES OF THE HOUSEHOLD

The FNS unit may not be familiar with the rules of order, and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the FNS unit feel most at ease. The FNS unit or its representative must be given adequate opportunity to:

- A. Before the hearing, the household or representative may request a pre-hearing conference with the county DSS to discuss the issues in the appeal. This does not affect the right to a hearing, although the need to have a hearing may be eliminated.
- B. Before the hearing, the household or representative may review the case file and the records to be used at the hearing by making arrangements with the Department of Social Services for a time to review the file. The household has right to 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. The contents of the case file used by the county department to establish the household's ineligibility or eligibility and allotment must be made available, provided that confidential information such as the names of individuals who have disclosed information about the household without its knowledge or the nature and state of pending prosecutions is protected from release. Those portions of the case files which do not pertain to the appeal or which are required by federal statutes/regulations or by State statutes/regulations to be held confidential will not be released to the household or representative. However, in cases where the household and/or representative has been denied access to portions of the case file, the Hearing Officer will certify as part of the official record that the Hearing Officer has examined the case files and that no portion of those files pertain to the appeal. The county DSS must provide free copies of the relevant portions of the case file if requested by the household or representative.
- C. The household may represent themselves during the appeal process, retain legal counsel at the households expense, or have a relative, friend, or other spokesperson to represent them.
- D. The household may bring their own witnesses.
- E. The household may argue the case without undue interference.
- F. May question or refute any testimony or evidence, including having an opportunity to confront and cross-examine the other party as well as make a closing argument summarizing view of the case and the law.
- G. May submit any evidence such as records, receipts, or other statements what will help the household explain the case and establish all pertinent facts and circumstances.

705.19 THE COUNTY DEPARTMENT

The county representative has all the same rights as the claimant such as the right to examine documents, bring witnesses, advance arguments, question evidence, and submit evidence.

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705.20 RESPONSIBILITIES OF THE HEARING OFFICER

The Hearing Officer presides and conducts the hearing informally in orderly and rational manner. The recording procedures should be explained so that each person will understand the importance of speaking slowly and distinctly.

- A. After the oath is administered and other formalities are completed, the Hearing Officer will have the county read into the record the Appeals Summary.

- B. The Hearing Officer will make a statement of the points at issue and explain the following:
 - 1. The Hearing Officer's decision will comply with Federal Law and regulations and will be based on the hearing record.

 - 2. The decision will summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations.

 - 3. Both parties will have an opportunity to present information. The County will have an opportunity to present information explaining why they took the action that is under appeal. The client will also have an opportunity to present information explaining why he/she disagrees with the County's action. Opportunity is provided the participants for a correction or modification of the statement of the problem. It is the duty and responsibility of the Hearing Officer to assist both the household and the county department in making a full statement of the case so that the relevant facts are brought out to develop the points at issue. Each person present is given an opportunity to speak. Any oral testimony or written documents, which in the judgement of the Hearing Officer appear to be reasonably related to the issue involved and to be of value in determining the fact at issue, are received. The household and the county have the opportunity to offer rebuttal.

 - 4. The client, DSS, and representatives will receive a decision in writing from the Hearing Officer and will be advised of appeal rights should either party disagree.

705.21 HEARING RECORD

The verbatim transcript or recording of testimony and exhibits or an official report containing the substance of what transpired at the hearing, all papers and requests filed in the proceeding, oral or written arguments received after the tentative decision, and the final decision will constitute the hearing record.

- A. The record shall be retained in accordance with 7 C.F.R. § 272.1 (f), Retention of Records. This record shall also be available to the household or its representative, at any reasonable time, for copying and inspection.

- B. Confidential or other information which the FNS unit or representative does not have an opportunity to hear, see, and respond to will not be introduced at the hearing nor shall it become a part of the hearing record.

705.22 MEDICAL ISSUES

If the hearing involves medical issues, such as those concerning a diagnosis or an examining physician's report, the Hearing Officer may rule that a medical assessment other than that of the person making the original determination will be obtained at combined federal-State expense from a source satisfactory to both the FNS unit and the county and made a part of the hearing record. (This would be a county expense.) Federal and State reimbursement is available and is included in allowable administrative expenses claimed on the DSS-1571.

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705.23 HEARING DECISION

The hearing decision is rendered by the State Hearing Officer. Decisions are rendered in the name of the State Department of Health and Human Services. The hearing decision will take into consideration the issue(s) under appeal at the hearing and will be factually based on the hearing record. Decisions may not run contrary to federal law, regulation, or policy.

705.24 DECISION FORMAT

The decision will state the issue, the principal facts presented at the hearing that relate to the decision, pertinent Federal Regulations, policy and the reasoning that led to the decision.

705.25 NOTIFICATION OF TENTATIVE DECISION

A decision will be prepared in tentative form and shall be sent to the household and the county department for review. The tentative decision will become final unless either party requests within ten calendar days of the date of the tentative decision to present oral or written arguments. The household and the county may present written and oral argument, for and against this decision. Written argument must be submitted to the Chief Hearing Officer within ten (10) calendar days from the date the tentative decision was rendered. Written argument may be mailed to the North Carolina Department of Health and Human Services, Hearings and Appeals, Attn: Chief Hearing Officer, 2418 Mail Service Center, Raleigh, NC 27699-2418 or faxed to 919-715-1910. Oral argument must be requested within ten (10) calendar days from the date of the tentative decision by contacting the Chief Hearing Officer. The Chief Hearing Officer may be contacted at the above listed address or by calling (919) 855-3260 with request for oral argument. Once an oral argument is requested, a letter will be mailed giving the date and time for oral argument to be heard. All oral arguments are heard at the Hearings and Appeals office in Raleigh, North Carolina. If oral or written arguments are not requested within ten calendar days, the decision shall become final. (There is no further notification of the hearing decision.) If the hearing was on a repayment issue, the county will send a DSS-8658 Post Hearing Repayment Notice (Figure 705-1) to tell the household they still owe the claim if the ruling was in favor of the county.

705.26 NOTIFICATION OF FINAL DECISION

If oral or written arguments are timely requested within ten calendar days, after further review of the official record and argument, the designated official of the Department will render a final decision that shall be sent to the household and the county department. If the hearing was on a repayment issue, the county will send a DSS-8658 Post Hearing Repayment Notice (Figure 705-1) to tell the household they still owe the claim if the ruling was in favor of the county.

705.27 REVIEW OF DECISIONS

(Reserved)

705.28 FURTHER APPEAL

Final decisions of the Department of Health and Human Services, can be appealed to Superior Court by the household in accordance with North Carolina General Statute 108A-79(k) et seq. provided such appeal is filed within 30 days of the date of receipt of the final decision. The county has no further appeal rights after a Final Decision.

705.29 PUBLIC INSPECTION

All hearing records and decisions will be available for public inspection and copying, subject to the disclosure safeguards provided in Section 130.01, Disclosure of Information. (The name and/or other identifying information must be blanked out or otherwise restricted from release.)

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705.30 IMPLEMENTATION OF FINAL DECISION

The county department is responsible for ensuring that all final hearing decisions are reflected in the FNS unit's allotment within the time limits specified in 705.02, Timely Action on Hearings.

705.31 LOST BENEFITS

When the decision finds that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, issue supplemental benefits to the FNS unit in accordance with Section 905, Restoration of Lost Benefits.

Any unpaid balance on an IPV, IHE, or AE claim shall be applied against the amount to be restored. The Notice of Final Decision need not direct the county department to restore the lost benefits.

705.32 OVERISSUANCE

When the Hearing Officer upholds the county department's action, a claim against the FNS unit for any overissuance shall be prepared in accordance with Section 800, Claims.

705.33 REMANDED HEARINGS

A Hearing Officer can decide additional verification or action is necessary in order to determine eligibility, and remand the case back to the county. The county should take the necessary action(s) as instructed in the decision.