

Food and Nutrition Service, USDA

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in the judgment of the ALJ, Chief Judge or the Judicial Officer, there is cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

§ 283.23 Procedural matters.

(a) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(b) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

Subpart C—Summary Procedure for Appeals of QC Claims of Less Than \$50,000

§ 283.24 Incorporation of procedures by reference.

Except as otherwise provided, the following procedures detailed in subpart B of this part shall apply to appeals of QC claims of less than \$50,000: §§ 283.5 *Motion to Dismiss*; 283.6 *Answer*; 283.8 *Rebuttal or Amendment of Appeal or Answer*; 283.9 *Withdrawal of Appeal*; 283.10 *Consent Decision*; 283.18 *Motions and Requests*; 283.19 *ALJ's*; 283.20 *Review by the Judicial Officer*; 283.21 *Ex Parte Communications*; 283.22 *Filings; Service; Extensions of Time; and Computations of Time*; and 283.23 *Procedural Matters*.

§ 283.25 Filing appeals for QC claims of less than \$50,000.

(a) *Time.* A State agency may appeal the bill for collection from FNS for a QC claim of less than \$50,000 for a food stamp QC error rate in excess of the tolerance level. A State agency must file a written notice of appeal, in accordance with this section, within 10 days of receipt of the bill for collection from FNS for a QC claim of less than \$50,000. The State agency may request an extension to the 10-day filing requirement in accordance with

§ 283.22(f). FNS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies.* The State agency must appeal the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing.* The notice of appeal shall be filed with the Hearing Clerk.

(d) *Content of the notice of appeal.* (1) A notice of appeal, in order to be considered acceptable must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of less than \$50,000 identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A true copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FNS to the notice and dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advise that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) That the State agency must file and serve its appeal petition, as set forth in § 283.22 not later than 60 days

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after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists, and

(2) The nature of the relief sought.

(h) *FNS answer.* Upon service of the State agency appeal petition, FNS shall file an answer, pursuant to § 283.6, not later than 60 days after the State agency submits its appeal petition.

§ 283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of \$50,000 or more.

(a) If, after the filing of its appeal petition, the State agency does not believe that the summary procedure provided in this subpart is adequate for handling the appeal and that an oral hearing is necessary, the State agency may file, no later than the date established for the conclusion of any discovery pursuant to § 283.29, a motion that its appeal be handled under the procedures in subpart B of this part.

(b) The motion shall specify why the State agency believes that the summary procedure is inadequate and what harm will result if an oral hearing is not held.

(c) FNS will have 10 days from service of the State agency's motion that the appeal be handled under subpart B

of this part to submit arguments either in support of or against the State agency's position.

(d) The ALJ will review the State agency's motion and the information submitted by FNS and decide which procedures shall be used in the appeal.

§ 283.27 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of the opportunity to file a cross motion for summary judgment pursuant to § 283.30. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 10 days after service of such motion and proposed decision, FNS may file with the Hearing Clerk objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures. Copies of the decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.28 Discovery.

Upon motion and as ordered by the ALJ, written interrogatories, written requests for admissions and written requests for the production of documents, may be served by any party to the appeal upon any other party and used in accordance with § 283.12(b).

§ 283.29 Scheduling conference.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to attend a scheduling conference following the filing of a notice of appeal pursuant to § 283.25. The scheduling conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time and place of the