

**Procedural Rules for Washington Health Benefit Exchange
Appeals
As Amended by the WAHBE Board of Directors on
September 25, 2014**

1. Purpose
2. Definitions
3. What Decisions Can Be Appealed
4. Requesting an Appeal
5. Dismissing Appeals
6. Expedited Appeal
7. Informal Resolution
8. Prehearing Conference
9. Notice of Hearing
10. Hearings
11. Burden of Proof and Standard of Review
12. Appeal Decisions
13. Appeal of Exchange Decisions to HHS
14. Rescheduling a Prehearing Conference or Hearing
15. Designating a Representative to Act for the Appellant
16. Interpreters
17. Withdrawal of Request for Hearing
18. Sending Documents to the Exchange

1. Purpose

These procedural rules set out the process for appeals of eligibility determinations that are issued by the Washington Health Benefit Exchange (the Exchange). These rules implement the federal rules in 45 CFR subpart F that govern appeals of Exchange determinations. These procedural rules have been adopted by the Board of Washington Health Benefit Exchange (the "Exchange"). Nothing in these rules is intended to limit or change the requirements or rights in any other statute or rule. If there is a conflict between these rules and the federal rules in 45 CFR part 155, subpart F, the federal rules prevail.

Authority: 45 CFR part 155, subpart F

2. Definitions

For the purposes of these Procedural Rules, the following terms have the following meaning:

- (1) "Appeal record" means the appeal decision, all papers and requests filed in the proceeding, and, if a hearing was held, the recording of hearing testimony or an official report containing the substance of what happened at the hearing, and any exhibits introduced at the hearing.
- (2) "Appellant" means an applicant, enrollee, employer, or employee who has submitted a valid appeal request.
- (3) "De novo" means a review of an appeal that is made without deference to prior decisions in the case.
- (4) "Exchange" means the Washington Health Benefit Exchange established under chapter 43.71 RCW.
- (5) "Good cause" means substantial reason or legal justification for failing to appear, act, or respond to an action; a good reason for what a person did or did not do, including but not limited to illness, other circumstances beyond a person's control, or failure to respond because a notice was written in a language the person does not understand.
- (6) "Presiding officer" means an impartial person who is not involved in original eligibility decisions and who is appointed by the Exchange to conduct appeal proceedings under these procedural rules.
- (7) "Vacate" means to set aside a previous action.

3. What Decisions Can Be Appealed

- (1) Individual appeals: An applicant or enrollee may appeal
 - (a) An eligibility decision on an initial application for enrollment in a qualified health plan, including the amount of advance payment of the premium tax credit and amount of cost-sharing reduction.

- (b) An eligibility redetermination for a current enrollee in a qualified health plan, including the amount of advance payment of the premium tax credit and amount of cost-sharing reduction.
 - (c) Failure of the Exchange to provide timely notice of an eligibility decision (determination or redetermination).
 - (d) An eligibility determination for an exemption to the individual mandate in accordance with 45 CFR §155.605
- (2) Employer appeals: An employer may appeal a determination that:
- (a) The employer does not provide minimum essential coverage through an employer sponsored health insurance plan; or
 - (b) The minimum essential coverage that the employer provides is not affordable for an employee.
- (3) Small Business Health Options Program (SHOP) appeals:
- (a) An employer may appeal
 - (i) A notice of denial of eligibility; or
 - (ii) Failure of the Exchange to make an eligibility determination in a timely manner.
 - (b) An employee may appeal
 - (i) A notice of denial of eligibility; or
 - (ii) Failure of the Exchange to make an eligibility determination in a timely manner.

Authority: 45 CFR section 155.505; 45 CFR section 155.705

4. Requesting an Appeal

- (1) An appeal must be requested within 90 days of the date on the notice of eligibility determination.
- (2) An appeal may be requested in the following ways:
 - (a) U.S. Mail, by mailing the appeal form included with the Exchange eligibility notice to the address on the appeal form.
 - (b) Email, by emailing an appeal request to appeals@wahbexchange.org. The email request should include the name, address, and phone number of the person making the appeal, the date

of the eligibility determination being appealed, and the reason for the appeal.

- (c) Telephone, by contacting the Exchange at 1-855-859-2512 (toll free).
 - (d) Facsimile, by sending an appeal request by facsimile to 360-841-7653
 - (e) Internet, by completing the appeal form online at www.wahbexchange.org.
 - (f) Hand delivery, or delivery by commercial delivery service, to the Exchange, 810 Jefferson Street SE, Olympia, Washington 98501.
- (3) The Exchange must:
- (a) Upon request, assist the applicant or enrollee in making the appeal request;
 - (b) Not limit or interfere with the applicant's or enrollee's right to make an appeal; and
 - (c) Treat as valid an appeal request that was incorrectly delivered to the Washington State Department of Social and Health Services, the Washington State Health Care Authority, or the Washington State Office of Administrative Hearings, but is otherwise valid.
- (4) When the Exchange receives an appeal request, the Exchange will send to the person requesting the appeal:
- (a) A notice that the appeal has been received;
 - (b) A schedule for the appeal process, including notice of the date and time of the prehearing conference and the hearing;
 - (c) Information about eligibility for advanced payment of the premium tax credit and cost sharing reductions during the appeal;
 - (d) An explanation that any advance payments of the premium tax credit paid on behalf of the appellant during the appeal are subject to reconciliation by the Internal Revenue Service on the appellant's income tax return;
 - (e) Information about requesting written translations and an interpreter and identifying the primary language or hearing impaired status of the party; and

- (f) Information about how to request accommodation for special needs.
- (5) The appellant must have the opportunity to review the appeal record, including all documents and records to be used by the Exchange at the hearing, at a reasonable time before the hearing, and at the hearing.
- (6) When the Exchange receives an appeal request that is not valid because it fails to meet the requirements of this section, the Exchange must:
 - (a) Send written notice to the applicant or enrollee that the appeal request has not been accepted and the reason why it has not been accepted; and
 - (b) Treat as valid an amended appeal request that meets the requirements of this section.
- (7) When the Exchange receives an appeal request disputing the appellant's eligibility in Washington Apple Health, the Exchange will transmit the appeal to the Health Care Authority via secure electronic interface.

Authority: 45 CFR section 155.520

5. Dismissing Appeals

- (1) The presiding officer must dismiss an appeal if:
 - (a) The appeal is not requested for one of the reasons listed in Procedural Rule 3.
 - (b) The appellant did not request the appeal within 90 days of the date of the notice of eligibility that is being appealed.
 - (c) The appellant does not appear at a scheduled hearing, without good cause.
 - (d) The appellant withdraws the appeal request in writing.
 - (e) The appellant dies before the appeal is concluded.
- (2) The Exchange must send timely notice to the appellant which states:
 - (a) The reason for dismissal.

- (b) How the dismissal affects the appellant's eligibility for advance payment of the premium tax credit and cost sharing reductions.
 - (c) How the appellant may, within 30 days of the notice of dismissal, submit a written request showing good cause why the dismissal should be vacated.
 - (d) How to amend the appeal and resubmit it.
- (3) Vacating a Dismissal: The presiding officer must vacate a dismissal if the appellant makes a written request showing good cause to vacate the dismissal and to allow the appeal to continue.
- (a) The request must state the reasons for good cause not to dismiss the appeal.
 - (b) The appellant must make the request to vacate the dismissal within 30 days of the date of the notice of dismissal.
 - (c) The appellant may request, in writing, a hearing before the presiding office on the request to vacate the dismissal.
 - (d) The Exchange must provide the appellant written notice of the denial of a request to vacate a dismissal, if it is denied.
 - (e) If the presiding officer vacates the dismissal, the Exchange must send the appellant the information in Procedural Rule 4(4).

Authority: 45 CFR section 155.530

6. Expedited Appeal

- (1) An appellant may request an expedited appeal when the appellant can show an immediate need for health services because the regular appeal process could jeopardize the appellant's
- (a) Life or health; or
 - (b) Ability to attain, maintain, or regain maximum function.
- (2) An expedited appeal must be requested in the same manner as a regular appeal, as set out in Procedural Rule 4.

- (3) At the time the expedited appeal is requested, the appellant should submit
 - (a) Evidence of the reason for the expedited appeal; and
 - (b) Evidence of how the eligibility determination is incorrect.
- (4) If the presiding officer grants the request for an expedited appeal, the Exchange must issue a final appeal decision no later than fourteen days after the Exchange received the request for expedited appeal.
- (5) If the presiding officer denies the request, the Exchange must:
 - (a) Handle the appeal request under the standard appeal process and issue the appeal decision within 90 days of receipt of the request; and
 - (b) Inform the appellant, promptly and without undue delay, through electronic or oral notification, if possible, of the denial and, if notification is oral, follow up with the appellant by written notice. Written notice of the denial must include—
 - (i) The reason for the denial;
 - (ii) An explanation that the appeal request will be transferred to the standard 90 day process; and
 - (iii) An explanation of the appellant's rights under the standard process, including the information in Procedural Rule 4(4).

Authority: 45 CFR section 155.540

7. Informal Resolution

- (1) The Exchange will seek to resolve the appeal through an informal resolution process that will include the following:
 - (a) After receiving the appeal request, the Exchange will review its eligibility records and any documentation the appellant submits, to determine if the appellant's request can be granted, and the eligibility decision changed.

- (b) The Exchange will contact the appellant or the appellant's representative, if one has been designated, to discuss the reason for the appeal and how to resolve it.
 - (c) The Exchange and the appellant may discuss the evidence regarding appellant's eligibility and agree to resolve the appeal at the prehearing conference.
- (2) The appellant or the appellant's representative may also request of the Exchange the informal resolution process set forth in subsection (1) of this section
 - (3) If the Exchange and the appellant agree to resolve the appeal, the informal resolution agreement is final and binding, and the appellant must notify the Exchange, in writing, that he or she is withdrawing the appeal.
 - (4) The appellant has the right to a hearing if no informal resolution is reached.

Authority: 45 CFR section 155.535

8. Prehearing Conference

- (1) The presiding officer will hold a prehearing conference no less than seven days before the hearing.
- (2) At the prehearing conference, the Exchange and the appellant, or the appellant's representative, will consider;
 - (a) The issues to be addressed at the hearing, including legal issues;
 - (b) The witnesses who will testify at the hearing, and any limits on the number of witnesses or what they will testify about;
 - (c) The documents to be submitted at the hearing;
 - (d) The possible informal resolution of the appeal; and
 - (e) Any other matters regarding the efficient conduct of the hearing.
- (3) Prehearing conferences will be conducted by a presiding officer, by telephone or another method

agreed to by the Exchange and the appellant, and will be electronically recorded.

- (4) The presiding officer will enter a prehearing order that sets out the action taken at the prehearing conference, including rulings made by the presiding officer and agreements between the Exchange and the appellant.

Authority: 45 CFR section 155.535

9. Notice of Hearing

- (1) When the Exchange has scheduled a hearing, it must send written notice to the appellant no later than 15 days prior to the hearing date. The notice must state the date, time, and manner of conducting the hearing. For teleconference calls, the notice must state the telephone number and any other access code or PIN number required to participate in the hearing.
- (2) The notice of hearing must state that if the appellant fails to attend or participate in a hearing the appeal will be dismissed as set out in Procedural Rule 5.
- (3) The notice of hearing must state that if an appellant or witness who is limited-English proficient or hearing impaired needs an interpreter, a qualified interpreter will be appointed no cost to the appellant or witness. The notice must include a form for a party to indicate whether the party needs an interpreter and to identify the primary language or hearing impaired status of the party.

Authority: 45 CFR sections 155.205, 155.535

10. Hearings

- (1) Hearings will be conducted by a presiding officer, by telephone. The hearing may be conducted in person, or by another method agreed to by the Exchange and the appellant. Hearings will be electronically recorded.
- (2) Hearings will be conducted by a presiding officer who has not been directly involved in the eligibility determination being appealed.

- (3) At the hearing, the appellant may
 - (a) Present the relevant testimony of one or more witnesses.
 - (b) Present documents and other relevant evidence.
 - (c) Confront and cross examine adverse witnesses, and refute evidence.
 - (d) Present his or her argument without interference.

Authority: 45 CFR section 155.535

11. Burden of Proof, and Standard of Review

- (1) The Presiding Officer must review the appeal record de novo; all the evidence must be considered without considering the decision made in the original eligibility determination.
- (2) The appellant has the burden of proving, by a preponderance of the evidence, that the Exchange determination was incorrect.

Authority: 45 CFR section 155.535

12. Appeal Decisions

- (1) The presiding officer must issue a written appeal decision to the appellant within 90 days of the date the Exchange received the appeal request, except in the case of an expedited appeal under Procedural Rule 6.
- (2) Appeal decisions must be in writing, based only on evidence in the record, and include:
 - (a) The decision, including a plain language description of the effect on the appellant's eligibility;
 - (b) A summary of the relevant facts;
 - (c) A statement of the legal basis, including regulations that support the decision;
 - (d) The effective date of the decision;
 - (e) An explanation of the appellant's right to appeal the Exchange appeal decision to the U.S. Department of Health and Human Services.

Authority: 45 CFR section 155.545

13. Appeal of Exchange Decisions to HHS

- (1) If an appellant disagrees with the appeal decision of the Exchange, he or she may make an appeal to the United State Department of Health and Human Services (HHS) within 30 days of the date of the notice of appeal decision.
- (2) The WAHBE Appeals Program may provide a copy of the appropriate form to the appellant upon request, or the appellant may go to <https://www.healthcare.gov/can-i-appeal-a-marketplace-decision/> for a copy of the form. After completing the form, the appellant must mail the form to:

Health Insurance Market
465 Industrial Blvd
London, KY 40750-0061
- (3) The Exchange must transmit the original appeal request and the applicant's appeal record to HHS through a secure electronic interface.

Authority: 45 CFR sections 155.505 and 155.545

14. Rescheduling a Prehearing Conference or Hearing

- (1) The appellant may request that the Exchange reschedule a prehearing conference or hearing.
- (2) The request to reschedule must be made in writing, and state good cause to reschedule the prehearing conference or hearing. The presiding officer will consider the written request and promptly issue a written decision granting or denying the request.
- 3) A request to reschedule a prehearing conference or hearing will not be granted if it will cause the final decision in the appeal to be made more than 90 days after the Exchange received the appeal.

Authority: 45 CFR sections 155.505 and 155.535

15. Designating a Representative to Act for the Appellant

- (1) An appellant may designate an individual person, such as a lawyer or family member, or organization, to act on his or her behalf during the appeal, including requesting an appeal under Procedural Rule 4.
- (2) The appellant must designate a representative in writing, as follows:
 - (a) On an appeal form provided by the Exchange and signed by the appellant;
 - (b) In another written document signed by the appellant;
 - (c) By designating a representative through the Healthplanfinder eligibility system;
 - (d) By written notice of appearance sent by US Mail or email, if the authorized representative is an attorney admitted to practice in Washington State; or
 - (e) By legal documentation to act on behalf of the appellant, such as a guardianship order or power of attorney.

Authority: 45 CFR sections 155.227 and 155.505

16. Interpreters

- (1) The Exchange must provide a qualified interpreter to assist an appellant or witness who is hearing impaired or limited English proficient.
- (2) Exchange appeal forms must include a place for a party to indicate whether the party needs an interpreter and to identify the primary language or hearing impaired status of the party.
- (3) Relatives of any party or employees of the Exchange may not serve as interpreters in Exchange appeal proceedings.
- (4) The presiding officer must determine if an interpreter can accurately interpret the proceedings for the appellant or witness requesting the interpreter's services. If at any time during the proceedings the interpreter does not provide accurate and effective

interpretation, the presiding officer shall appoint another qualified interpreter.

- (5) The presiding officer must allow enough time during the proceedings for the interpreter's translations to be made and understood.

Authority: 45 CFR sections 155.205 and 155.545

17. Withdrawal of Request for Hearing

- (1) A person who has requested an appeal may withdraw the appeal request for any reason at any time during the appeal. The request for withdrawal must be made
 - (a) On a form provided by the Exchange and signed by the appellant, or in another written communication; or
 - (b) By telephone if the Exchange records in full the appellant's statement under penalty of perjury and the Exchange sends to the appellant a written confirmation of the withdrawal; or
 - (c) Orally to the presiding officer during an appeal proceeding.

- (2) A person who has requested an Exchange appeal may withdraw the hearing request in order to seek review of a denial of eligibility for Washington Apple Health. The request for withdrawal must be made
 - (a) On a form provided by the Exchange and signed by the appellant, or in another written communication; or
 - (b) Orally to the presiding officer during an appeal proceeding.

When the Exchange receives the withdrawal, it shall transmit all information about the withdrawn appeal to the Health Care Authority promptly using a secure electronic interface.

- (3) The form provided for written withdrawals must contain the reason for the withdrawal, and require a signed acknowledgment that the appellant is knowingly withdrawing the appeal request and his or her right to a hearing.

- (4) If a person withdraws an appeal, the presiding officer shall enter an order dismissing the appeal under Procedural Rule 5.

Authority: 45 CFR sections 155.505 and 155.530

18. Sending Documents to the Exchange

- (1) When these procedural rules or an order of the presiding officer require the appellant to provide any documents or other information to the Exchange, the appellant may provide the information by:
 - (a) U.S. Mail, to P.O. Box 1757, Olympia, WA 98507-1757.
 - (b) Email, to appeals@wahbexchange.org.
 - (c) By facsimile, to 360-841-7653
 - (d) Hand delivery, or commercial delivery service, to 810 Jefferson St SE, Olympia, WA 98501-1417
- (2) When these procedural rules or an order of the presiding officer requires that the Exchange receive a document, that document is considered received by the Exchange when it arrives at the Exchange office during regular office hours.