Procedural Rules for Washington Health Benefit Exchange Appeals

1. Purpose

These procedural rules set out the process for appeals of eligibility determinations that are issued by the Washington Health Benefit Exchange (WAHBE, or the Exchange). These rules implement the federal rules in 45 CFR subpart F that govern appeals of Exchange determinations, and Washington State law. 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 this meaning:

(1) “Advance Premium Tax Credit” or “APTC” means a payment made by the U.S. Department of Health and Human Services pursuant to 42 USC § 18082 on behalf of an eligible individual to reduce the amount of a health plan premium.

(2) "Appeal record" means the appeal decision, all documents 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.

(3) "Appellant" means an individual applicant, individual enrollee, or employer, who has submitted a valid appeal request.

(4) “Applicant” means an individual who completes and submits an application for health insurance coverage through *Washington Healthplanfinder*.

(5) “Cascade Care Savings” means the premium assistance program established in RCW 43.71.110

(6) “Child care sponsorship program” means the premium assistance program established by Chapter 334, Laws of 2021, Engrossed Substitute Senate Bill 5092, passed by the Washington State Legislature on April 25, 2021, for employees of licensed child care facilities.

(7) “Cost-sharing reductions” means extra savings that lower the amount an enrollee pays for deductibles, copayments, and coinsurance. Cost-sharing reductions are available with metal level Silver plans.

(8) "De novo" means a review of an appeal that is made without deference to prior decisions in the case.

(9) “Eligibility determination” or “Eligibility redetermination” means a decision made by the Exchange that an applicant or enrollee is eligible or ineligible for enrollment in a qualified health and/or dental plan, and/or financial assistance. “Eligibility determination” is inclusive of both eligibility determinations and redeterminations. May also be referred to as “eligibility

decision" or "eligibility result(s)".

(10) "Enrollee" means an individual enrolled in a health and/or dental plan through *Washington Healthplanfinder*.

(11) "Exchange" means the Washington Health Benefit Exchange established under chapter 43.71 RCW.

(12) "Financial Assistance" means any premium or cost-sharing assistance provided to an applicant or enrollee, including cost-sharing reductions, APTC, premium assistance provided through the child care sponsorship program, and/or premium assistance provided through the state premium assistance program, through *Washington Healthplanfinder*.

(13) "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.

(14) "Premium assistance" means a periodic payment made to a health insurance carrier by the Exchange on behalf of an enrollee to reduce the amount of premium paid by the enrollee.

(15) "Presiding officer" means an impartial person who is not involved in original eligibility decisions or eligibility redeterminations, and who is appointed by the Exchange to conduct appeal proceedings under these procedural rules.

(16) "State premium assistance program" means premium assistance program established by the state to support health insurance affordability in the individual market. These include programs described under Section 2 (5) and (6).

(17) "Vacate" means to set aside a previous action.

(18) "Written Notice" or "in writing" means delivered by postal mail, facsimile, or email.

3. What Determinations Can Be Appealed

(1) Individual appeals: An applicant or enrollee may appeal:

(a) An eligibility determination on an initial application for enrollment in a qualified health and/or dental plan, or an eligibility redetermination for a current enrollee in a qualified health and/or dental plan.

(b) An eligibility determination or redetermination for APTC, including the amount of APTC, and/or cost-sharing reductions, including the amount of cost-sharing reductions.

(c) An eligibility determination or redetermination for premium assistance through a state premium assistance program, including the amount of state premium assistance for -

(i) Cascade Care Savings

(ii) Child Care Sponsorship program

(d) An eligibility determination for a special enrollment period.

(e) Failure of the Exchange to provide timely notice of an eligibility determination.

(f) An eligibility determination for an exemption to the individual mandate requiring insurance if applicable in accordance with 45 CFR §155.605.

(2) Employer appeals: An employer may appeal a determination that:

(a) The employer does not offer health insurance that provides minimum essential coverage and meets minimum value standards.

(b) The minimum essential coverage, minimum value plan that the employer provides is not affordable for an employee.

Authority: 45 CFR section 155.505; 45 CFR section 155.555; 45 CFR section 155.605

4. Requesting an Appeal

(1) An appeal must be requested within 90 days of the date on the notice of eligibility determination.

(2) An individual applicant or enrollee may submit written

good cause explanation for failure to submit an appeal within 90 days of the eligibility determination if the delay was due to exceptional circumstances.

(3) An appeal may be requested in the following ways:

(a) U.S. Mail, by mailing an appeal request 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 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 Washington Health Benefit Exchange, 810 Jefferson Street SE, Olympia, Washington 98501.

(4) The Exchange must:

(a) Upon request, assist the applicant, enrollee, or employer in making the appeal.

(b) Not limit or interfere with the applicant's, enrollee's, or employer's right to make an appeal.

(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.

(5) 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, if the appeal cannot be resolved informally without a

hearing.

(c) Information about eligibility for financial assistance:

(i) Financial assistance may continue during the appeal process when the appeal is regarding an eligibility determination showing reduction or loss of financial assistance previously received.

(ii) A request to continue financial assistance during the appeal process must be requested prior to the effective date of the reduction in financial assistance or within 10 calendar days of the effective date of the reduction of financial assistance, whichever is longer.

(iii) An explanation that any APTC paid on behalf of the appellant during the appeal is subject to reconciliation by the Internal Revenue Service on the appellant's income tax return.

(d) Information about requesting accessibility assistance or interpreter services in accordance with federal law as described in Procedural Rule 7.

(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, or employer that the appeal request has not been accepted and the reason why it has not been accepted.

(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 upload to the appellant’s *Washington Healthplanfinder* application.

Authority: 45 CFR section 155.520

5. Expedited Appeal

(1) An individual 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.

(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 need for an expedited appeal, and

(b) Explanation of why the appellant believes 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 14 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 appeal.

(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.

(iii) An explanation of the appellant's rights under the standard process, including the

information in Procedural Rule 4(5).

Authority: 45 CFR section 155.540

6. Designating a Representative to Act for the Appellant

(1) An appellant may designate an individual person, such as a lawyer or family member, or an organization, to act on their behalf during the appeal, including requesting an appeal under Procedural Rule 4.

(2) An appellant designating a representative must do so:
- (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.
- (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

7. Accessibility Assistance/Interpreters

(1) Federal regulations require the Exchange appeals processes to comply with the accessibility requirements in § 155.205(c). This includes providing information to applicants and enrollees in plain language and in a manner that is accessible and timely to:
- (a) individuals living with disabilities, including accessible websites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.
- (b) individuals who are limited English proficient through the provision of language services at no cost to the individual, including:

(i) oral interpretation, including telephonic interpreter services in at least 150 languages.
(ii) written translations.
(iii) taglines in top 15 non-English languages indicating the availability of language services.

(c) inform individuals of the availability of these services and how to access such services.

(2) Exchange appeal forms must include a place for a party to indicate whether they need accessibility assistance or an interpreter.

(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 accessibility aid or interpreter is accurately, effectively, and impartially supporting the proceedings for the appellant, enrollee, employee, or witness requesting the accessibility or interpreter services. If at any time during the proceedings the presiding officer determines the accessibility aid or interpreter is not providing accurate, effective, and impartial services, the presiding officer shall dismiss the interpreter or other accessibility aid and obtain the services of a more qualified interpreter or accessibility aid.

(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

8. 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 WAHBE Appeals Program, 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 require 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.

9. 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 individual appellant, or employer appellant and employee, submits to determine if the appellant's request can be granted without proceeding to a hearing.

(b) The appellant or the appellant’s representative may also request of the Exchange the informal resolution process.

(2) 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 or by telephone, that they are withdrawing the appeal.

(3) The appellant has the right to a prehearing and/or hearing if no informal resolution is reached.

Authority: 45 CFR section 155.535

10. Notice of Hearing

(1) When the Exchange has scheduled a hearing, it must send written notice to the individual appellant, or to

the employer appellant and employee, no later than 15 calendar 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 personal identification number (PIN) required to participate in the hearing.

(2) The notice of hearing must state that if the individual or employer appellant fails to attend or participate in a prehearing or hearing, the appeal will be dismissed as set out in Procedural Rule 16.

(3) The notice of hearing in accordance with federal regulations must state that if an individual appellant, employer appellant, employee, or witness needs accessibility assistance or interpreter services, these services will be provided at no cost to the individual appellant, employer appellant, employee, or witness.

Authority: 45 CFR sections 155.205, 155.535

11. 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

12. Prehearing Conference

(1) The presiding officer will hold a prehearing

conference no less than 7 calendar 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 for the hearing.
   (d) Possible informal resolution of the appeal.
   (e) Any other matters regarding the efficient conduct of the hearing.

(3) The prehearing conference will be conducted by a presiding officer, by telephone or another method agreed upon 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.

(5) If the individual appellant, or employer appellant and employee, have been given sufficient notice and/or agree, and the presiding officer finds that it is appropriate, a final ruling can be made at the conclusion of the prehearing conference. Nothing within this rule should be construed to limit an appellant's right to adequate notice, a continuance, or a hearing.

Authority: 45 CFR section 155.535

13. Hearings

(1) The individual appellant, or employer appellant and employee, 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.

(2) 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.

(3) Hearings will be conducted by a presiding officer who has not been directly involved in the eligibility determination being appealed.

(4) At the hearing, the individual appellant, or the employer appellant and employee, may
   (a) Present documents and other relevant evidence that demonstrates the Exchange determination was incorrect or not all relevant facts were considered.
   (b) Present the relevant testimony of one or more witnesses.
   (c) Confront and cross-examine adverse witnesses and refute evidence.
   (d) Present their arguments without interference.

Authority: 45 CFR section 155.535

14. Standard of Review

The presiding officer must review the appeal record de novo; all the evidence must be considered without deferring to the decision made in the original eligibility determination.

(1) Newly discovered evidence that was not available at the time of the eligibility decision may be introduced.

Authority: 45 CFR section 155.535

15. Withdrawal of Appeal

(1) An individual or employer who requested an appeal may withdraw the appeal request for any reason at any time during the appeal process. The request for withdrawal must be made:
   (a) On a form provided by the Exchange and signed by the individual appellant or employer representative, or in another written, faxed, or

mailed communication.

(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.

(c) Orally to the presiding officer during an appeal proceeding.

(2) An individual appellant 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, faxed, or emailed communication.

(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.

(c) Orally to the presiding officer during an appeal proceeding.

(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 their right to a hearing.

(4) If an appellant 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

16. 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 individual or employer appellant does not appear

at a scheduled prehearing conference or hearing, without good cause.

(d) The appellant withdraws the appeal request in accordance with Procedural Rule 15.

(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 enrollment in a qualified health plan or financial assistance.

(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 appellant must make the request to vacate the dismissal within 30 days of the date of the notice of dismissal.

(b) The request must state the reason for good cause not to dismiss the appeal.

(c) The appellant may request, in writing, a hearing concerning 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

17. 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 5.

(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 individual appellant's eligibility, or in an employer appeal, the employee's eligibility.
   (b) A summary of the relevant facts.
   (c) A statement of the legal basis, including regulations and laws that support the decision.
   (d) The effective date of the decision.
   (e) An explanation of the individual appellant's second-level appeal rights.

(3) Eligibility following an appeal:
   (a) If the appeal decision results in a change to the appellant's or employee's eligibility, the change is effective prospectively based on the date of the decision, unless the decision states otherwise.
   (b) If the appellant elected to retain the eligibility in effect prior to the determination in dispute pending the outcome of the appeal, a finding that the eligibility determination under appeal should stand will result in the decision being applied prospectively.
      (i) The eligibility shall take effect the first day of the month following the issuing of a decision upholding the initial eligibility determination.
   (c) If the individual appellant or employee has experienced and reported a change, that change takes precedent as a newly reported eligibility determination and is effective based on the date the change was reported.
   (d) Eligibility for household members who have not appealed may change as a result of the appeal.

Authority: 45 CFR section 155.545

18. Disputes and Appeals of Exchange Appeal Decisions

(1) If an individual appellant disagrees with the decision

regarding an appeal of an eligibility determination for enrollment in a qualified health and/or dental plan, eligibility for and the amount of APTC and/or cost-sharing reductions, failure of the Exchange to provide timely notice of an eligibility determination, or an eligibility determination for an exemption to the individual mandate, the appellant may:

(a) Within 14 days of the date of the appeal decision, request review of the decision by the United States Department of Health and Human Services (HHS).

(b) Within 30 days of the date of the appeal decision, make an appeal to HHS.

(i) The Exchange may provide a copy of the HHS appeal form to the appellant upon request, the appellant may go to https://www.healthcare.gov/downloads/marketplace-appeal-request-form-s.pdf for a copy of the form, or the appellant can write a letter.

(ii) The appellant must mail the request for review or appeal to:

Health Insurance Marketplace
Attn: Appeals
465 Industrial Blvd
London, KY 40750-0061

or fax the request or appeal form to a secure fax line: 1-877-369-0130.

(iii) When instructed by the HHS appeals entity, the Exchange will transmit the appeal record to HHS through a secure electronic interface.

(2) If an individual appellant disagrees with the appeal decision regarding eligibility for or amount of premium assistance provided by a state premium assistance program, the appellant may request a second-level appeal through the Exchange. Second-level appeals:

(a) Must be requested within 30 days of the date of the notice of appeal decision.

(b) May be requested for reasons including, but not

limited to, the appellant believing the presiding officer's decision:

(i) Is inconsistent with law.

(ii) Is not supported by the evidence in the record.

(iii) Does not address all of the issues raised by the parties.

(iv) Newly discovered evidence that was not available at the time of the hearing is now available.

(c) Are heard by a different presiding officer than the original appeal.

(3) Employer appellants do not have the right to a second-level appeal.

(4) An employee in an employer appeal has the right to request an individual appeal of an eligibility determination that resulted from the employer's appeal.

Authority: 45 CFR sections 155.505 and 155.545