



ADMINISTRATIVE RULES OF MONTANA



37.5.124 CHILD AND ADULT CARE FOOD PROGRAM (CACFP): APPLICABLE ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES FOR DAY CARE HOMES

- (1) Administrative reviews (appeals) are available to the extent granted in 7 CFR 226.6(l). The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.331, 37.5.334, 37.5.337 do not apply to such administrative reviews.
- (2) An administrative review of an intent to terminate a day care home provider's agreement for cause or a suspension of their participation will be limited to a review of the written documentation provided to the Office of Fair Hearings, federal policies, 7 CFR 226, state laws and administrative rules, the requirements shown in the sponsor/provider agreement, and policies and procedures governing the Child and Adult Care Food program. This review will be performed by allowing the parties to submit written documentation to support their claim.
- (3) A day care home provider must request an administrative review in writing. The written request must be received by the Office of Fair Hearings at the Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 within 15 calendar days of receipt by the day care home provider of the notice of intent to terminate or notice of suspension. The written request for administrative review must include the date the notice of intent to terminate or notice of suspension was received by the day care home provider.
- (4) The day care home provider may refute the findings contained in the notice of intent to terminate or notice of suspension by submitting written documentation to the administrative review officials at the Office of Fair Hearings. The sponsor and provider must submit copies of the documentation in written format to the Office of Fair Hearings.
- (5) In order for documentation to be considered, the day care home provider must submit written documentation to the administrative review official at the Office of Fair Hearings no later than 30 calendar days after receipt by the day care home provider of the notice of intent to terminate or notice of suspension. The sponsoring organization must submit written documentation to the administrative review official at the Office of Fair Hearings no later than 15 calendar days after the date the sponsor receives from the Office of Fair Hearings the acknowledgment of the hearing request referred to in (6)(a).
- (6) When a request for an administrative review from a day care home provider is received by the Office of Fair Hearings, the Office of Fair Hearings will:
 - (a) acknowledge receipt by notifying the department, the sponsor and the day care home provider of the request for administrative review within five calendar days and include the final date for rendering a decision;

- (b) consider only written documentation submitted by the sponsoring organization and the day care home (or their authorized representatives). Day care home providers and sponsors will not be contacted for additional information. The decision will be based entirely upon the written documentation provided to the Office of Fair Hearings within the time limits cited in (5), and on federal and state laws, 7 CFR 226, rules, regulations, the requirements stated in the sponsor/provider agreement, and policies and procedures governing the program; and
 - (c) render a final decision within 60 calendar days of receipt of the written request for an administrative review from the day care home provider. This time limit is a federal administrative requirement for the department and may not be used as a basis for overturning the department's action if a decision is not made within the specified time limit.
- (7) The determination made by the administrative review official is the final administrative determination to be afforded the day care home.
 - (8) Documentation may be submitted to the Office of Fair Hearings only once. The first submission of documentation is the only written documentation from the provider and sponsor that may be reviewed by the hearing officer. No other submitted written documentation will be considered.

Authorizing statute(s): 50-1-202, MCA

Implementing statute(s): 50-1-202, MCA

History: NEW, 2004 MAR p. 577, Eff. 3/12/04.