

## **CHICKASAW NATION SUMMER EBT PROGRAM**

### **Policy: Request for Fair Hearing**

In accordance with 7 CFR 292.26, The Chickasaw Nation Summer EBT program must establish a fair hearing procedure and make it available for families and Summer EBT agencies.

### **Purpose**

The purpose of this document is to outline conditions and procedures involving requests for a Fair Hearing. A request for a Fair Hearing is defined as any clear expression by the individual, the individual's parent, caretaker or other representative (otherwise known as the appellant), that he or she desires an opportunity to present their case to a higher authority.

The Summer Electronic Benefits Transfer (EBT) agency shall not limit or interfere with the individual's freedom to request a hearing ([7 CFR 292.8\(e\)\(12\)](#), [7 CFR 292.26, 210, 220, 225 and 292 EBT agencies](#)). Hearing requests by appellants can be made verbally in person or by contacting (580) 272-1178 Toll Free: (844) 256-3467 or in writing and delivered or sent to the Summer EBT agency at 1001 N. County Club Rd, Ada, OK 74820.

### **References**

Federal regulations relating to this policy and procedure can be referenced at [7 CFR 292.8\(e\)\(12\)](#), [7 CFR 292.26, 210, 220, 225 and 292 EBT agencies](#).

### **Procedures**

#### ***Notification of Appeal Rights***

- a. The Summer EBT agency shall provide to all applicants and participants the statements on the appropriate forms that outline their rights to a Fair Hearing, including instructions for making the appeal. Applicants and participants shall also be informed of their rights to be represented by a relative, friend, legal counsel or other spokesperson.
- b. Copies of the Fair Hearing form shall be publicly available on the Summer EBT website.

#### ***Time Limit for Request:***

- a) Households can request a fair hearing to appeal decisions of an adverse action that was mailed or given to the applicant by the Summer EBT agency. These requests must be made within **90 days** after the end of the summer operational period.
- b) Hearings will be held with reasonable promptness and convenience, and adequate notice given as to the time and place of the fair hearing must be available for examination. The time and date of the fair hearing will be at least 30 days from the date the agency mails or

otherwise issues the notice of adverse action. The written notice shall enclose an explanation of the hearing procedure with the notice.

- c) Written notification of the decision made in the case of a Fair Hearing must be made within 45 working days of the hearing.

***Denial or Dismissal of Request:***

- a) The Summer EBT agency shall NOT deny or dismiss a request for a hearing unless:
- b) The request is not received after 90 days after the end of the summer operational period.
- c) The request is withdrawn in writing by the appellant or a representative of the appellant.
- d) The appellant or representative fails, without good cause, to appear at the scheduled hearing.
- e) The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Summer EBT Program eligibility have changed in such a way as to justify a hearing.

**Continuation of Benefits:**

Participants who appeal the termination of benefits within the 60 working days provided, as defined by this section, **MUST** continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to:

- a) Applicants denied benefits at initial certification;
- b) Participants whose certification period has expired; or
- c) Participants who become categorically ineligible for benefits.

Under the three circumstances stated above, applicants or participants may appeal the denial or termination, but **MUST NOT** receive benefits while awaiting the Hearing.

**Uniform Rules of Procedures:**

The Summer EBT agency shall process each request for a Hearing under uniform rules of procedure (12 CFR 747[a]) and shall make these rules of procedure available for public inspection and copying on the Summer EBT website. At a minimum, such rules shall include:

- a) the time limits for requesting and conducting a Hearing;

- b) all advance notice requirements;
- c) the rules of conduct at the Hearing; and
- d) the rights and responsibilities of the appellant.

These rules shall not be unduly complex or legalistic.

**Hearing Official:**

The Hearing shall be conducted by an impartial official, such as the Director of Child Nutrition, who was not directly involved in the initial determination of the action being contested.

The **Hearing Official** shall:

- a) administer oaths or affirmations if required by the Summer EBT agency;
- b) ensure that all relevant issues are considered;
- c) request, receive and record all evidence at the Hearing determined necessary to rule on the issues being raised;
- d) regulate the conduct and course of the Hearing consistent with due process to ensure it remains orderly;
- e) order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the agency; and
- f) render a Hearing decision which will resolve the dispute.

**Conduct of the Hearing:**

The Hearing Official shall mail a notice of the Hearing, which includes an explanation of the procedure and the date, time, place and reason for the Hearing to the appellant and the appellant's representative.

- a) the Summer EBT agency shall ensure that the Hearing is accessible to the appellant and is held within three weeks from the date the Summer EBT agency received the request for a hearing;
- b) the Summer EBT agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose an

explanation of the hearing procedure with the notice;

- c) the Summer EBT staff with knowledge of the dispute should be in attendance, along with legal counsel for the agency if the agency desires. The Summer EBT staff shall have the opportunity to present oral and documentary evidence and to examine, question or refute any testimony or other evidence, including the opportunity to confront and cross-examine witnesses.
- d) the Hearing Official shall conduct the Hearing without unduly complex or legalistic procedures, taking into consideration the appellant's background and education.
- e) the Hearing Official shall also provide the appellant or representative an opportunity to:
  - i. examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
  - ii. be assisted or represented by an attorney or other persons;
  - iii. bring witnesses;
  - iv. advance arguments without undue interference;
  - v. question or refute any testimony or evidence, including through cross-examination and confrontation of adverse witnesses; and
  - vi. submit evidence to establish all pertinent facts and circumstances in the case.

**Timeframe for Fair Hearing Official's Decision:**

Written notification of the decision in the case of a Hearing must be made within 45 days of the Hearing.

The decision by the Hearing Official shall:

- a) summarize the facts of the case in including the challenge or decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing official;
- b) the hearing official's decision, including the reasons therefor;
- c) any documentary evidence and a summary of any oral testimony presented at the hearing official, identify the supporting evidence and the pertinent regulations or policy; and

- d) be put on the record and a copy of the notification to the parties concerned of the decision of the hearing official

Decisions of the Hearing Official shall be based upon the application of appropriate Federal law, regulations and policy and will be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by the Hearing Official.

The Summer EBT agency shall retain the hearing records for three years and make them available for copying and inspection to the appellant or representative at any reasonable time. Fair Hearing Decisions:

When the Summer EBT agency pursues collection of a claim against an individual participant who has been improperly issued benefits, the individual and all parties concerned and any designated representative must be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits to be repaid and of the right to a fair hearing.

If the decision is **IN FAVOR** of the appellant and benefits were denied or discontinued, benefits shall begin immediately;

1. if the decision concerns **DISQUALIFICATION** and is in favor of the Summer EBT agency, as soon as administratively feasible, the agency shall terminate any continued benefits, as decided by the hearing official;
2. if the decision regarding repayment of benefits by the appellant is in favor of the agency, the Summer EBT agency shall collect the claim.
3. The parties concerned and any designated representative must be notified in writing of the decision of the hearing official.

#### **Judicial Review:**

If the appellant expresses an interest in pursuing a higher review of the decision, the Summer EBT agency shall explain further, if any, processes are available to the appellant in their review of the decision. If these are either unavailable or have been exhausted, the Summer EBT agency shall retain the right to pursue the judgment of the decision.

#### **Summer EBT Fair Hearing Information Language for Households**

If you have been denied Summer EBT, had your Summer EBT services discontinued or if you are being asked to pay for benefits received, you may have the right to a hearing.

#### **For a Hearing:**

- To request a hearing, contact the Summer EBT agency at (580) 272-1178 Toll Free: (844) 256-3467 within 90 days after the end of the summer operational period to appeal decisions regarding SEBT services or the request of Households to repay benefits.
- A hearing will be scheduled within three weeks of when your request was received.
- You will be notified in writing of the time and place of a hearing scheduled at least 30 days after written notification of a hearing has been mailed by our agency.
- You may be helped or represented by an attorney or other persons such as a friend or relative.
- Before the hearing, you or your representatives may look at the documents and records to be presented.

### **Hearing Procedures:**

You or a representative must come to the hearing. During the hearing you or your representative may:

- Bring witnesses to testify for you.
- Look at the records presented by the Summer EBT agency.
- Tell your story and submit supporting information or evidence.
- Question or deny information or evidence presented and question the opposing side's testimony.

### **While Waiting for the Hearing Decision:**

If you have been receiving Summer EBT, benefits will continue if you request a hearing within 15 days of the notice to stop services. Benefits can be received only until your certification expires.

If you have been asked to pay for benefits received, collection efforts will stop.

Summer EBT benefits will not continue if:

- Your certification has expired or expires.
- You were not categorically eligible.
- You were denied Summer EBT at a new eligibility determination.

### **Hearing Decisions**

You will be told in writing of the decision on your case, the reason the hearing was held or what was questioned, the reasoning for the decision, a copy of what was sent to anyone else that might have represented you at the hearing. within 45 days from the date of the fair hearing.

You may request a conference or meeting to provide the opportunity to discuss a specific situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request may not prejudice or diminish the right to a fair hearing. Summer EBT will schedule fair hearing within 14 days of request.

You or your representative can copy or review all hearing records during the three-year availability window.

If the decision is for you, Summer EBT services will begin immediately or will continue. If the decision is against you, Summer EBT services will stop or the Summer EBT agency may begin collection efforts for payment of benefits.

Fair Hearing procedures must:

Allow a household to appeal, within 90 days after the end of the summer operational period, decision made with respect to:

- An application the household has made for Summer EBT benefits

- A streamlined certification for Summer EBT benefits

- A verification process or procedure

- Any adverse action taken against the household by the Summer EBT agency

Require the State or ITO to provide a household with back-benefits for Summer EBT if the fair hearing determines that the Summer EBT agency erroneously failed to issue such benefits in the correct amount to an eligible family, an administrative disqualification for intentional Program violation was subsequently reversed, or if there is a statement elsewhere in this part specifically stating that the household is entitled to restoration of lost benefits.

In response to an appeal, the Summer SEBT agency may defend its initial decision to deny the eligibility of the child for Summer EBT benefits or take an adverse action against a household. The fair hearing procedure must provide for both the household and the Summer EBT agency:

A fair hearing will be accepted in either an oral or written request made available through a simple, publicly announced method;

May be represented by an attorney or other person;

Prior to the fair hearing an opportunity will be given to examine any documents, records presented to support;

Hearing will be held with reasonable promptness and convenience, and adequate notice given as to the time and place of the fair hearing must be available for examination. Such time limits must not be less than 30 days from the date the agency mails or otherwise issues the notice of adverse action;

An opportunity will be given to present oral or documentary evidence and arguments supporting a position without undue interference;

An opportunity will be given to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

The hearing will be conducted and the decision made by a hearing official who did not participate in making the decision under appeal or any previously held conference.

The decision of the hearing official will be based on the oral and documentary evidence presented at the hearing and made a part of the hearing record;

The parties concerned and any designated representative must be notified in writing of the decision of the hearing official.

A written record with respect to each hearing must include the challenge or decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing official, the hearing official's decision, including the reasons therefor, and a copy of the notification to the parties concerned of the decision of the hearing official; and

The written record of each hearing must be preserved for a period of 3 years and be available for examination by the parties of concerned or their representatives and made available upon receiving a written request;

A household may request a conference to provide the opportunity to discuss a specific situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request may not prejudice or diminish the right to a fair hearing. Summer EBT will schedule fair hearing within 14 days of request.



Fair hearings communications with households will be an understandable and uniform format and, to the extent possible in a language that parents and guardians can understand.

#### Special Considerations

Children have until the last day of the summer operational period to apply for benefits using a Summer EBT application. Benefits must expunge up to 122 days after issuance, so some benefits will be spent after the end of summer operational period.

Chickasaw Nation Summer EBT households are allowed to appeal within 90 days after the end of the summer operational period.