

Section 8000

Denials, Terminations, and Appeals

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Section 8000

Denials, Terminations, and Appeals

8100 Denial

Denial occurs when TDA determines that the CE's application¹ does not meet, at a minimum, the following application criteria:

1. The ability of the CE to operate the program in accordance with Federal and State requirements
2. The necessity for the program in the projected service area of the CE
3. The resources available (caseload and funds) for initiating a program in the service area
4. For nonprofit agencies: tax exempt status, with appropriate documentation

If the application is denied, TDA must provide 1) a written explanation for the denial and 2) notification of the CE's right to appeal the decision.

8200 Termination

Both TDA and the CE must provide at least 30 days' written notice of termination of CSFP participation.

Termination by TDA. TDA may terminate the CE's participation if the CE does not comply with the requirements of TDA policy as well as state and federal regulations. TDA termination notice must include at least the following characteristics:

1. Notify the CE in writing of the termination
2. Name the reasons for the action
3. Specify the effective date
4. Provide the CE with the opportunity to appeal²

¹ See *CSFP Handbook* Section 2000 for details about the CSFP application.

² See "Appeals" in this handbook section for more information.

Termination by the CE. The CE may terminate participation in the CSFP by written notification to TDA. The notification must give the reasons and effective date of the termination.

Termination by mutual agreement. Participation may be terminated if both TDA and the CE agree that the termination would be in the best interest of the CSFP. The two parties must agree upon the conditions of the termination, including, but not limited to, the effective date.

NOTE: Termination by mutual agreement is not an adverse action; therefore, a CE cannot appeal this determination.

8300 Appeal

The adverse action must be postponed until the hearing is complete. The following definitions are pertinent to the discussion below.

adverse action – A decision, action, or inaction that negatively affects participation in CSFP. For a CE or site, adverse action may include, but is not limited to, the following:

- Agreement termination or suspension before the stated expiration date
- Denial of payment or rejection of a statement of costs, in whole or in part
- Demands for settlement or repayment of funds

Administrative Review Official (ARO) – An impartial person that presides over the hearing of an adverse action. The ARO is 1) appointed by TDA, 2) familiar with CSFP requirements, and 3) not involved in the action that is being appealed. The ARO makes a final determination in the case.

The CE's appeal must be received by TDA within 15 days of receiving notification of an adverse action. The appeal must meet the following criteria:

1. Be in writing
2. State the basis for the appeal
3. Include a legible copy of TDA's adverse action letter
4. Request for a hearing, if the CE wants a hearing
 - The appeal must include a request for the CE (or a representative) to attend the hearing in person *if* the CE wants to attend.
 - The CE waives the right to a hearing when the written appeal does not include a request for a hearing. Rather, the ARO will conduct the hearing by reviewing the documents in the record.

NOTE: There are occasions when a CE is unable to timely request a hearing. In such a case, the ARO might determine that the failure to make a timely request

was due to circumstances beyond the CE's control. Otherwise, the ARO shall deny a request for a hearing if the request is filed after TDA receives the appeal.

8310 Submittal to TDA

The CE may submit documentation to be considered at the hearing. The CE must submit documentation either 1) with the written appeal or 2) separately, within 30 days of the receipt of adverse action. The written appeal and hearing documentation, if any, must be submitted to TDA by the following methods.

| Submittal of Appeal and Documentation to TDA | |
|--|--|
| <i>Mail</i> | Food and Nutrition Appeals Texas Department of Agriculture Legal Division Attn: Docket Clerk PO BOX 12847 Austin TX 78711 |
| <i>Fax</i> | (800) 909-8530 |
| <i>Hand-delivery, Overnight Delivery Service, and Special delivery service</i> | Texas Department of Agriculture Legal Division 1700 North Congress, 11 th Floor Austin TX 78701 |

CEs that wish to confirm receipt of the appeal request may contact the Legal Division at 512-463-4075.

8320 Hearing. The hearing³ shall be conducted by the ARO, who must make a decision that is based solely on the evidence presented at the hearing, as well as on CSFP legislation and regulations. The ARO's decision must be made within 60 days from the date of the CE's appeal, and the decision must be provided in writing to the CE.

³ The CSFP hearing follows TDA's typical hearing procedures, which are found in the Texas Administrative Code, Title 4, Rules 1.1050 – 1.1053.