
REPRESENTING PERSONS ACCUSED OF
PUBLIC BENEFITS FRAUD:
HANDLING SNAP IPVS AND OTHER
FRAUD CHARGES

Thursday, September 15, 2016

Albany Marriott

CLE Course Materials and NotePad[®]

*Complete course materials distributed in electronic format online in
advance of the program.*

Sponsored by the

New York State Bar Association and the Committee on Legal Aid

This program is offered for education purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials. Further, the statements made by the faculty during this program do not constitute legal advice.

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New York State Bar Association**

Lawyer Assistance Program 800.255.0569



Q. What is LAP?

- A.** The Lawyer Assistance Program is a program of the New York State Bar Association established to help attorneys, judges, and law students in New York State (NYSBA members and non-members) who are affected by alcoholism, drug abuse, gambling, depression, other mental health issues, or debilitating stress.

Q. What services does LAP provide?

- A.** Services are **free** and include:
- Early identification of impairment
 - Intervention and motivation to seek help
 - Assessment, evaluation and development of an appropriate treatment plan
 - Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
 - Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
 - Information and consultation for those (family, firm, and judges) concerned about an attorney
 - Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

Q. Are LAP services confidential?

- A.** Absolutely, this wouldn't work any other way. In fact your confidentiality is guaranteed and protected under Section 499 of the Judiciary Law. Confidentiality is the hallmark of the program and the reason it has remained viable for almost 20 years.

Judiciary Law Section 499 Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation who has furnished information to the committee.

Q. How do I access LAP services?

- A.** LAP services are accessed voluntarily by calling 800.255.0569 or connecting to our website www.nysba.org/lap

Q. What can I expect when I contact LAP?

- A.** You can expect to speak to a Lawyer Assistance professional who has extensive experience with the issues and with the lawyer population. You can expect the undivided attention you deserve to share what's on your mind and to explore options for addressing your concerns. You will receive referrals, suggestions, and support. The LAP professional will ask your permission to check in with you in the weeks following your initial call to the LAP office.

Q. Can I expect resolution of my problem?

- A.** The LAP instills hope through the peer assistant volunteers, many of whom have triumphed over their own significant personal problems. Also there is evidence that appropriate treatment and support is effective in most cases of mental health problems. For example, a combination of medication and therapy effectively treats depression in 85% of the cases.

Personal Inventory

Personal problems such as alcoholism, substance abuse, depression and stress affect one's ability to practice law. Take time to review the following questions and consider whether you or a colleague would benefit from the available Lawyer Assistance Program services. If you answer "yes" to any of these questions, you may need help.

1. Are my associates, clients or family saying that my behavior has changed or that I don't seem myself?
2. Is it difficult for me to maintain a routine and stay on top of responsibilities?
3. Have I experienced memory problems or an inability to concentrate?
4. Am I having difficulty managing emotions such as anger and sadness?
5. Have I missed appointments or appearances or failed to return phone calls?
Am I keeping up with correspondence?
6. Have my sleeping and eating habits changed?
7. Am I experiencing a pattern of relationship problems with significant people in my life (spouse/parent, children, partners/associates)?
8. Does my family have a history of alcoholism, substance abuse or depression?
9. Do I drink or take drugs to deal with my problems?
10. In the last few months, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?
11. Is gambling making me careless of my financial responsibilities?
12. Do I feel so stressed, burned out and depressed that I have thoughts of suicide?

There Is Hope

CONTACT LAP TODAY FOR FREE CONFIDENTIAL ASSISTANCE AND SUPPORT

The sooner the better!

Patricia Spataro, LAP Director

1.800.255.0569

New York State Bar Association

FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form-you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees: please complete, sign and return this form along with your evaluation, to the registration staff **before you leave** the program.

**You MUST turn in this form at the end of the
program for your MCLE credit.**

**Representing Persons Accused of Public Benefits Fraud:
Handling SNAP IPV's and Other Fraud Charges| Thursday, September 15, 2016
New York State Bar Association's Committee on Legal Aid, Albany Marriott,
Albany, NY**

Name:

(Please print)

I certify that I was present for the entire presentation of this program

Signature:

Date:

Speaking Credit: In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers** and **Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.

NEW YORK STATE BAR ASSOCIATION

Live Program Evaluation (Attending In Person)

Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name:

Program Code:

Program Location:

Program Date:

1. What is your overall evaluation of this program? Please include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments _____

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
	Excellent	Good	Fair	Poor	Excellent	Good	Fair	Poor
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Additional comments (CONTENT)

Additional comments (ABILITY)

3. Please rate the program materials and include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional comments

4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.

☐ Yes – Expanded ☐ Yes – Shortened ☐ No – Fine as is

Additional comments

5. Please rate the following aspects of the program: **REGISTRATION; ORGANIZATION; ADMINISTRATION; MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
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Organization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Meeting Site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments

6. How did you learn about this program?

☐ Ad in legal publication ☐ NYSBA web site ☐ Brochure or Postcard
☐ Social Media (Facebook / Google) ☐ Email ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered



NEWYORK STATE BAR ASSOCIATION

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**2016 Legal Assistance Partnership Conference
Albany, New York
“Representing Persons Accused of Public Benefits Fraud:
Handling SNAP IPV and Other Fraud Charges”**

Agenda

- I. Introduction
 - Programs affected by IPV accusations
 - Types of alleged IPVs
 - Civil-criminal interface
- II. IPV Investigations in General)
 - How clients learn of investigations
 - The advisability of cooperating with investigations
 - Tips for representing clients during investigations
 - Administrative disqualification hearings (ADHs)
- III. Eligibility-based IPVs
 - The types of events that trigger investigations
 - Innocent explanations for triggering events
 - Regulations that can help put the blame back on the county agency
- IV. Trafficking-based IPVs
 - The types of events that trigger investigations
 - Innocent explanations for triggering events
- V. Attempts to Solicit Disqualification Consent Agreements
 - Incentives for investigators and prosecutors
 - Legal sufficiency of purported DCAs
 - Representing clients who have already signed DCAs or waivers of hearings
- VI. Conclusion

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**REPRESENTING PERSONS ACCUSED OF
PUBLIC BENEFITS FRAUD:
HANDLING SNAP IPVS AND OTHER FRAUD
CHARGES**

**“Representing Persons Accused of Public Benefits Fraud:
Handling SNAP IPVs and Other Fraud Charges”
2016 Legal Assistance Partnership Conference
Albany, New York**

By: Belkys Garcia, Staff Attorney, The Legal Aid Society, Civil Practice Law Reform Unit
David A. Super, Professor of Law, Georgetown University Law Center¹

I. BACKGROUND

A. Legal/Regulatory Context

1. General –
 - a. SNAP program administered by three levels of government (1) federal - USDA; (2) state - OTDA; (3) local – Social Services District (SSD).
 - b. Cash Assistance ("Family Assistance" or "FA" and "Safety Net Assistance" or "SNA") - Federal TANF dollars fund parts of the Cash Assistance program in New York State, but fraud issues are governed by OTDA and SDD.
2. General Definition of IPV - An Intentional Program Violation (IPV) is a charge alleged against an applicant or recipient of SNAP or Cash Assistance by either the SSD or the District Attorney and courts for intentionally violating program rules and which may carry a range of penalties from program disqualification to fines and criminal penalties.
3. Legal Definition of IPV/fraud - Relevant law and policy found at the federal, state and local level for SNAP and at the state and local level for CA. Figure 1 summarizes the operative provisions likely to come up in your practice.

¹ The panelists wish to thank Susan Welber from The Legal Aid Society for coordination and significant contribution to creating these materials; Susan Antos, Saima Akhtar and Ray Burke from the Empire Justice Center for sharing the knowledge of how IPV hearings and criminal charges are handled around the state of New York; Maryanne Joyce for her guidance individually, and for the collective effort of Ian Feldman, Maryanne Joyce and Cathy Roberts in producing the 2014 Partnership Conference Workshop ("2014 IPV Workshop"), "Intentional Program Violations, Administrative Disqualification Hearings, and related Welfare/SNAP Fraud Issues" and excellent materials, which served as an invaluable reference in putting together this outline. Because this outline is not meant to be comprehensive, we encourage advocates to consult the 2014 IPV Workshop materials for additional background and advocacy tips concerning IPVs and other fraud cases. The materials, including the extensive appendix, are accessible online at <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=51584>.

Figure 1 - Summary of IPV/fraud definitions in state and federal law

Source of Law	SNAP IPV	CA IPV/Fraud	
New York regulations	A FS-IPV "occurs where an individual has intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts concerning the individual's eligibility for food stamps; or (2) committed any act constituting a violation of the requirements of the food stamp program, including, but not limited to, acts constituting a fraudulent use, presentation, transfer, acquisition, receipt, possession or alteration of SNAP coupons or authorization to participate cards or any other evidence of the individual's eligibility for food stamps." 18 N.Y.C.R.R. § 359.3(b)(1)-(2).	A public assistance IPV "occurs when an individual, for the purpose of establishing or maintaining the eligibility of the individual or of the individual's family for public assistance or of increasing or preventing a reduction in the amount of public assistance and is found to have intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts concerning the individual's eligibly for public assistance; (2) committing any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity concerning the individual's eligibility for public assistance; or (3) engaging in any conduct inconsistent with the requirements of Parts 350 ["standards of assistance"], 351[investigation and eligibility], 352 [applications], 369 [Family Assistance] or 370 [Safety Net Assistance] of this title." 18 N.Y.C.R.R. § 359.3(a)(1)-(3).	
Federal statute/ regulations	SNAP General - Pursuant to the Food Stamp Act, an intentional program violation (IPV) has occurred when a person is found by any state or federal court or administrative agency to have “intentionally (A) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (B) committed any act that constitutes a violation of this chapter, the regulations issued thereunder, or any State statute, for the purpose of using, presenting, transferring, acquiring, receiving, or possessing program benefits.” 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(c).		N/A
NY Social Services Law	N/A	CA fraud is defined in NY Social Services Law § 145(1): "Any person who by means of a false statement or representation, or by deliberate concealment of any material fact, or by impersonation or other fraudulent device, obtains or attempts to obtain or aids and abets any person to obtain public assistance or care to which he is not entitled, or does any willful act designed to interfere with the proper administration of public assistance and care, shall be guilty of a misdemeanor, unless such act constitutes a violation of the provision of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed by such law." <u>The statute includes a definition of what constitutes "presumptive evidence of deliberate concealment of a material fact" as used in the first sentence of SSL 145(1):</u> "Failure on the part of a person receiving public assistance or care to notify the social services official granting such assistance or care of the receipt of money or property or income from employment or any other source whatsoever, shall, upon the cashing of a public assistance check by or on behalf of such person after the receipt of such money, or property or income, constitute presumptive evidence of deliberate concealment of a material fact."	

Source of Law	SNAP IPV	CA IPV/Fraud
State Penal Law	<p>"Fraudulent Welfare Act" is defined in section 158.00 of the N.Y. Penal Law to mean: "knowingly and with intent to defraud, engaging in an act or acts pursuant to which a person: engaging in an act or acts pursuant to which a person: (1) offers, presents or causes to be presented to the state, any of its political subdivisions or social services districts, or any employee or agent thereof, an oral or written application or request for public assistance benefits or for a public benefits card with knowledge that the application or request contains a false statement or false information, and such statement or information is material, or (2) holds himself or herself out to be another person, whether real or fictitious, for the purpose of obtaining public assistance benefits, or (3) makes a false statement or provides false information for the purpose of (i) establishing or maintaining eligibility for public assistance benefits or (ii) increasing or preventing reduction of benefits, and such statement or information is material.</p> <p>Section 175.35 of the Penal Law defines False Instrument Charges - Often used when the case involves a low amount or zero of money/value.</p>	

4. Selected other federal law bases for SNAP penalty

- a. Obtaining cash by destroying food and collecting deposits. 7 U.S.C. § 2015(p).
- b. Selling food purchased with SNAP. 7 U.S.C. § 2015(q).
- c. "Trafficking," a specific kind of SNAP IPV, as defined in 7 C.F.R. § 271.2, which includes:
 - i) buying, selling, stealing or otherwise effecting an exchange of SNAP issued and accessed via EBT, card numbers and PINS or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone or attempting to do any of the above;
 - ii) the exchange of firearms, ammunition, explosives or controlled substances for SNAP benefits;
 - iii) purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit; internally discarding the product, and intentionally returning the container for the product amount;
 - iv) purchasing a product with SNAP benefits with the intent or obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally

reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food;

- v) intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

5. Penalties for IPV - Figure 2 summarizes the penalty schemes applying to the IPV's defined above.

Figure 2 - Penalties for SNAP and CA IPV/Fraud

	SNAP IPV	CA IPV/Fraud
New York and federal law	<p><u>Disqualification for a minimum period of time:</u></p> <ul style="list-style-type: none"> • First violation: 12 months • Second violation: 24 months • Third violation: permanently <p><u>See</u> 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(1); 18 N.Y.C.R.R. § 359.9(c).</p> <p><u>Note:</u> Longer disqualification periods apply as penalties relating to trafficking and other fraudulent acts such as trading a controlled substance for coupons and trading ammunition for coupons. <u>See</u> 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(b)(2)-(7); 18 N.Y.C.R.R. § 359.9(c).</p>	<p><u>Disqualification for a minimum period of time -</u></p> <ul style="list-style-type: none"> • First violation: 6 months • Second violation or where wrongful receipt of an amount between \$1,000 and \$3,900: 12 months • Third violation or wrongful receipt in excess of \$3,900: 18 months • Any subsequent violation: five years <p><u>See</u> N.Y. Soc. Serv. Law §145-c; 18 N.Y.C.R.R. § 359.9(a).</p>
Criminal classification	<p>"1.a. Whoever knowingly uses, transfers, acquires, alters, purchases, transports or possesses food stamps, food stamp program coupons, authorization cards or electronic access devices which entitle a person to obtain food stamps, in any manner not authorized by section ninety-five of this chapter shall be guilty of a Class A misdemeanor except that if the value of the benefit she or she obtained:</p> <p>(i) exceeds \$1,000, Class E felony</p> <p>(ii) exceeds \$3,000, Class D felony</p> <p>(iii) exceed \$50,000, Class C felony"</p> <p><u>See</u> NY SSL § 147; SNAP Source Book at 158 (specifying that a conviction under SSL 147 is characterized as an IPV)</p> <p><u>See also</u> NY Penal Law § 175.35 (penalties for false instrument charges)</p>	<ul style="list-style-type: none"> • Fraudulent welfare act in the first degree - value of the benefits obtained exceeds \$1,000,000; Class B felony • Fraudulent welfare act in the second degree - value of the benefits obtained exceeds \$50,000; Class C felony. • Fraudulent welfare act in the third degree - value of the benefits obtained exceeds \$3,000; Class D felony. • Fraudulent welfare act in the fourth degree - value of the benefits obtained exceeds \$1,000; Class E felony. • Fraudulent welfare act in the fifth degree - Class A misdemeanor. <p><u>See</u> N.Y. Penal Law § 158.05-158.25</p> <p><u>See also</u> NY Penal Law § 175.35 (penalties for false instrument charges)</p>

6. Effect of IPV on other household members - The IPV only disqualifies the guilty individual, not the other members of the household. 7 C.F.R. § 273.16(b)(11); 18 N.Y.C.R.R. § 359.9 (e)&(f). However, the other members of the household are required to make restitution of the overpayment, and often, in effect, end up being penalized. 18 N.Y.C.R.R. § 273.16(b)(12).

B. Overview of Process

1. Investigation

a. What triggers?

- i) Upon application - A broad array of circumstances trigger a referral for investigation. See 18 N.Y.C.R.R. § 348.7(c)(1)(i)-(ii) (describing a broad array of circumstances under which a referral shall be made).
- ii) Computer matches - Capacity is mandated by federal law. See, e.g., 42 U.S.C. § 1320b-7 (states are required to have income and eligibility verification systems). State agencies routinely check information received from households against a host of data bases, including those maintained by the SSA, state labor and motor vehicle agencies. 7 U.S.C. § 2020(e)(18); 7 C.F.R. § 273.2(f)(7), (9), (10). Although states make aggressive use of this capacity, Congress amended the Food and Nutrition Act in 1996 to make these systems voluntary in response to states' complaints that many "hits" produced by these systems were not accurate. In New York State, data runs are made with warrant, fleeing felon and prisoner databases as well matches of benefit recipients in other states and matches with death indexes. OTDA sends computer match information to the local district for investigation and follow-up. See generally Exhibit 1 (HRA Computer Match Processing Desk Guide listing various forms of matches).
- iii) Many other potential sources - including, worker suspicion; Specialized Fraud and Abuse Reporting System (SFARS) report.

b. Who conducts?

State law mandates a system for screening applicants. See N.Y. Soc. Serv. L. ("SSL") § 134-b (authorizing creation of "Front End

Detection System" by each SSD for screening applicants). For ongoing program integrity measures, it depends on the district. In New York City, an arm of the Social Services District called the Bureau of Fraud Investigation is responsible for investigating suspected fraud.

- c. Location -- In the field - at client's home, place of residence, neighborhood; agency office.
- d. Fraud Investigation Interview - Held in the district's office. Not mandatory attendance for SNAP recipients, but it is for CA recipients.
 - i) Will involve receipt of a call-in letter, with certain required notifications, including notice of the right to bring a representative, OTDA GI 90IM/DC036; the right not to answer questions, Rush v. Smith, 573 F.2d 110 (2d Cir. 1978).
 - ii) May attempt to persuade recipient to sign a waiver. See Barbara Hallman, U.S. Department of Agriculture, Fraud Policy: 7 C.F.R. § 273.16 at 2 (Feb. 4, 2004), ("Hallman Memo"), *available at* http://www.fns.usda.gov/sites/default/files/a-fraud_policy.pdf.
 - iii) May be pressured to sign a voluntary incriminating statement.
 - iv) Investigator writes up a report summarizing findings.

2. Remedies available to Local District

- a. Insufficient evidence; recoupment of overpayment - Where a fraud allegation is made, the district needs to decide whether there is sufficient evidence of fraud. If the evidence is insufficient, the district may still pursue recoupment of an overpayment, which can be challenged in a fair hearing.
- b. Evidence found - If evidence of fraud found, in most counties SSD will automatically refer the case to a prosecutor, 7 U.S.C. § 2015(b)(1); 7 C.F.R. § 273.16(g). Depending on the SSD and case value, SSD may handle administratively in an Administrative Disqualification Hearings (ADH). 7 C.F.R. § 273.16(e). See 18 N.Y.C.R.R. § 359.5.

- i) Referral to Prosecutor - Under what circumstances the case gets referred to a prosecutor depends on the Social Services District. The Empire Justice Center has collected information on various county Investigative Unit Operation Plans (IOUP) required by OTDA. The IOUP indicate a wide array of policies and practices in New York State. In some districts, such as NYC and Erie, the case only gets sent to a prosecutor when the fraud value is at or above a threshold (\$3,000 and \$5,000 respectively); in others, it appears there are guidelines based on case value. In other counties, it appears that every case gets sent to the D.A.
 - a) No ADH while case pending with prosecutor - Once referred to a prosecutor, the SSD has no authority to initiate an ADH until the DA declines to prosecute or fails to take action within a reasonable time. See 18 N.Y.C.R.R. § 359.5(c).
 - b) If judicial prosecution proceeds, the prosecutor must prove the IPV beyond a reasonable doubt and the accused will have all the rights of a criminal defendant (including counsel, discovery, etc.). 7 C.F.R. § 273.16(g); 18 N.Y.C.R.R. § 359.4(a). IPV civil penalties will subsequently be imposed. 18 N.Y.C.R.R. § 359.9(d)
 - c) Mandatory penalties - Only the criminal court has discretion to shorten the federal disqualification periods. 7 U.S.C. § 2024(b)(1); SSL §147; N.Y. Penal Law § 158.
 - d) Use of Disqualification Consent Agreement (DCA) – See 7 C.F.R. § 273.16(h); 18 N.Y.C.R.R. §§ 359.1(e) & 359.4(b). A DCA is an agreement that is only intended for cases in which the prosecutor has elected to pursue a case through judicial prosecution and the case is resolved through deferred adjudication. Accordingly, neither the prosecuting attorney nor the state should solicit disqualification consents while criminal charges are still pending. Many counties do not follow the rules. There are other procedural requirements that the county must meet before a DCA is valid. 18 N.Y.C.R.R. § 359.4(b)(4) (client must be provided with a copy of the DCA, together with notification of the consequences of signing, at least 10 days prior to the execution of the DCA). See Part III.B.2 (for a

discussion of advocating in cases where a DCA is being offered or has been signed).

- ii) ADH - The SSD may elect to pursue the alleged IPV in an ADH, or an ADH may be scheduled when and if the DA declines to proceed. See below for a list of the various procedural requirements attending to an ADH. 18 N.Y.C.R.R. § 359.4(a).

3. ADH/Hearing Procedure

a. Selected procedural rules -

- i) SSD prepares documentary evidence in the form of an evidence packet that gets forwarded to the State Office of Administrative Hearings (OAH) for review with a request to schedule. 18 N.Y.C.R.R. § 359.5(d)(i): (i) if OAH decides the evidence sufficient, the scheduling notice is sent. 18 N.Y.C.R.R. §§ 359.5(f) & 359.6; (ii) if the evidence is insufficient or packet does not comply with regulations, OAH will return the case to the SSD and not schedule the hearing. 18 N.Y.C.R.R. § 359.5(g).
- ii) Requirements for scheduling ADH. 18 N.Y.C.R.R. § 359.6, including notice requirements. See 18 N.Y.C.R.R. § 359.6 (d). See Part III.C.1.b, infra (listing requirements).
- iii) Right to an adjournment 10 or more days in advance and for good cause less than 10 days in advance 18 N.Y.C.R.R. § 359.7(c). OAH has an outside deadline to conduct the hearing, arrive at a decision and forward the decision to SSD for implementation, within 90 days of the notice to the appellant. 18 N.Y.C.R.R. § 359.7(f)(3). Adjournments extend the 90 days.
- iv) Client will be offered an opportunity to waive the hearing - 7 C.F.R. § 273.16(f); 18 N.Y.C.R.R. §§ 359.6(d)(15) & 359.8. See Hallman Memo. The notice must meet certain procedural requirements:
 - a) contain the date that the signed waiver must be returned to avoid holding the hearing must be included;
 - b) contain statement of the right to remain silent and that anything said or signed regarding the charges can be used in a court of law;

- c) contain notice that the waiver of ADH will result in disqualification even if contains no admission.
- d) contain an opportunity to admit or deny the charges.

See Part III.C(2) infra (discussion of problems).

- v) Defaults - the hearing is held even if the appellant does not appear. 7 C.F.R. § 273.16(e)(4); 18 N.Y.C.R.R. § 359.7(g)(2).

b. The Hearing itself

- i) Burden on agency to prove intent based on clear and convincing evidence. 7 C.F.R. § 273.16(e)(6); 18 N.Y.C.R.R. § 359.7(e)(2) & (f)(1).
- ii) Rights at the hearing. See 7 C.F.R. §§ 273.16(e)(3)(iii) & 273.15(p); 18 N.Y.C.R.R. § 359.7(d).
- iii) Requirements for conduct of hearing. See 18 N.Y.C.R.R. § 359.7(e).
- iv) Regular fair hearing rights apply 18 N.Y.C.R.R. § 358, (unless inconsistent with part 359). 18 N.Y.C.R.R. § 359.7(e)(4).
- v) Decision must comport with 18 N.Y.C.R.R. § 359.7(f).

c. Post hearing -

- i) Must be written notice. 7 C.F.R. § 273.16(e)(7); 18 N.Y.C.R.R. § 359.10.
- ii) Right to subsequent fair hearing on amount of claim, budget of remaining household members and failure to reinstate the disqualified household member. 18 N.Y.C.R.R. § 359.10(b)(5)(i)-(iii).
- iii) May challenge in request for reconsideration or appeal in an Article 78.

II. PREVENTING & DEFENDING AGAINST IPV: Understanding What Triggers Different Types of IPV

To effectively prevent and defend against an IPV or fraud charge, advocates need to be familiar with (a) the substantive program rules that often give rise to accusations of fraud and (b) the specific obligations clients have to report changes encompassed by the program rules. Even where a client runs afoul of a program rule concerning income or resources, unless he or she has an obligation to report the change at the time it happens, there is no basis for an IPV. The focus below is on SNAP program rules, but certain rules governing cash assistance are also included.

A. Eligibility Rules that may come into play in an IPV charge

1. Household composition

- a. SNAP definition of "household" - "(A) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others; or (B) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption." 7 U.S.C. § 2012(m)(1); 7 C.F.R. § 273.1(a); 18 N.Y.C.R.R. § 387.1(w).

Practice Note: Defining "living with" -- The term "living with" has been subject to litigation; just because two people are sharing the same dwelling does not necessarily mean that they are "living with" one another. See, e.g., Robinson v. Block, 869 F.2d 202 (3d Cir. 1989); Murray v. Lyng, 667 F. Supp. 668, 672-74 (D. Minn. 1987), affirmed on other grounds, 854 F.2d 303 (8th Cir. 1988).

- b. Exceptions to definition of "household" -- Special rules include or exclude people in contravention of the general household definition.
 - i) People with certain relationships are automatically considered to be part of the same household -- Spouses who live together, parents and their children 21 years of age or younger who live together, and children (excluding foster children) under 18 years of age who live with and are under the parental control of a person other than their parent together with the person exercising parental control are considered members of the same household whether or not they purchase and prepare food together. 7 U.S.C. § 2012(m)(2); 7 C.F.R. § 273.1(b)(1); 18 N.Y.C.R.R. § 387.1(w).

- ii) Elderly and disabled exception -- People that are *both* elderly *and* disabled can be excluded from a household even if they purchase and prepare food together with members of that household. 7 U.S.C. § 2012(m)(3); 7 C.F.R. § 273.1(b)(2).
- iii) Common exclusions -- Most boarders, roomers, live-in attendants, foster children, and persons disqualified from SNAP are excluded from the definition of a household. 7 C.F.R. §§ 273.1(b)(3)-(7); 18 N.Y.C.R.R. § 387.14(b).
- iv) Institutional living exclusions - Persons residing in institutions, including group homes, substance abuse treatment programs, and shelters for battered women or for the homeless are excluded. 7 U.S.C. §§ 2012(m)(4) & (5); 7 C.F.R. § 273.1(b)(7)(vi). See 7 C.F.R. § 273.11(e)-(i) (rules for households with special circumstances listed above).

c. CA Household Definition –

- i) The number of persons in the public assistance household are those persons who the applicant, recipient or a representative indicates wish to receive public assistance and who reside together in the same dwelling unit. Mandatory Filing Unit rule requires a parent to include minor dependent children and their siblings on the application, and the application of any minor, dependent child also must include his or her natural or adoptive parents and blood related or adopted brothers and sisters who are also minor dependent children. 18 N.Y.C.R.R. § 352.30.
- ii) Persons not required to be included:
 - a) SSI recipients who are parents or siblings
 - b) Stepbrothers/sisters
 - c) Ineligible “aliens”
 - d) Ineligible individuals due to lump sum rule
 - e) Children getting adoption subsidies or foster care subsidies.

2. Income

- a. SNAP - Income is relevant to determine eligibility and benefit level, which depend upon the number of people in the household and in the amount of countable income. See 7 U.S.C. § 2017(a); 7 C.F.R. § 273.10; 18 N.Y.C.R.R. § 387.10(a).
- i) Income exclusions - the following are excluded from computations of household income:
 - a) *In-kind payments* - “any gain or benefit which is not in the form of money payable directly to a household,” 7 U.S.C. § 2014(d)(1); 7 C.F.R. § 273.9(c)(1), such as someone paying the household’s bills for it directly;
 - b) *Irregular income* - any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of \$30 in a quarter.” 7 U.S.C. § 2014(d)(2); 7 C.F.R. § 273.9(c)(2);
 - c) *Educational loans and grants* - “all educational loans on which payment is deferred, grants, scholarships, fellowships, veterans’ educational benefits, and the like” under the federal Higher Education Act and, subject to minimal conditions, under other federal and state programs as well. 7 U.S.C. § 2014(d)(3); 7 C.F.R. § 273.9(c)(3);
 - d) *Other deferred loans* - “all loans other than educational loans on which repayment is deferred.” 7 U.S.C. § 2014(d)(4); 7 C.F.R. § 273.9(c)(4);
 - e) *Reimbursements* - “reimbursements which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household,” 7 U.S.C. § 2014(d)(5); 7 C.F.R. § 273.9(c)(5); and “any payment made to the household under [SNAP] for work related expenses or for dependent care.” 7 U.S.C. § 2014(d)(14); 7 C.F.R. § 273.9(c)(14);
 - f) *Special once-a-year, back to school grants* - “any allowance a State agency provides no more frequently than annually to families with children on the occasion of those children’s entering or returning to school or child care for the purpose of

obtaining school clothes.” 7 U.S.C. § 2014(d)(5); 7 C.F.R. § 273.9(c)(5);

- g) *Monies received on behalf of others* - “moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member,” 7 U.S.C. § 2014(d)(6); 7 C.F.R. § 273.9(c)(6), such as Social Security payments a household member receives as representative payee for a friend or relative outside the household as well as foster care payments for children not included as household members. 7 C.F.R. § 273.9(d)(15);
- h) *Income earned by minors* - “income earned by a child who is a member of the household, who is an elementary or secondary school student, and who is 17 years of age or younger.” 7 U.S.C. § 2014(d)(7); 7 C.F.R. § 273.9(c)(7);
- i) *Certain lump-sum payments* - “moneys received in the form of nonrecurring lump-sum payments, including, but not limited to, income tax refunds, rebates, or credits, ... retroactive lump-sum social security or railroad retirement pension payments and retroactive lump-sum insurance settlements.” 7 U.S.C. § 2014(d)(8); 7 C.F.R. § 273.9(c)(8);
- j) *Certain one-time home energy grants* - “a 1-time payment or allowance made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device.” 7 U.S.C. § 2014(d)(11)(B); 7 C.F.R. § 273.9(c)(11)(ii);
- k) *Certain charitable cash donations* - “cash donations based on need that are received from one or more private nonprofit charitable organizations, but not in excess of \$300 in the aggregate in a quarter” 7 U.S.C. § 2014(d)(8); 7 C.F.R. § 273.9(c)(12);
- l) *Overhead costs for self-employed* - “the cost of producing self-employed income” including particularly generous provisions for households losing money from farming. 7 U.S.C. § 2014(d)(9); 7 C.F.R. § 273.9(c)(9);

- m) *Other energy assistance* - “any payments or allowances made for the purpose of providing energy assistance under any Federal law” including utility allowances provided to residents of assisted housing. 7 U.S.C. § 2014(d)(11)(A); 7 C.F.R. § 273.9(c)(11)(i);
- n) *Self-support plans for certain people with disabilities* - “any amounts necessary for the fulfillment of a plan for achieving self-support of a household member” receiving supplemental security income (SSI) if the Social Security Administration (SSA) has approved that plan. 7 U.S.C. § 2014(d)(15); 7 C.F.R. § 273.9(c)(16);
- o) *Other exclusions* - “any income that any other Federal law specifically excludes from consideration as income for purposes of determining eligibility for the [SNAP],” 7 U.S.C. § 2014(d)(10)), including the earned income tax credit (EITC), 7 C.F.R. § 273.9(d)(10)(vii) & (13), as well as many relocation assistance payments, many payments under settlements of Native Americans’ claims, the pay of VISTA and similar volunteers, and some payments under the Workforce Investment Act (WIA);
- p) *State optional exclusions* - certain other moneys that the Food and Nutrition Act gives states the option to exclude. 7 U.S.C. §§ 2014(d)(16)-(18);
- q) *Income whose receipt is uncertain* - income that the household has not already received UNLESS both the household and the state “are reasonably certain [those amounts] will be received” during the month in question. 7 C.F.R. § 273.10(c)(1)(i). “If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household’s income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing or amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in

what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered income.” Id. Even more generous rules apply to migrant and seasonal farm workers. 7 C.F.R. § 273.10(e)(3).

- ii) Income deductions - After it determines a household’s gross income with income exclusions and income anticipation rules outlined above, the state must subtract specified deductions before determining countable income:
- a) twenty percent of the household’s gross earned income. 7 U.S.C. § 2014(e)(2); 7 C.F.R. § 273.9(d)(2) (note that earnings are calculated from gross, not net or take-home, wages);
 - b) a “standard deduction” of at least \$134 per month per household. 7 U.S.C. § 2014(e)(1); 7 C.F.R. § 273.9(d)(1) (note that, for recent years, a higher standard deduction may apply, such as the \$155 minimum deduction for 2016);
 - c) dependent care costs that, until the 2008 Farm Bill, were capped at \$200 per month for each child under age two and \$175 per month for each older child or adult in care. 7 U.S.C. § 2014(e)(3); 7 C.F.R. § 273.9(d)(4);
 - d) legally obligated child support payments a household member made to persons outside the household. 7 U.S.C. § 2014(e)(4); 7 C.F.R. § 273.9(d)(5);
 - e) unreimbursed medical expenses of elderly (over age 60) or disabled household members to the extent that they exceed \$35 each month. 7 U.S.C. § 2014(e)(5); 7 C.F.R. § 273.9(d)(3);
 - f) shelter expenses (rent or mortgage, utilities, property taxes and fire insurance) that exceed half of the household’s countable income net of all other deductions. 7 U.S.C. § 2014(e)(6); 7 C.F.R. § 273.9(d)(6)(ii). If the household does not contain an elderly (age 60 or greater) or disabled member, this shelter deduction is subject to a cap that is

adjusted for inflation (the current cap is \$426 per month).

- b. CA Income -- Income eligibility is generally based upon the standard of need for the household size in comparison to the household income. See 18 N.Y.C.R.R. §§ 352.18(a), 352.1, 352.2, 352.3.
 - i) Exclusions from Earned income, 18 N.Y.C.R.R. §§ 352.19, 352.20.
 - a) First \$90/month
 - b) Income of a child under 21 who is a part time student or full time student will be disregarded
 - c) 50% of income after work expenses deducted, if household has pregnant woman, dependent child <18 (or <19 if still in school).
 - d) Earned Income Tax Credit advance or refund
 - ii) Non-countable income includes but not limited to: See 18 N.Y.C.R.R. §§ 352.15-16, 352.22.
 - a) Child/spousal support pass through
 - b) Restricted payments by organizations or non-legally responsible relative/friends
 - c) Federal education grants/loans
 - d) Educational grants/loans other than for living costs
 - e) Bona Fide loans to FA households (not SNA).
 - f) HEAP
 - g) Major disaster & emergency assistance (FEMA, WTC e.g.)
 - h) Payments for board of child by agency or relative
 - i) Adoption subsidies

3. Resources

- a. SNAP - requires most households have *countable* resources that do not exceed \$2,000 (or \$3,000, if the household contains an elderly (over age 60) or disabled member). 7 U.S.C. § 2014(g)(1); 7 C.F.R. § 273.8(b); 18 N.Y.C.R.R. § 387.9.

i) Exclusions

- a) *Home of residence* - Most household property, including the home in which the household lives and its non-liquid personal property, does not count against this limit. 7 U.S.C. § 2014(g)(2)(A); 7 C.F.R. § 273.8(e). For example, most property whose cash value is not accessible to the household also is excluded. 7 C.F.R. § 273.8(e)(8). *Certain Motor vehicles* - Some motor vehicles do count, at least in part, as resources; the rules for counting vehicles are quite intricate and often misapplied by eligibility workers and fraud investigators. 7 U.S.C. § 2014(g)(2); 7 C.F.R. §§ 273.8(e)(3) & (f).

- b) If a household's countable resources do not exceed the limit, the amount of those resources is completely irrelevant: a household with no countable resources receives exactly the same SNAP benefit as an otherwise identical household with \$2,000 in liquid resources.

- ii) Exemptions -- Households in which all members receive Temporary Assistance to Needy Families (TANF), federal supplemental security income (SSI) benefits for the elderly and persons with disabilities, or certain other benefits supported with TANF funds are "categorically eligible" and are exempt from the SNAP resource test as well as many other eligibility rules. 7 U.S.C. § 2014(a); 7 C.F.R. § 273.2(j)(2).

- b. CA - requires most households have *countable* resources that do not exceed \$2,000 (or \$3,000, if the household contains an elderly (over age 60) or disabled member). 18 N.Y.C.R.R. § 352.23

- i) Exceptions - 18 N.Y.C.R.R. §§ 352.21, 352.22, 352.23.

- ii) Exemptions - 18 N.Y.C.R.R. §§ 352.15, 352.16, 352.22, 352.30(e)(1)(vi).

Practice Note -- See 16-ADM-09 for implementation of the positive changes in the vehicle resource exemption rules for CA included in this year's State budget.

4. Bases for SNAP Disqualifications

- a. being deceased. 7 U.S.C. § 2020(r);
- b. persons convicted of certain drug-related felonies based on conduct occurring after August 21, 1996. 7 U.S.C. § 862a; 7 C.F.R. § 273.11(m);
- c. persons incarcerated for more than thirty days. 7 U.S.C. § 2020(e)(20)(B);
- d. persons actively fleeing felony indictments or convictions. 7 U.S.C. § 2015(k); 7 C.F.R. § 273.11(n);
- e. many, but not all, households containing strikers. 7 U.S.C. § 2015(d)(3); 7 C.F.R. § 273.1(e);
- f. persons sanctioned for violating SNAP's work requirements and sometimes those persons' households, 7 U.S.C. § 2015(d)(1); 7 C.F.R. § 273.7(a)(1), unless the person falls under one of several exemptions from those requirements. 7 U.S.C. § 2015(d)(2); 7 C.F.R. §§ 273.7(a)(6) and (b)(1);
- g. certain individuals that voluntarily violated TANF conduct requirements, although not those that merely exceeded a TANF time limit or failed to comply with a TANF procedural rule. 7 U.S.C. § 2015(i); 7 C.F.R. § 273.11(k);
- h. certain adults without either children or disabilities between the ages of 18 and 50 that have received SNAP benefits for at least three of the previous thirty-six months, subject to several exceptions. 7 U.S.C. § 2015(o); 7 C.F.R. § 273.24;
- i. some non-citizens under complicated and frequently misapplied rules. 7 U.S.C. § 2015(f); 8 U.S.C. § 1612(a); 7 C.F.R. § 273.4;
- j. *some* college students not meeting any of numerous exceptions, 7 U.S.C. § 2015(e); 7 C.F.R. § 273.5, although many households actually get *more* SNAP benefits when their student members are excluded;
- k. individuals currently subject to a disqualification because they were found guilty of a SNAP IPV.

B. SNAP Reporting obligations

For an individual to be guilty of a SNAP IPV, she or he must have violated a specific obligation to provide information. Federal law creates no blanket obligation to inform the SNAP office of all relevant facts at all times. See 7 C.F.R. 273.2(a)(1); 7 U.S.C. 2014(b) & 2020(e)(5). Below is a description of the circumstances in which clients have reporting obligations.

1. Application

- a. Application form - A household must file an application with the state. The household is required to fill in only its name, address, and signature on the application form. 7 U.S.C. § 2020(e)(2)(B)(iv); 7 C.F.R. § 273.2(c)(1); 18 N.Y.C.R.R. § 387.8. The rest can be completed at the interview, and sometimes eligibility workers fill in blanks to speed the process along, creating the potential for misunderstandings. See 7 C.F.R. §§ 273.2(e)(1) & 273.2(h)(1)(i)(A); 18 N.Y.C.R.R. § 387.7.
- b. Application Interview - Federal regulations require that the state interview every new applicant for SNAP benefits and many households applying for recertification. 7 C.F.R. § 273.2(e)(1). “The State agency must protect the applicant’s right to privacy during the interview. Facilities must be adequate to preserve the privacy and confidentiality of the interview.” Id. Some interviews are held over the telephone. 7 C.F.R. § 273.2(e)(2); 18 N.Y.C.R.R. § 387.7.

Practice Note: Language Access Rights - Adult applicants that do not speak English well have the right to be interviewed in a language they can understand. 7 U.S.C. §§ 2020(e)(1)(B) & (2)(A); 7 C.F.R. §§ 272.4(b) and 273.2(a)(1); 18 N.Y.C.R.R. § 387.2.

- c. Verification - SNAP Federal and state rules require a household to supply verification of most important information that it provides in connection with its application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. §§ 273.2(f)(1)-(3). This verification typically takes the form of written documents, but the state also can obtain verification by talking with third parties (“collateral contracts”) or by conducting a home visit with the advance consent of the household. 7 C.F.R. §§ 273.2(f)(4)-(5). 18 N.Y.C.R.R. § 387.8(b).

2. Certification/Recertification

a. Federal law

- i) Certification period - When the state finds an applicant household eligible for SNAP benefits, it must determine the length of time the household can receive benefits before the next eligibility review. This period is called a certification period. 7 U.S.C. §§ 2012(c) & 2020(e)(4); 7 C.F.R. § 273.10(f). At the end of each certification period, the household must reapply if it is to continue receiving SNAP benefits. 7 U.S.C. § 2020(e)(4); 7 C.F.R. § 273.14. Most exchanges of information required under the regulations take place at recertification. Federal rules require the state to interview the household at least once every six months.
- ii) Variances in length - At present, states typically certify most SNAP households for six or twelve months at a time. See 7 U.S.C. § 2012(c); 7 C.F.R. § 273.10(f)(3). Migrant and seasonal farmworkers, the homeless, and some childless adults between the ages of 18 and 50 often receive shorter certification periods. Households all of whose adult members are elderly (over age 60) or disabled and that have no earned income commonly are certified for twelve months. The length of certification periods has varied considerably during past periods that may be covered by IPV allegations.
- iii) Federal law changed in 2002 to simplify reporting obligations. Under simplified reporting, the only change a household is required to report during its certification period is an increase in earned income that places it over the program's gross income limit, which is 130 percent of the federal poverty income guidelines (\$2,628 for a family of four this year). 7 U.S.C. §§ 2014(c)(2) & 2015(c)(1)(D)(ii).

b. NY State law - The reporting obligations applicable in New York State depend on the reporting category. In 2015, OTDA issued a SNAP Change Report Form that summarizes the rules. See Exhibit 2. See generally 18 N.Y.C.R.R. § 387.17; 04-INF-25. Here is a brief summary of the different categories and applicable rules:

- i) Simplified Reporter (household members with countable earned income; households that do not fit into any of the

other categories) - only need to report changes at the time of the next recertification except in three circumstances:

- a) the household's gross monthly income exceeds 130% of the poverty level - required to report within 10 days after the end of the calendar month in which the income exceeded the 130% level;
 - b) if the household's certification period is longer than 6 months, the client must report at the six-month checkpoint specified changes related to income, household comp, a move and related change in rent/mortgage, utility and energy costs; child support obligations; new or different car and increases in resources if the combined value exceeds \$2,250 (\$3,250 if there are household members who are disabled or over age 60);
 - c) if anyone in the household is ABAWD, if their work hours go below 80 hours a month within 10 days after the end of that month.
- ii) Change Reporter (includes households that are certified for three months or less at a time; households in which all adult members are either permanently disabled or 60 years or older; zero income households; homeless households; migrant seasonal farmworker households) - must report specified changes with 10 days after the end of the month in which the change happened. The changes are the same as listed in (i)(b) above.
- iii) Other categories -
- a) TBA Change Reporter - not required to report; may report changes that would increase your benefits.
 - b) NYSNIP Change Reporter - Not required to report changes during the certification other than in response to the 24 month contact letter. May voluntarily report increases in expenses or decreases in income. Should report new address so receive any notices.

3. Duty to cooperate

- a. A household must cooperate in establishing its prospective eligibility, but if the household refuses to do so, the consequence is only that its application is denied. 7 C.F.R. § 273.2(d)(1); 18

N.Y.C.R.R. § 387.5(d). State agencies may not require households to report for an in-office interview during their certification period, although they may request households to do so. For example, State agencies may not require households to report en masse for an in office interview during their certification period simply to review their case files or for any other reason. 7 C.F.R. § 273.2(e)(1).

- b. USDA has clarified that cooperation with fraud investigators is not required for a household's continued participation. See Arthur T. Foley & Lou Pastura, Food Stamp Program, Food Nutrition Service, USDA, Food Stamp Program Cooperation with Fraud Investigations (April 24, 2003) ("Foley Memo"), available at <http://www.fns.usda.gov/sites/default/files/a-fraud.pdf>.
- c. A small number of households are randomly selected to be part of SNAP's Quality Control (QC) sample. 7 U.S.C. § 2025(c); 7 C.F.R. § 275.11. The state is required to undertake a careful re-review of these households' eligibility and benefit level during *one* particular prior month. If the household refused to cooperate with a QC review, it will be ineligible for a limited period of time. 7 C.F.R. § 273.2(d)(2).

C. CA Reporting Requirements

- 1. *Frequency of reporting* - Recipients of CA do not benefit from the changes to SNAP reporting obligations. CA recipients are required to report changes within 10 days of the change, on TA eligibility questionnaires and at recertification. See 18 N.Y.C.R.R. § 351.1(b)(2)(iv) (requiring recipients to "make a timely report to the district of any changes in his or her needs and resources. A report will be considered timely if made within 10 days of the changes except as provided in section 351.2(k)(4) of this Part. A report to a social services district concerning changes in income must be made timely. Such a report will be considered timely if made within the time frames specified in section 352.19(b) of this Title").

Practice Note: Remember that section 145 of the Social Services Law takes a strict view of what constitutes the concealment of income that would trigger an IPV²

² "The failure on the part of a person receiving public assistance to notify the SSD of the receipt of money or property or income from employment or any other source whatsoever, shall, upon the cashing of a public assistance check after receipt of such money, or property, or income, constitute presumptive evidence of deliberate concealment of a material fact." N.Y. Soc. Serv. L. § 145.

2. *Other general rules -*

- a. Each applicant and recipient must as a condition of eligibility for themselves or others provide accurate, complete and current information on his or her needs and resources as well as the whereabouts and circumstances of responsible relatives. 18 N.Y.C.R.R. § 351.1.
- b. A recipient must timely report and certify any changes in employment. 18 N.Y.C.R.R. § 352.17

III. **ADVOCACY AT DIFFERENT STAGES OF THE IPV PROCESS**

The rules discussed here are the same for CA and SNAP IPV hearings unless otherwise specified.

A. **Advocacy at Investigation Stage**

1. *Assert Investigation Interview rights:*

- a. Penalty for non-attendance - Attendance not mandatory when SNAP benefits at issue, see Foley Memo. Attendance is mandatory when the investigation involves Cash Assistance (but the client does not need to answer questions). The district may initiate a case closing when a client fails to attend the interview.
- b. No coercion - Investigations of fraud shall be promptly made, but shall be conducted by lawful means only, without infringing upon the civil rights of individuals. Under no circumstances, shall force, threat of force or false statements be used to obtain entry into a household or to obtain evidence of any nature. 18 N.Y.C.R.R. § 348.3.
- c. Constitutional rights must be upheld; right to a representative: Any investigation or reinvestigation of eligibility shall be conducted in a manner that will not result in practices that violate an applicant's or recipient's constitutional rights. An applicant or recipient shall be permitted to appear with an attorney or other representative at any interview or conference with a representative of a social services district, whenever such interview or conference relates to questions of eligibility for public assistance and care, or the amount to which the person interviewed is or was entitled. 18 N.Y.C.R.R. § 351.1(d).
- d. Right to an interpreter - Adult applicants that do not speak English well have the right to be interviewed in a language they can understand. 7 U.S.C. §§ 2020(e)(1)(B) & (2)(A); 7 C.F.R. §§ 272.4(b) and 273.2(a)(1); 18 N.Y.C.R.R. § 387.2.

- e. Right to remain silent - 5th Amendment right not to incriminate & right to remain silent.
- f. Client cannot be coerced to sign a “voluntary statement” - Client is not required to sign voluntary statements. Any statement will likely be used as evidence at the ADH and can be used as an admission in a future criminal case.

B. Advocacy at Criminal prosecution stage - 7 C.F.R. § 273.16(g)

1. Referral to prosecutor --

- a. “Whenever a social services official has reason to believe that any person has violated any provision of this section, he shall promptly refer the facts and evidence available to him to the appropriate district attorney or other prosecuting official, who shall immediately evaluate the facts and evidence and take appropriate action.” SSL § 145(l).
- b. Each social services district shall take measures designed to prevent, detect and report fraud, make an agreement with the appropriate district attorney or other prosecuting official establishing the procedures for referral to such official of all cases wherein reasonable grounds exist to believe that fraud was committed and file with the department a copy or a statement of the agreement with the prosecuting official. 18 N.Y.C.R.R. § 348.2.
- c. Referral for criminal prosecution required unless prior agreement with prosecuting authority. 18 N.Y.C.R.R. § 359.4. SSD must refer cases that warrant civil or criminal prosecution to prosecuting author and not to OAH/OTDA for ADH unless prior notification by prosecutor that amount does not warrant prosecution. For example, NYC sends to prosecutor when fraud value is above \$3000; Erie sends to prosecutor when fraud value is over \$5000.
- d. Judge presiding in a criminal SNAP trial is the only person empowered to shorten the disqualification periods provided for by statute and regulation. 7 C.F.R. § 273.16(g)(2)(i).
- e. Once referred to a prosecutor, the SSD has no authority to initiate an ADH until the DA declines to prosecute or SSD formally withdraws the referral after the DA fails to take action within a reasonable time. See 18 N.Y.C.R.R. § 359.5; 93-ADM-8.
- f. If prosecuted and a court determines that an individual has engaged in conduct constituting an IPV, the SSD must impose IPV penalties and must initiate the disqualification period within 45

days of the order, if not otherwise specified in the order. 18 N.Y.C.R.R. § 359.9(d)

2. Disqualification Consent Agreements

- a. States may seek Disqualification Agreement (DCA) from individuals receiving deferred adjudication of their criminal fraud cases. 7 C.F.R. § 273.16(h); 18 N.Y.C.R.R. §359.1(e).
 - i) Federal regulation only allow DCAs in case that already have been resolved by the court by agreement with prosecutors.
 - ii) Neither the prosecuting attorney nor the state should solicit DCAs while criminal charges are still pending.
 - iii) The accused must be provided advance written notification of the consequences of consenting to a disqualification in cases of deferred adjudication.
- b. Threat of prosecution should not be used to solicit "voluntary" admissions - USDA guidance makes clear that states should select either the administrative or criminal track and should not seek leverage from criminal charges to gain advantage in an administrative proceeding, for example, by pressuring the client to sign a waiver of the ADH in exchange for agreeing not to refer the case to prosecutors. "[T]he consequences of losing a judicial proceeding are potentially so severe when contrasted with 'merely' losing one's benefits for 12 months, that it is conceivable that innocent clients will sign [ADH] waivers rather than risk the alternative." See Hallman Memo. Disqualification consent agreement – These are only allowed in cases that already have been resolved by the court or by agreements with prosecutors. 7 C.F.R. § 273.16(h). States may seek from individuals receiving deferred adjudication of their criminal SNAP fraud cases. Id. Accordingly, neither the prosecuting attorney nor the state should solicit disqualification consents while criminal charges are still pending. But this is often ignored.
- c. State regulations and 7 C.F.R. § 273.16(h)(1)(ii) prescribe the format and contents of the DCA including the requirement that notification of consequence of signing the DCA must be provided to the accused individual at least 10 days prior to the execution of the DCA. 18 N.Y.C.R.R. § 359.4.

d. **Practice Tips on DCAs:**

- i) Advise clients not to sign -- By the time federal regulations allow the state to ask the accused to sign, the criminal prosecution has been resolved without a conviction. **An individual faces no risk of disqualification unless she or he signs.**
- ii) What to do when you learn a client has already signed a DCA --
 - a) Investigate the procedural history of the case and determine if the client was even eligible to be offered a DCA as a resolution.
 - b) Request a fair hearing where the SSD obtained the DCA improperly -- The hearing is requested on the notice of disqualification that gets issued after the DCA is signed. OAH previously determined that it did not have jurisdiction to review a DCA at a fair hearing. OAH has recently changed its policy and will conduct a limited review of a DCA at a fair hearing to ensure that the SSD followed the procedural requirements outlined in 18 N.Y.C.R.R. § 359.4(b)(1) & b(4). OAH Procedures Transmittal 16-06, attached as Exhibit 3.
 - c) SSD has the burden to show that the DCA signed by the accused individual and that the procedure used meets the regulatory requirements.
 - d) The underlying merits of the claim of alleged fraud will not be reviewed at the fair hearing.
 - e) For an excellent memo submitted in connection with a fair hearing requested on a DCA. See Exhibit 4 (redacted fair hearing memo submitted by Sam Young of Legal Services of Central New York).

C. Advocacy Issues for the Administrative Disqualification Hearing

1. *Make-sure Pre-Hearing requirements were met*

- a. Evidence packet requirements 18 N.Y.C.R.R. § 359.5(e):
 - i) Full name and address of accused client
 - ii) List of charges

- iii) Summary of evidence to be introduced
 - iv) List of names, titles and phone numbers of agency staff and witnesses who will appear at hearing
 - v) List of exhibits with page numbers
 - vi) Copies of all documents to be used in support of charge
 - vii) Information regarding when and where the exhibits can be reviewed and the availability of free legal services
 - viii) Statement regarding any prior IPV findings/criminal findings, and supporting documentation.
- b. Notice requirements for scheduling ADH. 18 N.Y.C.R.R. § 359.6(d).
- i) Timing - must be sent at least 30 days before the hearing
 - ii) Mandatory contents – include but not limited to
 - a) Hearing date, time and place;
 - b) Charges;
 - c) Summary of evidence and how and where it can be examined;
 - d) Notification of right to examine all documents and records to be used at the hearing; contact number;
 - e) Notification of the right to adjournment; right to present case; be represented; bring witnesses; make arguments without interference; question or refute testimony or evidence; to confront and cross-examine witnesses; to submit evidence;
 - f) Notification of right to remain silent but that inferences can be drawn from silence;
 - g) copies of relevant sections. See James v. Proud, 2014 WL 1714436, slip op. 31064 (Sup. Ct. N.Y. County, Apr. 25, 2014) (defeating motion to dismiss of Article 78 proceeding brought by *pro se* appellant, where the evidence packet contained a copy of regulations 12 years out of date);
 - h) Description of penalties;

- i) Explanation that person may waive hearing, including time to sign and return waiver form, explanation of significance of waiver, opportunity to admit or deny facts, contact number for additional information. See 7 C.F.R. § 273.16(f); 18 N.Y.C.R.R. § 359.8.
- 2. Waivers - After receipt of the scheduling notice, individuals have the option of waiving the hearing and accepting the sanction, including repayment.
 - a. Rules on waivers
 - i) Prior to soliciting a waiver, federal rules require an independent agency employee to review the evidence against the accused and to determine that the evidence warrants scheduling an ADH. 7 C.F.R. § 273.16(f)(1)(i).
 - ii) Federal rules require waiver to be solicited in writing, with all of the same notices of rights that accompany the scheduling of an ADH, including a summary of the evidence against the accused. 7 C.F.R. §§ 273.16(f)(1)(iii) & (e)(3)(iii)(C). This notice also must include a *Miranda*-like warning to the accused of her or his right to remain silent as to the charges and the fact that anything the accused says may be used against her or him in a criminal prosecution. 7 C.F.R. § 273.16(f)(1)(ii)(B).
 - iii) Form asks individual whether or not she or he admits to the charges. Whether yes or no are checked makes no practical difference. The disqualification is for the same time period without further inquiry.
 - iv) Admission could be used in subsequent criminal prosecution.
 - v) Refusal to admit - May mislead some clients that checking the box will secure an opportunity for a hearing; many are conditioned to believe that they must sign and return forms that the state sends them.
 - b. Practice Advice on Waivers
 - i) Advise clients not to sign a waiver -
 - a) Because the penalty is precisely fixed by statute, the state cannot offer leniency in exchange for a waiver

or threaten a more severe penalty if the accused allows the matter to go to a hearing.

- b) Accused will do at least as well at hearing if declines to testify or simply does not attend the hearing, forcing the fraud investigators to prove their case. Fraud investigators often solicit waivers in cases where they lack evidence to proceed to a hearing.
 - ii) If the client already signed a waiver, make sure all of the procedural requirements were met. In particular, statements of the charges often are deficient.
- 3. Check whether the IPV was Pursued Within the Statute of Limitations - The IPV may not be imposed if there has been more than 6 years between the date an individual committed an IPV and the date the social services district discovered the IPV and the office determines that there is evidence to substantiate the charges. See 18 N.Y.C.R.R. § 359.2(c).
- 4. If ADH is scheduled after a referral to the prosecutor, need withdrawal - If an ADH is initiated after a referral to the prosecutor, SSD must present evidence of formal written withdrawal at the hearing. Failure to present evidence of such a formal written withdrawal may result in an ADH decision adverse to the SSD. 18 N.Y.C.R.R. § 359.5(c).
- 5. Relationship to regular fair hearing
 - a. Regular fair hearing rights apply. 18 N.Y.C.R.R. Part 358, unless inconsistent with part 359. See 7 C.F.R. § 273.16(e), including the right to see the case file and all evidence the investigators plan to use against her or him and the right to question adverse witnesses. 7 C.F.R. §§ 273.15(p)(1) and 273.16(e)(3)(iii)(C)&(G).
 - b. Disqualification can only result from a properly convened ADH, not a fair hearing, even if fraud was alleged as an issue in the fair hearing.
 - c. State's burden of persuasion is higher in an ADH, so if a client wins the issue in a fair hearing, that may effectively resolve the matter.

D. Representing Your Client at the ADH

- 1. Assure all of your client's ADH rights are honored - 18 N.Y.C.R.R. § 359.7(d), Your client has the right to:

- a. examine the contents of the individual's case file, and all documents and records to be used by the social services district at the hearing, at a reasonable time before the date of the hearing and during the hearing;
- b. present the case himself or herself, or with the aid of an authorized representative;
- c. bring witnesses;
- d. establish all pertinent facts and circumstances;
- e. advance any arguments without undue influence; and
- f. question or refute any testimony or evidence including the opportunity to cross-examine adverse witnesses.

2. Assure that the ALJ conducts the hearing properly - 18 N.Y.C.R.R. § 359.7(e)

- a. ALJ must advise the individual that he or she may refuse to answer questions during the hearing. An ADH does not preclude subsequent prosecution. 18 N.Y.C.R.R. § 359.6(d)(12).
- b. The SSD has the burden of proof in an ADH and therefore the ALJ must have the SSD present evidence first.
- c. In CA IPV, if individual was convicted based on guilty plea in state or federal court on same set of facts and not advised on record of disqualification penalties, neither the conviction itself nor the records of the court proceeding may be used in in the ADH and ALJ may not be made aware of conviction.

3. Hold SSD to its High Burden of Proof

- a. SSD must prove IPV by clear and convincing evidence – 18 N.Y.C.R.R. § 359.7(f)(1): SNAP – individual intentionally -- Made a false or misleading statement or misrepresented, concealed or withheld facts concerning eligibility or committed any act constitution a violate of the SNAP requirements. 18 N.Y.C.R.R. § 359.3(b).

Practice Note: As set forth in Part II of this outline, SSD cannot meet its burden unless the client actually ran afoul of the eligibility rules and had a duty to report whatever change is pointed to as a basis for the fraud.

- i) CA – individual for the purposes of establishing or maintain CA benefit or increasing or preventing a reduction, intentionally
 - a) Made a false or made a false or misleading statement, or misrepresented, concealed or withheld facts concerning the individual's, or the individual's family's eligibility for public assistance;
 - b) committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity concerning the individual's, or the individual's family's eligibility for public assistance; or
 - c) engaged in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370

Practice Note: It is especially important that advocates advise and counsel client on rules to help prevent IPV charges because of definitions of concealment and increased reporting requirements of N.Y. Soc. Serv. Law § 145 are so stringent. For example, if a client has a person offering money to help, an advocate could advise that the person purchase a good or service for the client instead.

- b. Burden must be met even if default - Even if accused does not appear, or if the accused appears and declines to offer a defense, the state must prove its case with clear and convincing evidence. 7 C.F.R. § 273.16(e)(6); 18 N.Y.C.R.R. § 359.7(g)(2).
- c. Harm to SSD is not part of burden -- SSD does not have to prove it was harmed.
 - i) To prove an IPV, SSD has to prove actions were intentional, not that they resulted in an overpayment. See 94-INF-11.
 - ii) But lack of an overpayment, can be used as evidence that there was no intent.

4. Objections to SSD documentary evidence:

- a. Evidence not included in SSD evidence packet can be excluded. Compare contents of the evidence packet presented by SSD to yours.
- b. Object on relevance grounds - For example, make sure WMS Printout covers the relevant dates. Investigator Affidavits – Often

unsigned and conclusory. State no allegations of fact. Can object on the grounds of relevance and entitled to no weight.

- c. Voluntary statement – If client signed a voluntary statement, this will need to be overcome in the hearing. Was there coercion? What did the client think would be the consequence of refusing to sign? Did your client know what she was signing? Was an interpreter provided? Did she read the statement in advance? Who wrote it? Explore client's literacy level and education history. These infirmities can come out on cross and in direct questioning of your client.

5. Objections to SSD witness testimony:

- a. If a witness appears at the hearing who was not listed in the evidence packet, demand testimony be excluded. Can also request adjournment for more time to prepare.
- b. On cross, explore the witness's personal knowledge of the case.

6. Have your case prepared

- a. Opening & closing statements – emphasize heavy burden of proof
- b. Client and witness testimony
- c. Documentary evidence

E. Advocacy Post-hearing

- 1. Decision – Under 18 N.Y.C.R.R. § 359.7(f) the decision must
 - a. be based “exclusively on clear and convincing evidence and other material introduced at hearing which demonstrates that an individual committed and intended to commit” an IPV;
 - b. specify the reason for decision, identify the supporting evidence and relevant law, and respond to reasoned arguments made by the individual;
 - c. be issued within 90 days of date of notice of ADH.
- 2. Notice of IPV must be written. 18 N.Y.C.R.R. § 359.10.
- 3. Client may have right to subsequent fair hearing on:
 - a. amount of claim if not established by ADH or court;

- b. Amount of CA or SNAP allotment to remaining member of the household during the disqualification period; and
 - c. SSD's failure to restore the disqualified individual to the household at the end of the disqualification period indicated on the notice. 18 N.Y.C.R.R. § 359.10(b)(5).
- 4. Reopening Default 18 N.Y.C.R.R. § 359.7(g).
 - a. Must contact OTDA within 10 days of hearing date with good cause for failure to appear.
 - b. Must contact OTDA within 30 days of date of hearing decision with good cause for failure to appear, if that good cause is failure to receive notice
 - c. OTDA must schedule a notice on the sole issue of good cause.
- 5. May challenge in request for reconsideration. 18 N.Y.C.R.R § 358-6.6
- 6. May appeal in an Article 78. 18 N.Y.C.R.R § 359.7(i)
 - a. A decision that an intentional program violation has been committed cannot be reversed by a subsequent fair hearing.
 - b. The period of disqualification may be subject to stay or other injunctive remedy ordered by such a court, but any period for which sanctions are imposed shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the sanctions were imposed is subsequently reversed by a court of appropriate jurisdiction.

REPRESENTING PERSONS ACCUSED OF
PUBLIC BENEFITS FRAUD:
HANDLING SNAP IPVS AND OTHER FRAUD
CHARGES

Biographies

Panelist Biographies

Belkys Garcia

Belkys Garcia has been a staff attorney with The Legal Aid Society since 2007 helping low-income New Yorkers to access various government benefits. She is currently in the Civil Practice Law Reform Unit focusing on health and benefits after spending five years in the Health Law Unit where she represented clients and engaged in policy and legislative reform on issues regarding access to healthcare. She currently works on *Cruz v. Zucker*, a class action challenging a Medicaid regulation which denies payment for medically necessary health care for transgender Medicaid recipients. Previously in The Legal Aid Society's Bronx Neighborhood Office she represented clients on appeals of denials of public assistance, food stamps and disability benefits in administrative hearings, New York State Courts and U.S. District Court. Belkys is a graduate of CUNY School of Law and The New School.

David A. Super

David A. Super is a Professor of Law at Georgetown University Law Center. Previously, he was general counsel to the Center on Budget and Policy Priorities and worked for several legal services programs, including Community Legal Services of Philadelphia, where he specialized in food stamp and Medicaid cases. He has done extensive legislative and administrative work on SNAP and has trained legal services advocates on SNAP, Medicaid, and litigation strategy in over thirty states. He is currently completing a casebook on Public Welfare Law.

Exhibit 1

Computer Match Processing Desk Guide

Name of Computer Match	Verified Upon Receipt?	CA/FS Cases	NCA FS Cases	Special Instructions (See Notes below)	
				For CA/FS cases	For NCA FS cases
Death	Yes	Division of Financial Review and Processing (DFRP)*	NCA FS Centers	<ul style="list-style-type: none"> Review the match information from State Department of Health and NYC Vital Statistics. Remove the deceased individual from the case (or close the case if the household size equals one). 	<ul style="list-style-type: none"> Review the match received from the Income Clearance Program (ICP). Remove the deceased individual from the case (or close the case if the household size equals one). Send notification of action taken on FS case. Annotate the match with the action(s) taken and return it to ICP.
Financial Institution Recipient Match (FIRM)	No (collateral contact is required)	Job Center	Not Applicable	<p>SAVED</p> <ul style="list-style-type: none"> Retrieve the match information from the Resource File Integration (RFI) subsystem in the Welfare Management System (WMS) when preparing for initial or recertification interviews. Review the case record to determine whether or not the amounts exceed the CA resource limits, and take no further action if the amounts do not exceed the resource limit. Contact the participant and request that he/she provide documentation to verify or refute the information if combined resources exceed the CA resource limit. If the participant submits documentation supporting a dollar amount above the resource limit for CA or fails to respond, close the case. If the participant responds but is unable to provide documentation of the account(s), send the Bank Inquiry and Clearance Report (LDSS-760) form to the financial institution, and if the documentation from the financial institution supports a dollar amount above the resource limit for CA, close the case. Send notification of action taken on the case. 	Not Applicable

* When DFRP is unable to process the computer match information for CA cases, DFRP will notify the Regional Manager of the issue and request a timely resolution. Once the issue is resolved, DFRP must take the required action(s) in WMS.

Note 1: If an FS overpayment results, establish an FS claim according to current procedure (See PD #07-11-ELI).

Note 2: DFRP and ICP must submit relevant documents for scanning and indexing into the HRA OneViewer. NCA FS Centers and Job Centers (including HASA) must scan relevant documents into the POS browser. All documents pertaining to computer matches must be scanned/indexed into the electronic case record.

Note 3: For matches that are not verified upon receipt, NCA FS Centers cannot take action on an FS case until the next recertification.

Computer Match Processing Desk Guide (continued)

Name of Computer Match	Verified Upon Receipt?	CA/FS Cases	NCA FS Cases	Special Instructions (See Notes below)	
				For CA/FS cases	For NCA FS cases
Fleeing Felon	No	DFRP*	NCA FS Centers	<ul style="list-style-type: none"> Review the match information and recommendation from the Bureau of Fraud Investigation (BFI). Remove the participant with outstanding felony warrants from the case if the household size is greater than one. Close, rebudget, and/or enter recoupment(s) as appropriate. Send notification of action taken on case. 	<ul style="list-style-type: none"> Review the match information and recommendation from BFI. Remove the participant with outstanding felony warrants from the case if the household size is greater than one. Close, rebudget, and/or enter recoupment(s) as appropriate. Send notification of action taken on case.
Marriage	No (collateral contact is required)	DFRP*	NCA FS Centers	<p>STANDARD</p> <ul style="list-style-type: none"> Review the match information and recommendation from BFI. Use standard budgeting procedure to determine continued eligibility. Close the case if the reported spouse is in the household and has income or resources that make(s) the household ineligible for Cash Assistance. Inform the Job Center of the changes in the household, if any, if the reported spouse is in the household and the household is still potentially eligible for assistance. Initiate recoupment if an overpayment was made. Close the case if: the casehead failed to appear for an interview with BFI or to comply with the BFI's request for documentation. (If household member [not casehead] failed to appear or comply with documentation request, remove the individual line.) Send notification of action taken on case to the household. If no change results (e.g., reported spouse not in household due to incarceration), enter case note indicating that no action is required. 	<ul style="list-style-type: none"> Review the match received from BFI. If the casehead failed to appear for interview or did not comply with request for documentation, close the case. (If household member [not casehead] failed to appear or comply with documentation request, remove the individual line.) Send notification of action taken on FS case. Annotate the match with the action(s) taken and return it to BFI. If no change results, enter case note indicating that no action is required.

* When DFRP is unable to process the computer match information for CA cases, DFRP will notify the Regional Manager of the issue and request a timely resolution. Once the issue is resolved, DFRP must take the required action(s) in WMS.

Note 1: If an FS overpayment results, establish an FS claim according to current procedure (See PD #07-11-ELI).

Note 2: DFRP and ICP must submit relevant documents for scanning and indexing into the HRA OneViewer. NCA FS Centers and Job Centers (including HASA) must scan relevant documents into the POS browser. All documents pertaining to computer matches must be scanned/indexed into the electronic case record.

Note 3: For matches that are not verified upon receipt, NCA FS Centers cannot take action on an FS case until the next recertification.

Computer Match Processing Desk Guide (continued)

Name of Computer Match	Verified Upon Receipt?	CAFS Cases	NCA FS Cases	Special Instructions (See Notes below)	
				For CA/FS cases	For NCA FS cases
National Crime Information Center (NCIC)/Federal Bureau of Investigation (FBI) Fleeing Felon	Yes	DFRP*	NCA FS Centers	<ul style="list-style-type: none"> Review the match information and recommendation from BFI. Remove the participant with outstanding felony warrants from the case if the household size is greater than one. Close, rebudget, and/or enter recoupment(s) as appropriate. Send notification of action taken on case. 	<ul style="list-style-type: none"> Review the Required Statistical Action memo received from BFI. Remove the participant with outstanding felony warrants from the case if the household size is greater than one. Close, rebudget, and/or enter recoupment(s), as appropriate. Send notification of action taken on FS case. Notify BFI of the action(s) taken by the date indicated on the memo.
National Directory of New Hires (NDNH)	Yes	DFRP*, ICP, Job Centers and HASA	Not Applicable	<ul style="list-style-type: none"> Retrieve TALM detailed information through Internet access. Retrieve Manual Eligibility Verification (MEV) detailed information from downloaded PDF file that is transmitted from OITDA. Review WMS, NYCWAY and electronic case folder and compare case information with NDNH employment information. If income is not already known to the Agency, budget income and take appropriate action to close, reduce budget and/or initiate recoupment for overpayment. Send notification of action(s) taken. If no changes are necessary, enter detailed case note(s) specifying reason that no action is required. If follow-up actions are needed, refer case to Job Center. 	Not Applicable
Prison	Yes	DFRP*	NCA FS Centers	<ul style="list-style-type: none"> Review the match information and recommendation from BFI. Remove the incarcerated individual from the case (or close the case if the household size equals one). Send notification of action taken on case. 	<ul style="list-style-type: none"> Review the Required Statistical Action memo received from BFI. Remove the incarcerated individual from the case (or close the case if the household size equals one). Send notification of action taken on FS case. Notify BFI of the action(s) taken by the date indicated on the memo.

* When DFRP is unable to process the computer match information for CA cases, DFRP will notify the Regional Manager of the issue and request a timely resolution. Once the issue is resolved, DFRP must take the required action(s) in WMS.

Note 1: If an FS overpayment results, establish an FS claim according to current procedure (See PD #07-11-ELI).

Note 2: DFRP and ICP must submit relevant documents for scanning and indexing into the HRA OneViewer. NCA FS Centers and Job Centers (including HASA) must scan relevant documents into the POS browser. All documents pertaining to computer matches must be scanned/indexed into the electronic case record.

Note 3: For matches that are not verified upon receipt, NCA FS Centers cannot take action on an FS case until the next recertification.

Computer Match Processing Desk Guide (continued)

Name of Computer Match	Verified Upon Receipt?	CA/FS Cases	NCA FS Cases	Special Instructions (See Notes below)	
				For CA/FS cases	For NCA FS cases
Probation Violator Parole Violator	Yes	DFRP*	NCA FS Centers	<ul style="list-style-type: none"> Review the match information and recommendation from BFI. Remove the Probation/Parole Violator from the case if the household size is greater than one. Close, rebudget, and/or enter recoupment(s), as appropriate. Send notification of action taken on case. 	<ul style="list-style-type: none"> Review the match information and recommendation from BFI. Remove the Probation/Parole Violator from the case if the household size is greater than one. Close, rebudget, and/or enter recoupment(s), as appropriate. Send notification of action taken on case.
Public Assistance Reporting Information System (PARIS)	Yes	DFRP*	Special Projects Change Food Stamp Center (F25)	<ul style="list-style-type: none"> Review the match information and recommendation from BFI. Remove the individual collecting benefits in multiple states from the case (or close the case if the household size equals one). Send notification of action taken on case. 	<ul style="list-style-type: none"> Review the Required Statistical Action memo received from BFI. Remove the individual collecting benefits in multiple states from the case (or close the case if the household size equals one). Send notification of action taken on FS case. Notify BFI of action(s) taken by the date indicated on the memo.
Social Security Beneficiary Data Exchange (BENDEX match) (for Retirement, Survivors and Disability Insurance [RSDI] benefits or Old Age, Survivors and Disability Insurance [OASDI])	Yes	ICP	NCA FS Centers	<ul style="list-style-type: none"> Review the match information. Budget the RSDI (or OASDI) for CA and FS purposes, per current procedure. Send notification of action(s) taken on the case. If no change results, enter case note indicating that no action is required. 	<ul style="list-style-type: none"> Review the match information from ICP. Budget the RSDI (or OASDI) for FS purposes, per current procedure. Send notification of action(s) taken on FS case. Annotate the match with the action(s) taken and return it to ICP. If no change results, enter case note indicating that no action is required.

* When DFRP is unable to process the computer match information for CA cases, DFRP will notify the Regional Manager of the issue and request a timely resolution. Once the issue is resolved, DFRP must take the required action(s) in WMS.

Note 1: If an FS overpayment results, establish an FS claim according to current procedure (See PD #07-11-ELI).

Note 2: DFRP and ICP must submit relevant documents for scanning and indexing into the HRA OneViewer. NCA FS Centers and Job Centers (including HASA) must scan relevant documents into the POS browser. All documents pertaining to computer matches must be scanned/indexed into the electronic case record.

Note 3: For matches that are not verified upon receipt, NCA FS Centers cannot take action on an FS case until the next recertification.

Computer Match Processing Desk Guide (continued)

Special Instructions (See Notes below)				
Name of Computer Match	Verified Upon Receipt?	CA/FS Cases	NCA FS Cases	Processed by
State Data Exchange (SDX match) (for Supplemental Security Income [SSI])	Yes	ICP	NCA FS Centers	<p>For CA/FS cases</p> <ul style="list-style-type: none"> Review the match information. For FA cases remove the individual receiving SSI from the CA case (or close the case if the household size equals one). The SSI income is only budgeted for FS purposes. For SNCA/SSNIC cases, Rice budgeting rules apply. (See the NYS Public Assistance Program Budgeting Manual, page A-48.) Send notification of the change in benefits. If no change results, enter case note indicating that no action is required.
	No (collateral contact is required)	Job Center	NCA FS Centers	<p>For NCA FS cases</p> <ul style="list-style-type: none"> Review the information from ICP. Budget the SSI for FS purposes. Send notification of the change in FS benefits. Annotate the match with the action(s) taken and return it to ICP. If no change results, enter case note indicating that no action is required.
State Directory of New Hires (SDNH)				<p>6-Month Reporting Household</p> <ul style="list-style-type: none"> Retrieve the match information from the RFI subsystem in WMS when preparing for initial or recertification interviews. Review the case record for supporting documents. If household income exceeds the 130% poverty level for household size, authorize the budget and reject/close the FS case. If the household income does not exceed the 130% poverty level for the household size, enter a case note that no action is required. <p>(See Note 4 below for 10-day reporting household.)</p>
<p>Note 1: If an FS overpayment results, establish an FS claim according to current procedure (See PD #07-11-ELI).</p> <p>Note 2: DFRP and ICP must submit relevant documents for scanning and indexing into the HRA OneViewer. NCA FS Centers and Job Centers (including HASA) must scan relevant documents into the POS browser. All documents pertaining to computer matches must be scanned/indexed into the electronic case record.</p> <p>Note 3: For matches that are not verified upon receipt, NCA FS Centers cannot take action on an FS case until the next recertification.</p> <p>Note 4: NCA FS households subject to 10-day reporting rules must report changes by the tenth day of the month following the month in which the change occurred. Review the available information and make collateral contact to resolve discrepancies on the new or unresolved computer match information. If benefits are to be reduced or terminated, calculate and save a new budget and send the participant a Client Notices System (CNS) notice of intent indicating the change to the case within 10 days of the notification. If no change results, make case note indicating that no action is necessary.</p>				

Computer Match Processing Desk Guide (continued)

Name of Computer Match	Verified Upon Receipt?	CA/FS Cases	NCA FS Cases	Special Instructions (See Notes below)	
				For CA/FS cases	For NCA FS cases
Unemployment Insurance Benefits (UIB)	Yes	DFRP*	NCA FS Centers	<ul style="list-style-type: none"> Review the computer match information from the Bureau of Eligibility Verification (BEV). Budget the UIB for CA and FS purposes for the filing unit. If the benefits exceed the income limit for the household size, close the case and/or enter recoupment(s), as appropriate. Send notification of action(s) taken. If no change results, enter case note indicating that no action is required. Review the computer match information. Mail form W-592J to work-study students. If completed form W-592J or form W-592R and/or household questionnaire is received, make collateral contact to verify the match information. If an incomplete questionnaire is received, schedule appointment with BEV. If BEV appointment is kept and required documents submitted, budget the case per current procedure. If BEV appointment is not kept or requested documents not submitted, close the case. Send notification of action taken. If no change results, enter case note indicating that no action is required. 	<p>6-Month Reporting Household</p> <ul style="list-style-type: none"> Review the computer match. Review income to determine if total household income exceeds 130% poverty level for the household size. If so, close the FS case. Send notification of action taken on the FS case or enter case note if no action is required. Annotate the match with the action(s) taken and return to ICP. <p>(See Note 3 below for 10-day reporting household.)</p> <p>6-Month Reporting Household</p> <ul style="list-style-type: none"> Review computer match and case record for supporting documents when preparing for initial or recertification interviews. Determine if total household income exceeds 130% poverty level for the household size. Send participant form W-138PP to verify information at next recertification or six-month contact. Upon receipt of verification, if income exceeds the 130% poverty level for the household size, authorize the budget and close the FS case. Send notification of action taken. If no change results, enter case note indicating that no action is required. <p>(See Note 4 below for 10-day reporting household.)</p>
Wage Reporting System (WRS)	No (collateral contact is required)	DFRP*	NCA FS Centers		

* When DFRP is unable to process the computer match information for CA cases, DFRP will notify the Regional Manager of the issue and request a timely resolution. Once the issue is resolved, DFRP must take the required action(s) in WMS.

Note 1: If an FS overpayment results, establish an FS claim according to current procedure (See PD #07-11-ELI).

Note 2: DFRP and ICP must submit relevant documents for scanning and indexing into the HRA OneViewer. NCA FS Centers and Job Centers (including HASA) must scan relevant documents into the POS browser. All documents pertaining to computer matches must be scanned/indexed into the electronic case record.

Note 3: For matches that are not verified upon receipt, NCA FS Centers cannot take action on an FS case until the next recertification.

Note 4: NCA FS households subject to 10-day reporting rules must report changes by the tenth day of the month following the month in which the change occurred. Review the available information and make collateral contact to resolve discrepancies on the new or unresolved computer match information. If benefits are to be reduced or terminated, calculate and save a new budget and send the participant a Client Notices System (CNS) notice of intent indicating the change to the case within 10 days of the notification. If no change results, make case note indicating that no action is necessary.

Exhibit 2

NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

**SUPPLEMENTAL NUTRITION ASSISTANCE
PROGRAM (SNAP) CHANGE REPORT FORM***(Please Print Clearly)*

CASE NUMBER

**YOU MUST REPORT ANY CHANGES IN YOUR CIRCUMSTANCES
ACCORDING TO THE RULES LISTED BELOW.**

DATE: _____

COMPLETE THIS FORM AND MAIL TO:

LOCAL DISTRICT NAME, ADDRESS AND TELEPHONE NUMBER:

TO: _____

ADDRESS: _____

YOUR RESPONSIBILITY TO REPORT CHANGES

Please read the questions and rules carefully. If you fail to report any changes that you are required to report under the rules, we may have to establish a claim for overpayment of Supplemental Nutrition Assistance Program (SNAP) benefits and collect the amount of the overpayment from you.

The changes that you **MUST** report are explained below. You may still voluntarily report any change about your SNAP household and, if this change will increase your benefit level and you verify this change, we will increase your benefit.

ARE YOU A “SIMPLIFIED REPORTER” (6 MONTH) OR A “CHANGE REPORTER”? YOU MAY ANSWER THESE QUESTIONS TO FIND OUT WHETHER YOU ARE A “SIMPLIFIED REPORTER” OR A “CHANGE REPORTER”.

1. Do you receive transitional SNAP benefits (TBA)?	<input type="checkbox"/> YES – Go To “TBA” on page 3 (Skip questions 2 through 8)	<input type="checkbox"/> NO – Go To Question #2, below
2. Do you receive New York State Nutrition Improvement Project (NYSNIP) benefits?	<input type="checkbox"/> YES – Go To “NYSNIP” on page 3 (Skip questions 3 through 8)	<input type="checkbox"/> NO – Go To Question #3, below
3. Are you certified for SNAP benefits for three months or less at a time?	<input type="checkbox"/> YES –Go To “Change Reporting” on page 2 (Skip questions 4 through 8)	<input type="checkbox"/> NO – Go To Question #4, below
4. Does anyone in your household have earned income that is being counted in your SNAP benefit amount?	<input type="checkbox"/> YES –Go To “Simplified Reporting” on page 2 (Skip questions 5 through 8)	<input type="checkbox"/> NO – Go To Question #5, below
5. Are all of the adults (18 or older) in your household either permanently disabled or 60 or older?	<input type="checkbox"/> YES –Go To “Change Reporting” on page 2 (Skip questions 6 through 8)	<input type="checkbox"/> NO – Go To Question #6, below
6. Does your household receive \$0 income (including \$0 Temporary Assistance)?	<input type="checkbox"/> YES –Go To “Change Reporting” on page 2 (Skip questions 7 and 8)	<input type="checkbox"/> NO – Go To Question #7, below
7. Are you without shelter (undomiciled) or a migrant/seasonal farmworker?	<input type="checkbox"/> YES – Go To “Change Reporting” on page 2 (Skip question 8)	<input type="checkbox"/> NO – Go To #8, below
8. You answered “NO” to all 7 questions above	<input type="checkbox"/> Go To “Simplified Reporting” on the top of page 2	

SIMPLIFIED REPORTING RULES: As a SNAP household under the “Simplified Reporting” rules, you are only required to report changes at the time of your next recertification, except for the following three situations:

1. **If your household’s gross monthly income exceeds 130% of the poverty level, you MUST report this monthly amount to your social services district by telephone, in writing, or in person within 10 days after the end of the calendar month in which you exceed the 130% level.** Gross income is the amount of income before taxes and other deductions are taken out, not the amount you receive when you cash your check. We must use the gross income in figuring your eligibility for SNAP benefits. Your worker will explain what 130% of the poverty level means for a family of your size. Any other kind of income that you receive besides earnings must be added to your gross earned income to know if you are over 130% of the poverty level. Examples of other sources of income that count include child support you receive, Unemployment Insurance, Temporary Assistance (TA) payments, Workers Compensation, Social Security Benefits, Supplemental Security Income (SSI) and private disability payments.

If you fail to report that your gross income is above 130% of the poverty level in any calendar month, all benefits received after that month may be considered an overpayment. This is true even if your gross income falls below the 130% poverty level in a future month.

2. **If your household’s certification period is longer than 6 months:** At a six-month checkpoint into your certification period, you will receive a report form that you **MUST** return within ten days after you receive the form. If your household has any of the changes listed below, you **MUST** report them on the report form that is sent to you at the six-month checkpoint.

List of Changes you must report at the six-month checkpoint:

- Changes in any **source of income** for anyone in your household
- Changes in your household’s total **earned income** when it goes up or down by more than \$100 a month
- Changes in your household’s total **unearned income from a public source** such as Social Security Benefits or Unemployment Insurance Benefits when it goes up or down by more than \$50 a month
- Changes in your household’s total **unearned income from a private source** such as Child Support Payments or Private Disability Insurance when it goes up or down by more than \$100 a month
- Changes in the amount of legally obligated **child support you pay** to a child outside of your SNAP household
- Changes in **who lives with you**
- **If you move**, your new address and your new rent or mortgage costs, heat/air-conditioning costs and utility costs
- **A new or different car**, or other vehicle
- Increases in your household’s **cash, stocks, bonds, money in the bank** or savings institution if the total cash and savings of all household members now amounts to more than \$2,250 (more than \$3,250 if anyone in your household is disabled or 60 years old or older)
- Any changes in your household that would result in a penalty as described on page 6

3. **If anyone in your SNAP household is an Able-Bodied Adult Without Dependents (“ABAWD”), you MUST tell us if their work hours go below 80 hours a month within 10 days after the end of that month.**

CHANGE REPORTING RULES:

As a SNAP household under the “Change Reporting” rules, you **MUST** report the following changes within 10 days after the end of the month in which the change happened:

- Changes in any **source of income** for anyone in your household
- Changes in your household’s total **earned income** when it goes up or down by more than \$100 a month
- Changes in your household’s total **unearned income from a public source** such as Social Security Benefits or Unemployment Insurance Benefits when it goes up or down by more than \$50 a month
- Changes in your household’s total **unearned income from a private source** such as Child Support Payments or Private Disability Insurance when it goes up or down by more than \$100 a month
- Changes in the amount of legally obligated **child support you pay** to a child outside of your SNAP household
- Changes in **who lives with you**
- **If you move**, your new address and your new rent or mortgage costs, heat/air-conditioning costs and utility costs
- **A new or different car**, or other vehicle
- Increases in your household’s **cash, stocks, bonds, money in the bank or savings institution** if the total cash and savings of all household members now amounts to more than \$2,250 for a household **without** an elderly or permanently disabled household member **or** \$3,250 for a household **with** an elderly or permanently disabled household member.
- **If anyone in your SNAP household is an Able-Bodied Adult Without Dependents (“ABAWD”), you must tell us if their work hours go below 80 hours a month within 10 days after the end of that month**
- Any changes in your household that would result in a penalty as described on page 6

TBA CHANGE REPORTING for household in receipt of transitional benefits:

- Transitional SNAP benefits can continue for up to five months after your Temporary Assistance case closes.
- You are not required to report changes during the transition period. If you have changes that may increase your benefits you can contact your worker to file an early recertification application at any time during your transitional period to receive the increase. The increase cannot be done until a signed recertification application is filed, and the entire recertification process is completed.
- You must recertify near the end of your transitional period to see if you can continue to receive SNAP benefits after your transitional period ends. We will send you a notice reminding you of this recertification requirement. If you do not recertify, we will not send you any other notice and must close your SNAP case.

NYSNIP CHANGE REPORTING for participants in NYSNIP:

- You will receive a contact letter 24 months after you begin participation in NYSNIP that you must complete and return.
- You are not required to report changes during your certification period other than the 24-month contact letter. You may voluntarily report increases in your medical expenses, rent, heat/air-conditioning costs, or utility costs, or decreases in your income. If you report and verify these changes, you may be eligible for more SNAP benefits. You are not required to, but should report your new address if you move, so that you continue to receive any notices we send to you.

Medical Expenses: You are not required to report changes in your medical expenses during your certification period. However, you may voluntarily report changes in your medical expenses for household members that are:

- | | |
|--|---|
| - 60 years old or older | - getting veterans' disability benefits |
| - disabled spouses or children of a deceased veteran | - getting government disability retirement benefits |
| - getting Supplemental Security Income (SSI) | - getting Railroad Retirement disability benefits |
| - getting Social Security Disability payments | - getting disability-based medical assistance |

If you report and verify an increase in your medical expenses, you may be eligible for more SNAP benefits. Changes in medical expenses must be reported at your next recertification.

Temporary Assistance (TA) Reporting Rules: The rules listed above apply only to SNAP. If you also receive TA, you are still required to report changes for TA within 10 days of the change, on TA Eligibility Questionnaires and at recertification.

When to use this form:

This form may be used to report any required or voluntary changes. You can also use this form to report changes in the cost of caring for children or disabled adults, or changes in shelter costs even if you haven't moved. If these expenses go up you may be eligible for more SNAP benefits.

If proof of the changes you are reporting is available, please include it with this form. This will help make sure that you get the correct amount of SNAP benefits. If an ABAWD's hours of work have changed, documentation must be provided to the social services district. Please include this documentation with this form. **Reported changes must be verified before we can increase your benefits.**

This form should be mailed, faxed or brought to the agency listed above. If for some reason you can't mail, fax or bring in this form, you can report the changes by calling us at the telephone number listed on Page 1.

If you no longer want to receive SNAP benefits, sign here to withdraw from participation in SNAP. Your SNAP benefits will stop. You have the right to contest this withdrawal if you feel that you were given incorrect or incomplete information about your eligibility for SNAP benefits by requesting a Fair Hearing within 90 days. You may re-apply for SNAP benefits at any time after your withdrawal.

X _____

IF YOU WITHHOLD INFORMATION ABOUT CHANGES IN YOUR HOUSEHOLD THAT YOU ARE REQUIRED TO REPORT, YOU WILL OWE US THE VALUE OF ANY EXTRA SNAP BENEFITS YOU RECEIVE AS A RESULT. IF YOU INTENTIONALLY WITHHOLD INFORMATION WHEN YOU ARE REQUIRED TO REPORT IT, YOU MAY ALSO BE DISQUALIFIED FROM SNAP AND COULD BE SUBJECT TO CRIMINAL PROSECUTION (SEE ATTACHED "SNAP PENALTY WARNING" ON PAGE 6).

Use the Form Below to Report Changes

CHANGE IN INCOME OR SOURCE OF INCOME – If you are a Simplified Reporter, your reporting rules are explained beginning on Page 2. If you are a Change Reporter, your reporting rules are also explained on Page 2.

NAME OF PERSON RECEIVING INCOME	SOURCE OF INCOME	NEW AMOUNT	TOTAL NUMBER OF HOURS WORKED PER WEEK , IF WORKING	HOW OFTEN RECEIVED
1.		\$		
2.		\$		
3.		\$		

CHANGE IN HOUSEHOLD - List below all new members to your household including newborn children. Also list members who have moved in or out or have died.

NAME	AGE	RELATIONSHIP	CHANGE (CHECK ONE)	DATE	INCOME AMOUNT	TOTAL NUMBER OF HOURS WORKED PER WEEK , IF WORKING	SOURCE
1.			<input type="checkbox"/> CAME INTO HOUSEHOLD <input type="checkbox"/> LEFT HOUSEHOLD		\$		
2.			<input type="checkbox"/> CAME INTO HOUSEHOLD <input type="checkbox"/> LEFT HOUSEHOLD		\$		
3.			<input type="checkbox"/> CAME INTO HOUSEHOLD <input type="checkbox"/> LEFT HOUSEHOLD		\$		
4.			<input type="checkbox"/> CAME INTO HOUSEHOLD <input type="checkbox"/> LEFT HOUSEHOLD		\$		

CHANGE OF ADDRESS

NEW MAILING ADDRESS	CITY	STATE	ZIP CODE
---------------------	------	-------	----------

IF YOU DON'T HAVE A STREET ADDRESS, GIVE DIRECTIONS TO YOUR HOME (if you are homeless, leave blank)	TELEPHONE NUMBER WHERE YOU CAN BE REACHED () AREA CODE
---	---

CHANGE IN HOUSING COSTS - If you have moved, you must list your new costs below. Even if you have not moved, you can use this section to tell us that your rent, mortgage payment or other costs have changed.

Are you a roomer or boarder? ☐ YES ☐ NO If Yes, are meals ☐ INCLUDED ☐ NOT INCLUDED

RENT	YES	NO	IF YES, GIVE MONTHLY AMOUNT	CHANGE (CHECK ONE)
Do you pay rent ?	<input type="checkbox"/>	<input type="checkbox"/>	\$	<input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/> Less
Do you pay for the following separate from your rent ?	YES	NO		
• Heat and/or air conditioning	<input type="checkbox"/>	<input type="checkbox"/>		
• Utilities (electricity, cooking gas, garbage, etc.)	<input type="checkbox"/>	<input type="checkbox"/>		
MORTGAGE PAYMENT	YES	NO	IF YES, GIVE MONTHLY AMOUNT	CHANGE (CHECK ONE)
Do you have a mortgage payment?	<input type="checkbox"/>	<input type="checkbox"/>	\$	<input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/> Less
Do you pay for the following separate from your mortgage :	YES	NO	IF YES, GIVE MONTHLY AMOUNT	CHANGE (CHECK ONE)
• Property taxes	<input type="checkbox"/>	<input type="checkbox"/>	\$	<input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/> Less
• House Insurance	<input type="checkbox"/>	<input type="checkbox"/>	\$	<input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/> Less
• Heat and/or air conditioning	<input type="checkbox"/>	<input type="checkbox"/>		
• Utilities (electricity, cooking gas, garbage, etc.)	<input type="checkbox"/>	<input type="checkbox"/>		

Are you living in section 8 or other subsidized housing? ☐ YES ☐ NO Are you living in public housing? ☐ YES ☐ NO

CHANGE IN NUMBER OF CARS OR VEHICLES - Has anyone in your household purchased, sold or traded a car, truck, boat, camper, motorcycle or other vehicle since the last time you told us about vehicles?

MAKE	MODEL	YEAR	IF SOLD, AMOUNT RECEIVED
1.			\$
2.			\$
3.			\$

CHANGE IN SAVINGS - List the total amount of money that the members of your household now have. Include cash, savings accounts, checking accounts, stocks, bonds or other investments. You must tell us if your household savings have increased to more than \$2,250 (more than \$3,250 if anyone in your household is 60 years old or older or been determined to be disabled).				\$
CHANGE IN CHILD CARE, DEPENDENT CARE COSTS OR THE AMOUNT OF CHILD SUPPORT PAID - Have your child care or dependent care costs changed? If so, you may be eligible for more SNAP benefits.				
CHANGE (CHECK ONE)	FOR WHOM?	WHOM DO YOU PAY?	NEW AMOUNT	HOW OFTEN DO YOU PAY?
1. <input type="checkbox"/> NO LONGER HAVE COST <input type="checkbox"/> HAVE COST			\$	
2. <input type="checkbox"/> NO LONGER HAVE COST <input type="checkbox"/> HAVE COST			\$	
3. <input type="checkbox"/> NO LONGER HAVE COST <input type="checkbox"/> HAVE COST			\$	
CHANGE IN MEDICAL COSTS (Doctors, Dentists, Hospitals, Prescriptions, etc.) – You are only required to report changes in your medical expenses at recertification. However, you may voluntarily report changes in your medical expenses at any time for household members who are: <ul style="list-style-type: none"> 60 years old or older disabled spouse or children of a deceased veteran getting Supplemental Security Income (SSI) getting Social Security Disability payments getting veterans' disability benefits getting government disability retirement benefits getting Railroad Retirement disability benefits getting disability-based medical assistance <p>If you report and verify an increase in your medical expenses, you may be eligible for more SNAP benefits.</p>				
NAME	TYPE OF COST	AMOUNT	HOW OFTEN IS EACH PAYMENT DUE?	
		\$		
		\$		
		\$		
		\$		
DO YOU EXPECT THE CHANGES YOU HAVE REPORTED TO CONTINUE NEXT MONTH?				<input type="checkbox"/> YES <input type="checkbox"/> NO
If "NO" explain:				
CHECK HERE IF YOU HAVE <u>NO CHANGES TO REPORT</u> ABOUT YOUR SNAP HOUSEHOLD				<input type="checkbox"/> NO CHANGES
CHANGE OF BENEFITS				
We will use your answers on this form to see if your household's benefits will change. Before we change your benefits, we will send you a notice explaining what will happen. If you don't agree with our decision, you have the right to a fair hearing to challenge our decision.				
BE SURE TO READ AND SIGN PAGE 6				

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) PENALTY WARNING

SNAP PENALTY WARNING – Any information you provide in connection with your application for SNAP will be subject to verification by Federal, State and local officials. If any information is incorrect, you may be denied SNAP. Anyone who is violating a condition of probation or parole or anyone who is fleeing to avoid prosecution, custody or confinement for a felony and is actively being pursued by law enforcement is not eligible to receive SNAP benefits.

If a SNAP household member is found to have committed an Intentional Program Violation (IPV), the member will not be able to get SNAP benefits for a period of:

- 12 months for the first SNAP-IPV;
- 24 months for the second SNAP-IPV;
- 24 months for the first SNAP-IPV, that is based on a court finding that the individual used or received SNAP benefits in a transaction involving the sale of a controlled substance (illegal drugs or certain drugs for which a doctor's prescription is required);
- 120 months if found guilty of making a false statement about who you are or where you live in order to get multiple SNAP benefits simultaneously, unless permanently disqualified for a third IPV;

Additionally, a court may bar an individual from participation in SNAP for an additional 18 months.

Permanent disqualification of an individual for:

- The first SNAP-IPV based on a court finding of using or receiving SNAP benefits in a transaction involving the sale of firearms, ammunition or explosives;
- The first SNAP-IPV based on a court conviction for trafficking SNAP benefits for a combined amount of \$500 or more (Trafficking includes the illegal use, transfer, acquisition, alteration or possession of SNAP authorization cards or access devices);
- The second SNAP-IPV based on a court finding that an individual used or received SNAP benefits in a transaction involving the sale of controlled substances (illegal drugs or certain drugs for which a doctor's prescription is required);
- All third SNAP Intentional Program Violations.

Any SNAP recipient who knowingly provides incorrect information now could also be fined up to \$250,000, imprisoned up to 20 years or both. The individual may also be subject to prosecution under the applicable Federal and State laws.

You may be found ineligible for SNAP or found guilty of an IPV if:

- You make a false or misleading statement, or misrepresent, conceal or withhold facts in order to qualify for benefits or receive more benefits; or
- Purchase a product with SNAP benefits with the intent of obtaining cash by intentionally discarding the product and returning the container for the deposit amount; or
- Commit any act that constitutes a violation of Federal or State law for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits, authorization cards or reusable documents used as part of the Electronic Benefit Transfer (EBT) system.

Additionally the following is not allowed and, you may be disqualified from receiving SNAP Benefits and/or be subject to penalties for actions that include:

- Using or have in your possession EBT cards that do not belong to you, without the card owner's consent; or
- Using SNAP Benefits to buy nonfood items, such as alcohol or cigarettes, or to pay for food previously purchased on credit; or
- Allowing someone else to use your electronic benefit transfer (EBT) card in exchange for cash, firearms, ammunition or explosives, or drugs or to purchase food for individuals who are not members of the SNAP household.

CERTIFICATION

I understand the penalty for hiding or giving false information. I also understand I will owe the value of any extra SNAP benefits I receive because I don't fully report changes in my household. I agree to prove any changes reported if necessary. The answers on this form are correct and complete to the best of my knowledge. I understand that my signature authorizes federal, state and local officials to contact other persons or organizations to verify the information I have provided.

SIGNATURE

DATE

X

Exhibit 3

Office of Administrative Hearings (OAH) Procedures Transmittal		Transmittal: 16-06
Distribution:		Date: July 1, 2016
		Pages: 3
Albany OAH Staff <input checked="" type="checkbox"/>	Rest of State Hearing Officers <input checked="" type="checkbox"/>	Subject: Review of Disqualification Consent Agreement (DCA) and New Issue codes 170 and 443
	Supervising Hearing Officers <input checked="" type="checkbox"/>	
NYC OAH Staff <input checked="" type="checkbox"/>	NYC Hearing Officers <input checked="" type="checkbox"/>	
	Supervising Hearing Officers <input checked="" type="checkbox"/>	
Rest of State Social Service Districts <input checked="" type="checkbox"/>		
NYC Agencies <input checked="" type="checkbox"/>		

This transmittal addresses a change in policy concerning jurisdiction to review at a Fair Hearing a Disqualification Consent Agreement (DCA) signed by an accused individual. Previously, the Office of Administrative Hearings (OAH) determined that it did not have jurisdiction to review a DCA at a Fair Hearing. However, various advocacy groups have raised concerns that social services districts (SSDs) have not followed the procedural requirements in State regulations (18 NYCRR 359.4), to ensure the due process rights of accused individuals who sign a DCA to settle a Public Assistance, or SNAP Intentional Program Violation (IPV). Therefore, OAH will conduct a limited review of a DCA at a Fair Hearing to ensure that the SSD followed the procedural requirements outlined in 18 NYCRR 359.4(b)(1) and (b)(4).

91-ADM-51 ("Use of Disqualification Consent Agreement (DCA) in the Food Stamp Program") indicates that there is no further administrative appeal available to a client who has entered into a DCA. Additionally, the fair hearing language on the LDSS-4799 Intentional Program Violation (IPV) Disqualification Notice for the Supplemental Nutrition Assistance Program (SNAP) limits the issues that may be reviewed. The Notice indicates that a fair hearing may only be requested to review: (1) the amount of an overpayment or over-issuance, but only if the amount was not determined when the disqualification was determined; (2) the amount of the SNAP allotment to be provided to the remaining members of the individual's family or household during the disqualification period; and (3) the failure to restore the individual to the household at the end of the disqualification period after a request for such restoration. The LDSS-4799 states that the individual or members of the individual's family or household do not have a right to a fair hearing to review the disqualification. Notwithstanding the language in the ADM and on the notice, OAH is accepting jurisdiction to conduct a limited review of DCAs.

18 NYCRR 359.4(b)(2) provides that when a case is referred, in accordance with 18 NYCRR 359.4(a), to the appropriate district attorney, or any other prosecutor authorized to act on the matter, and is accepted for prosecution, the prosecutor may choose to settle the case or a court of appropriate jurisdiction hearing the case may issue a pre-determination disposition order (e.g., order adjourning the case in contemplation of dismissal), provided that full restitution is made. In these cases, the SSD may use a DCA as described in 18 NYCRR 359.4(b)(1).

18 NYCRR 359.4(b)(1) outlines the format a SSD must use for a DCA. A DCA must include the following:

- notification to the accused individual of the consequences of signing the agreement and consenting to a disqualification penalty;
- a statement for the accused individual to sign indicating that he or she understands the consequences of signing the agreement, along with a statement that any caretaker relative or head of household must also sign the agreement if the accused individual is not the caretaker relative or head of household;
- a statement that signing the agreement will result in disqualification of the accused individual and reduction or discontinuance of assistance or SNAP for the disqualification period, even if the accused individual was not found guilty of civil or criminal misrepresentation or fraud;
- a statement describing the disqualification period which will be imposed as a result of the accused individual's signing the agreement; and
- a statement that the remaining members of the household or assistance unit, if any, will be held responsible for repayment of the overpayment or over-issuance, unless the accused individual has already repaid the overpayment or over-issuance as a result of meeting the terms of any agreement with the prosecutor or any court order.

Additionally, 18 NYCRR 359.4(b)(3) requires that a SSD which uses a DCA must enter into written agreements with the appropriate prosecutors which give the SSD opportunity to send advance written notice of the consequences of signing a DCA to the household when deferred adjudication is contemplated.

Finally, 18 NYCRR 359.4(b)(4) requires that the SSD provide to the accused individual a copy of the DCA, together with the notification of the consequences of signing the DCA, at least ten (10) days prior to the execution of the DCA and advise the accused individual that he/she may obtain a legal or other authorized representative for counsel and advise prior to and at the time the DCA is executed by the accused individual.

At the Fair Hearing, the SSD has the burden to show that the DCA signed by the accused individual meets the requirements in 18 NYCRR 359.4(b)(1) and that the accused individual was provided a copy of the DCA, along with the notification of the consequences, at least ten (10) days prior to the signing and that the accused individual was advised that he/she may obtain a legal or other authorized representative prior to and at the time the DCA is signed, as required by 18 NYCRR 359.4(b)(4). The underlying merits of the claim of alleged fraud will not be reviewed at the Fair Hearing. This review is strictly limited to whether the SSD complied with the procedural requirements in 18 NYCRR 359.4(b)(1) and (b)(4) to obtain the DCA from the accused individual.

If the SSD fails to meet its burden of proof, then the DCA cannot be upheld if the SSD did not comply with the procedural requirements of 18 NYCRR 359.4(b)(1) and (b)(4). The SSD should be directed to restore any lost Temporary Assistance (Family Assistance (FA) or Safety Net Assistance (SNA)) or SNAP benefits retroactive to the date of discontinuance. Additionally, the SSD should be advised that if it determines to redo its previous action, it is directed to comply with the requirements of 18 NYCRR 359.4(b).

Effective July 5, 2016, new Fair Hearing Information System (FHIS) issue codes will be available for statewide use. Coding for hearing requests related to this issue is as follows:

AGENCY:

NYC: NBAD

Rest of State: SSD

Category: FA/SNA or SNAP

ISSUE CODE:

FA/SNA: 170 Review of Disqualification Agreement

SNAP: 443 Review of Disqualification Agreement

ACTION: INAD

AID STATUS: NA

Staff should be aware that no other unrelated issues should be included in these requests.

If you have any questions regarding this transmittal, please contact Michael Allen at (518) 473-4969 or via email at mike.allen@otda.ny.gov.



Samuel L. Spitzberg, Director,
Office of Administrative Hearings

Exhibit 4



Office of Temporary and Disability Assistance

ANDREW M. CUOMO
Governor

SAMUEL D. ROBERTS
Commissioner

SHARON DEVINE
Executive Deputy Commissioner

Informational Letter

Section 1

Transmittal:	15-INF-07
To:	Local District Commissioners
Issuing Division/Office:	Audit and Quality Improvement (A&QI)
Date:	August 20, 2015
Subject:	Investigative Unit Operations Plan (Revised)
Suggested Distribution:	Temporary Assistance Directors SNAP Directors Fraud Directors FEDS Coordinators
Contact Person(s):	Stephen Bach(A&QI) (518) 402-0117 or Stephen.Bach@otda.ny.gov
Attachments:	Investigative Unit Operations Plan Form Protocol for DCA Interview DCA Interview Acknowledgement
Attachment Available Online: <input checked="" type="checkbox"/>	

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
93-ADM-8 91-ADM-51 06-INF-28	14-INF-03	18 NYCRR 348.2, 359.4	145 145-c	FSSB Section 6	7 CFR 273.16(g)(1)

Section 2

I. Purpose

This Informational Letter (INF) supersedes 14-INF-03 and requires each social services district (SSD) to submit to the Office of Temporary and Disability Assistance (OTDA) for

review and approval a revised Investigative Unit Operations Plan (IUOP). Such plans must be submitted to OTDA within 60 days of this INF. The purpose of this INF is to update the conditions and clarify the requirements regarding portions of the IUOP. Specifically, OTDA is providing additional guidance concerning appropriate procedures, with particular attention to the procedures required when administering a Disqualification Consent Agreement (DCA).

It is critical that SSDs maintain a clear delineation between the process for referrals to the prosecuting authority which could or could not result in a DCA, and the process for referrals for an administrative hearing which could or could not result in a waiver of the administrative hearing. These are two distinct processes and that distinction must be maintained to preserve the integrity of the overall structure for pursuing Intentional Program Violations (IPVs).

Included with this INF is an IUOP template for your use (Attachment 1) and you are encouraged to provide sufficient detail to demonstrate that the Plan is consistent with all applicable regulations and policy guidance. Also provided to assist in completing the IUOP, and to use when conducting DCA interviews, is a sample "Protocol for DCA Interview" (Attachment 2) and a sample "DCA Interview Acknowledgement" form (Attachment 3).

II. Background

93-ADM-8 requires that SSDs file an IUOP with OTDA. The administration of DCAs, specifically, is addressed in 91-ADM-51 and at 18 NYCRR 359.4.

III. Program Implications

Each SSD must submit an updated IUOP to OTDA within 60 days of the date of this INF.

The plan must include:

- (1) A description of the organizational unit(s) responsible for the investigation of allegations of client fraud;
- (2) A description of any claims establishment (recoupments) and collection activities for which the Fraud referral unit also may be responsible;
- (3) Procedures for the referral of fraud cases for administrative hearings;
- (4) A description of the organizational unit(s) responsible for the prosecution of allegations of client fraud;
- (5) Detailed procedures for the referral of fraud cases to the prosecuting authority;
- (6) A detailed, step by step description of the DCA process following the guidelines set forth in 91-ADM-51 and 18 NYCRR 359.4. Additionally, attached for your reference are the "Protocol for DCA Interview" (Attachment 2) and "DCA Interview

Acknowledgement” (Attachment 3) forms. These forms are not mandatory, but are included for your consideration and their use is encouraged;

- (7) An explanation of how it is proven that the individual was advised on the record of the court of the disqualification provision prior to entering any plea; and
- (8) A copy of or a statement of the agreement with the prosecuting authority's office in accordance with 18 NYCRR 348.2(c) and 359.4, and the federal regulation 7 CFR 273.16(g)(1). This agreement must include information on how, and under what circumstances, cases will be accepted for possible prosecution and the criteria set by the prosecutor for accepting cases for prosecution. The criteria should include, but not be limited to, the dollar threshold and the type of violation.

In our effort to update and standardize SSD plans, please submit your IUOP using the attached template (Attachment 1), answering all sections completely and in detail. All plans must be submitted to Stephen Bach at: Stephen.Bach@otda.ny.gov or submitted by mail to:

New York State Office of Temporary & Disability Assistance
Audit and Quality Improvement – Program Integrity
Riverview Center 4th Floor
40 North Pearl Street
Albany, NY 12243

If you have any questions, please contact Mr. Bach prior to submitting your plan.

Issued By

Name: Kevin Kehmna

Title: Director

Division/Office: OTDA/A&QI

Exhibit 5

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

Case No. [REDACTED]
Hrg. No. 6817733R

In the Matter of the Appeal of

[REDACTED]

Appellant,

Appellant's
Post-Hearing
Memorandum

from a determination by the Onondaga County
Department of Social Services,

Respondent.

A Fair Hearing was held in the above matter on October, 24, 2014, before Administrative Law Judge Heydary. At the close of his case, Appellant requested and was granted the opportunity to supplement his arguments in the form of a post-hearing memorandum, which was directed to be submitted by the close of business on October 27, 2014.

As discussed below, the Disqualification Consent Agreement entered in this case was not authorized by law, as it was not a deferred adjudication in a criminal prosecution. Furthermore, even if authorized, the purported DCA did not comply with the requirements of federal and state regulations. For the reasons that follow, Appellant respectfully requests that the Department reverse the Notice of Decision discontinuing his SNAP benefits for one year.

FACTS

During the hearing, the following facts were established:

1. During the relevant time periods, Appellant [REDACTED] [REDACTED] was living in his home

- with his teenaged son, [REDACTED] [REDACTED]
2. [REDACTED] [REDACTED] has multiple disabilities, including Attention Deficit Hyperactivity Disorder, Bipolar Disorder, and borderline schizophrenia.
 3. Because of his disabilities, [REDACTED] [REDACTED] receives monthly SSI payments.
 4. [REDACTED] [REDACTED] was granted custody of his son [REDACTED] by an Order of the Onondaga County Family Court early in 2012.
 5. After obtaining custody of his son and losing his job as a cook due to a work-related injury, Mr. [REDACTED] applied for public benefits with the Onondaga County Department of Social Services in approximately May of 2012. Mr. [REDACTED] listed himself and his son [REDACTED] as being in his household.
 6. As per the agency's Investigator Report, the agency became aware of the SSI income to [REDACTED] [REDACTED] in approximately February of 2013, when [REDACTED] [REDACTED] advised the agency of the income as part of his application for cash assistance. (Agency's Fair Hearing Packet at p. 12).
 7. Upon receiving notice of the SSI income to [REDACTED] [REDACTED] the agency determined that Mr. [REDACTED] had received an overpayment in SNAP benefits from May 2012 to February 2013 in the amount of approximately two thousand dollars. (*Id.*)
 8. Based upon this information, Marc Wierzbicki, the agency's Coordinator of Eligibility Investigations, checked the box to request a "DCA Letter" be sent by the Onondaga County District Attorney's Office. Mr. Wierzbicki did not check the boxes labeled "Refer to DA" or "Request Prosecution".
 9. Mr. Wierzbicki testified that he viewed the case as a civil matter at that point, and

preferred that it be resolved as a civil matter. When he requested that the DCA letter be sent out by the District Attorney's office, he had not tracked the case for a criminal prosecution, nor had the DA's office accepted the matter for prosecution.

10. As a result of Mr. Wierzbicki's request, the Onondaga County District Attorney's Office ("DA") sent Mr. [REDACTED] a "Fraud Referral" letter dated June 24, 2014. (Agency's Fair Hearing Packet at p. 6). The letter was on District Attorney letterhead, and was signed by an Assistant District Attorney, but directed Mr. [REDACTED] to contact Mark Wierzbicki at the Department of Social Services, and not to contact the District Attorney's Office. (*Id.*)
11. The letter from the District Attorney's Office informed Mr. [REDACTED] that the DA's office had "reviewed an investigative report prepared by the Law Division of the Department of Social Services", and that it appears from the report that he "received welfare benefits during a period where you were not eligible to receive." (*Id.*)
12. The letter went on to state that the District Attorney's office had accepted the case for purpose of a "review for criminal prosecution", but that the case could be settled as a "civil action", without prosecution, by having Mr. [REDACTED] contact the Onondaga County Department of Social Services and resolving the claim. (*Id.*)
13. The letter concluded that unless the matter is "satisfactorily resolved", the District Attorney's Office will be required "to review this matter again to determine if prosecution is then warranted." (*Id.*)
14. Investigator Wierzbicki testified that a DCA letter like the one in this case is sent out by the DA's office in every case which he investigates. He stated that his office prefers to

resolve these cases civilly, by having the accused person sign a DCA, as that resolution is easier and requires less work for the Department of Social Services and the District Attorney's Office.

15. Mr. Wierzbicki states that if the accused person does not sign the DCA, the case will be sent to the District Attorney's office again to consider whether that office wishes to prosecute.
16. If the DA's office declines to prosecute, then the case may be referred to OTDA to bring an administrative disqualification hearing.
17. Mr. Wierzbicki testified that along with the DCA letter, the District Attorney's office typically sends out a Disqualification Consent Agreement (DCA) and a Notice of Consequences of Consenting to a DCA.
18. Mr. [REDACTED] testified he received the letter from the District Attorney's Office, and went to meet with Mr. Wierzbicki right away. He testified that there were no other papers attached to the letter which he received in the mail.
19. Mr. Wierzbicki acknowledged that he could not testify that the DCA and the Notice of Consequences were mailed out with the District Attorney's letter.
20. The DCA was signed by Mr. [REDACTED] on June 23, 2014, the day before the date on the DA's letter. (Fair Hearing Packet at pp. 6-8).
21. The final line of the DCA, prior to the signature block, states:
"Further prosecution by social services officials of me regarding the IPV's described in this DCA will be deferred pending the performance of the terms of this agreement and the charges will be withdrawn and/or dismissed upon complete performance of the terms of

this agreement.” (Fair Hearing packet at p. 8).

22. Mr. [REDACTED] testified that he came to Mr. Wierzbicki’s office alone, and met with the investigator there.
23. At the meeting, Mr. Wierzbicki told Mr. [REDACTED] that the agency knew his son was receiving SSI, and that they believed he deliberately withheld that information on his SNAP application. Mr. Wierzbicki apparently had this belief, even though the agency discovered [REDACTED] SSI income when [REDACTED] supplied this information to them in an application filed several months later.
24. Mr. [REDACTED] testified that during their meeting, Mr. Wierzbicki gave Mr. [REDACTED] the Disqualification Consent Agreement, as well as the Notice of Consequences.
25. Per Mr. [REDACTED] the investigator wanted Mr. [REDACTED] to sign the DCA that day, and stated that he would be criminally prosecuted if he did not do so. Mr. Wierzbicki appeared to be angry, as evidenced by his red face and aggressive voice. He told Mr. [REDACTED] that he needed to sign the DCA.
26. Investigator Wierzbicki denied threatening Mr. [REDACTED] with jail time, but stated that he could not recall what he told Mr. [REDACTED] about a criminal prosecution, as he did not recall their conversation specifically.
27. Mr. [REDACTED] did not know what to do. He was scared by his meeting with Mr. Wierzbicki, and afraid of going to jail. He had not spoken to an attorney prior to the meeting, and was never told he could speak to an attorney, or take the papers home to review with an attorney. Mr. Wierzbicki stated that while Mr. [REDACTED] had the right to consult with an attorney, and he was so advised in the DA’s letter, Mr. Wierzbicki did not

- advise Mr. [REDACTED] that he had the right to have an attorney present for their meeting.
28. Mr. [REDACTED] left the room briefly to think. A few minutes later, he returned to Mr. Wierzbicki, and agreed to sign the DCA.
29. Mr. [REDACTED] did not believe he had committed any fraud, but was nervous and scared, and did not want to be prosecuted and risk going to prison.
30. Like the DA letter, the Notice of Consequences was also dated on June 24, 2014. Mr. Wierzbicki and the agency had no explanation for why the letter and notice were dated the day after Mr. [REDACTED] signature on the DCA.
31. Mr. [REDACTED] testified he did not have time to fully read any of the documents, and was not provided with a copy of any of the documents after he signed the DCA.
32. He left Mr. Wierzbicki's office feeling upset and confused, and thinking that he had made a mistake in signing the DCA without discussing it with counsel.
33. Mr. [REDACTED] has only completed school through the tenth grade. In elementary school he received special education services for speech and reading problems.
34. Mr. Wierzbicki was unable to provide a good definition for the concept of "inadvertent household error," but agreed that it could include instances when a recipient household initially forgot to include income on an application without an affirmative misrepresentation, and then subsequently provided that information.
35. Mr. Wierzbicki was unfamiliar with OTDA policy stating that a local district must initially treat an alleged program violation as inadvertent household error and pursue repayment. He stated that he had never been trained on this policy.

ARGUMENT

Disqualification Consent Agreement was not Permitted in this Case

Neither federal nor New York State laws and regulations governing SNAP benefits permit a local social services district to enter into a Disqualification Consent Agreement (DCA) before a case has been referred to and accepted for prosecution by a prosecutor's office. A Disqualification Consent Agreement is intended for cases in which a prosecutor and/or court agree to a "deferred adjudication", after a department of social services has elected to pursue a case through judicial prosecution. This procedure is reserved for "those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor." 7 CFR 273.16(h).

The Food Stamp Act of 1977, Section 6(b)(2) reads, "Each state agency shall proceed against an individual alleged to have engaged in such activity (intentional Program violation) either by way of administrative hearings, after notice and an opportunity for a hearing at the State level, **or** by referring such matters to appropriate authorities for civil or criminal action in a court of law." (emphasis added.) Therefore the Department of Social Services must choose whether it will proceed administratively, or refer the case for prosecution, but it cannot pursue both simultaneously.

Similarly, 18 NYCRR 359 provides that if a case is referred by the social services district to the appropriate prosecutor to review for criminal prosecution, and that prosecutor declines or fails to prosecute, the social services district must formally withdraw its referral to the prosecutor in writing, before it may refer the case to the Department for an administrative disqualification hearing.

18 NYCRR 359.4 and 359.5.

In fact, in a Guidance on Food Stamp Fraud published on February 4, 2004, the Food and Nutrition Service explicitly states, “The State agency must not offer an ADH waiver if it intends to refer the case for prosecution nor suggest prosecution if the waiver is not signed.” (FNS Guidance of February 4, 2004, provided as Appellant’s Exhibit “1”). As the FNS Guidance cautioned, “these provisions require the State agency to make a determination as to which procedure, administrative or judicial, it believes appropriate for a given case and to pursue that procedure to its conclusion.” *Id.* The practice of threatening prosecution if an individual does not sign a waiver or consent agreement, therefore, runs directly contrary to both federal and state regulations governing the SNAP program.

The federal regulations allow states to request DCA agreements only after a criminal case is resolved through a deferred adjudication. David A. Super, *Improving Fairness and Accuracy in Food Stamp Fraud Investigations*, Clearinghouse Review, May, 2005, at p. 83 (submitted as Appellant’s Exhibit “3”). Because the DCA is intended to be used exclusively in the context of a criminal case, at the point that the individual would be asked to sign the DCA, a criminal proceeding should have been commenced and prosecuted, with all of its attendant procedural and due process safeguards. The individual would have access to an attorney, typically assigned by the court, who could review the evidence against the individual. Before entering into a DCA, the prosecutor, defense attorney and judge would have all considered the evidence against the individual, and concluded that a deferred adjudication was the appropriate result. Any number of protections would attach that protect an individual against frivolous or unproven allegations of fraud. It is only under these circumstances that an accused recipient should be able to voluntarily enter into a DCA.

Asking an individual to sign a DCA before the case is accepted for prosecution runs afoul of the federal regulations. See Super, *supra*.

The DCA Failed to Meet Statutory and Regulatory Requirements

Even if this case represented an appropriate use of the disqualification consent agreement, the purported DCA in this case fails to meet any number of regulatory requirements imposed by state and federal regulation.

18 NYCRR 359.4, which governs referrals to prosecuting authorities and the requirements of disqualification consent agreements, provides that social services districts which contemplate the use of DCA's must enter into written agreements with the appropriate prosecutors, which give the social service districts opportunity to send advance written notification of the consequences of signing a DCA to the household when deferred adjudication is contemplated. 18 NYCRR 359.4(b)(3). Similarly, the federal regulations provide that the state agency shall enter into an agreement with the prosecutor's office which provides for advance written notification to the household member of the consequences of consenting to a DCA in cases of deferred adjudication. 7 CFR 273.16(h)(1)(i).

Specifically, the state regulations provide that if the prosecutor requests or authorizes a social services district to assist in obtaining a DCA, a copy of the DCA, together with the notification of the consequences of signing the DCA, must be provided to the accused individual **at least 10 days prior to the execution of the DCA**. 18 NYCRR 359.4(b)(4).

Furthermore, the accused individual must be advised that he or she may obtain a legal or

other authorized representative for counsel and advice prior to and at the time the DCA is executed by an accused individual. 18 NYCRR 359.4(b)(4).

Moreover, a DCA must be in a format prescribed by the department and must include the following:

- (i) notification to the accused individual of the consequences of signing the agreement and consenting to a disqualification penalty;
- (ii) a statement for the accused individual to sign indicating that he or she understands the consequences of signing the agreement;
- (iii) a statement that signing the agreement will result in a disqualification of the accused individual and a reduction of assistance or food stamps for the disqualification period;
- (iv) a statement describing the disqualification period which will be imposed; and
- (v) a statement that the remaining members of the household will be responsible for repayment of the overpayment or overissuance.

18 NYCRR 359.4(b)(1).

Contrary to the requirements of federal and state regulation, the proposed DCA and notice of consequences were not given to Mr. [REDACTED] in advance of his being asked to sign them. In fact, the date that the DCA was signed was the day before the DA letter and the notice of consequences were dated. Clearly Mr. [REDACTED] was given no opportunity to review the documents or make a decision before he was pressured to sign, much less having the 10 days to consider the information that the regulation requires. 18 NYCRR 359.4(b)(4).

Mr. [REDACTED] was not advised that he had the right to have counsel present for the meeting with the investigator, nor was he given the opportunity to speak with an attorney at the time of

signing the agreement, or to take the papers back home and consult with an attorney before making a decision. 18 NYCRR 359.4(b)(4). Further, neither the DCA nor the DA letter describes the alleged fraud, so as to put him on notice of what he is alleged to have done, and allow him to consider the matter intelligently prior to the meeting with the investigator.

The DCA in this case was not presented to Mr. [REDACTED] in the context of a deferred adjudication in a criminal proceeding, as is contemplated in the federal and state regulations. Investigator Wierzbicki testified that the case had not yet been referred to or accepted by the District Attorney's office, and no request for prosecution had been made by DSS. Similarly, the letter from the DA's office makes it clear it had not yet reviewed the matter to determine if prosecution was warranted. Rather, the local Department of Social Services was attempting to settle this matter "as a civil action" by having the District Attorney's office send out the DCA letter. (Hearing Packet at p. 6). Per the testimony of Investigator Wierzbicki, this is the agency's usual practice.

Per the regulations, an intentional program violation (IPV) case may be resolved in one of four ways. 1) The county department of social services may refer the matter to the Department for an administrative disqualification hearing, in which case the agency must prove the intentional program violation by clear and convincing evidence. 7 CFR 273.16(e); 18 NYCRR 359.5. 2) If the case warrants a referral for an administrative disqualification hearing, that hearing may be waived by an adequate administrative hearing waiver, provided that the requirements for such a waiver are met. 7 CFR 273.16(f); 18 NYCRR 359.7. 3) The case can be referred to a prosecutor's office for a judicial prosecution, in which case the prosecutor must prove the IPV beyond a reasonable doubt, and the accused person will have all of the rights of a criminal defendant (counsel, discovery, confrontation, etc). 7 CFR 273.16(g); 18 NYCRR 359.4(a). 4) Having accepted a case for

prosecution, the prosecutor's office and the accused person may agree to enter into a DCA as a deferred adjudication of the prosecution. 7 CFR 273.16(h); 18 NYCRR 359.4(b).

The procedure used in this case represented none of the above four possible dispositions. The agency encountered an instance of non-reported income to Mr. [REDACTED] son, when Mr. [REDACTED] himself reported the income some months later in a subsequent application. The agency did not refer the case to the District Attorney's office for prosecution, nor did it refer to the Department to review for an administrative disqualification hearing. Instead, the agency asked the District Attorney's office to send out a letter on DA letterhead, discussing the possibility of future prosecution, and seeking to have Mr. [REDACTED] settle the matter through some sort of "civil action" in order to avoid the threat of criminal prosecution.

As was found in *Matter of the Appeal of Erie County DSS v. A.C.*, FH No. 3444058J, the agency cannot pursue a civil action through the District Attorney's office. As that decision found, "whatever the Agency was trying to accomplish in its correspondence with the Appellant was outside the scope of the law." In *Matter of Erie County*, as in the case at bar, the agency merely referred a criminal charge to the District Attorney, and then instructed the client to sign disqualification papers. There, as here, there was no evidence that the district attorney accepted the case and authorized the agency to enter into a DCA. Further, in both cases, there is no evidence that the required notice and instruction concerning the DCA were timely provided to the appellant. *Matter of Erie County*, *supra*, at pp. 5-6. The agency did not establish that it had procured either a court conviction, an appropriate DCA, a decision after an administrative disqualification hearing, or a waiver of a disqualification hearing. In the absence of one of these methods, the notice of sanction should not have been issued. *Matter of Erie County*, *supra*, at p. 6.

Moreover, Mr. [REDACTED] was improperly threatened both in writing and in person with criminal prosecution if he did not immediately sign the Disqualification Consent Agreement . This practice is extremely problematic for several reasons. First, threatening criminal prosecution of an individual suspected of fraud is not only traumatizing for the individual, it is coercive, potentially causing the individual to sign a waiver even if they do not believe they've committed fraud.

The 2004 FNS Guidance (Exhibit "I") states, "The consequences of losing a judicial proceeding are potentially so severe when contrasted with "merely" losing one's benefits for 12 months, that it is conceivable that innocent clients will sign . . . waivers rather than risk the alternative."

Indeed, the U.S. Supreme Court has found constitutional violations when an individual was given the choice between substantial civil penalties or criminal prosecution. In *Garrity v. New Jersey*, the U.S. Supreme Court stated, "The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent." 385 U.S. 493 (1967).

Finally, according to the Fraud Investigator's report, the Department became aware of the SSI income to Mr. [REDACTED] son when it was included on an application for cash assistance made by Mr. [REDACTED] himself. (Fair Hearing Packet at p. 12). This self-disclosure is indicative of an inadvertent household error at worst, and not an intentional program violation. This is exactly the type of self-reporting that the Department should want to encourage, not pursue as a fraud investigation.

Although Mr. Wierzbicki claimed to have received no training on the treatment of inadvertent household error, the SNAP Sourcebook, in its section on Intentional Program Violations, states that unless specifically granted written authorization to proceed directly on a SNAP IPV, a

Moreover, Mr. [REDACTED] was improperly threatened both in writing and in person with criminal prosecution if he did not immediately sign the Disqualification Consent Agreement. This practice is extremely problematic for several reasons. First, threatening criminal prosecution of an individual suspected of fraud is not only traumatizing for the individual, it is coercive, potentially causing the individual to sign a waiver even if they do not believe they've committed fraud. The 2004 FNS Guidance (Exhibit "1") states, "The consequences of losing a judicial proceeding are potentially so severe when contrasted with "merely" losing one's benefits for 12 months, that it is conceivable that innocent clients will sign . . . waivers rather than risk the alternative." Indeed, the U.S. Supreme Court has found constitutional violations when an individual was given the choice between substantial civil penalties or criminal prosecution. In *Garrity v. New Jersey*, the U.S. Supreme Court stated, "The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent." 385 U.S. 493 (1967).

Finally, according to the Fraud Investigator's report, the Department became aware of the SSI income to Mr. [REDACTED] son when it was included on an application for cash assistance made by Mr. [REDACTED] himself. (Fair Hearing Packet at p. 12). This self-disclosure is indicative of an inadvertent household error at worst, and not an intentional program violation. This is exactly the type of self-reporting that the Department should want to encourage, not pursue as a fraud investigation.

Although Mr. Wierzbicki claimed to have received no training on the treatment of inadvertent household error, the SNAP Sourcebook, in its section on Intentional Program Violations, states that unless specifically granted written authorization to proceed directly on a SNAP IPV, a

local district must initially treat an alleged IPV as an inadvertent household error, prior to either referring the case to the district attorney or processing the allegation for an administrative disqualification hearing. OTDA SNAP Sourcebook, Section 6, p. 156. In this case, absent a referral for either prosecution or administrative disqualification hearing, this unreported income should have been treated as an inadvertent household error, and pursued as an overpayment.

CONCLUSION

For the foregoing reasons, the purported Disqualification Consent Agreement in this case was not authorized by law, nor did the agreement comport with the strict requirements for a DCA, as contained in state and federal regulations. Absent compliance with the regulations, Mr. [REDACTED] should never have been forced to make a choice between giving up his SNAP benefits or risking his liberty. Because the DCA was invalid, it is respectfully requested that the Notice of Decision dated August 22, 2014, discontinuing Appellant's SNAP benefits for one year, be reversed and set aside.

Moreover, because it appears from the testimony of the agency's Coordinator of Investigations that Onondaga County Department of Social Services engages in a similar process in each case, and that these inappropriate DCA's will continue if unchecked, it is respectfully requested that the Department issue an instruction to Onondaga County to modify its policies and practices regarding DCAs so as to comport with state and federal law and regulations.

Respectfully Submitted,

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