NEW YORK STATE BAR ASSOCIATION

WORKSHOP B.

# Moving Towards Civil Gideon

## *2014 Legal Assistance Partnership Conference*

Hosted by:
The New York State Bar Association
and The Committee on Legal Aid

NYSBA

# NEW YORK STATE BAR ASSOCIATION
# 2014 PARTNERSHIP CONFERENCE

## B. INTENTIONAL PROGRAM VIOLATIONS, ADMINISTRATIVE DISQUALIFICATION HEARINGS, AND RELATED WELFARE/SNAP FRAUD ISSUES[*]

**AGENDA**

**September 12, 2014**
**9:00 a.m. – 10:30 a.m.**

**1.5 Transitional CLE Credits in Professional Practice.**
*Under New York's MCLE rule, this program has been approved for all attorneys, including newly admitted.*

**Panelists:**
**Ian F. Feldman, Esq.**, Director of Legal Services, Mental Health Project, Urban Justice Center
**Maryanne Joyce, Esq.**
**Diana C. Proske, Esq.**, Staff Attorney, Neighborhood Legal Services, Inc.
**Cathy Roberts**, Senior Paralegal, Empire Justice Center

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| **I.** | **Applicable Law, Regulations, and Policy** | **9:00 am – 9:10 am** |
| **II.** | **Fraud/Intentional Program Violation Definitions and Penalties** | **9:10 am – 9:20 am** |
| **III.** | **Initial Investigation by Local Social Services District** | **9:20 am – 9:30 am** |
| **IV.** | **Referral to Prosecutor/District Attorney** | **9:30 am – 9:40 am** |
| **V.** | **Administrative Disqualification Hearing** | **9:40 am – 9:55 am** |
| **VI.** | **Post Hearing Proceedings** | **9:55 am – 10:05 am** |
| **VII.** | **Recent Developments in Law and Policy** | **10:05 am – 10:15 am** |
| **VIII.** | **When Your Client Is The Victim of Benefits Fraud** | **10:15 am – 10:20 am** |
| **IX.** | **Question & Answer** | **10:20 am – 10:30 am** |

[*] These materials supplement, revise, and update materials presented at the 2009 Legal Services NYC training and the 2008 NYSBA Partnership Conference training by Susan Bahn, Maryanne Joyce, Carolyn McQuade and Lisa Pearlstein, which were based on the 2007 "Intentional Program Violations" outline by MacGregor Smyth.

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# Substantive Outline

# B. INTENTIONAL PROGRAM VIOLATIONS, ADMINISTRATIVE DISQUALIFICATION HEARINGS, AND RELATED WELFARE/SNAP FRAUD ISSUES

## OUTLINE

**Abbreviations:**
*"IPV" - Intentional Program Violation*
*"ADH" - Administrative Disqualification Hearing*
*"OTDA" - New York State Office of Temporary and Disability Assistance*
*"OAH" - OTDA's Office of Administrative Hearings*
*"HRA" - New York City Human Resources Administration*

## I.APPLICABLE LAW, REGULATIONS, AND POLICY

### A. Federal Statutes and Regulations for SNAP Fraud, Trafficking, and IPVs

1. 7 U.S.C. § 2015. Eligibility Disqualifications.
2. 7 U.S.C. § 2024. Violations and enforcement.
3. 7 C.F.R. § 271.2. Definitions [trafficking]. (Recently amended, see 78 Fed. Reg. 51649 (Aug. 21, 2013).[1]
4. 7 C.F.R. § 273.16. Disqualification for Intentional Program Violations.
5. 7 C.F.R. § 274.6. Replacement issuances and cards to households. (Recently amended, see 78 Fed. Reg. 65515 (Nov. 1, 2013); 79 Fed. Reg. 22766 (Apr. 24, 2014).[2]

### B. New York Social Services Law

1. § 106-b. Adjustment for incorrect payments.
2. § 132. Investigation of applications.
3. § 134. Supervision [and reinvestigation of recipients].
4. § 134-a. Conduct of investigation.
5. § 134-b. Front end detection system.
6. § 136-a. Information from state tax commission and the comptroller.
7. § 144-a. Information to be given to officials of the department and of social services districts [by financial institutions and others].
8. § 145. Penalties [for false statement/concealment/misrepresentation/fraud and referral to prosecutor].
9. § 145-c. Sanctions [periods of ineligibility].
10. § 146. Penalties for sale or exchange of assistance supplies.
11. § 147. Misuse of food stamps, food stamp program coupons, authorization cards, and electronic access devices.

### C. New York Penal Law

1. § 158. Definitions; presumption; limitation [Welfare Fraud].
2. §§ 158.05 to 158.25. Welfare fraud.

[1] Also available at https://federalregister.gov/a/2013-20245
[2] Also available at https://federalregister.gov/a/2014-09334

3. §§ 158.30 to 158.35. Criminal use of a public benefit card.

**D. <u>New York State Regulations</u>**

1. 18 NYCRR § 348 et seq. Requirements Applicable to Fraud Cases.
2. 18 NYCRR Part 351. Investigation and Eligibility.
3. 18 NYCRR Part 359. Disqualification for Intentional Program Violation.[3]
4. 18 NYCRR Part 358 (applies where not inconsistent with Part 359).

**E. <u>Policy Documents</u>**

***1. Federal Policies***

a. Arthur T. Foley & Lou Pastura, Food and Nutrition Service, Food Stamp Program Cooperation with Fraud Investigations (Apr. 24, 2003)
b. Barbara Hallman, Food and Nutrition Service, Fraud Policy: 7 C.F.R. § 273.16

***2. New York State Policies,[4,5]***

a. OTDA Informational Letter 14-INF-03- Investigative Unit Operations Plan
b. OTDA Informational Letter 13 TA/DC030- Excessive Replacement Card Letter to Clients
c. OTDA Local Commissioners Memorandum 3-LCM-13- Social Media Access by Local District Child Support and Fraud Investigators
d. OTDA GIS 11 TA/DC012- False or Misleading Marital Status Information Admission Statement Form and Food Stamp Program Intentional Program Violations
e. OTDA GIS 10 TA/DC004- False or Misleading Marital Status and Food Stamp Program Intentional Program Violations (*Robles v. Doar*-related)
f. OTDA Informational Letter 09-INF-12- Program Integrity Questions and Answers
g. OTDA GIS 09 TA/DC036- Randomization of CBIC Numbering
h. OTDA Informational Letter 08-INF-06- Online availability of the LDSS-4903: ‘‘Disqualification Consent Agreement’’ and LDSS-4904: ‘‘Notice of Consequences to a Disqualification Consent Agreement’’
i. OTDA Administrative Directive 06-ADM-14- Electronic Benefit Transfer (EBT) Customer Service Automated Response Unit (ARU) Personal Identification Number (PIN) Selection Restriction
j. OTDA Informational Letter 06-INF-26 -Investigative Unit Operations Plan

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[3] *Note: Under 18 NYCRR § 399.11, Part 359 supersedes Part 399 (Food Stamp Fraud and Food Stamp Intentional Program Violations-Disqualification)*

[4] *OTDA Policy documents and Source Books are found at http://otda.ny.gov/legal /*

[5] *OTDA Guidance Documents are listed annually in the NYS Register. 2014 list available at: http://docs.dos.ny.gov/info/register/2014/jan15/pdf/guidance.pdf*

k. OTDA Informational Letter 06-INF-16- Program Integrity Questions and Answers
l. OTDA Administrative Directive 05-ADM-08- Front End Detection Systems (FEDS) Policy
m. OTDA Informational Letter 05-INF-18- Food Stamp Program Questions and Answers: Expedited FS Application Processing, IPVs, NYSNIP, TOP/CAMS
n. OTDA Local Commissioners Memorandum 04-LCM-06- Front End Detection System (FEDS)
o. OTDA Informational Letter 94-INF-11- Intentional Program Violation (IPV) – Regional Meetings Questions and Answers
p. OTDA Administrative Directive 93-ADM-08- Disqualifications for Intentional Program Violations
q. OTDA 90IM/DC036 GIS- Notification of Fraud Interviews
r. OTDA Temporary Assistance Source Book ("TASB"), Ch. 6, Sec. D at 6-9 to 6-20- Disqualification for Intentional Program Violation
s. OTDA Supplemental Nutrition Assistance Program (SNAP) Source Book ("SNAPSB"), Sec. 6 at 154-171, Disqualification for Intentional Program Violation

***3. Local Social Services District Policies***[6,7]

a. Erie County DSS Investigative Unit Operations Plan
b. Chemung County DSS Investigative Unit Operations Plan
c. HRA Policy Directive #13-26-ELI- Intentional Program Violations
d. HRA Policy Directive #13-25-OPE- Requests for Replacement of Stolen Supplemental Nutrition Assistance Program Benefits and/or Cash Assistance
e. HRA Policy Directive #12-28-ELI- Processing the Statewide Clearance Match in POS
f. HRA Policy Directive #12-12-OPE- Fraud Referrals to BFI
g. HRA Policy Directive #10-30-OPE- Clarification Regarding Computer Matches
h. HRA Policy Directive #09-43-SYS- Resource File Integration (RFI)
i. HRA Policy Bulletin #08-64-SYS- Bureau of Fraud Investigation (BFI) Alerts

## II.FRAUD/INTENTIONAL PROGRAM VIOLATION DEFINITIONS AND PENALTIES

### A. Definitions

***1. Federal Law and Regulations on SNAP Benefits Fraud***

a. 7 U.S.C. § 2015(b) addresses fraud and misrepresentation; disqualification

[6] *Local District Investigative Unit Operations Plans must be filed with OTDA. See Informational Letter 14-INF-03; 93-AD-8; TASB at 6-10; SNAPSB at 156.*
[7] *HRA Policy documents can be found at http://onlineresources.wnylc.net*

penalties; ineligibility periods; and applicable procedures.

1. Under 7 U.S.C. § 2015(b)(1),

   Any person who has been 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 shall, immediately upon the rendering of such determination, become ineligible for further participation in the program.

b. 7 U.S.C. § 2015(p) addresses disqualification for obtaining cash by destroying food and collecting deposits.
   1. [A]ny person who has been found by a State or Federal court or administrative agency in a hearing under subsection (b) to have intentionally obtained cash by purchasing products with supplemental nutrition assistance program benefits that have containers that require return deposits, discarding the product, and returning the container for the deposit amount shall be ineligible for benefits under this chapter for such period of time as the Secretary shall prescribe by regulation.
c. 7 U.S.C. § 2015(q) addresses disqualification for the sale of food purchased with supplemental nutrition assistance program benefits
   1. [A]ny person who has been found by a State or Federal court or administrative agency in a hearing under subsection (b) to have intentionally sold any food that was purchased using supplemental nutrition assistance program benefits shall be ineligible for benefits under this chapter for such period of time as the Secretary shall prescribe by regulation.
d. Under 7 C.F.R. § 273.16(c), an IPV shall consist of having intentionally:
   1. made a false or misleading statement, or misrepresented, concealed or withheld facts; or
   2. committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).
e. Under the recently revised trafficking definition in 7 C.F.R. § 271.2, trafficking means:
   1. The buying, selling, stealing, or otherwise effecting an exchange of

SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (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;

2. The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
3. 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 amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
4. Purchasing a product with SNAP benefits with the intent of 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; or
5. Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food[;]
6. Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

***2. New York Law Definitions—TA/SNAP Fraud***

a. N.Y. Penal Law § 158.00(b) defines "fraudulent welfare act" as: knowingly and with intent to defraud, 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 benefit 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 public assistance benefits, and such statement or information is material.

b. Welfare fraud in the fifth degree is a Class A misdemeanor. Welfare fraud in the fourth degree, where the value of benefits obtained exceeds $1000, is a class E felony. Welfare fraud in the third degree, where the value of the benefits obtained exceeds $3000, is a class D felony. Welfare fraud in the second degree, where the value of the benefits obtained exceeds $50,000, is a class C felony. §§ 158.05 to 158.20.
c. Under N.Y. Soc. Serv. Law § 145(1),
    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 or abets any person to obtain public assistance or care to which he is not entitled, or does any wilful 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 a 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. 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.
d. Under 18 NYCRR § 348.1,
    1. For the purposes of section 145 of the Social Services Law and the regulations herein, *fraud* shall be deemed to exist when a person knowingly obtains, or attempts to obtain, or aids or abets another person to obtain, public assistance or care to which he is not entitled by means of a false statement, deliberate concealment of a material fact or other dishonest act.
e. Social Services Law § 147 specifically addresses misuse of SNAP benefits and electronic access devices:
    1. Whoever knowingly uses, transfers, acquires, alters, purchases, transports or possesses [SNAP benefits] ... or electronic access devices which entitle a person to obtain [SNAP benefits], 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 he or she obtained: (i) exceeds one thousand dollars, he or

she shall be guilty of a class E felony; or (ii) exceeds three thousand dollars, he or she shall be guilty of a class D felony; or (iii) exceeds fifty thousand dollars, he or she shall be guilty of a class C felony.

***3. Definition of Intentional Program Violation for PA and SNAP[8,9]***

a. 18 NYCRR § 359.3 lays out the regulatory standards for determining whether an individual has committed an IPV:

1. 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 such public assistance, individually, or as a member of a family, applies for or receives public assistance and is found to have intentionally:
    i. 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;
    ii. 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
    iii. engaged in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370 of this Title.
        1. [A SNAP]-IPV occurs when an individual has intentionally:
            a. made a false or misleading statement, or misrepresented, concealed or withheld facts concerning the individual's eligibility for food stamps; or
            b. 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 food stamp coupons or

[8] ***Note:*** *Subsection 2 language in the federal definition of SNAP-IPV differs slightly: "[c]ommitted any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device)." 7 C.F.R. 273.16(c)(2).*

[9] ***Note:*** *According to OTDA, there can be an IPV without any overpayment—see Informational Letters 94-INF-11 and 04-INF-12 ("Under 18 NYCRR 359.3 it is not necessary that an actual overpayment was caused by the fraudulent behavior. This is true for any TA IPV for the period January 31, 2001 or later.…For TA IPV's for the period January 30, 2001 or earlier, an overpayment must have resulted from the fraudulent actions." 04-INF-12, Attachment, Question 45).*

authorization to participate cards or any other evidence of the individual's eligibility for food stamps.

**B. <u>Intentional Program Violation Penalties</u>**

1. SNAP disqualification periods under 7 C.F.R. § 273.16(b)(5) and 18 NYCRR § 359.9(c) are:
    a. one year for a first IPV;
    b. two years for a second IPV or for the first occasion of a court finding of trading of a controlled substance for coupons;
    c. 10 years for fraudulent representations with respect to identity or residence in order to receive multiple benefits simultaneously [found in C.F.R § 273.16(b)(5) but not in 18 NYCRR § 359.9];
    d. Permanently for a third IPV; for a second occasion of a finding of trading of a controlled substance for coupons; for first occasion of a finding of trading of firearms ammunition, or explosives for coupons; or for a conviction of trafficking in benefits in the amount of $500 or more.
    e. Criminal penalties and extended disqualification period
        1. Under 7 U.S.C. § 2024(b)(1): "Whoever knowingly uses, transfers, acquires, alters, or possesses [food stamp] benefits in any manner contrary to this chapter or the regulations issued pursuant to this chapter" shall be guilty of a misdemeanor if the benefits are of a value below $100, and guilty of a felony if the benefit amount exceeds $100. Periods of imprisonment can be as much as 20 years for felonies. Fines range from $1000 for a misdemeanor to $250,000 for a felony.
        2. In addition, any person convicted of a felony or misdemeanor violation under § 2024(b)(1) may be suspended by the court from participation in the supplemental nutrition assistance program for an additional period of up to eighteen months on top of the period of suspension mandated by 7 U.S.C. § 2015(b)(1).
2. Public assistance disqualification periods under Soc. Serv. Law §145-c and 18 NYCRR § 359.9(a) are:
    a. 6 months for the first PA IPV
    b. 12 months for the second IPV or where wrongful receipt of an amount between $1,000 and $3,900
    c. 18 months for the third IPV or where wrongful receipt in excess of $3,900
    d. 5 years for fourth or subsequent IPVs
    e. If found guilty of criminal offense, longer disqualification periods, fines and imprisonment may also be imposed by the court under § 145, or under other provisions of the penal code, e.g. larceny, filing a false instrument, etc.

1. *Only the individual found to have committed the IPV is disqualified, not the entire household*. However, the household may be required to make restitution or be recouped any overpayment resulting from the IPV. 7 C.F.R. § 273.16(b)(11) & (12); 18 NYCRR § 359.9(e) & (f).

**C. Time Limit to Schedule Administrative Disqualification Hearing**

1. ADH "may be scheduled … provided that not more than six years have elapsed between the month the individual committed an [IPV] and the date on which the social services district discovered the [IPV], and the office determines that there is evidence to substantiate that an [IPV] has occurred." 18 NYCRR § 359.2(c).

## III. INITIAL INVESTIGATION BY LOCAL SOCIAL SERVICES DISTRICT

**A. <u>Investigative Units</u>**

1. Under Social Services Law § 134-B and 18 NYCRR § 348.7, each social services district must have a Front End Detection System to investigate fraud by applicants. *See also* TASB Ch. 5.
2. Under Social Services Law § 134 and 18 NYCRR Parts 348 and 351, each district is also responsible for continuous supervision of recipients and is charged with investigating fraud allegations against applicants and recipients.
3. Social services district investigative unit names vary by county: Special Investigations Unit/Special Investigations Division/Bureau of Fraud Investigation/Case Integrity Unit.
4. Under 18 NYCRR § 348.3, "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."
5. Under § 351.1(d), "[a]ny investigation or reinvestigation of eligibility shall be conducted in a manner that will not result in practices that violate an applicant's 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."
6. New York City HRA
    a. In New York City, the Investigation, Revenue, and Enforcement Administration (IREA) is the investigative arm of HRA.[10]
    b. IREA is made up of the Office of Investigation, the Office of Revenue and Administration, and the Office of Medicaid Provider Fraud and Abuse Investigation. The Office of Investigation is comprised of the Bureau of

[10] See http://www.nyc.gov/html/hra/welfarefraudnyc/html/home/home.shtml

Fraud and Investigation (BFI) and the Bureau of Eligibility Verification (BEV).

1. **Bureau of Fraud and Investigation (BFI)** is mandated to conduct investigations of individuals and organized groups allegedly committing fraudulent acts against the social service programs administered by HRA/DSS. BFI investigations may result in Administrative Disqualification Hearings, Civil Litigation, other appropriate administrative actions, and/or referrals for prosecutions.
2. **Bureau of Eligibility Verification (BEV)** is mandated to deter cash assistance fraud at the application level. BEV contributes to the integrity of the cash assistance process by conducting eligibility reviews of applicants. BEV utilizes automated management systems to elicit information that is critical for accurate eligibility determinations. Activities include participant interviews, computer matches, collateral contacts, and document verification. This process includes office as well as field interviews. In addition, BEV also investigates the eligibility of sanctioned clients who have continuously failed to comply with FIA program requirements.[11]

**B. Sources of Information**

***1. Computer Matches***

a. Under federal law, states must have an Income Eligibility Verification System (IEVS) that allows the state to match benefit program recipients' social security numbers with those in other databases. See 42 U.S.C. § 1320b-7. With IEVS, state agencies use six major databases to run matches to verify household income. New York State OTDA runs periodic matches of recipients with the State Wage Reporting System, State Directory of New Hires; National Directory of New Hires; Workers' Compensation/ Unemployment Insurance; Financial Institution Matches; Marriage Matches; Federal Tax Information matches. The state also runs matches with warrant, fleeing felon and prisoner databases as well as 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 04-INF-20; 05-ADM-06; 06-INF-10; 06-ADM-13; 08-INF-14; 14-INF-05; TASB Ch. 5, Sec. F. *See also* HRA PD 10-30-OPE.

2. Criminal Investigations (police, district attorney, New York State Office of the Welfare Inspector General, federal authorities).

[11] www.nyc.gov/html/hra/html/services/program_integrity_investigation.shtml

3. Reports from landlords, former partners/friends/family members, members of the public.
4. Discrepancies in case record/caseworker uncovers discrepant information/suspects unreported income or resources.
5. Specialized Fraud and Abuse Reporting System (SFARS) Recipient Report (Appendix P).

## C. Social Services District Investigation

### *1. Field Investigations*

a. Field investigators go out to check addresses, interview landlords, neighbors, relatives, employers.

b. Investigators may also conduct "stake out" type investigations.

*c.* ***Note****: The refusal of a third party to cooperate may be used against the individual in an ADH.*

### *2. Office Investigations and Interviews*

a. Appointment Letter[12,13]

1. Individual may receive a letter from the social services district investigative unit to come in for an interview. Letter may not state the reason for call-in. There may be a list of documents to bring. See, e.g., HRA's Bureau of Fraud Investigation Interviews[14]:

(1) Letter should advise individual of the right to bring a representative to the interview. See OTDA GIS 90IM/DC036 (*see* Appendix F). *See also* TASB Ch. 3, Sec. D at 3-5 and Ch. 4, Sec R at 4-31 (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 local district, whenever such interview or conference relates to questions of eligibility for TA and care, or the amount to which the person interviewed is or was entitled).

(2) Letter should state that individual has right not to answer questions. *See Rush v. Smith*, 573 F.2d 110 (2d Cir. 1978) (see Appendix L).

(3) Letter cannot threaten to terminate SNAP benefits based on failure to attend interview:

(a) Threatening to terminate the individual/household for failure to respond to [a request for contact],

[12] Arthur T. Foley & Lou Pastura, Food and Nutrition Service, Food Stamp Program Cooperation with Fraud Investigations (Apr. 24, 2003) ("Foley Memo")(*see* Appendix N); also available at http://origin.www.fns.usda.gov/snap/rules/Memo/2003/fraud.htm.

[13] *See also* Albany and Broome County appointment notices and Tom Hedderman email (June 6, 2014) (see Appendix M).

[14] Frequently Asked Questions, available at www.nyc.gov/html/hra/welfarefraudnyc/downloads/pdf/resources/Fraud_Investigation_FAQ.pdf

> when the response involves communicating with a fraud investigator, circumvents the right to remain silent pursuant [to] 7 C.F.R. § 273.16(e)(2)(iii) & (f)(1)(ii)(B)…. [In]vestigators may request but not require individuals to attend meetings to discuss investigators' suspicions. … In no event, however, may the individual or the household be threatened with the possibility of termination for non-cooperation.

b. Conduct of Interview
    1. Individual is in a bind between the duty to cooperate under PA rules and Fifth Amendment right not to incriminate him/herself.
    2. NYC advocates have been advised at HRA Legal Advisory Committee meeting that individuals called in to BFI get "spirit of Miranda" warnings before interview.
    3. Individual has a right to remain silent. 18 NYCRR § 359.7. There is rarely any benefit in talking to investigator. All statements may be taken in the worst possible light and used against the individual.
    4. As noted above, for SNAP benefits, the USDA has clarified that individual does not have to attend interview or answer questions. See Foley Memo (Appendix N). For PA, the individual must attend interview but does not have to answer any questions.
    5. Investigator may try to coerce the individual into signing a "Voluntary Statement" admitting the IPV. Statement will constitute admission in any future criminal case.
    6. In Erie County, the district attorney and the Special Investigation Division ("SID") may interview the individual together in an attempt to get an admission.

c. ***Failure to appear at interview***[15]:
    1. For PA the social services district may take the position that it can close a PA case for failure to appear at an investigative interview.
    2. As noted above, for SNAP benefits, the USDA has determined that a district cannot terminate a SNAP case for failure to meet with a fraud investigator. See Foley Memo (Appendix N).
    3. For PA cases, individual should attend the interview (to fulfill duty to cooperate), but invoke the right not to speak.

[15] ***Note:*** *The Food and Nutrition Service of the U.S. Department of Agriculture has a helpful fraud policy clarification memo to "reiterate and clarify current policy" governing IPVs. See Barbara Hallman, Food and Nutrition Service, Fraud Policy: 7 C.F.R. § 273.16[15] (Appendix O) & David A. Super, Improving Fairness and Accuracy in Food Stamp Fraud Investigations: Advocating Reform Under Food Stamp Regulations ("Super, Improving Fairness") (Appendix R). 39 Clearinghouse Rev. 73 (2005). Available at http://ssrn.com/abstract=923563, for a discussion of FNS policy guidance and legal and policy arguments for a fairer investigation process where SNAP fraud is suspected.*

***Practice Tip:*** *Advocate can call to find out subject of call-in and advocate for resolution. In NYC, you may be able to get HRA to drop the interview and investigation if you can provide documents right away that individual had no intent to defraud or to prove extenuating circumstances. Call Assistant Deputy Commissioner, Bureau of Fraud Investigation (212) 274-5611.*

***d. Outcome of Investigation***

1. Fraud allegation unsubstantiated/inadvertent error/insufficient evidence.
    (1) If overpayment, may be recouped. Individual entitled to notice of recoupment. The total amount to be recouped must be specified and a copy of the budget must be attached. Individual has right to fair hearing to challenge recoupment. 18 NYCRR §§ 358-2.2(a)(1)(iii) & (a)(14).
2. Fraud allegation supported — Referral to prosecuting authority unless agreement otherwise.
    (1) NYC: amount over $3,000 — BFI makes referral to prosecutor (see below).
    (2) Erie: over $5,000 — SID makes referral to prosecutor
    (3) Other counties: all fraud allegations referred to prosecutor in first instance, ADH only if prosecutor sends back to investigative unit.
3. Fraud allegation supported/case not referred to prosecutor/prosecutor declines to prosecute — individual charged with IPV.
    (1) Social services district proceeds with ADH.
    (2) See 18 NYCRR Part 359 and TASB, Ch. 6, Sec. D, Disqualification for Intentional Program Violation, at 6-9 to 6-20, for processes and procedures that must be followed.

**IV.**REFERRAL TO PROSECUTOR/DISTRICT ATTORNEY

A. Under Soc. Serv. Law § 145(1), "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."
B. Under 18 NYCRR § 348.2, "Each social services district shall …[m]ake 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 f]ile with the department a copy or a statement of

the agreement with the prosecuting official."

C. Referral for Civil or Criminal Prosecution. 18 NYCRR § 359.4.
    1. Referral required unless prior agreement with prosecuting authority.
        a. Social services district must refer cases that warrant civil or criminal prosecution to prosecuting authorities and not to OAH/OTDA for ADH unless prior notification by prosecutor that amount does not warrant prosecution.
        b. In NYC, the threshold amount for referral to the district attorney is $3,000. If the amount of the suspected fraud is less than $3,000, HRA's BFI will proceed with an ADH.
        c. In Erie County, the threshold amount for referral to the district attorney is $5,000. See Erie County Investigative Unit Operations Plan (Appendix B).
        d. In other counties, referrals to the district attorney may be made for lesser amounts.

> ***Practice Tip:*** *Make a FOIL request for the district's Investigative Unit Operations Plan, which includes the agreement between the local social services district and the prosecuting authority, and which must be on file with OTDA.*

    2. Settlement of criminal case.
        a. In lieu of trial, case may settle or result in Adjournment in Contemplation of Dismissal (ACD) provided full restitution is made. Individual may be asked to sign a Disqualification Consent Agreement (DCA), agreeing to take the disqualification penalty without going to trial. 18 NYCRR §§ 359.1(e) & 359.4(b). Note, if no DCA, if case is Adjourned in Contemplation of Dismissal, no ADH can be brought. 94-INF-11, Q 13.
        b. Use of DCAs varies by county. For example, Erie County does not use DCAs. See Erie Investigative Unit Operations Plan (see Appendix B).
        c. Some upstate districts are offering DCAs *before* individual is criminally charged and threatening to criminally prosecute or refer to district attorney if the DCA is not signed. Other counties offer the DCA where the district attorney declines to prosecute. See, e.g., Chemung County Investigative Unit Operations Plan (see Appendix C). This is extremely problematic.
        d. In Onondaga, the practice has been that individuals receive a letter that comes addressed from the district attorney, with a statement that the matter has been referred to that office for prosecution. However, the letter says that the individual should try to resolve the matter through the local social services district and gives the individual the chief investigator as the contact. The letter includes a DCA where the blanks are not filled in. This does not meet the requirements of 10-day notice for review of a DCA

because the individual does not know pertinent details of what s/he will be asked to sign. The district attorney frequently ends up not filing charges and the cases are often withdrawn from the district attorney for an ADH hearing to be held instead.

e. Such a practice appears to run afoul of 18 NYCRR § 359.4, which says that DCAs are to be used after the case is referred AND accepted for prosecution and the prosecutor contemplates deferred adjudication. These counties appear to be using the DCA as a short cut to disqualification, thereby depriving the individual of the right to either a criminal court hearing or an ADH.[16]

3. Penalties imposed after conviction.
   a. If a court determines that the individual engaged in conduct that would amount to an IPV, the social services district must impose the penalties as directed by court or as specified in 18 NYCRR § 359.9, with some exceptions. District must initiate disqualification proceedings within 45 days of the court determination. § 359.9(d).[17,18]

D. Prosecutor/District Attorney Declines Case
   1. If, after referral to the district attorney, that office declines to prosecute, the case may be sent back to the social services district that may proceed w/ an IPV/ADH.
   1. Once case is referred to the district attorney for prosecution, the social services district can only do ADH if the district attorney declines to prosecute or fails to take action within reasonable time. The social services district must formally withdraw, in writing, the referral to the prosecutor before bringing ADH hearing. Must present evidence of the formal written withdrawal to OAH in advance of or at the hearing. 18 NYCRR § 359.5; **93-ADM-8.**

## V.ADMINISTRATIVE DISQUALIFICATION HEARING

### A. Commencement.

1. If case not referred for prosecution or if prosecutor declines after referral, local social services district can decide to proceed with an ADH. To proceed with ADH the social services district must prepare an evidence packet to send to OTDA for

[16] ***Note:*** *As discussed by David Super in the SNAP context, "[a]though similar in effect, 'consents to disqualifications' and 'waivers of administrative disqualification hearings' are under separate sections of the federal regulations and authorized under very different circumstances. Federal regulations allow states to request consents to disqualification only after a case is resolved through 'deferred adjudication.' According to Super, "[i]f states can threaten criminal prosecution to obtain consent to disqualification before the accused claimant has had the opportunity to have a criminal defense lawyer appointed, all of the safeguards of the regulations on waivers of administrative disqualification hearings are rendered meaningless." Super, Improving Fairness (Appendix R).*

[17] ***Note****: Social services district cannot impose the penalties for a PA-IPV based on a conviction in state or federal court if conviction was result of a plea and person was NOT advised on the record in the proceeding, and in writing, that it might result in disqualification. 18 NYCRR § 359.9(d)(5); 93-ADM-8 (see Appendix I). In this circumstance district can bring separate ADH but neither fact of conviction nor records of court proceeding can be used at ADH nor can hearing officer know of conviction. §§ 359.7(e)(3), 359.9(d)(5).*

[18] ***Note:*** *An ADH does not preclude prosecution. 18 NYCRR § 359.6(d)(12).*

approval and scheduling of hearing.

a. Under 18 NYCRR § 359.5; TASB at 6-12; SNAPSB at 160, packet must include:
    1. Full name, including middle, complete address, etc. of person against whom penalty is sought;
    2. List of particular charges;
    3. Summary of evidence to be introduced;
    4. List of names, titles, and phone numbers of ALL district personnel and witnesses who will appear in support of the documentation;
    5. Itemized list of exhibits, with page numbers;
    6. Copies of all documents to be used in support of the determination;
    7. Information as to when and where the original exhibits may be reviewed; and on availability of free legal services;
    8. Statement of whether there are prior IPV findings (including criminal), attaching supporting documentation.
b. If OAH finds the evidence sufficient, on its face, to substantiate IPV, an ADH will be scheduled and notice sent to the individual 30 days prior to the date of the hearing. 18 NYCRR §§ 359.5(f) & 359.6. If evidence not sufficient or packet does not comply with regulations, OAH will return to the social services district and will not schedule hearing. § 359.5(g).

*2.* ***Notice***[19]

a. Under 18 NYCRR § 359.6(d), written notice of an ADH must be sent to the individual at least 30 days before the date of the hearing and must include:
    1. Date/Time/Place of hearing;
    2. Charges;
    3. Summary of evidence and how and where the evidence can be examined;
    4. Statement warning that decision will be based solely on district's evidence if individual fails to appear;
    5. Notification of right to examine all documents and records to be used at hearing, with contact phone number;
    6. Notification of right to adjournment; right to present case or be represented; to bring witnesses, advance arguments without undue interference; to question or refute any testimony or evidence; to confront and cross-examine witnesses; to submit evidence;
    7. Notification of right to remain silent but that inferences can be drawn from the silence and that anything said or signed can be

[19] ***Note:*** *In an Article 78 proceeding recently filed in N.Y. County, the petitioner defeated a motion to dismiss where the pro se appellant was provided with an evidence packet in advance of the ADH, which contained a copy of regulations 12 years out of date. See James v. Proud, 2014 WL 1714436, slip op. 31064 (Sup. Ct. N.Y. County, Apr. 25, 2014) (see Appendix J).*

later used against individual;

8. Statement that copies of Part 359 will be made available; copies of relevant sections;
9. Citation to relevant federal or state regulation;
10. Listing of legal aid/legal services organizations available to help;
11. Statement that ADH does not preclude state or federal civil or criminal prosecution or from collection of overpayment;
12. Statement on how to reopen default;
13. Description of penalties for IPV;
14. Explanation that person may waive hearing, which must include: time to sign and return waiver form, explanation of waiver's significance, opportunity to admit or deny facts, but be subject to penalty whether or not admits IPV(s); contact number for additional information.

***Practice Tip:*** *Check packet thoroughly to make sure everything in 18 NYCRR § 359.6 is included. Use this section as a checklist at the hearing – exclude all documents not provided to you, and argue that it violates the individual's basic right to due process.*

3. ***Adjournment***
    a. Individual has the right to an adjournment at least 10 days in advance, or with good cause if less than 10 days.
    b. Under regulations, hearing cannot be adjourned for more than a total of 30 days, 18 NYCRR § 359.7, but OAH will grant adjournments more liberally. Outside NYC, ALJs rotate ADH days, so an ADH hearing "personalized" to the ALJ may be adjourned for months at a time.
    c. OAH is <u>required</u> to conduct the hearing, arrive at a decision, and forward it to the district within 90 days of the original notice to the individual. 18 NYCRR § 359.7(f)(3).
    d. Deadline for decision is tolled by number of days the hearing is postponed if individual requests adjournment.
4. ***Waiver of ADH. 18 NYCRR § 359.8.***
    a. After receipt of the scheduling notice, individual has option of waiving the hearing and accepting the sanction, including repayment. Option to admit IPV or not.
    b. Extremely problematic with unrepresented individuals.
    c. Waivers may be signed and mailed in advance of the hearing or obtained by social services district at pre-hearing waiver "conferences."
        1. In Erie County, they are done ahead of time but a second opportunity to "waive" is conducted right before the ADH hearing

in a second hearing room.

***Practice Tip**: extremely useful tool for individual in a Fifth Amendment bind. Can waive hearing and accept sanction without admitting anything. Minimizes problem of future criminal liability based on admissions.*

d. ***Note:** See Hallman Memo (discussing handling of ADH waivers) if case involves SNAP (Appendix O).*

5. ***Defaults. 18 NYCRR § 359.7(g).***
   a. If individual does not appear at hearing, ALJ is required to conduct the hearing, not merely enter a default. ALJ has independent duty to make a finding.
   b. Reopening Default
      1. Must contact OTDA within 10 days of hearing date with good cause for failure to appear.
      2. 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.
      3. OTDA must schedule a hearing on the sole issue of good cause

**B. <u>Preparation</u>**

1. May request adjournment for time to investigate case/prepare for hearing
2. Review packet. Check that contents comply with regulations. Look for conflicting or contradictory information. Check social services district's calculations of overpayment claim. If recertification or other forms are part of social services district's documentary evidence, ask if individual filled out forms him/herself.
3. Get client's explanation of situation. Explore possibility of extenuating circumstances, e.g., domestic violence; or possibility of social services district error, e.g., income reported but not budgeted. Was there "inadvertent household error," i.e., did client have credible belief that employer or vendor agency was reporting to district information such as employment after work activity placement.
4. If signed "voluntary" statement in packet, explore what happened in interview with investigator(s). Who was in the room? Was there coercion, duress? If client cannot read/speak English, was there a translator/interpreter? Who wrote statement? Was it adequately explained to client? Was client given "Miranda-type" warning before interview or before signing?
5. Explore client characteristics: problems with reading or comprehension; mental difficulties, educational history, limited English proficiency
6. Review client's case record — Call investigator to make appointment to review case record. Request copy of investigator's report if not in record.

7. Get WMS or other printouts from social services district or investigative unit to see if there is anything helpful to client.
8. Check who made the fraud referral; if it was not client's own worker, call the assigned worker and ask why s/he did not make the referral.
9. Review and discuss packet and all documents and findings with client.
10. Look for evidence to undermine proof of intent.
11. Consider whether you need/want other witnesses besides the client.
12. Discuss whether client should sign waiver.
13. Legal research – Look at statutes/regulations/policy documents. Check Online Resource Center Fair Hearing Bank,[20]

***Practice Tip**: If case involves a joint PA/SNAP IPV, ensure that the social services district is following correct rules for SNAP, i.e., if there is an allegation that the client deliberately failed to report a change of residence, the client may not have been required to report the change for SNAP.*

14. Prepare direct examination of client and other witnesses and cross of social services district witnesses.
15. Important to do several run-throughs with client on what to expect at hearing and what testimony will be. Do mock hearing with client the week before and again the day before the hearing.
16. Prepare opening and closing statements; consider preparing a brief.

**C. <u>The Hearing</u>**

1. ***Rights at the Hearing***. 18 NYCRR § 359.7(d); TASB at 6-16; SNAPSB at 164.
    a. To examine the contents of the individual's case file, and all documents and records to be used by the district at the hearing, at a "reasonable time" before the date of the hearing and during the hearing;
    b. To present the case or be represented by counsel or other person;
    c. To bring witnesses;
    d. To advance arguments without undue interference;
    e. To question or refute any testimony or evidence;
    f. To confront and cross-examine adverse witnesses;
    g. To submit evidence to establish all pertinent facts in the case;
    h. To remain silent, although negative inferences may be drawn;
2. ***Requirements for Conduct of ADH Hearing***. 18 NYCRR § 359.7(e).
    a. ALJ <u>must</u> advise appellant that she may refuse to answer questions during the hearing;
    b. The social services district has the burden of proof;
        1. The burden is heavy — "Clear and convincing." 18 NYCRR §

[20] Available at http://onlineresources.wnylc.net; OTDA Fair Hearing Decision Archive, http://otda.ny.gov/hearings/search/

359.7(f)(1);

2. Be aware of the different definitions of IPV for PA and SNAP cases. Compare 18 NYCRR § 359.3(a) (PA) and 18 NYCRR § 359.3(b)(SNAP).
3. Elements that district must prove:
    i. False statement (or misrepresentation, concealment, withholding of facts);
    ii. Individual knew that the representation was false at time made;
    iii. Individual intended to make the false representation in order to obtain or maintain eligibility for benefits (for PA);
4. ***Warning*:** Social services district does not have to prove that it was damaged.
    i. Overpayment is not technically required: To prove an IPV, district just has to prove that actions were intentional, NOT that they resulted in overpayment. 94-INF-11 gives example of intentional withholding of information about $600 in savings account. Individual is still under resource limit, but if it is intentional, it is an IPV. However, at times social services districts have lost ADHs on this point because it goes to intent.

    ii. Focus on Intent: e.g., Failure to report *exempt* income: It undermines intent to defraud (individual testified that did not report because s/he knew it was exempt and did not think it was necessary to report).
5. If individual convicted based on guilty plea in state or federal court on same set of facts and not advised on record of disqualification penalties, neither fact of conviction nor record of court proceeding may be used and hearing officer may not be made aware of conviction.
6. All provisions of 18 NYCRR Part 358 apply to conduct of ADH where not inconsistent with Part 359.

3. ***Procedure at the ADH***
    a. *ALJ will make opening statement. May swear in witness(es);*
    b. *Social services district's direct case*
        1. Burden of proof is on social services district so social services district representative will go first. First witness is usually the investigator who interviewed the individual and prepared the packet. There may be more than one social services district witness;

i. Documentary Evidence: Social services district will introduce the Evidence Packet in full. ALJ will individually mark exhibits and enter into evidence. Take time to compare contents of their Evidence Packet to yours – 18 NYCRR § 359.5(e). Object to exhibits that were not in the packet or that are not relevant.

Object to admission piece by piece (examples below)

1. Summary of Fraudulent Activity (Summary of Charges; lists Evidence exhibits)
2. Investigator Affidavit — Challenge: "Unsigned, conclusory, and meaningless. States no allegations of fact, so exclude as irrelevant. Entitled to no weight."
3. WMS Printout (Case Composition) — Challenge: make sure it is for a relevant date.
4. WMS Address Verification/Budget History/AFIS Photo/Recertification Forms — Challenge: make sure accurate and for relevant dates.
5. PA Claim Computation—Challenge: "Unsigned and meaningless"; "It presumes an IPV, the very thing to be proven here."

ii. Point out if evidence does not support the charges, e.g. charge of failure to report change in household composition when case is about failure to report marriage and spouse never moved in.

iii. If overpayment claim computation is incorrect, the disqualification period may be reduced at outset of hearing.

2. Witness Testimony: 18 NYCRR § 359.5(e)(4) requires a listing of names, titles, and phone numbers of all district personnel and witnesses who will appear in support of the determination.

i. If witness not listed in evidence packet, demand that testimony be excluded. (You won't win, but it chips away at credibility). May also request adjournment for more time to prepare.

ii. Witness/Investigator's testimony usually just consists of introducing documents.

c. *Cross examination*

1. First question to any witness should be whether s/he has personal knowledge. In NYC not likely to be the individual's worker or anyone from the local center. Most likely witness's first contact with individual came during investigation.

i. Question investigator and any witnesses on inconsistencies.
ii. Question on documents presented. Point out weaknesses/inconsistencies.

d. *Your direct case*
   1. Make opening statement.
   2. Client and witness testimony. When social services district cross-examines, do not allow social services district representative to badger your client or witnesses. If you think improper or irrelevant questions are being asked, object or consider instructing client not to answer.
   3. Documentary evidence.
   4. Closing statement. Emphasize heavy burden of proof — "clear and convincing"; weakness of social services district's case; lack of intent.
   5. Request opportunity to send a closing letter if needed.

**D. <u>The Decision.</u>**

1. Under 18 NYCRR § 359.7(f), the ADH 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 reasons for the decision, identify the supporting evidence and relevant law, and respond to reasoned arguments made by the individual;
   c. Be issued within 90 days of the date of notice of ADH (extended if individual requested adjournment).

## VI.POST-HEARING PROCEEDINGS

**A. <u>Written Notice of Disqualification</u>**

1. Must be sent after hearing (or after DCA or waiver or court finding). Requirements for the notice are found in 18 NYCRR § 359.10.
   a. PA disqualification put on hold if individual not on PA, until reapplication.
   b. FS disqualification begins to run whether or not individual in receipt of FS.

**B. <u>Right to Subsequent Fair Hearing:</u>**

1. Recoupment amount — Regular fair hearing may be held on the amount of claim if ADH decision does not specifically find that the amount is proper. 18 NYCRR § 359.10(b)(5)(i).
2. Calculation of amount to be provided to remaining household members during disqualification period. 18 NYCRR § 359.10(b)(5)(ii).
3. Social services district failure to restore disqualified individual at end of disqualification period despite individual's request. § 359.10(b)(5)(iii).

**C. <u>Request for Reconsideration</u>**

1. As with fair hearings, the appellant (or the social services district) may request that the Commissioner review an ADH decision to correct any error of fact or law, or may request that the hearing be reopened to complete the record, in accord with 18 NYCRR § 358-6.6. The initial decision is binding until and unless a new decision is issued.

**D. Appeal of Hearing Decision — Article 78 Proceeding**

1. An Article 78 proceeding is the only form of review for ADH decisions.
    a. A decision that an intentional program violation has been committed cannot be reversed by a subsequent fair hearing …. However, the disqualified individual is entitled to seek relief … pursuant to article 78 of the Civil Practice Law and Rules. 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.
2. 18 NYCRR § 359.7(i).
    a. Individual must meet a significant legal burden.
    b. Standard is generally whether ALJ had "substantial evidence," and courts usually defer to ALJ on credibility findings. *Williams v. Perales*, 156 A.D.2d 697 (2d Dep't 1989).
    c. The administrative record of the hearing must be made available, even without an Article 78. 18 NYCRR § 359.7(h).

## VII. RECENT DEVELOPMENTS IN LAW AND POLICY

A. Marriage Matches — *Robles v. Doar*

1. *Robles v. Doar*, 9 CV 5851, S.D.N.Y. (Amended Stipulation and Order of Settlement Apr. 2, 2012) (*see* Appendix K; *see also* Appendices D & E) was a class action challenging the manner in which HRA brought food stamp IPVs based on marriage matches. HRA's practice was to match New York City marriage records with initial applications and recertification applications, and if it was found that an individual had not reported a marriage, HRA considered the individual to have committed an IPV, whether or not there had been an overpayment of food stamps and without regard to whether there was any intent to defraud. In addition to retroactive relief for the class members, HRA agreed to amend its call in notice, voluntary statement, and interview process.

B. SNAP IPVs and Six-month Reporting

1. In cases involving IPVs of SNAP as well as TA, the social services district (and the ALJ) should make a separate determination as to whether the SNAP IPV is appropriate when deciding that it is appropriate on the TA side. This is particularly important when the violation involves an alleged intentional failure to report a change. Most TA/SNAP households are subject to 6 month (aka

"simplified") reporting rules for SNAP — meaning that they do not need to report most changes until their next 6 month required contact (recertification or receipt of "change report" form in the mail). On the SNAP side, the only change that simplified reporters are required to report in between 6-month intervals is an increase in household income above 130% FPL. See 02-ADM-07; 03-INF-10; 07-ADM-05. For an ADH decision upholding TA IPV but reversing SNAP IPV for 6-month reporting individual household, go to *In re Jane Doe*, FH No. 6377135N (OTDA Aug. 28, 2013)[21]

## VIII. WHEN YOUR CLIENT IS THE VICTIM OF BENEFITS FRAUD

### A. Benefits Stolen from EBT System Not Readily Replaced

1. While state regulation allows for replacement of lost or stolen checks if the individual makes a police report and completes an affidavit of loss, electronic benefits stolen from an EBT account are not as readily replaced. See 18 NYCRR § 352.7(g); TASB, Ch. 11, Sec. D at 11-7 to 11-9; TASB, Ch. 21, Sec. A at 21-23, Sec. D at 21-4.
    a. When a recipient claims that he or she has not received electronic cash public assistance benefits which the department's computer issuance record indicates were issued, the social services district must verify the validity of the computer issuance record in accordance with procedures established by the department. If it is verified that a valid issuance transaction occurred, the benefits cannot be replaced. If it is determined that a valid issuance transaction did not occur, the benefits must be restored.
2. 18 NYCRR § 352.7(g)(2); TASB at 11-9.[22]
    a. OTDA's position is that if the individual's CBIC number and PIN were used to access the benefits, regardless of whether the individual gave permission for their use, the benefits were "validly issued."
    b. OTDA informational materials distributed to individuals advise:
        1. If you suspect that your accounts have been accessed without your knowledge, you should contact the EBT Customer Service hotline to disable your CBIC. After doing that you should contact your worker to receive a replacement card. You will be held responsible for Cash and Food Stamp Benefits that are accessed using your CBIC card and PIN. If someone else uses your Common Benefit Identification Card (CBIC) and PIN to access your account, no replacement of benefits will be issued even if you claim that you did not receive those benefits.

### B. Replacement of Benefits in Certain Circumstances[23,24,25]

[21] Available at http://otda.ny.gov/fair%20hearing%20images/2013-8/Redacted_6377135N.pdf
[22] "What You Should Know About Your Rights and Responsibilities," OTDA, available at http://www.otda.ny.gov/programs/applications/4148A.pdf, at 25

1. OTDA has recognized some rare circumstances in which benefits stolen from EBT system may be replaced, namely where the individual's CBIC card number and demographic information were fraudulently obtained and used to change the PIN number through the Automated Response Unit, thus allowing access to the benefits without use of the actual card, by a person who keys in the card number and the PIN at a cooperative retailer to fraudulently access benefits.
2. If an individual suspects such unauthorized access to account, immediately report to Customer Service, to social services district, and to police. Request that a PIN lock be put on card. If social services district does not act promptly and thefts continue, any subsequent SNAP losses after first report are replaceable.[26]

***Practice Tip:*** *Obtain SFARS Recipient Profile Report if suspect that benefits are being stolen from EBT account. SFARS Report will indicate when and where each transaction took place and whether card was swiped or card number keyed in (see Appendix P).*

## C. Emergency Assistance

1. In certain situations, special needs allowances or emergency assistance can be used to replace items of need that the lost or stolen recurring temporary assistance grant was intended to cover. See TASB, Ch. 21, Sec. B, at 21-1 to 21-2.

[23] *See* HRA Policy Directive #13-25-OPE, Requests for Replacement of Stolen Supplemental Nutrition Assistance Program Benefits and/or Cash Assistance, available at http://onlineresources.wnylc.net/nychra/docs/pd_13-25-ope.pdf
[24] OTDA 06-ADM-14, Electronic Benefit Transfer (EBT) Customer Service Automated Response Unit (ARU) Personal Identification Number (PIN) Selection Restriction, available at http://otda.ny.gov/policy/directives/2006/ADM/06-ADM-14.pdf
[25] *See also Boyd v. Doar*, Index No. 400706/2008 (Sup. Ct. N.Y. County, Oct. 2, 2008), available in Online Resource Center's Benefits Law database
[26] *See In re D.V.*, FH No. 6148504R (OTDA Dec. 6, 2012), available at http://otda.ny.gov/fair%20hearing%20images/2012-12/Redacted_6148504R.pdf (directing social services district to re-evaluate claim of unauthorized use of food stamp identification card based on SFARS Report and video of illegal transaction; HRA restored $392 in lost food stamps)

# Appendices

# Appendices table of Contents

# Appendix A

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

Andrew M. Cuomo
Governor

Kristin M. Proud
Commissioner

# Informational Letter

**Section 1**

| | |
|---|---|
| **Transmittal:** | 14-INF-03 |
| **To:** | Local District Commissioners |
| **Issuing Division/Office:** | A&QI |
| **Date:** | January 14, 2014 |
| **Subject:** | Investigative Unit Operations Plan |
| **Suggested Distribution:** | Temporary Assistance Directors<br>SNAP Directors<br>Fraud Directors<br>FEDS Coordinators |
| **Contact Person(s):** | Rebecca Lynch (A&QI)<br>518-402-0013 or Rebecca.Lynch@otda.ny.gov |
| **Attachments:** | Investigative Unit Operations Plan Form |
| **Attachment Available On – Line:** | ☒ |

**Filing References**

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|---|---|---|---|---|---|
| 93 ADM-8<br>06-INF-26 | | 18 NYCRR<br>348.2,<br>359.4 | 145<br>145.C | | 7 CFR<br>273.16(g)(1) |

**Section 2**

## I. Purpose

This Informational Letter (INF) is to request that each local Social Services District (SSD) submit an updated Investigative Unit Operations Plan (IUOP).

## II. Background

93 ADM-8 requires that local SSDs file an IUOP with OTDA. A review of our files shows that the majority of the plans on file are aged and require updating.

## III. Program Implications

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

The plan must include:

(1) A description of the organizational units responsible for the investigation and prosecution of allegations of client fraud;

(2) A description of any claims establishment (recoupments) and collection activities for which this organizational unit may also be responsible;

(3) An explanation of the coordination between the investigation units and the prosecutor, i.e., courts in which cases of alleged fraud are heard, referral process, etc.;

(4) 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

(5) A copy of or a statement of the agreement with the District Attorney's office in accordance with Department Regulations 18 NYCRR 348.2(c) and 359.4, and 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 form.

All plans must be submitted to Rebecca Lynch at:

Rebecca.Lynch@otda.ny.gov
or
New York State Office of Temporary & Disability Assistance
Audit and Quality Improvement – Program Integrity
40 North Pearl Street
Riverview Center 4th Floor
Albany, NY 12243

Issued By
Name: Kevin Kehmna
Title: Director
Division/Office: Audit and Quality Improvement

# Appendix B

# Erie County Department of Social Services

## Investigative Unit Operations Plan

March 2014

Contact: Craig Provenzo
Phone # : 716-858-1773
Title: Asst. Director of Investigations
E-mail Address: Craig.Provenzo@erie.gov

1. **What unit is responsible for the investigation and prosecution of client fraud allegations?**

All fraud investigations begin as written complaints at the Intake team in the Special Investigations Division of Erie County Dept. of Social Services. An intake supervisor screens all complaints and logs new complaints into an investigation tracking system with a complaint number. Duplicate complaints are linked with the existing case file. Complaints requiring field investigations are then routed to one of three Long-Term Investigations teams. The three Long-Term Investigation teams consist of the following:

- 3 Sr. Special Investigators
- 5 Special Investigators
- 4 Asst. Special Investigators

Field investigators review the complaint and client case history, and then attempt to locate and obtain supporting documentation to prove the allegation. Typical supporting documents include witness affidavits, client affidavits (i.e. admissions of guilt), or any income or resource related documentation (wage, bank account, other financial account info). Once obtained, the case file is forwarded to an Overgrant Package team for further processing.

Completed investigations, and complaints which do not require field investigation are routed to one of three Overgrant Package Teams. Each Overgrant Package team in SID consists of the following:

- 1 Head Social Welfare Examiner
- 2 Sr. Special Investigators
- 5 Sr. Social Welfare Examiners
- 5 Social Welfare Examiners
- 1 Special Investigator

The Erie County District Attorney's office is responsible for prosecuting client fraud allegations (see item 3 below for further details).

2. **What unit is responsible for determining the overpayment amount, establishing the claim, and collection activities?**

All overpayment determinations are made by SID's Overgrant Package teams. SID's Collection Team establishes claims on CAMS for all closed Temporary Assistance and SNAP cases, and all closed or active Medicaid and Day Care cases. Active TA and SNAP cases resulting in civil recovery or affirmed Administrative Disqualification Hearings are established and collected by TA and SNAP via recoupment in CAMS.

Active, successfully prosecuted fraud cases are established and collected by the Collection Team using CAMS.

3. **What are the procedures for the referral of fraud cases to your District Attorney and Administrative Hearings? What are your procedures regarding the DCA?**

Fraud cases are referred to the District Attorney (DA) by the Overgrant Package teams supervised by the Head Social Welfare Examiner. The fraud determination is made by a Social Welfare Examiner (or Sr. SWE) and reviewed by a line supervisor and the Head Social Welfare Examiner, who then attaches supporting documentation for the DA.

Currently, a $5000 minimum overgrant threshold exists before cases are referred to the DA for all program areas (TA, SNAP, MA, and Day Care), which must include at least one face-to-face concealment made by the client to the program area examiner at the certification or recertification interview. Exceptions are granted for unusual circumstances (i.e. repeat offenders, or clients who under-report income by forging wage documentation).

Typical violations prosecuted include the following:

- Undisclosed Income (wages and commissions, Unemployment Insurance Benefits, disability, Social Security benefits, or pension income)
- Undisclosed Resources (bank accounts, real estate, stock accounts, Individual Retirement Accounts)
- Undisclosed Household Composition
- Cohabitation with Legally Responsible Relative (i.e. parent of the children in household, or spouse)
- Falsified day care vendor records
- Filing a False Instrument

Only Temporary Assistance and SNAP cases are subject to Administrative Disqualification Hearings. ADH cases are handled similarly as fraud referrals to the DA. The ADH determination is made by a Social Welfare Examiner (or Sr. SWE) and reviewed by a line supervisor and the Head Social Welfare Examiner, who then attaches supporting documentation. Cases referred for ADH must include at least one face-to-face or mail-in concealment made by the client to the program area examiner.

Currently, Disqualification Consent Agreements (DCAs) are not used.

4. **How is it proven that an individual has been advised on the court record of the Temporary Assistance disqualification penalties?**

The District Attorney meets with the client's attorney to arrive at a plea agreement. Clients are referred to SID to sign a "Statement for the Record" at an interview with the Collection Team prior to a guilty plea in court. SID forwards the "Statement for the Record" to the District Attorney, who advises the client of the disqualification penalties on the record in court prior to the client's entering a plea.

5. **Attach a copy of the agreement between your county and the District Attorney's Office for the prosecution of welfare fraud.**

See attached.

# INTERFUND
# COOPERATIVE AGREEMENT

This Cooperative Agreement made this 27th day of February 2013, by and between the Erie County Department of Social Services with offices located at 95 Franklin Street, Buffalo, New York 14202, hereinafter called the Department and the **Erie County District Attorney,** with offices located at 25 Delaware Avenue, Buffalo, New York 14202, hereafter called the Contractor.

**WHEREAS,** the Department is an administrative unit of the County of Erie which is a social services district charged with the responsibility insofar as funds are available to administer public assistance and care pursuant to the Social Services Law of the State of New York; and

**WHEREAS,** the Department may contract for the provision of public assistance and care service; and

**WHEREAS,** the Department desires to purchase services from the Contractor which is either an Administration Unit or Department or Office of the County of Erie; and

**WHEREAS,** the Department does not have either the staff or the expertise to provide the services required to be performed herein; and

**WHEREAS,** it is economically and organizationally feasible for the Contractor to provide those services; and

**WHEREAS,** the Department finds that the amount of funds to be paid to the Contractor in the amount of Three Hundred Eighty Two Thousand, Nine Hundred

Fifty Four Dollars and no cents ($382,954.00) is reasonable and necessary to obtain quality services outlined in Appendix A, attached hereto and made a part hereof and the most effective way of providing these services. Payments will be made by Interfund transfer between the Department and the Contractor according to the attached Appendix A.

NOW, THEREFORE, it is mutually agreed as follows:

1. This Cooperative Agreement will commence on January 1, 2013 and will end on December 31, 2013, unless sooner terminated by the mutual consent of the parties.
2. The Commissioner of Social Services shall have organizational supervision of any staff working under the terms of the Cooperative Agreement.
3. The Commissioner of Social Services may have input into the assignment, retention, and reassignment of any staff working under the terms of the Cooperative Agreement but that the ultimate authority for these staff remains with the appointing office.
4. The Department will provide reports, documents and other information that will enable the other party to perform its duties under the agreement.
5. The Contractor agrees that the Assistant District Attorney assigned to work with the Erie County Department of Social Services Special Investigations Division (SID) will meet with the Supervisor/Administrator of SID monthly to discuss the status of all referrals. Any referrals in which the DA plans on deferring back to SID shall be done within 90 days of the referral date. It is expected that all required reporting under the terms of the agreement contain a review of each case referred.

6. The Contractor agrees to keep and, upon reasonable prior request, make available to the United States, the New York State Department of Temporary Assistance, the Department and the Erie County Comptroller or their designees, its financial and other records of the funds paid to it and performed by it hereunder.

The United States, the New York State Department of Temporary Assistance, the Department and the Erie County Comptroller or their designees' may, at their option, on reasonable notice, and its expenses, audit the pertinent books and records of the Contractor concerning this Cooperative Agreement. The Contractor agrees to retain all books, records, and other documents relevant to this Cooperative Agreement for six years after final payment.

Prior to the making of any payments hereunder, the Department may, at its option, audit such books and records of the Contractor as are reasonably pertinent to this Cooperative Agreement to substantiate the basis for payment. The Department shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Cooperative Agreement.

7. Quarterly fiscal and programmatic reporting as required by the Department shall be provided as soon as quarterly data is available but no later than 30 days after the end of the quarter. **Reports must be submitted to Contract Control, 95 Franklin Street, Room 746, Buffalo, New York 14202.** The failure of the Contractor to submit quarterly reports indicating services rendered during the previous quarter shall result in the suspension of all payments for services

rendered by the Contractor pursuant to this Cooperative Agreement and may at the discretion of the Department result in the Department's cessation of service referrals to the Contractor until such time as the Contractor remedies said failure to the satisfaction of the Department. Reports required by the Department may be added, deleted or revised over time and these reports are deemed to be incorporated into this Cooperative Agreement as they occur.

8. The Contractor agrees to comply with the Civil Rights Act of 1964 as amended by Executive Order 11246, 41 CFR Part 60, Section 504 of the Rehabilitation Act of 1973 and 45 CFR Parts 84 and 85.

9. (a) The Contractor represents and agrees to safeguard the confidentiality of all information utilized by or in the possession of the Contractor under this Cooperative Agreement where such information is subject to Federal and State confidentiality statutes and regulations. Any breach of confidentiality by the Contractor, its agents or representatives pursuant to said statutes or regulations shall be cause for immediate termination of this Cooperative Agreement.

(b) The Contractor agrees that any disclosure of confidential HIV-related information shall be accompanied by a written statement as follows: "This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may

result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

10. This Cooperative Agreement is executory only to the extent of monies available to the Department for the performance hereof and appropriated therefore and no liability on account thereof shall be incurred by the Department beyond the monies available and appropriated for the purpose thereof.

11. (a) The Department, upon thirty (30) days notice to the Contractor, may terminate this Agreement in whole or in part when the Department deems it to be in its best interest. In such event, the Contractor shall be compensated and the Department shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination. Upon receipt of notice that the Department is terminating this Agreement in its best interests, the Contractor shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Department, and the Contractor shall direct any approved subcontractors to do the same.

In the event of a dispute as to the value of the Services rendered by the Contractor prior to the date of termination, it is understood and agreed that the Department shall determine the value of such Services rendered by the Contractor. The Contractor shall accept such reasonable and good faith determination as final.

(b) The contract may be terminated immediately by ECDSS, without notice, for cause or discovery of the contractor's non-performance or breach of this contract.

IN WITNESS THEREOF: The parties hereto have executed this Cooperative Agreement as of the day and year first above written.

APPROVED AS TO CONTENT
Louis Menza
Administrative Director III
ECDSS Program Area

DATE: 3/22/13

APPROVED AS TO FORM
ECDSS Office of Counsel

BY: HOWARD B. FRANK

DATE: 4/3/13

CONTRACTOR:

BY:

Name: FRANK A. SEDITA, III
(PRINT OR TYPE)

TITLE: ERIE COUNTY DISTRICT ATTORNEY

DATE: 2/27/2013

FOR THE DEPARTMENT:

COMMISSIONER

DATE: 4/5/13

FOR THE COUNTY OF ERIE:

MARK POLONCARZ/RICHARD TOBE
County Executive/Deputy County Executive

DATE: 4/8/13

7

# Appendix C

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

Andrew M. Cuomo
Governor

Kristin M. Proud
Commissioner

February 25, 2014

Jan Bliss
Supervising Social Services Investigator
Chemung County Department of Social Services
Human Resource Center
425 Pennsylvania Avenue
PO Box 588
Elmira, NY 14902-0588

Dear Jan Bliss:

This letter will serve as approval of your revised Investigative Unit Operations Plan (IUOP) and District Attorney (DA) agreement.

We very much appreciate the time and effort that was put into revising your IUOP and DA agreement.

Thank you for helping to maintain the integrity of Temporary Assistance and the Supplemental Nutrition Assistance Program (SNAP) in New York State.

Sincerely,

Rebecca Lynch

Rebecca Lynch
Management Specialist 2
Program Integrity

cc: Jennifer Stimson, Commissioner of Human Services
Tina O'Herron, Director of Administrative Services

Investigative Unit Operations Plan


| | |
|---|---|
| **County:** | Chemung County |
| **Contact Person:** | Jan Bliss |
| **Title:** | Supervising Social Services Investigator |
| **Phone:** | 607-737-5378 |
| **E-mail address:** | jbliss@co.chemung.ny.us |


1. **What unit is responsible for the investigation and prosecution of client fraud allegations? (name of the unit, # of positions, titles of positions, how are allegations processed)**

The Chemung County Department of Social Services Special Investigations Unit (SIU) is responsible for the investigation and prosecution referral of client fraud allegations. Our Investigation team consists of the following staff:

1 Full-Time Supervising Social Services Investigator
1 Full-Time Social Services Investigator
1 Part-Time Social Services Investigator
1 Full-Time Police Fraud Investigator
1 Full-Time Senior Social Welfare Examiner

Client fraud referrals are received from a variety of sources including the public, other governmental agencies, and the Department of Social Services workers. All client fraud referral information is entered into an automated SIU computer program by various Chemung County employees or members of the SIU. The SIU computer program is a network based program and allows various Chemung County employees to send fraud referrals to the SIU from their desktops. The fraud referral intake process provides for the entry of the client's demographic information, the type of fraud, and a narrative of the alleged fraud. A Fraud Referral Cover Sheet identifies the referral by client name and assigns a specific Fraud referral number for tracking purposes. The SIU staff or designee prepares a file and completes a preliminary case review and forwards the referral to the investigative team.

2. **What unit is responsible for determining the overpayment amount, establishing the claim and collection activities?**

The Senior Social Welfare Examiner, in SIU, is responsible for determining the overpayment amount based upon eligibility rules for each program area. The SIU's Resource Recovery team consists of one Sr. Resource Clerk and one Resource Clerk who are responsible for establishing claims on the Cash Management System (CAMS) and pursuing collection activities.

3. **What are the procedures for the referral of fraud cases to your District Attorney and Administrative Hearings?**

When a fraud has been detected, the Supervising Social Services Investigator or Police Fraud Investigator gathers and prepares an evidence package to support the allegations of the fraud. The evidence package includes documentary evidence (i.e. sworn statements, applications, recertification's, budgets, over grant summary, defendant statement, etc.) to support the allegation of fraud. The Police Fraud Investigator is responsible for preparing the Accusatory Instrument for the unit and for filing the complaint together with the evidence package with the District Attorney's Office. On cases where the District Attorney declines to criminally prosecute, the Social Services Investigator may file an Administrative Disqualification Hearing (ADH) transmittal document or pursue a disqualification consent agreement resulting in an Intentional Program Violation.

**What are your procedures regarding the DCA?**

When the Chemung County District Attorney's Office declines to criminally prosecute on a case prepared by the Chemung County Special Investigation's Unit, a Disqualification Consent Agreement is presented as an option. Upon approval of the District Attorney's Office, SIU prepares paperwork for the client contact and proceeds to follow through with obtaining the disqualification and Intentional Program Violation. When completed, the case is forwarded to the Senior Social Welfare Examiner to complete client notices, adjust the budget, and to forward to Resource Recovery to pursue collection.

4. **How is it proven that an individual has been advised on the court record of the Temporary Assistance disqualification penalties?**

The Statement for the Record document is included with each evidence package sent to the District Attorney, Criminal Court, and the Defendant. The Elmira City Court forwards a copy of the Statement for the Record along with the court order disposition to the SIU.

**Attach a copy of the agreement between your county and the District Attorney's Office for the prosecution of welfare fraud.**

# Appendix D

**TO:** Commissioners, TA Directors, FS Directors, Fraud Investigators, Legal Staff, WMS Coordinators, and Staff Development Coordinators

**FROM:** Russell Sykes, Deputy Commissioner, Center for Employment and Economic Supports

**SUBJECT:** False or Misleading Marital Status Information Admission Statement Form and Food Stamp Program Intentional Program Violations

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:**
TA Program Questions: Temporary Assistance Bureau at (518) 474-9344
FS Program Questions: Food Stamp Bureau at (518) 473-1469
Program Integrity Questions: William Donnelly at (518) 402-0129

## Background

**GIS 10 TA/DC004, dated February 5, 2010,** provided clarification about the criteria that must be applied in order to determine if a false or misleading statement by an applicant or recipient of food stamp (FS) benefits constitutes an Intentional Program Violation (IPV). In that GIS, the local districts were informed that OTDA was in the process of developing a recommended admission statement form that, when signed by a TA-FS or NTA-FS applicant or recipient and submitted in combination with the required IPV hearing packet, would provide a sufficient basis to begin the IPV hearings process.

## Purpose

The purpose of this GIS is to inform local districts about the availability of the English version of this recommended admission statement form. A copy of the form is attached to this GIS. This form is not yet available among the LDSS e-forms or in translation. Translation into languages other than English will be forthcoming, as will the assignment of an LDSS e-forms number. An INF will be issued to inform the local districts about the release of those documents.

**Program Implications**

Local districts are strongly encouraged to review **GIS 10 TA/DC004, dated February 5, 2010,** and the entire policy regarding the criteria that must be applied in order to determine if a false or misleading statement by an applicant or recipient of either Temporary Assistance (TA) or food stamp (FS) benefits constitutes an Intentional Program Violation (IPV).

In summary, however, The New York State Food Stamp program regulations at 18 N.Y.C.R.R. § 387.1(w) define the composition of a food stamp household to include the spouse of a member of the household who lives in the household. Such spouses are considered to be purchasing and preparing meals together even if they do not do so. As such, spouses living together always must be included in the same food stamp household. Spouses not living in the same household are not automatically considered to be part of the same food stamp household.

For purposes of determining whether an individual has committed an IPV in the Food Stamp program, however, it is not necessary that his or her spouse be part of the food stamp household. If the applicant/recipient provides a false or misleading statement on an application/recertification form regarding marital status, the applicant/recipient may have committed an IPV if the district can clearly establish that the applicant/recipient:

1. Intentionally made the false or misleading statement as to marital status on the application/recertification form, **and**;
2. Made the false or misleading statement for the purpose of either affecting their eligibility for the Food Stamp Program or the amount of their benefit, regardless of whether it actually did affect either their eligibility or benefits.

As noted in **GIS 10 TA/DC004,** for an admission statement regarding the intentional provision of false or misleading marital status information to be acceptable, the statement must contain an acknowledgement that the applicant/recipient understands that he/she does **not** have to sign the statement and an acknowledgement of the consequences of signing such an admission. The attached recommended admission statement contains an acknowledgement that the applicant/recipient understands that he/she does not have to sign the statement and sets forth the consequences of signing such an admission.

## STATEMENT BY FOOD STAMP APPLICANT/RECIPIENT REGARDING THE PROVISION OF FALSE OR MISLEADING INFORMATION AS TO CURRENT MARITAL STATUS

I hereby certify that I intentionally provided false or misleading information about my marital status on my Food Stamp Application and/or Recertification form AND that I provided this false or misleading marital status information for the purpose of affecting my household's eligibility for food stamp benefits and/or my household's food stamp benefit amount. I intentionally provided the incorrect information about my marital status because I thought the incorrect information would make my household eligible for food stamp benefits and/or make my household eligible for more food stamp benefits than I would have received if I provided my correct marital status.

I am aware that this statement may be used in an administrative disqualification proceeding for an Intentional Program Violation in the Food Stamp Program. I am also aware that if I am found to have committed an Intentional Program Violation, I will not be allowed to participate in the Food Stamp Program for one year if this is my first ever food stamp Intentional Program Violation, two years if this is my second Intentional Program Violation and permanently (never allowed to participate in the Food Stamp Program again) if this is my third Intentional Program Violation.

I further acknowledge that I am aware that I do not have to sign this statement and affirm that I sign below willingly. No promises or threats have been made to make me sign this statement.

_____ _____

Signature Date

_____

Print Name

# Appendix E

OTDA-4357-EL (Rev. 7/01 ) UPSTATE AND NYC MESSAGE
GIS 10 TA/DC004

**GENERAL INFORMATION SYSTEM**
**Center for Employment & Economic Supports**

**February 5 , 2010**
Page: 1

**TO:** Commissioners; TA and FS Directors; Fraud Investigators, Legal Staff, WMS Coordinators, and Staff Development Coordinators

**FROM:** Russell Sykes, Deputy Commissioner, Center for Employment and Economic Supports

**SUBJECT:** False or Misleading Marital Status Information and Food Stamp Program Intentional Program Violations

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:**
TA Program Questions: Bureau of Temporary Assistance at (518) 474-9344
FS Program Questions: FS Bureau at 1-800-343-8859 Extension 3-1469
Program Integrity Questions: William Donnelly (518) 402-0129

This message is to advise social services districts about a recent clarification received from the United States Department of Agriculture (USDA) regarding Intentional Program Violations (IPV) in the Food Stamp program. Specifically, the USDA clarified the circumstances in which the provision of false or misleading information regarding marital status on an application or recertification form may constitute an IPV. The USDA has stated that, for purposes of establishing an IPV in the Food Stamp program, the applicant/recipient must have provided the false or misleading marital status information intentionally and for the purpose of affecting food stamp eligibility and/or benefit level. Further, the USDA also clarified that an IPV may be established even if the false or misleading information does not affect eligibility or benefit amounts. An overpayment does not need to have occurred in order to pursue the IPV.

The USDA recognizes that marital status is an important consideration for determining household composition and, hence, Food Stamp program eligibility and benefit amount. The USDA further acknowledged that there is a legitimate interest in establishing the marital status of Food Stamp program applicants and recipients, and that a false or misleading statement regarding marital status potentially could be the basis of an IPV. As marital status is an important component for determining food stamp eligibility and benefit amount, it is important for districts to investigate any discrepant information regarding marital status and take appropriate action.

A discrepancy in the marital status information submitted on the application/recertification may be identified by districts in a variety of ways including the matching of applicants/recipients against a database of marital records. However, while such information is an indicator that could potentially lead to an IPV, discrepant information regarding marital status alone is insufficient to establish an IPV. A case based solely on discrepant marital status information will not be accepted into the IPV hearings process. Further investigation is necessary before a district can determine that it is appropriate to pursue an IPV.

The USDA clarified that the fact that an applicant/recipient has made a false or misleading statement regarding marital status does not necessarily mean that the applicant/recipient has committed an IPV. As stated above, the false or misleading statement must be intentional and made for the purpose of affecting eligibility and/or benefit level. The USDA clarification specifically refers to two examples; one, of an applicant/recipient who believes that a legal separation means that he or she is no longer married and responds to the question on the form incorrectly and, two, an applicant/recipient who simply wishes to be disassociated from their spouse and, without fraudulent intent, provides a false statement. In the first example, there is no IPV because there was no intent to make a false or misleading statement. The applicant/recipient was not aware that the information he/she provided regarding marital status was inaccurate and, thus, did not have the knowledge necessary to form the required intent. In the second example, although the false statement was intentionally provided, there is no IPV as there was no intent to affect Food Stamp program eligibility and/or benefit amount.

In summary, in order for cases based on a false or misleading statement on an application/recertification as to marital status to be accepted for an IPV hearing, the district must clearly establish that the applicant/recipient:

1. Intentionally made the false or misleading statement as to marital status on the application/recertification form, and;
2. Made the false or misleading statement for the purpose of affecting their eligibility for food stamps or their benefit amount, regardless of whether it actually did affect their eligibility or benefits.

A district may establish the above two elements by obtaining a signed statement from the applicant/recipient admitting to both elements set forth above. The statement must contain an acknowledgement that the applicant/recipient understands that he/she does not have to sign the statement and must set forth the consequences of signing such an admission. The OTDA is developing a recommended form for this use and will be distributing the form in the near future. Submission of this signed, recommended form, or the approved local equivalent, in combination with the required IPV hearing packet, provides a sufficient basis to begin the IPV hearings process. If the applicant/recipient does not sign the recommended form, the district needs to conduct further investigation before it can determine whether a sufficient basis exists to establish the IPV. For example, the district may discover that the spouse is living in the household or that the

applicant/recipient is attempting to conceal income. Such information would be sufficient to submit the case for an IPV hearing.

This GIS and the USDA clarification address only the situation where there is discrepant information regarding marital status. The establishment of IPV cases in situations where other application/recertification information supplied by the applicant/recipient is false and/or inaccurate remains unchanged.

# Appendix F

90IM/DC036 10/22/90 10:15 AM

ATTENTION: LOCAL COMMISSIONERS, DIRECTORS OF INCOME MAINTENANCE AND FOOD STAMPS
FROM: OSCAR R. BEST, JR., DEPUTY COMMISSIONER, DIVISION OF INCOME MAINTENANCE
SUBJECT: NOTIFICATION OF FRAUD INTERVIEWS
CONTACT PERSONS: PA - GREG NOLAN AT 1-800-342-3715, EXTENSION 4-9313
FS - YOUR COUNTY FOOD STAMPS REPRESENTATIVE AT 4-9225

THE PURPOSE OF THIS MESSAGE IS TO ADVISE YOU OF A SETTLEMENT IN THE CASE OF 'MALONE AND WETZAL VS. PERALES'. UNDER THIS SETTLEMENT, ANY LOCAL DISTRICT WHICH HAS A SPECIAL UNIT(S) RESPONSIBLE FOR CONDUCTING INTERVIEWS IN CONNECTION WITH ALLEGATIONS OF WELFARE FRAUD (INCLUDING BUT NOT LIMITED TO FRAUD INVOLVING FOOD STAMPS, MEDICAL ASSISTANCE AND PUBLIC ASSISTANCE) MUST INCLUDE IN ANY LETTER SCHEDULING SUCH AN INTERVIEW A SENTENCE ADVISING THE INDIVIDUAL OF THE RIGHT TO HAVE A REPRESENTATIVE AT THE INTERVIEW.

TS PROCEDURE OBVIOUSLY IS NOT REQUIRED IN DISTRICTS WHICH DO NOT HAVE ARATE UNITS INVESTIGATING FRAUD (OR WITH REGARD TO PROGRAMS FOR

**CONTINUED ON NEXT PAGE**

XMT S



90IM/DC036 10/22/90 10:15 AM

WHICH THE SPECIAL UNIT IS NOT RESPONSIBLE). HOWEVER, SINCE ALL CLIENTS HAVE A RIGHT TO HAVE A REPRESENTATIVE PRESENT AT ALL STAGES OF THE ELIGIBILITY/RECERTIFICATION PROCESS, THE DEPARTMENT ENCOURAGES THAT CLIENTS ROUTINELY BE SO NOTIFIED.

THIS PROVISION IS EFFECTIVE IMMEDIATELY.

***END OF CURRENT MESSAGE***

# Appendix G

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

David A. Paterson
*Governor*

David A. Hansell
*Commissioner*

# Informational Letter

**Section 1**

| | |
|---|---|
| **Transmittal:** | 09-INF-12 *{revised}* |
| **To:** | LDSS Commissioners |
| **Issuing Division/Office:** | Bureau of Audit and Quality Improvement |
| **Date:** | May 13, 2009 |
| **Subject:** | Program Integrity Questions and Answers |
| **Suggested Distribution:** | Temporary Assistance (TA) Directors<br>Food Stamps (FS) Directors<br>TOP Coordinators<br>Fraud Directors<br>Front End Detection System (FEDS) Coordinators<br>Staff Development Coordinators<br>Fair Hearings Staff |
| **Contact Person(s):** | See Attachment I for the Contact Person(s) for each Program Integrity Initiative or call 518.402.0125 for assistance |
| **Attachments:** | Attachment I – Program Integrity Staff Contact List<br>Attachment II – FEDS Indicator List<br>Attachment III – Acronym Listing *{revised}*<br>Attachment IV – Fraud Allegation Form |
| **Attachments Available On–line:** | yes |

**Filing References**

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|---|---|---|---|---|---|
| 06 ADM-13<br>05 ADM-08<br>01 ADM-09<br>99 ADM-09<br>97 ADM-23<br>97 ADM-04<br>94 ADM-05<br>08 INF-13<br>08 INF-08<br>07 INF-10 | | 18 NYCRR 396.2 | 7 CFR 273.16<br>SSL 136 | | 08 ADM-03 (MA)<br>GIS08TA/WMS 008<br>GIS08TA/DC016 |

06 INF-26
06 INF-24
06 INF-16
06 INF-10
05 INF-18
04 INF-20

Section 2

## I. Purpose

The purpose of this Informational Letter (INF) is to assist eligibility staff, investigative staff and other Local Department of Social Services (LDSS) staff with answers to Program Integrity questions.

## II. Background

Program Integrity (PI) staff from OTDA's Bureau of Audit and Quality Improvement gave presentations at the following conferences/meetings:

- New York Public Welfare Association (NYPWA) conference,
- New York Welfare Fraud Investigator Association (NYWFIA) conference and fall regional meetings, and
- New York State Staff Development Coordinators (SDC) conference.

Questions that were asked at these meetings and conferences, as well as other recent LDSS questions, have been incorporated below into the following topic areas:

For reference, Attachment III contains a listing of commonly used Program Integrity acronyms.

## III. Program Implications

### A. Automated Finger Imaging System (AFIS)

**Q1: What name should be used to enroll into AFIS when the applicant signs the application with one name although their Social Security card has another name?**

A1: Temporary Assistance (TA) policy is that the recipient can be known by any name he or she chooses; however, the Social Security Number (SSN) must be issued in that name. The chosen name and corresponding SSN is entered in section 2 of the 3209: "Authorization" document and any other names (i.e., birth name, alias) are entered in the "Other Names" field in the same section of the 3209.

Temporary Assistance Source Book (TASB), Chapter 5, Section N, page 62: *"Name does Not Match-The SSN validation error "NO Match on Name" will occur when the recipient's first or last name in WMS (Welfare Management System) does not match the SSA database. If after investigation the SSD determines that the name on file with SSA is not the same name known by social services, the recipient must be informed that he/she must use the same name for social services as SSA. The recipient has the right to decide which name he/she wants to be known by. If he/she chooses to change his/her name with SSA the recipient must be referred to their local SSA office to apply for a corrected social security number."*

Based on this policy, the AFIS record should match the name associated with the SSN. Due to the WMS PreFill functionality within AFIS, we are aware that the names may not match at the time of initial enrollment. The name must be corrected in WMS, which will generate a WMS Batch Update transaction to AFIS.

**Q2: What should be done when an applicant arrives at the AFIS workstation for finger imaging and does not have any identification?**

A2: Continue with the enrollment process; however, enter "No ID" in the remarks field.

**Q3: If a finger image is marked as "Unusable" at enrollment, how does the Eligibility Worker know?**

A3: A Match Result Notice is sent to the AFIS workstation printer within five (5) minutes of enrollment. The Match Result Notice will provide the results of the search against the OTDA AFIS database (Match/No Match), as well as the current status of the finger images. If the finger images were marked as "Unusable", the reason for that status will also be noted (i.e., "Unusable – Core too low."). To review the Corrective Action for a particular record's Unusable finger image,

retrieve the record in Records Management and select the F2 key. The Unusable Reasons will display both Reason(s) and Action(s) to be taken for each Unusable index finger.

On a weekly basis, AFIS sends WMS a file of transactions that will populate the AFIS Indicator field in WMS. The system-generated indicators from AFIS are:

1. Finger Imaged
2. Exempted – L&R Index Fingers Permanently Unavailable or Permanently Unusable
3. Temporarily Unavailable or Unusable – One Finger
4. Temporarily Unavailable or Unusable – Two Fingers

P Purged from AFIS

Any record with at least one (1) finger image marked as Unusable will appear on the AFIS Aging Status Report, which is e-mailed to the AFIS Liaison on the first business day of each month. These individuals must be called back in within 30 days to have their Unusable finger image(s) updated.

**Q4: If a finger image is Unusable, does the worker enter an exemption code in WMS?**

A4: No, the AFIS Indicator code is system generated through the weekly WMS Batch Update process, placing a 3 or 4 in the AFIS Indicator field. *Refer to answer above.*

**Q5: Is there an exemption code to enter into WMS when clients with Unusable finger image(s) have moved out of the county and, therefore, cannot be called back in to be re-imaged?**

A5: No. If the case is closed in WMS, the weekly WMS Batch Update process will inactivate the AFIS record, and the client will no longer appear on the Aging Status Report. When the client is re-activated or opened in another county, the AFIS record will appear on the respective LDSS Aging Status Report.

**Q6: What should an AFIS operator do when presented with an elderly client whose finger images are of poor quality due to age?**

A6: Whenever an operator is presented with a poor quality finger image, regardless of age, with the applicant still at the workstation, the Sagem Morpho Helpdesk at 1-800-480-6331 should be called for assistance. The Minutia Analysts (fingerprint experts) on site can assist the operator in capturing a quality finger image. If a call to the Helpdesk is not feasible at that time, the operator should capture the best images possible and then enter comments in the Remarks field in AFIS describing the situation. This will assist the Minutia Analysts in determining if the applicant's images are Permanently Unusable.

**Q7: Are Medicaid (MA) and Food Stamp (FS) clients enrolled in AFIS?**

A7: Yes. Certain Medicaid-Only applicant/recipients age 21 and over are required to be finger imaged. The finger imaging requirements for Medicaid parallel the photo ID requirements for Medicaid. Individuals who are not required to have their photo image on their Medicaid identification cards are exempt from AFIS requirements. Please refer to 99 ADM-09 for detailed exemptions. *NOTE: Effective July 1, 2009, finger-imaging for MA-only clients is eliminated. However, until the Department of Health issues policy guidance, this requirement remains in place.*

Food Stamp applicants/recipients age 18 and older are required to be finger imaged, unless exempted via your Local District AFIS Plan of Operation.

**Q8: For Food Stamp purposes, may AFIS be used for identification?**

A8: No. In accordance with 99 ADM-09, the United States Department of Agriculture (USDA) policy prohibits requiring finger imaging in the Food Stamp program as a means of identification. However, it does permit requiring finger imaging as a means to prevent duplicate participation.

## B. Intentional Program Violations (IPVs)

**Q9: An LDSS requested an Administrative Disqualification Hearing (ADH) against a FS recipient who was receiving duplicate FS benefits in two states. The LDSS indicated in its summary to the Office of Administrative Hearings (OAH) that it was pursuing the 10-year disqualification period for the duplicate benefits and because it had documentation of fraudulent residency and/or identity*. The Commissioner's Designee at OAH accepted the case for the hearing with the 10-year penalty. The recipient was sent proper notice of the hearing but did not show. When the LDSS is notified of the ADH decision, may the LDSS impose a 10-year FS disqualification, since the original hearing request included the 10-year disqualification period?** *{revised}*

A9: Even when a recipient fails to appear at a hearing, the hearing takes place, and the LDSS presents its evidence. In this example, the LDSS may proceed with a 10-year IPV, provided that the LDSS indicated in the original ADH packet that it was pursuing a 10-year IPV, and the Administrative Law Judge is presented evidence and finds that the individual made a fraudulent statement or representation with respect to his/her identity or place of residence in order to receive multiple food stamp benefits simultaneously.

LDSSs must always indicate in the ADH packet summary the length of the penalty being pursued. LDSSs are reminded that the USDA regulation for a 10-year IPV is very specific:

> [7 CFR 273.16 (b) (5)] states "...an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple FS benefits

simultaneously shall be ineligible to participate in the FS Program for a period of 10 years".

*In order to pursue and be upheld for a 10-year disqualification, in addition to the duplicate payments, there must be proof that an applicant/recipient either filed a fraudulent written statement or made a fraudulent oral statement (documented by the LDSS) specifically with regard to identity or place of residence.

**Q10: If a client is found guilty of a second FS IPV and is still serving his/her first FS IPV, should the second IPV begin *after* the remaining time on the first IPV runs its course?**

A10: No. The clock begins from the time the client is found guilty of his/her second FS IPV. The IPVs would run concurrently.

**Q11: When an overpayment occurs, such as with an IPV, and repayments are made, how should they be applied when an overpayment has occurred in multiple programs?**

A11: Per 94 ADM-05, if no client specification is made, then one payment should be applied equally to each program, i.e., two programs: 1/2 and 1/2; three programs: 1/3 and 1/3 and 1/3. When one program is paid in full, any remaining monies received must be applied to the other outstanding program(s) also in equal proportions up to the amount owed in each category.

**Q12: How do LDSSs get access to the electronic Disqualified Recipient System (e-DRS) in order to research FS IPVs?**

A12: Step One for a new e-DRS user is to go into the website:

https://www.fns-edrs.usda.gov/disclaimer.aspx

and complete a new user account form. This establishes an e-Authentication user account, user ID and password. Step Two is for the new user to visit a local USDA office and present photo identification. Step Three is to request the USDA FNS-674 "Computer System Access Request" form from PI's Judy Iemma (see Attachment I of this Directive for contact information), complete it and return it to Ms. Iemma. Once the FNS-674 form is approved, the new user will be admitted to the e-DRS.

**Q13: If an applicant files a false instrument, what code should be used to deny the application?**

A13: Filing a false instrument is not an application denial reason. The discovery of what led to the determination that a false instrument was filed is generally the reason that supports the denial or closing. For example, a single FS applicant failed to report income, but the FEDS (Front-End Detection System) investigation revealed that the applicant had enough income that would make him ineligible. The application would be denied for *excess income*. The LDSS would then pursue an IPV based on the filing of the false instrument.

Also, for TA applications only, there is a denial code available ("M40") that can be used to deny a TA application if a determination is made that the applicant intentionally misrepresented needs or resources. Please see the FEDS ADM, 05 ADM-08, for further information.

LDSSs must follow the policy of each program area when determining denial reasons and applying individual vs. case sanctions.

**Q14: How should fraudulent documents be handled? May LDSS staff confiscate them?**

A14: There is no authority to confiscate fraudulent documents. OTDA suggests that you photocopy any document in question, and on a separate sheet of paper indicate the reasons why you believe it is fraudulent.

**Q15: An LDSS has a situation where an applicant applied for FS claiming no income and was given expedited FS. Then, due to an RFI (Resource File Integration) hit, the LDSS discovered that the individual had been in receipt of Unemployment Insurance Benefits (UIB) all along. Is it correct that the LDSS may not process a claim on expedited FS, but that an IPV may be pursued?**

A15: Yes. An IPV may be pursued, but per 05 INF-18 all benefits issued under expedited processing are not subject to the establishment of a *claim*.

**Q16: LDSSs have found a few instances where other counties are not keeping their records on cases where they have had a FS IPV. The IPV is showing up on e-DRS, but the other county has not kept the documentation to back up the IPV. Therefore, if another IPV should be warranted, it can't be counted as a 2nd or 3rd IPV. Doesn't IPV supporting documentation need to be kept?**

A16: Yes. FS IPV supporting documentation and e-DRS records must be kept until an individual is known to have died or when the individual reaches 80. (The USDA selected 80 because that age is past normal life expectancy and assumed that those who reached 80 would not violate the Program.) This is important because clients can have 2nd or 3rd (permanent) FS IPVs.

**Q17: LDSSs are having issues with FS recipients: (1) purchasing large amounts of meat and then returning it for cash; (2) purchasing soda or milk, emptying the contents in the parking lot and then returning the containers to collect the return deposit money and (3) purchasing turkeys with FS at Thanksgiving and then selling them in store parking lots. May IPVs be pursued?**

A17: Neither the USDA regulations nor the State regulations currently address these specific situations. However, in the recently passed federal Farm Bill, that reauthorizes the Food Stamp Program (FSP), these situations have been addressed because the goal of the FSP is for recipients to feed their families, not to gain

income from the food purchased with FS. The USDA is currently drafting proposed regulations that will be sent to the states for comment. Once the regulations are finalized and the penalties for these situations are determined, OTDA will notify all Fraud Directors.

It is important to note that stores have the option of re-posting (crediting) the amount of the returned purchase back to the customer's EBT FS account. Stores are not required to give the customers cash, and OTDA prefers that they don't.

**Q18: May an individual in receipt of NYSNIP (New York State Nutrition Improvement Program) be pursued for an IPV?**

A18: In certain instances. NYSNIP recipients [an "S" indicator on WMS Screen 1 for Upstate NYSNIP cases and Shelter Type 94-98 for both upstate and NYC WMS] must give complete and accurate information. If the Investigator has confirmed information that indicates a false instrument was filed, the pursuit of an IPV is permitted. NYSNIP Shelter Type 98 cases that are opened via the auto-SDX process with the Social Security Administration are inherently correct. Unless the recipient is found to have committed fraud to get SSI and has redeemed FS benefits from the FS case that was auto-opened as a result of the SSI fraud, then the recipient is not subject to an IPV. However, a recipient with a NYSNIP Shelter Type 98 who knowingly reports false information on an LDSS-4841, "Information Collection Sheet", would be held responsible for the new information.

**Q19: What should an LDSS do with discrepant information received between recertifications for a FS six-month reporting household? Must the LDSS act on the information, or not? How does the LDSS know if there is an IPV?**

A19: To determine if there is an IPV, LDSS staff must become familiar with the reporting requirements for all FS simplified reporting households. If information that was not reported should have been reported (for example, a six-month reporting household failed to report income over the 130% poverty limit), then an IPV may be pursued.

When an LDSS is presented with information that is different than what is already in the case of a simplified reporting household, the LDSS must first review the information for "Verified Upon Receipt" status and then take the following action:

- If the information is Verified Upon Receipt (timely, not questionable **and** from a primary source), per 01 ADM-09, the LDSS must act on it.
- If the information is <u>not</u> Verified Upon Receipt, the LDSS must determine whether the information was either:
    - Required to be reported by the household (see 01 ADM-09 for procedures on sending the LDSS-4753: "Request for Contact"); or
    - Not required to be reported (the LDSS has the option to investigate the information <u>without contacting the household</u> and, if it reaches the level of Verified Upon Receipt information, the LDSS must act on it).

**Q20: Per 06 INF-26, revised Investigative Unit Operations Plans (IUOPs) were due 10/1/06. Will LDSSs need to complete and send a new one to OTDA each year?**

A20: No. As with FEDS plans, the IUOPs can just be updated and submitted to OTDA on an as-needed basis.

**Q21: We have an individual who has not yet served his TA IPV sanction but is applying now for emergency assistance. When do we impose the sanction?**

A21: When the individual is found eligible for the TA benefit, even if it is just a one-time payment or voucher to meet the emergency, the eligibility determination triggers the start of the pended IPV.

## C. IPV and Quarterly Fraud Reports

**Q22: Why does Program Integrity prefer the IPV Reports and Quarterly Fraud Reports to be submitted on the automated Excel spreadsheets?**

A22: When the LDSS sends the data on the Excel spreadsheets, the numbers can automatically be imported into the database. If the reports are in writing and faxed in, the numbers have to be re-entered into the database. This takes time and could create an error.

**Q23: If an individual has a pending Family Assistance (FA) or Safety Net Assistance (SNA) IPV, and the IPV needs to be implemented, how should the change be reflected on the IPV Report?**

A23: A 'C' for change should be entered under the appropriate column in the Record Action section of the IPV Report. The disqualification date must also be entered.

**Q24: If an individual has a 10-year FS disqualification, how should the IPV information be reported on the IPV Report?**

A24: For a 10-year FS disqualification, the length should be entered as 97 and the offense type code should be entered as "E".

**Q25: When completing the Quarterly Fraud Report, if a case that is referred for criminal prosecution is worked on but not completed by the end of a quarter, should that case be included in the criminal adjudication positive total in the current quarterly report, or should it be included in the adjudication positive total in the next report?**

A25: Once a case referred for criminal prosecution is successfully prosecuted, that case and the dollars involved should be included in the fraud report at the end of the quarter during which that case was **completed**.

**Q26: What is measured by the new quarterly IPV performance measurements?**

A26: The total number of positive TA and FS investigations against the total number of IPVs reported. In conjunction with examining IPV performance, OTDA encourages LDSSs to examine both their IPV and Quarterly Fraud Reports to try to determine why the IPVs occurred. Some reasons could be: (1) the Eligibility Worker missed a FEDS indicator and the case opened based on the applicant's filing of a false instrument or (2) a fraud referral was sent at recertification, but the Investigator failed to follow-up on what was questionable.

**Q27: Do I need to send in IPV reports, even if I have nothing to report?**

A27: Yes. Please report zero for that month.

## D. Front End Detection System (FEDS) Policy

**Q28: What Program Areas are mandatory for FEDS reporting?**

A28: OTDA mandates FEDS for Family Assistance (FA) and Safety Net Assistance (SNA). The Office of Children and Family Services (OCFS) mandates FEDS for Child Care.

Optional FEDS program areas are Emergency Assistance to Families (EAF), Home Energy Assistance Program (HEAP), Non-Temporary Assistance-FS (NTA-FS) and Medical Assistance (MA).

**Q29: Sometimes, Eligibility Workers need help from investigators in order to obtain necessary additional information about an application or case. However, when do Eligibility Workers send a FEDS referral, an Eligibility Verification Review (EVR) referral or a request for another type of investigation?**

A29: It is important for LDSSs to understand the different types of referrals so that the Investigator is able to assist the Eligibility Worker appropriately, and also record the investigation on the required report to OTDA:

FEDS Referral –If an Eligibility Worker has an application with an unresolved FEDS indicator for either a mandatory FEDS program or a program that is approved for FEDS in the LDSS FEDS plan, the Eligibility Worker would make a FEDS referral. The FEDS process guides the Eligibility Worker to focus on specific areas that may be problematic *at Application*.

EVR Referral – In order to make an EVR referral, the Eligibility Worker first must confirm that the LDSS has an OTDA-approved EVR process in place. If there is such a process, and the Eligibility Worker has a situation (could be at

Application, Undercare or Recertification) that meets the EVR criteria that OTDA has approved for the LDSS, then the Eligibility Worker would make an EVR referral.

Investigative Referral – If an Eligibility Worker has a situation that does not fall under either FEDS or EVR but still requires an investigation in order to maintain program integrity/prevent or detect fraud, the Eligibility Worker would make an Investigative Referral. Each LDSS must have in place a process by which regular Investigative Referrals can be made. These non-FEDS/EVR investigations, conducted at Application, Undercare or Recertification, must be reported on the fraud reports that are submitted by the LDSS to OTDA/Program Integrity on a quarterly basis.

**Q30: May an Eligibility Worker make a FEDS referral on a TA or FS application from a household that is *already* active in another assistance program?**

A30: Yes, in specific situations. Certain programs have minimal application requirements in order to increase program access and may, in some instances, even have automated openings:

TA application
If an Eligibility Worker has a case that is *already open* for Child Care, EAF, FS (including NYSNIP), HEAP, or MA, and the household is *now* presenting the Eligibility Worker with an application for TA, a FEDS referral would be made if the Eligibility Worker has an unresolved indicator.

FS application
If an Eligibility Worker has a case that is *already open* for Child Care, EAF, (including NYSNIP), HEAP, or MA, and the household is *now* presenting the Eligibility Worker with an application for FS, a FEDS referral would be made if the Eligibility Worker has an unresolved indicator and the LDSS is also approved for FS-FEDS in its FEDS plan.

Note: An LDSS does ***not*** need to have included the original open program (Child Care, EAF, [including NYSNIP], HEAP, or MA), in its FEDS plan. Only the program currently being applied ***to*** need be included in the LDSS FEDS plan.

This is a modification to information provided in the FEDS ADM, 05 ADM-08.

**Q31: If an LDSS has an open TA case, for example, and the household is simply adding a member to that household, is it appropriate to do a FEDS referral on the new TA applicant to that household?**

A31: No. The FEDS process is for an entire household when it is applying, not for individuals who are being added to an open case. If an Eligibility Worker has concerns about the new applicant, the Eligibility Worker would not use the FEDS referral process but, instead, would use the LDSS's regular Investigative Referral process.

**Q32: Shouldn't a FEDS referral be completed for any TA application that an Eligibility Worker has a concern about? Eligibility Workers many times need investigators to help assist them so that a correct eligibility determination can be made on the TA application.**

A32: Not always. Eligibility workers must complete a FEDS referral only if they have a FEDS indicator that they are unable to resolve confidently for that application. If there is no unresolved FEDS indicator present with the application, but the Eligibility Worker does not feel confident taking action on the application without investigative assistance, they would request an investigation using their LDSS's regular Investigative Referral process. The corresponding investigation would be reported on the fraud reports that are submitted by the LDSSs to OTDA/Program Integrity on a quarterly basis.

Not every Investigative Referral for an application is a FEDS referral simply because it is at Application. There *must be* an unresolved FEDS indicator for it to be considered a *FEDS* referral.

**Q33: May an Undercare worker send a FEDS referral, or may a FEDS referral be made at Recertification?**

A33: No. Per 05 ADM-08, FEDS referrals must be sent *before* the applicant becomes a recipient. However, referrals to your Investigative Unit may be made at any time.

**Q34: An Eligibility Worker reviews an application, misses a FEDS indicator and opens the case without the support of a FEDS investigation. Later, the Eligibility Worker or Supervisor notices that a FEDS indicator was missed. Should a FEDS referral then be made?**

A34: No. FEDS is used only for applications in process, not for cases that already have opened. If, however, the Eligibility Worker or Supervisor has concerns about the case, the Eligibility Worker could make a referral to the Investigative Unit and that investigation, once complete, would be recorded on the Quarterly Fraud Report.

**Q35: Is "Household Composition" in and of itself a FEDS indicator?**

A35: No. Please see Attachment II of this Directive for the list of State-mandated and State-optional FEDS indicators. Some of these indicators relate to household composition, but household composition is not a FEDS indicator on its own.

**Q36: Would all Other-Than-Grantee ("child-only") applications be referred for FEDS under the "Supported by loans or gifts from family/friends" indicator?**

A36: No. The only time an Eligibility Worker should refer a child-only application for a FEDS investigation is if the Eligibility Worker has concerns/is not confident of the accuracy or truthfulness of the information provided by the adult. For example, based on the interview and documentation, the Eligibility Worker may

have reason to believe that the child's parent is also residing in the household or that the adult submitting the application is not fully disclosing the child's own resources.

Q37: **An LDSS had a FEDS investigation that was unable to be completed within the programmatic time frames, so a Family Assistance (FA) case was opened. Upon completion of the investigation, the Eligibility Worker was informed that there was intentional misrepresentation. The Eligibility Worker tried to use the M40 "Intentional Misrepresentation" to close the case, but the system would not accept it. Why not?**

A37: Although intentional misrepresentation is a valid denial and closing reason (see the FEDS ADM, 05 ADM-08), there is currently no code that will support a *closing* and send a Client Notices System (CNS) notice. The M40 code is only supported for denials, so a manual notice must be sent for closings.

Q38: **If I am interested in on-site FEDS training for my county, whom do I contact?**

A38: You may contact Kevin Sullivan in OTDA's Training and Management Analysis (TAMA) bureau or PI's Lisa McLain (see Attachment I of this Directive for contact information), and she will forward the request.

Q39: **Is there online FEDS training available?**

A39: Yes. A training module is available at www.trainingspace.org and, at the same website, a viewer may watch the last FEDS teleconference. You may reach this site through Centraport, under the "Training and Support" Link (in the left-hand column) between "Presumptive Eligibility Training-CDHS" and "WMS Training".

Q40: **Is an Investigator required to make a recommendation on the Report of Investigation that is returned to the Eligibility Worker who made the referral?**

A40: No, there is no such requirement. The Investigator *may* make a recommendation, such as "failed to appear for scheduled FEDS appointment – deny TA application", but the Eligibility Worker makes the final determination.

Q41: **Is it acceptable for an LDSS to incorporate the five State-mandated and 10 State-optional indicators into its FEDS plan?**

A41: Yes. In addition to the five mandatory FEDS indicators, LDSSs may choose to incorporate all, some or none of the State-optional indicators into their FEDS plans. Please see Attachment II of this Directive for a list of all FEDS indicators. Please note that all indicators the LDSS incorporates in its FEDS plan become mandatory once OTDA approves the FEDS plan, and any of those indicators that remain unresolved must be referred for investigation.

**Q42: Are FEDS referrals allowed on "open/close" Transaction Type 09 applications (e.g., guaranteed payments for rent arrears or utilities)?**

A42: Yes, if the application is for a case type that is included in the LDSS's FEDS plan. Since open/close applications are usually the result of an application for emergency assistance, timing usually would not allow a complete FEDS investigation to be conducted prior to the issuance of the benefit to meet the emergency need. The investigation, however, once completed may yield that the applicant was not eligible for the benefit, and the overpayment would be subject to recovery.

If the Eligibility Worker has a concern on an open/close application that was not under a program area allowed by the FEDS plan, the Eligibility Worker could make an Investigative Referral.

**Q43: Does OTDA review Child Care FEDS plans?**

A43: No. Any FEDS plans that OTDA receives that contain Child Care information are forwarded to Bonnie Gregory at OCFS (bonnie.gregory@ocfs.state.ny.us, 518.402.3532). OCFS will then send the LDSS a reply and will copy OTDA.

**Q44: Are there any mandated indicators for Child Care FEDS?**

A44: Bonnie Gregory (contact information above) can provide a list of indicators that are allowable under Child Care FEDS.

**Q45: Does OTDA review MA FEDS plans?** *{revised}*

**A45:** No. Any FEDS plans that OTDA receives containing MA information are forwarded to Maria Dowling at the NYS Department of Health (mad14@health.state.ny.us, 518.474.8887). DOH will then send the LDSS a reply and will copy OTDA. In addition, the Office of the Medicaid Inspector General (OMIG) contact regarding recipient fraud is William Gilbert (wjg03@omig.state.ny.us, 518.486.9912).

**Q46: May an Eligibility Worker refer a FS application for a FEDS investigation for the indicator "Financial obligations are current, but stated expenses exceed income without a reasonable explanation"?**

A46: Yes. This indicator is one of the five State-mandated indicators included in 05 ADM-08 and is used as long as your LDSS's FEDS plan is approved for FS-FEDS referrals. A FS application may be referred with this indicator when the Eligibility Worker has an applicant who is up-to-date with all household costs, etc., but the income the applicant has stated is less than the applicant's stated expenses. In this situation, if the applicant has offered no reasonable explanation for the household being up-to-date (e.g., the applicant was using credit cards

which are now maxed out), the Eligibility Worker may not be confident that the applicant has reported and verified all available income.

Q47: **In this same situation above, if an Eligibility Worker refers a FS application for a FEDS investigation based on the "Financial obligations..." indicator, may an Investigator schedule an office meeting or schedule a home visit with the FS applicant to discuss possible other income?**

A47: Yes. The purpose of the scheduled meeting or scheduled home visit could be to discuss with the FS applicant other possible income to the household. The purpose also could be to discuss any discrepancies that the Investigator may have uncovered while performing a credit check, a TALX/Work Number or other employment verification, etc., prior to the scheduled office meeting or home visit. When a referral is made with this indicator, the Investigator would use all tools available to try to determine if there is unreported income that is supporting the household.

Q48: **In this same situation above, if the FS applicant fails to show for/comply with the scheduled office meeting or scheduled home visit, may the Eligibility Worker deny the applicant for "failure to keep a FEDS appointment" or "failure to comply"?**

A48: No. Those reasons are not allowable FS FEDS denial reasons. As stated in 05 ADM-08, the only acceptable denial reason for a FS application related to a FEDS investigation is "Failure to Verify". In this situation, if an Investigator discovers other employment and schedules an office meeting or schedules a home visit with the applicant in order to verify that employment, and the applicant fails to show for/comply, the Investigator would report this failure to the Eligibility Worker. The Eligibility Worker must then assess the application, the eligibility interview, documentation and any information received from the Investigator, and determine if a denial for failure to verify the income would be appropriate. The denial notice must state specifically what was not verified.

Please note that if there is merely a question of income, and neither the Eligibility Worker nor the Investigator discovers any firm evidence of the income and the applicant fails to show for/comply, then the Eligibility Worker would have no reason to deny the FS application, because there is nothing that needs verifying.

As with all aspects of eligibility determination and fraud prevention and detection, it is imperative that the Eligibility Worker and Investigator collaborate and use their combined expertise so that the Eligibility Worker may make a correct application determination.

Q49: **May an Eligibility Worker refer a FS application for a FEDS investigation for the indicator, "Supported by loans or gifts from family/friends"?**

A49: Yes. This indicator is one of the five State-mandated indicators included in 05 ADM-08 and is used as long as an LDSS's FEDS plan is approved for FS-FEDS referrals. A FS application may be referred under this indicator when an

Eligibility Worker has concerns/is not confident that the loan/gift statement the applicant submits is accurate or truthful, or if the Eligibility Worker suspects that there may be loans or gifts from family or friends that were not reported.

**Q50: In this same situation above, if an Eligibility Worker refers an application for a FEDS investigation based on the "Supported by..." indicator, may an Investigator schedule an office meeting or schedule a home visit with the applicant?**

A50: Yes. The purpose of the scheduled office meeting or scheduled home visit would be to discuss with the applicant if loans or gifts are being received from other family members and friends and, if so, the type(s) and frequency of the loans or gifts.

**Q51: In this same situation above, if the FS applicant fails to show/comply with the scheduled office meeting/home visit, may the Eligibility Worker deny the applicant for "failure to keep a FEDS appointment" or "failure to comply"?**

A51: No, those reasons are not allowable FS FEDS denial reasons. As stated in 05 ADM-08, the only acceptable denial reason for a FS application related to a FEDS investigation would be "Failure to Verify". In this situation, the Investigator must use all tools available to try to determine what money is being contributed, and by whom. This would involve speaking directly to the family members and friends, if possible, to identify any loans or gifts. If, however, the only way that the Investigator can get the additional information to resolve this indicator is to speak to the applicant, and the applicant fails to show/comply, then the application may be denied for "Failure to Verify". The denial notice must state specifically what was not verified.

Please note that if there is merely a question of loans or gifts and neither the Eligibility Worker nor the Investigator discovers any firm evidence of the loans or gifts, and the applicant fails to show/comply, then the Eligibility Worker would have no reason to deny the FS application, because there is nothing that needs verification.

As with all aspects of eligibility determination and fraud prevention and detection, it is imperative that the Eligibility Worker and Investigator collaborate and use their combined expertise so that the Eligibility Worker may make a correct application determination.

**Q52: As an Eligibility Worker, sometimes I have a FEDS indicator, but I am able to resolve it myself without having to refer it to the Investigator. Is this acceptable?**

A52: Yes. Eligibility Workers must be confident that the action they are taking on the application is correct, and they should do whatever they can within the confines of their job duties to resolve any indicators themselves. If they cannot resolve the indicator, the FEDS process is there to support their final application determination.

E. FEDS Monthly Investigation Reports

**Q53: If an LDSS cannot use the "Send" button on the FEDS Monthly Investigation Report template, what must be done to send the report?**

A53: If an LDSS cannot use the "Send" feature on the FEDS Monthly Investigation Report, then the report file MUST be named as follows in order for the data to import correctly into the FEDS reporting database:

FEDS_Report_MMYYYY_DistrictName.xls

An example is: **FEDS_Report_062008_Albany.xls**

Reports received without the correct file naming convention will be returned for correction. The correct name is automatically given to the report file when using the "Send" feature. The most common reason that LDSSs are unable to use the "Send" feature is because they are using an older version of Excel.

**Q54: If a FEDS referral is sent before a case has opened, but the Report of Investigation is not able to be returned until *after* the case has opened, is it still counted as a FEDS referral?**

A54: Yes. It is a late FEDS, but it still needs to be resolved because when it was referred, it was counted on the monthly FEDS report under Section 1 "Applications Referred for Investigation". The Eligibility Worker still must review the Report of Investigation and then determine if the case would now close (recorded on Line 4) or have its benefit reduced (recorded on Line 5).

**Q55: Am I supposed to report all FEDS referrals, or just those that had an unresolved issue that the investigation took care of?**

A55: You must report all FEDS referrals. The FEDS Monthly Investigation Report provides different fields for actions that were FEDS-related (Lines 3a-5) vs. non-FEDS-related (Line 2: Denied/Withdrawn for Reasons Other Than FEDS).

**Q56: If we have a FEDS referral but then the application is denied for reasons other than our FEDS investigative action, I understand that I report it on the FEDS Monthly Investigation Report on Line 2 "Applications Denied/Withdrawn for Reasons Other Than FEDS". But do I also report it on Line 4 "Applications Confirmed Denied/Withdrawn"?**

A56: No. Numbers from Line 2 are never repeated on Line 4.

**Q57: What plans does OTDA have for web-based, automated FEDS reporting?**

A57: OTDA hopes to implement a FEDS/EVR web-based, automated reporting application once implementation of the web-based, automated reporting application for the Recipient Fraud Matching System (RFMS) is completed.

Q58: **Each month, when I report my FEDS numbers on the FEDS Monthly Investigation Report, should the number in Line 1 "Applications Referred for Investigation" equal the number in Line 3d "Total Number of Investigations Completed"?**

A58: Usually not. This is a rolling report, so reconciliation may happen, but very rarely. If, for example, you have 100 referrals in September, they would all come in at different times during the month. Let's say that 50 come in sometime between 9/1 and 9/15, and 50 come in between 9/16 - 9/30. The report you submit by October 10th to cover what occurred in September will show all 100 referrals, but many of the resolutions will not be returned yet, particularly for the second group that came in 9/16-9/30. For the 9/16-9/30 group, it's likely that the investigation is still ongoing or the Eligibility Worker is reviewing the investigation results against the application record and interview information, and no action has been taken yet on the application.

An example of when it could reconcile is if an LDSS only had a few referrals at the very beginning of the month, and both the investigation and the action taken on the application were completed before the end of the month.

Q59: **As an Investigator, I am sometimes able to resolve a FEDS indicator in ways other than a face-to-face meeting with the applicant. Do I still count that as a FEDS investigation?**

A59: Yes.

Q60: **How do I report an applicant who applies for multiple programs, but, at the FEDS interview, tells the Investigator that they have decided to withdraw from one program while continuing to apply for others?**

A60: If the applicant has a multi-program application and withdraws the application for some of the programs (e.g., withdraws a TA application but wants to continue applying for NTA-FS and MA), then a withdrawal resolution is entered in the FEDS report under the appropriate program area (TA). If the LDSS's approved FEDS plan allows for the remaining program areas to be investigated, the investigations would be completed and the appropriate resolutions would be recorded under those program areas (NTA-FS and MA).

Q61: **As an Investigator, I often must go into WMS to determine the disposition of an application that was investigated for FEDS, in order to include it on the FEDS Monthly Investigation Report. Is this acceptable?**

A61: No. As explained in 06 INF-16 and 05 ADM-08, the Eligibility Worker must inform the Investigative Unit of the application dispositions because, in most instances, the transaction/reason codes entered in WMS will not provide the critical information of whether or not the action taken was *due to* the FEDS investigation.

F. Eligibility Verification Review (EVR)

**Q62: An Eligibility Worker does not complete a FEDS referral, and the case opens. Later, the Eligibility Worker or Supervisor notices that a FEDS indicator was missed. A FEDS referral cannot be made. Could the case be referred and counted under EVR?**

A62: No. An Eligibility Worker may only complete an EVR referral for a pre-determined population that has been pre-approved by OTDA. For example, an LDSS may want to have its Investigative Unit perform EVR investigations for all TA cases that remain sanctioned for employment requirements after a certain period of time and have not attempted to cure the sanction.

In this situation, if the Eligibility Worker has concerns/is not confident about the case, the Eligibility Worker could make an Investigative Referral to the Investigative Unit and that investigation, once complete, would be recorded on the Quarterly Fraud Report.

**Q63: Will Performance Measurements be developed for EVR?**

A63: No. Performance Measurements are for Statewide initiatives, and EVR is an optional process for LDSSs.

G. Computer Matches

**Q64: Why does OTDA run computer matches?**

A64: Computer matches are supported by federal authority under the U.S. Department of Health and Human Services (HHS) for TANF program integrity, the United States Department of Agriculture (USDA) for FS program integrity and by numerous New York State laws and regulations. Computer matches help to prevent and detect fraud by providing to the LDSS information affecting eligibility that may not have been reported by the applicant or recipient.

1. Fugitive Felon Match

**Q65: Why can't we close cases for misdemeanors?**

A65: Misdemeanors are not included in the federal and State regulations as allowable closing reasons: only certain fleeing felons are included.

**Q66: Why do some probation and parole violators show original charges as misdemeanors?**

A66: As explained in the question above, a closing may not be initiated for a misdemeanor. However, when the recipient *violates* the conditions of the parole or probation, a felony warrant may be issued. If a felony warrant is issued, the felony warrant is then the reason that the case may be closed.

Please see the 6/20/08 General Information System message GIS 08 TA/WMS008 for further information.

**Q67: Is the data contained in the "Fugitive Felon" match considered Verified Upon Receipt?**

A67: As explained in GIS 08 TA/WMS008, the probation and parole violator data contained in the "Fugitive Felon" match continues to be Verified Upon Receipt. There are now separate Client Notices System (CNS) transaction codes related to this data. The data that is specific to fugitive felons is no longer Verified Upon Receipt. In order to establish that a felon is actually fleeing, the LDSS must (1) ask the issuing agency if it is seeking the individual with the intent to prosecute the individual and, if so, (2) obtain a copy of the flight warrant from the issuing agency or a written statement from such agency on their letterhead with the specific flight/escape warrant information. Once the LDSS has completed these two steps, the information is Verified Upon Receipt, and a closing can be initiated.

**Q68: Can the Fugitive Felon data be made available to Eligibility Workers through Centraport?**

A68: Not at this time.

**2. Prison Match**

**Q69: Can you redesign WMS so that a flag could appear when a known Prison Match's SSN is input during the TA application process?**

A69: We agree that this information would be beneficial at application. However, adding this type of notification is not possible due to the current confines of WMS, which is an older, legacy-based computer system. We do expect that this type of interface will be available for all of our computer matches when the new front end system is built as part of the Statewide Welfare Management System (SWMS) implementation.

**Q70: Is the Prison Match nationwide?**

A70: No. The Prison Match contains data only from local prisons and New York State prisons within the Department of Correctional Services and the Division of Criminal Justice Services.

**Q71: Does the Prison Match contain TA and FS recipients who are in local jails and are released after a short time?**

A71: The Prison Match does include data from local jails, but the Match contains a length of incarceration edit that will prevent individuals who are incarcerated less than 30 days from appearing. Generally, individuals appearing on the Prison match are incarcerated for a year or more.

**Q72: I thought prisoners had to remain in "Suspend" status until they are released?**

A72: Temporary Assistance and Food Stamp regulations require the closing of cases for those individuals who are incarcerated. For Medical Assistance, the incarcerated individual's case is not closed, but is placed in "Suspend" status (see MA policy directive 08 ADM-03).

3. **Prison Match Auto Close Process**

**Q73: What is the purpose or goal of the Prison Match Auto Close Process?**

A73: OTDA's Prison Match Auto Close Process takes the Verified Upon Receipt data from the Prison match and automatically puts through a case closing/removal of the ineligible individual. This Process is expected to: (1) reduce the time it takes to close cases or remove ineligible individuals (2) save federal, State and local money, (3) reduce the Eligibility Worker's caseload, and (4) reduce overpayments.

**Q74: Is the Investigator or Eligibility Worker the contact on the Client Notices System (CNS) closing notice sent by the Prison Match Auto Close Process?**

A74: The Eligibility Worker is the contact listed on the CNS notice.

**Q75: Is the Prison Match Auto Close Process targeted specifically for New York City cases?**

A75: No. The Prison Match Auto Close Process is a statewide initiative.

**Q76: What if a recipient *not* in prison receives a closing notice via the Prison Match Auto Close Process?**

A76: As with any type of negative action, the CNS notice sent to the recipient explains that the recipient must contact the LDSS. When the recipient contacts the LDSS, there is time to correct the incorrect information before the closing/removal actually takes place and the benefits stop.

The information contained in the Prison Match is Verified Upon Receipt, per 04 INF-20 and 06 INF-10. This is because the vast majority of time the data is correct, and the individual is ineligible.

If this situation occurs, the LDSS must contact Steve Bach in OTDA. His contact information is on Attachment I.

**Q77: Will misdemeanor warrants be included in the Auto Close Process?**

A77: No. The data being used for the Auto Close Process and/or what is allowed as a closing is not altered in any way.

**Q78: What is the status for the Auto Close Process?**

A78: The Auto Close Process is now in place for the Prison Match. Effective with the June 2008 Prison Match, single person TA and FS cases were Auto Closed.

**Q79: Isn't the Auto Close Process a contradiction against FS Six-Month Reporters because they don't have to report being incarcerated?**

A79: There are two important things to remember about FS recipients who are on simplified reporting:

1. An LDSS must act on information that is Verified Upon Receipt, even if the FS recipient did not have to report the information. Simplified reporting does not mean that the LDSS ignores information that is Verified Upon Receipt. Per 04 INF-20, 06 INF-10 and **07 INF-10**, many computer matches are Verified Upon Receipt.
2. At application and at recertification, the simplified reporting rules do not apply—the applicant or recipient must report *all* income, resources, circumstances and changes.

**4. Public Assistance Reporting Information System (PARIS) Interstate Match**

**Q80: Is the PARIS Interstate Match going to be part of the Auto Close initiative?**

A80: It is not scheduled for the Phase I implementation. However, it may be included in the future.

**Q81: If an LDSS is having problems getting a state to close a PARIS Interstate Match hit – what should they do?**

A81: There are a number of things. First, the recipient has the responsibility to contact the other state to get the case closed. The LDSS must assist the recipient where possible. If there is clear evidence that the other state is not responding, Steve Bach from OTDA may be contacted. His contact information is on Attachment I. He may be able to obtain the necessary documentation or block the hit from reappearing on the Match.

**Q82: Does the PARIS Interstate Match provide the number of months a recipient has been receiving assistance in the other state?**

A82: No. There is no capability for that within the confines of the current system.

**Q83: When using the new Recipient Fraud Matching System (RFMS) web-based system for the PARIS Interstate Match, how does an LDSS make a change to a resolution previously entered?**

A83: Please contact your OTDA/A&QI Regional Representative regarding a resolution that needs to be changed.

**Q84: Is the PARIS Interstate Match data available through the RFMS admissible in a Fair Hearing?**

A84: Yes. The data being transmitted has not changed - only the format and delivery method have changed. In the case of a fair hearing, LDSSs should make a copy of the screen shot and present that as evidence, along with a copy of this page of this Directive and any other pertinent information, such as 04 INF-20 and 06 INF-10.

**5. Legally-Exempt Day Care Provider (LED) Match**

**Q85: Is the Legally-Exempt Day Care Provider (LED) Match new?**

A85: Yes. A pilot of this Match was performed in one Upstate county in 2007, and the results were promising. OTDA then conducted a match of all **Upstate** active TA and FS recipients with no income and income other than earned income source code 09E "Family Day Care Provider Income" and 20E "Net Business Income/Income from Self-Employment" against the OCFS file of approved legally-exempt day care providers.

**Q86: How often will this Match be sent to us?**

A86: The initial LED Match was a pilot for Upstate counties. OTDA must determine the effectiveness of the Match and, based on that, the future frequency of the Match. A modified version of this Match, with alterations made due to the analysis is planned for 2009, again for Upstate counties.

**6. TA Lottery Intercept**

**Q87: What case types are subject to the TA Lottery Intercept?**

A87: Individuals who were 21 and older while receiving benefits under the following case types are subject to the TA Lottery Intercept:

- TANF (Case Type 11, 12),
- SNA (Case Type 16, 17), and
- EAF (Case Type 19).

**Q88: Is the TA Lottery Intercept just for those who are currently in receipt of assistance from these case types?**

A88: No. Any of the assistance types listed above that were received within the last 10 years that have not been repaid are eligible to be recouped through the TA Lottery Intercept, regardless of whether the case is active or not.

**Q89: What lottery prizes are eligible for the TA Lottery Intercept?**

A89: Any prize from the NYS Division of the Lottery (including winnings from Video Gaming Machines) that equals or exceeds $600 is eligible for this Match. OTDA will withhold up to 50% of any eligible prize to repay a client's prorated share of TA benefits. By law, OTDA cannot withhold more than a client's prorated share of TA benefits.

**Q90: May a client appeal a TA Lottery Intercept?**

A90: Yes, if a client has already repaid the TA obligation or is not the person identified by the New York State Lottery. The client must appeal in writing to OTDA's TA Lottery Intercept Unit, per 18 NYCRR 396.2.

**Q91: May a TA Lottery Intercept occur for both a husband and wife?**

A91: Yes. The TA Lottery Intercept is conducted on an individual basis, not on a household basis. The SSN submitted at the time the Lottery prize is claimed is the SSN that is matched to WMS.

## 7. Verified Employment Data (VED) from the National Directory of New Hires (NDNH) Match

**Q92: I see on RFI (Resource File Integration) in WMS that there is a new resource called "VED". What is that?**

A92: Per 08 INF-08, this is the Verified Employment Data that was obtained by OTDA after the match of TANF adult individuals against the federal National Directory of New Hires (NDNH) database took place.

The VED information can be resolved through Option 1: Case Resolution on the RFI menu in WMS. VED screens are the first RFI resource on the resource list per individual in the case.

**Q93: Who is included in the TANF Adult universe that is submitted monthly to the NDNH?**

A93: The file contains any adult who received a TANF payment in the run month **and** is currently active in a TANF Case Type 11 or 12.

**Q94: How often is the VED match run?**

A94: OTDA matches to the NDNH database monthly, and the return file must then be verified. TALX-verified VED data is fed into RFI monthly, while Manual Employment Verification (MEV)-verified data is fed weekly.

**Q95: Why don't you reduce the amount of VED that you send to the Eligibility Workers in RFI by first checking to see if there is income in the budget before you send the VED?**

A95: This would defeat the purpose of the Match. The VED originated from a W-4 New Hires hit. It is possible that the TANF adult recipient has income on the budget, but it is from a different employer. If there is income on the budget, the Eligibility Worker must check the case record to see if the employer is the same as the one identified in the VED.

**Q96: Are there plans to eliminate the State Directory of New Hires (SDNH) from RFI?**

A96: Not at this time. The SDNH is run against the current TA, FS, and MA populations. The NDNH match that feeds the RFI VED information is only run against TANF adult recipients.

**Q97: Is the SSN the only matching criterion used in the NDNH match?**

A97: No. The Federal Matching Criteria for NDNH are: SSN, first character of the first name and first two characters of the last name. All SSNs are verified prior to the NDNH match. RFI Resolution Code 08 - "Wrong Individual Matched" is available if the Eligibility Worker determines it is not the same individual.

**Q98: I understand that VED information on RFI is Verified Upon Receipt and must be acted on timely, but how will I know that I have VED information on a case if I haven't gone into that case for any other reason?**

A98: Program Integrity sends a weekly "Alert Report" to Local District NDNH Coordinators (LDNCs) containing any VED information loaded into RFI for their district. The LDNCs must either notify the Eligibility Worker of the RFI VED information or resolve it themselves.

**Q99: How often are VED Aging Status Reports run?**

A99: VED Aging Status Reports are run monthly.

**Q100: Do these Aging Status Reports contain all outstanding cases, or only those not previously reported?**

A100: All cases that have not been given a resolution code within 60 days are included in the Aging Status Reports.

**Q101: What if an individual is "working off the books"?**

A101: Someone working off the books does not complete a W-4 form and, therefore, would not exist in the NDNH database to be matched. For this reason, individuals "working off the books" will not appear as a VED hit.

**Q102: Could VED information already be included in the budget?**

A102: Yes. It is possible that the recipient already reported the income. It is also possible that there is income in the case that is not the same as the VED information. As explained in Question 95, when the Eligibility Worker receives the VED information, the Eligibility Worker must review the case record and budget to make sure that the employer is the same as the one identified in the VED and that the income is budgeted correctly.

**Q103: Does the VED information include termination date and reason for termination?**

A103: Yes, if it was given by the employer.

**Q104: Could LDSSs receive multiple employment verifications for a single SSN?**

A104: It is possible that one individual may generate more than one employment verification. This is due to the fact that more than one W-4 may be on the NDNH for that individual, or that when the individual is run against the TALX/The Work Number database, TALX/The Work Number had more than one employer for that individual.

**Q105: Must LDSSs resolve all VED information received, regardless of the dollar amount involved?**

A105: Yes. The LDSS must select one of the following five Resolution Codes in RFI:

01 Closed Prior to the Match
02 No Case Action
03 Re-budgeted, but Case Remains Open
06 Closed as a Result of the Match
08 Wrong Individual Matched

One of the following Supplemental Codes is also required for VED hits:

A Referred to Investigation Unit for IPV
B Recoupment Being Assigned
C Recoupment Being Assigned **and** Referred to Investigation Unit for IPV
N No Supplemental Code

OTDA will have already filtered out any VED information where the annual income was $100 or less or where less than four weeks (28 days) of detailed wage data is available.

**Q106: Will the LDSSs ever receive VED information on closed cases for the pursuit of repayments and possible IPVs?**

A106: OTDA internal discussions have been held but, at this time, only VED information on *active* cases will be sent.

**Q107: Must LDSSs re-verify the VED information?**

A107: No. The VED information is Verified Upon Receipt, and negative action, if appropriate, may be taken immediately

**Q108: What documentation supports LDSSs in Fair Hearings associated with the VED information?**

A108: In the event that a LDSS's negative action has prompted the individual to call for a fair hearing, the LDSS should use the following items for support:

- The NDNH ADM (06 ADM-13);
- The RFI/VED INF (08 INF-08); **and**
- Copy of the screen prints from RFI/VED that show the detailed wage data. These may be obtained from the RFI VED history function (Option 8 on the RFI Menu).

**Q109: How much time do LDSSs have for resolving the VED hits?**

A109: LDSSs must return all Codes and Resolution Dates within **45** days of receipt of the hit.

**Q110: What code must be entered if there is no IPV or Recoupment associated with resolution of the VED information?**

A110: One of the four Supplemental Codes (see Answer 105) must always be used when resolving a VED hit. In this instance, the LDSS would enter Supplemental Code N – "No Supplemental Code".

**Q111: What code(s) must be entered if the VED information *might* be sent for IPV investigation, but the Eligibility Worker is unsure of the result?**

A111: If an IPV is suspected, the LDSS should use either Supplemental Code **A – "Referred to Investigation Unit for IPV"** or **C – "Recoupment Being Assigned and Referred to Investigation Unit for IPV"**. An IPV does not need to have been adjudicated in order to employ these Supplemental Codes.

**Q112: When should Eligibility Workers use the RFI Resolution Code "02 - No Case Action"?**

A112: "No Case Action" should be used as a resolution when:

- the client is no longer in a TANF-funded case (because OTDA must report back to the federal government only the impact on the TANF case); or
- the income had already been budgeted.

**Q113: What if VED information is received for a client who is no longer in a TANF-funded case?**

A113: If the client is no longer in a TANF-funded case, that VED information must be assigned the 02 - "No Case Action" code, because the data was originally derived from the NDNH match, and the NDNH match is on TANF adults. However, an Eligibility Worker still must use the VED information to:

- review against the current case,
- see if the income was known, and
- review for IPV or recoupment.

**Q114: What are the FS implications for VED information?**

A114: The LDSS is receiving Verified Upon Receipt data. It must be applied to the FS portion of the TANF case, per 01 ADM-09.

**Q115: Do LDSSs need to report any VED cost avoidance to OTDA?**

A115: No. LDSSs must only resolve all VED hits in RFI with a Resolution and Supplemental Code. OTDA will then automatically calculate cost avoidance for its internal and federal reporting purposes. As with any Program Integrity initiative, LDSSs who wish to calculate their own cost avoidance should use the cost avoidance amounts found in 08 INF-13.

**Q116: The VED screens only provide up to the most recent three months of verified employment data. What if I wish to see if the individual has been working longer than three months?**

A116: For VED information received by TALX/The Work Number [indicated on the VED screen under "SRCE" by a "T"], LDSSs can obtain employment verification going back three years through eXpress, by requesting an employment verification for that employer. However, for VED information that did not come from TALX/The Work Number, LDSSs will need to perform their own manual follow-up directly with employers.

**Q117: Is there VED history in RFI? This would be helpful to show a recipient's work history.**

A117: Yes. VED information **does** have a historical repository from which LDSSs may obtain copies later on, for IPV or FH documentation. VED History Screens may be accessed through Option 8 on the WMS RFI Menu.

The VED History Screens provide only the data on *resolved* cases. As with the other RFI resources, *unresolved* cases must be accessed through Option 1 "Case Resolution" on the WMS RFI menu.

**Q118: Is the NDNH computer match that feeds the RFI VED mandated?**

A118: Yes. The Match is mandatory for all LDSSs because the federal government allows states the option to match their TANF adult recipient caseload against the NDNH, and New York State exercised this option.

**Q119: What is the difference between the VED/NDNH and the State Directory of New Hires (SDNH) matches?**

A119: The NDNH database contains data from all IRS W-4 forms completed nationwide. OTDA matches the NYS **Adult TANF** recipient file against the NDNH database. OTDA then verifies the employment of those hits and feeds the data into the RFI system as VED information. The SDNH database contains only data from W-4 forms submitted to New York State Tax and Finance, and the employment is not verified.

The NDNH/VED information differs from the SDNH because the VED information provided to the LDSSs is Verified Upon Receipt and is comprised mostly of employers who are not required to report to Tax and Finance, such as out-of-state employers, multi-state employers and federal employers.

**Q120: If an Eligibility Worker enters the wrong resolution or supplemental code for a VED hit, what can be done to correct it?**

A120: If an LDSS needs to change a code for a VED hit, the Local District NDNH Coordinator (LDNC) should email Lisa McLain with the case number and correct code. Her contact information is on Attachment I.

**Q121: Is it possible that VED information appearing on a VED Alert Report could be system-resolved by the RFI system, rather than by an Eligibility Worker?**

A121: Yes. The following are RFI system-resolution codes:

- R – Resolved, data is duplicate;
- S – App/case is not locked or it is 260 days year prior;
- N – App/case not found;
- C – Case closed from daily process; and
- P – Case closed from monthly process.

Please note that since the RFI system-resolution codes are generated *after* the VED information is loaded into RFI, it is possible that VED information that was system-resolved might still appear on the VED Alert Report.

**Q122: If an RFI system-resolution code is assigned, how will I know?**

A122: If the Alert Report has VED information that does not appear when searched for through RFI Option 1 "Case Resolution", the VED information may have been system-resolved, or it may have been assigned an "X" by the Eligibility Worker ("Temporary unlock the app/case for three days"). This can be checked by searching for the same case in Option 8 "VED History Screens". If the case has been system-resolved or has been assigned an "X", it will appear in the History Screens with the assigned code.

**Q123: What action should the Eligibility Worker take if VED information has been system-resolved?**

A123: The Eligibility Worker does not need to take any further action.

## H. Statewide TALX/Work Number Contract

**Q124: Can I get to the TALX/Work Number website even if I don't have Internet access?**

A124: Yes, through Centraport on WMS (under "Links: Other Web Sites").

**Q125: Besides Centraport, how else can you access eXpress?**

A125: eXpress can also be accessed through:

- The Work Number's website (www.theworknumber.com)
- The eXpress phone service at: 800-660-3399. This is an automated number; there is no live operator.

**Q126: Can we use the TALX/Work Number contract in other areas of our agency, such as FS, MA or Child Support Enforcement, or for case types other than FA?**

A126: Yes, OTDA recommends that LDSSs fully utilize the TALX/Work Number eXpress and eBatch Services in any areas where their agency needs employment verification or where it currently submits to the TALX/The Work Number Corporation for verification.

**Q127: What is the difference between the "SSN Search" and "Income Verification" functions on eXpress?**

A127: The first step when accessing eXpress is the SSN search. There is NO CHARGE when the LDSS performs an SSN search. The SSN is entered, and the return screen displays the list of all employers matched to that SSN. The employee's status with that employer, such as "active" or "terminated", is also displayed.

After viewing the SSN search results, the user may opt to go further. The second step is the Income Verification. The user selects an employer from the list displayed and clicks "GO". The return screen will then display the detailed wage data for the selected employer. **Each** time an employer is selected from that list for an Income Verification, the LDSS is charged a gross fee of $1.98, and then the cost can be claimed for reimbursement on the Schedule D10, subject to available funding.

**Q128: How much does eXpress cost?**

A128: As explained above, there is no charge when the SSN search is performed. The current LDSS gross fee for each Income Verification is $1.98. Costs can be claimed for reimbursement on the Schedule D10, subject to available funding, through OTDA's Finance office.

**Q129: Can a user look up employment status through eXpress and, if active, get the detailed wage data from the free service?**

A129: No. The free service becomes disabled once the LDSS signs up for eXpress through OTDA.

**Q130: What is the eXpress Help Desk contact information?**

A130: 24-Hour Electronic Help Desk: *http://www.theworknumber.com/Contact*

or

Call Center Number: 1-800-996-7566.

**Q131: Does TALX/Work Number provide training?**

A131: Training materials are available through Centraport on *www.traingspace.org*, under "Software Training":

- *eXpress Service Demo*: A very quick step-by-step look at how to conduct an eXpress transaction.
- *The Work Number Demo*: A narrated Flash movie containing basic information about The Work Number.
- *Using The Work Number Quick Reference Card*: A one-page reference guide for using eXpress Service.
- *The Work Number Homepage*: A web site with further information on using this product.

There is also training at the following website:
http://www.theworknumber.com/SocialServices/eXpressDemo1.asp.

In specific instances, other training by TALX personnel could be scheduled. Please contact Kathleen Murphy (see Attachment I of this Directive for contact information) for more information on TALX training.

**Q132: How do users sign up for eXpress?**

A132: Users must contact their Local District TALX Coordinator (LDTC), who will then forward the request, if approved, on the "Work Number Authorized Users: Change, Add, Delete" form to Kathleen Murphy. Her contact information is on Attachment I.

**Q133: How long will it take for a request for new users to be processed?**

A133: Depending on the number of users being requested, the average processing time is three - five days. If you have not received the information after one week, please notify Kathleen Murphy, and she will check with TALX/Work Number.

**Q134: Is there a limit to the number of users per LDSS who can access the Work Number?**

A134: No. It is up to the LDSS to decide how many eXpress users it allows to perform employment verifications, since the LDSS incurs a cost per verification.

**Q135: What should users do if they lose their user ID or password?**

A135: Users must contact their LDTC, who will possess a master list of all user IDs for that LDSS or a designated back-up TALX/The Work Number information holder, if the LDSS has designated one. If any issues still exist, please contact Kathleen Murphy. Her contact information is on Attachment I.

**Q136: If I can't log in to eXpress, what do I do?**

A136: Contact your LDTC and check that you have used the correct fax number, and user ID. The most common reason for login errors is issues with the fax number. TALX/Work Number uses the fax number provided on the eXpress user request form as an identifier to connect with your user ID. The fax number provided on the form must be the one entered at login. If the LDTC cannot remedy the issue, please contact Kathleen Murphy. Her contact information is on Attachment I.

**Q137: How can the LDSS track how many eXpress Income Verifications were run?**

A137: TALX/Work Number provides OTDA with Monthly eXpress Usage Reports by LDSS, which are forwarded on to the LDTC.

**Q138: I performed an SSN search on the Work Number and found multiple individuals with the same SSN. What should I do?**

A138: Notify OTDA PI immediately. In these cases either the employer incorrectly entered the SSN or the SSN may have been stolen.

**Q139: Is there a way to see all the employers listed with the Work Number?**

A139: Yes. Begin by accessing www.theworknumber.com through either Centraport or the Internet. Enter the Social Services section and click on the "See All Employers" link.

**Q140: Does TALX/Work Number plan on adding a date to the employment activity status on the SSN Search results page?**

A140: Yes, this is part of the next planned eXpress enhancements and would appear on the first SSN search screen along with the employers matched.

**Q141: Does NDNH or TALX/Work Number have employers from Puerto Rico?**

A141: NDNH does contain the W-4 data of employers from Puerto Rico. TALX/The Work Number has many Puerto Rican employers that subscribe to their service.

**Q142: Does TALX/Work Number provide health insurance information?**

A142: TALX/Work Number does provide third party health insurance information through eXpress, the free service, and eBatch *if it is provided by the employer*.

**Q143: Does the wage detail provided by TALX/Work Number, a third party, create a hearsay problem when pursing an IPV?**

A143: The employment data provided by the employer is simply stored by TALX/Work Number and is then passed on to the requestor. TALX/Work Number does not alter the data—that is why it is considered Verified Upon Receipt. If specifically requested by a District Attorney, court or other appropriate authority, however, TALX/Work Number can provide a certified copy of the wage information for fair hearings and criminal investigations.

**Q144: How do I know if a Temporary Employment Agency employee has current income?**

A144: TALX/Work Number will include an employment activity status of 'Not Currently on Assignment" for participating Temp Agencies. "Not Currently on Assignment" indicates that the employee has not received income in at most 90 days.

**Q145: What should an Eligibility Worker or Investigator do if an income verification they obtain shows the employment status as "Active", but the income is old?**

A145: Notify Kathleen Murphy (her contact information is on Attachment I), and she will notify TALX/Work Number.

**Q146: When can LDSSs use eBatch?**

A146: eBatch is the ability to transmit a high volume of SSNs at one time to TALX/Work Number and receive back the next day a file of the detailed wage

data available for those SSNs. There is currently NO COST to the LDSSs to request an eBatch. However, *each* eBatch request must be approved by OTDA in advance.

LDSSs are required to designate a single eBatch contact person and must return to OTDA a completed eBatch Request Form each time an eBatch match is desired. For more information on eBatch, please contact Robert Antonacci. His contact information may be found on Attachment I of this Directive.

**Q147: What software capabilities will LDSSs need to transmit eBatches?**

A147: LDSSs must have the "PGP Encryption" software to transmit eBatches.

**Q148: What is the minimum number of records for eBatch?**

A148: 100 records are the minimum number for an eBatch.

## I. Fraud Allegations

**Q149: What do I do when I receive a fraud allegation from OTDA Program Integrity?**

A149: Program Integrity is frequently contacted by taxpayers and other agencies concerning allegations of fraud. OTDA completes in-house research and, if appropriate, OTDA will complete the Fraud Allegation Form (see Attachment IV of this Directive) outlining the fraud allegation and will forward that form to the Fraud Director in the appropriate county. Fraud Directors must investigate the allegation and report back to OTDA the outcome of their investigation and whether any case action was taken.

**Q150: What time frames do I have to respond to a fraud allegation?**

A150: For allegations forwarded to Program Integrity by USDA, a response within **45** days is required. For all others, PI requires a response within **60** days. The necessary response time will be included when the allegation is forwarded to the LDSS Fraud Director.

**Q151: Is OTDA Program Integrity going to develop a website for fraud allegations?**

A151: OTDA Program Integrity has a fraud reporting form that can be printed off the main OTDA webpage: http://www.otda.state.ny.us/main/data.asp, click on "Reporting Welfare Fraud". Eventually, complainants will be able to complete the form online and transmit the information directly to Program Integrity.

**Q152: If I receive information about an applicant or recipient who is defrauding a federal program, such as SSI, may I pass that information on to the appropriate federal agency?**

A152: Yes. Social Services Law 136 provides LDSSs with the authority to pass this information on to the appropriate federal agency.

## J. AccuriZ Real Property Records

**Q153: LDSSs used to be able to access real property records through Centraport, at the United States Public Data Records (USPDR) site. Why is the link no longer there?** *{revised}*

A153: The owners of the USPDR database re-formed the company into a new company called "AccuriZ" and required a purchase of service, which OTDA recently completed. The terms of the purchase agreement allow each LDSS to have access to this data through an assigned password. The Fraud Director or designated staff member, as well as a back-up staff member if one was requested, were assigned a password for this purpose.

AccuriZ can be accessed through Centraport. The link is located under the "Other Web Sites" heading and is listed as "Property Records Information". It is also possible to access AccuriZ by going directly to the company's website, www.accuriz.com.

For more information on AccuriZ, please contact Kathleen Murphy or Robert Antonacci. Their contact information may be found on Attachment I of this Directive.

## K. General Questions

**Q154: May an LDSS Investigative Unit show a list of applicants to its local law enforcement agency to see if any of the applicants have any outstanding warrants?**

A154: No. Requesting criminal history/status about an individual directly from law enforcement would be a breach of client confidentiality. Please see 97 ADM-23, Section E, for situations in which information may be shared.

**Q155: Is "common law marriage" recognized in New York State?**

A155: No.

**Q156: Is "same sex marriage" recognized in New York State?** *{revised}*

A156: Currently, same sex marriage that is performed in New York State is not recognized. Please note, however, that a February 1, 2008, Fourth Department court decision in Martinez v. County of Monroe held that legal same-sex marriages performed in other jurisdictions are "entitled to recognition in New York in the absence of express legislation to the contrary". New York State Governor David Patterson, pursuant to this court decision, directed all state

agencies to revise their policies and regulations to recognize legal same-sex marriages performed outside of New York State.

Q157: **I know that OTDA calculates estimated cost avoidance for all of its initiatives, but is there something that my agency should be doing with the figures?**

A157: It is helpful to understand how tremendous an impact Eligibility Workers and Fraud Investigators have on program costs and anticipated savings statewide. This can partially be understood with the calculation of the cost avoidance estimates. 08 INF-13 provides current information on cost avoidance calculations.

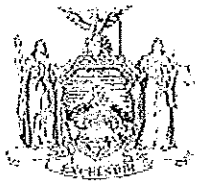
Q158: **What if an applicant did not sign the affirmation page of the original LDSS-2921 "Application" [or the LDSS-4826 "FS Benefits Application/ Recertification"] — may we send the applicant a blank copy of the application for signature?**

A158: The LDSS should send a photocopy of the entire application to the applicant and obtain an original signature on the photocopy.

Note: Signatures on faxed application signature pages, such as those used by HRA's facilitated POS e-app process, are acceptable, as well as the electronic signature on an electronic application received through the myBenefits program.

**Issued By**
**Name:** James White
**Title:** Director
**Division/Office:** Bureau of Audit and Quality Improvement

# Appendix H



George E. Pataki
*Governor*

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

Robert Doar
*Commissioner*

# Administrative Directive

**Section 1**

| | |
|---|---|
| **Transmittal:** | 05-ADM-08 |
| **To:** | Local District Commissioners |
| **Issuing Division/Office:** | PSQI |
| **Date:** | May 2, 2005 |
| **Subject:** | Front End Detection System (FEDS) Policy |
| **Suggested Distribution:** | TA Directors<br>FS Directors<br>FEDS Coordinators<br>Fraud Coordinators<br>Staff Development Coordinators<br>Fair Hearings Staff |
| **Contact Person(s):** | Maria Schollenberger at 518.402.0127 or 1-800-343-8859, extension 2-0127 or maria.Schollenberger@otda.state.ny.us |
| **Attachments:** | I – Revised Mandatory FEDS Plan Form<br>II – Sample Non-Mandated FEDS Referral Form |
| **Attachment Available On – Line:** | X |

**Filing References**

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|---|---|---|---|---|---|
| 92 ADM-33<br>04 LCM-06 | | Part 348<br>Part 351<br>Part 387 | 134-b | TASB, Chapter 5A | 05 INF-04<br>04 ADM-01<br>04 LCM-10<br>95 ADM-24 |

Section 2

## I. Summary

- The Front End Detection System (FEDS) is currently mandated for all Family Assistance and Safety Net applications; districts may also opt to conduct FEDS for other program areas, such as food stamps (FS), Medicaid and child care.

- The purpose of FEDS is to refer, investigate and resolve applications *before* a case is opened in order to prevent benefits from being issued to ineligible applicants. This proactive action by the district results in cost avoidance savings as well as correct application processing and is both a time and money-saver for districts. It also sends a strong message to clients and the community that cash assistance benefits should not be sought or received by people who are not eligible.

- Applications are referred for investigation based on indicators. There are five State-mandated indicators and other optional indicators that a district may select to include in its FEDS plan. Each district must have on file with OTDA/Program Integrity an approved FEDS plan.

- The eligibility worker, the eligibility worker's supervisor and the investigator all have important roles in the FEDS process. It is imperative that there is good communication between the eligibility and investigative units.

- Eligibility decisions and initial/recurring benefit issuances must be made on applications for TA or FS within the applicable regulatory processing time frames.

- Districts must ensure that staff understand how the FEDS process applies to TA eligibility as well as FS eligibility. Any action taken on a TA application is separate and apart from any action taken on a FS application. FS eligibility must always be separately determined from TA eligibility.

- Failure to attend a FEDS interview is not, in itself, a valid reason to deny FS benefits. For TA-FS and Non-TA FS applicants, eligibility workers must use available information and FS program criteria to separately determine eligibility.

- If there has been an *intentional* misrepresentation about the needs and resources of the applicant or information regarding responsible relatives, a TA application may be denied. However, for FS, intentional misrepresentation **cannot** be the sole basis for denying a FS application; existing FS Intentional Program Violation (IPV) procedures would need to be utilized when appropriate.

## II. Purpose

The purpose of this ADM is to provide clarification of Front End Detection System (FEDS) policy and an example of revised documents and to bring to the attention of the districts the importance of having a strong and consistent FEDS process in place.

## III. Background

Chapter 41 of the Laws of 1992 mandated that each social services district establish a Front End Detection System for temporary assistance (TA). FEDS is currently mandated for all Family Assistance and Safety Net applications. Because the Food Stamp Program is regulated by the United States Department of Agriculture and is a federal program, Chapter 41 does not apply to the Food Stamp Program. However, districts may also choose to implement FEDS for food stamps (FS), as well as for other program areas, such as Medicaid and child care.

The purpose of FEDS is to refer, investigate and resolve applications *before* a case is opened in order to prevent benefits from being issued to ineligible applicants. It is designed to identify intentionally fraudulent or inadvertently erroneous information supplied by an applicant for assistance before the applicant is found eligible. The FEDS process requires the active involvement and cooperation of a district's eligibility and investigative staff.

The FEDS process and its indicators are used at application only, as stipulated in regulation. An eligibility worker, when presented with an application, is starting with a blank slate and must examine every aspect of the application for *each* member who is applying and also the documentation submitted to support the application. The eligibility worker must assess whether all information fits together to be able to form a case that is eligible. The FEDS process highlights the areas that may be the most problematic for the worker to assess correctly. During undercare transactions and at recertification, however, eligibility workers must rely on other techniques to detect fraud. Once an application has been granted and a case is now up for recertification, for example, any further action by the eligibility worker is guided by what information is currently in place. The eligibility worker makes comparisons between what was submitted, verified and used to establish the budget and what appears to have changed during the recertification interview. If discrepancies are noted, the eligibility worker may request an investigation; however, this would not be considered an investigation under the FEDS program.

FEDS provides cost avoidance savings as well as correct application processing and is both a time and money-saver for districts. Cost avoidance figures for each of the case types are produced by the State and used in all different types of statistical analysis.

## IV. Program Implications

Each district must have on file with OTDA/Program Integrity an approved FEDS plan (see Attachment I) explaining how FEDS referrals are made, investigated and resolved for temporary assistance (TA) applications. As explained previously, districts may also opt to require the FEDS process for FS applicants, if they include this requirement in their plan. Districts must ensure that staff know whether FS is a part of their FEDS plan and also that staff understand how the FEDS process applies to TA eligibility as well as FS eligibility. Action taken on a TA application is discrete from any action taken on a FS application. However, information *uncovered* by the FEDS investigation on a TA/FS application must be considered in both the TA and FS eligibility process, even if the district does not opt to conduct FS-FEDS.

New York State oversight for child care (CC) programs lies with the Office of Children and Family Services (OCFS), and oversight for Medicaid lies with the Department of Health (DOH). Counties wishing to do FEDS in these two program areas must receive approval from these agencies. However, to ease the administrative burden on counties, OTDA/Program Integrity will forward to these agencies FEDS plans that include CC and/or Medicaid FEDS. OCFS and DOH will notify districts directly regarding these submissions and will copy OTDA/Program Integrity on correspondence regarding the submissions. An informational letter containing guidelines for Medicaid FEDS indicators will be forthcoming from the Department of Health.

It is critical that FEDS referrals be handled expeditiously so eligibility workers know the results of the investigation before the required time frames to take action on the application expire. Benefits must be issued by the fifth day following the day of application for FS applications that require expedited processing, by the 30th day for FA and non-expedited processed FS applications, and the 45th day for Safety Net applications. If a FEDS referral has been made, but the investigation has not been completed within the required application processing timeframes, the application must be approved if it is otherwise eligible. The FEDS process must continue until the ultimate resolution can be reported on the FEDS monthly report by the FEDS Coordinator. Once an initial FEDS referral is made and recorded on the FEDS monthly report, that referral must also be resolved and closed out on a FEDS monthly report, even if the process is delayed and a case has been opened and must then be closed. Counties are encouraged to solicit input from both eligibility and investigative staffs when designing their referral process.

**Districts are reminded that a referral to FEDS does not necessarily mean fraud exists—it is simply the tool that prompts the district to look further into questionable information.**

## V. Required Action

### A. Revisions to Plans

Counties may propose revisions to their FEDS plans at any time, but must submit these revisions to OTDA/Program Integrity in advance of their proposed implementation, so that the State oversight agencies have time to review and approve them. Revised plans must be submitted on the attached FEDS plan form (Attachment I) and must specify:

- The program areas for which FEDS will be conducted
- The five State-mandated indicators
- Any State-approved optional indicators it chooses to use
- Any county-specific indicators it wants to use
- How eligibility staff will refer applications to the investigative unit (manual, e-mail or automated process)
- The procedures between the eligibility and investigative units for receiving, monitoring and investigating referrals (manual, e-mail or automated processes)
- The turnaround time from the point of referral to the investigators until the return from the investigators to the originating eligibility worker
- The means and time frames by which the eligibility unit will report the action taken on the application to the investigation unit
- The name(s) of the district's contact person(s) responsible for the FEDS plan and for completing the FEDS monthly report
- The process for the submission of the monthly FEDS report.

Counties must also include a copy of:

- Any letter used to inform an applicant of a FEDS interview or home visit
- Any letter used to inform an applicant that he or she may be investigated by FEDS
- The FEDS referral form.

Any modifications to a FEDS plan in any program area must be made in writing and forwarded to OTDA/Program Integrity at least 60 days before proposed implementation. Modifications should be sent to:

Maria Schollenberger
NYS OTDA Audit & Quality Control/Program Integrity
Riverview Center - 4th Floor
40 North Pearl Street
Albany, NY 12243
Phone (518) 402-0127
Fax (518) 402-0121
maria.schollenberger@otda.state.ny.us

B. Applicant Rights

The FEDS program is geared towards reducing inappropriate TA and FS determinations, which lead to unnecessary costs. However, it is important that efforts to achieve these reductions not result in harm to applicants who are properly eligible for benefits. **Applicants must always be afforded an opportunity to explain their circumstances when one or more indicators is present.** If eligibility workers are not confident that the circumstances of an indicator have been explained or supported adequately, the application must be referred for investigation. If eligibility workers are confident of the explanation, then they should document in the case record why the indicator was not referred for a FEDS investigation.

C. Role of Staff in FEDS

FEDS is a team process. In order for it to work well and properly, there must be full cooperation between the eligibility and investigative units. Where possible, it is helpful for eligibility staff to get to know the investigative staff so that they know who will handle their referrals. In many counties, investigative staff do periodic in-service training regarding FEDS for eligibility staff, and eligibility staff do in-services regarding policy updates with investigative staff. In addition, OTDA offers on-site training in TA and FS program policy overviews which districts may request for their investigative staff. OTDA encourages the development of a strong working relationship between these two units, in order to get good referrals, complete reports of investigation and accurate application processing. OTDA also strongly encourages that the two units work together to develop a FEDS plan that will work well within the district.

1. Role of the Eligibility Worker

The goal of FEDS is to reduce federal, State and local costs incurred due to incorrect case openings and case inaccuracies. The FEDS process begins with the eligibility worker. **Eligibility workers must support and participate fully and correctly in the FEDS process for it to succeed.** It is critical that eligibility workers understand their duties and responsibilities regarding FEDS. They must work with the investigative unit

to get each application processed correctly, whether the application is denied or granted.

Eligibility workers must remember that a FEDS referral is not evidence that an applicant is committing fraud. A FEDS referral means that, despite a thorough interview by an eligibility worker, an application needs additional review before an eligibility determination can be made. Eligibility workers must keep in mind that applications with indicators must be referred, even if the eligibility worker suspects that the applicant may fail to comply with a part of the application process in the future, such as failure to comply with employment job search and/or assessment requirements.

An eligibility worker reviews the application and its accompanying documents and notes from the interview, identifies the presence of FEDS indicators during the interview process and makes a timely and appropriate referral to the investigation unit. Eligibility workers detect the presence of indicators by reviewing various documents related to the application and by asking questions at the eligibility interview. The following documents are used in detecting indicators:

- application
- clearance report (WMS/CNS Coordinator letter 8/6/04 issued by the Division of Temporary Assistance explains the different fields on the clearance report)
- verification documents submitted by the applicant
- past case records.

Eligibility workers must ensure that referrals are clear, concise and easily readable. They also must provide any information that could add to the safety or efficiency of the investigator's communication with the applicant. If, for example, an eligibility worker is referring the application because the applicant does not have a utility bill in his own name and the residency appears questionable, but the applicant stated he or she has a bad credit history with the utility provider, the eligibility worker should indicate this on the referral. An eligibility worker must also provide any necessary follow-up information and include pertinent facts, such as the applicant's responses and behavior during the eligibility interview when asked about the questionable information.

Eligibility workers must remember to notify investigators **immediately** of:

- the action taken on an application, so that monthly FEDS reports can be completed by the 10th of each month and proper cost avoidance savings can be applied;
- any important changes to the application, such as address change, withdrawal of application, or denial; and
- any action taken on the application that differs from the investigator's recommendation on the report of investigation and the reason the eligibility worker did not follow the investigator's recommendation.

Once an investigator returns the report of investigation to an eligibility worker, the eligibility worker then determines whether the application should be approved, denied, or the budget be reduced, and then sends proper notice to the applicant. Investigators make recommendations regarding application action; however, eligibility workers make the final eligibility determination.

Below are some situations where a FEDS referral is not required:

- recertification;
- someone being added to a household already receiving benefits;
- households already receiving assistance who are applying for another program area that is covered by FEDS in that district;
- applicants who are "late recerts" (i.e., they are "applying", but they received benefits within the past 30 days); and
- a household is transitioning from TA/FS to Non-TA FS.

As always, eligibility workers who have questions, suspicions or concerns regarding applicants in the above situations should talk to their supervisors and/or investigative staff to determine the most appropriate course of action.

Note: An applicant not in receipt of assistance within the past 30 days may apply and be denied right away for reasons such as excess income. If an applicant comes in quickly to reapply, it is likely that the original application would be used. If there is a FEDS indicator, this application should be referred for FEDS. (Presumably, any prior FEDS investigation would have stopped when the eligibility worker notified the investigator of the initial denial.)

2. Role of the Eligibility Worker's Supervisor

OTDA strongly encourages supervisors in eligibility units to set up procedures by which they review and approve FEDS referrals to ensure that appropriate referrals are being made. In cases where a referral is made, a supervisor should review the application to determine if the referral is warranted and complete. In cases where no referral is made, a supervisor should review the application to see if any indicators were missed. Supervisors are expected to know whether the FEDS process is working efficiently and correctly in their unit and must address any deficiencies in the FEDS process. As part of the process, supervisors must assess their eligibility workers' knowledge of FEDS and provide training and increased attention to workers as necessary.

3. Role of the Investigator

Investigators communicate with eligibility workers to gather information and impressions related to the applicant. Investigators also conduct in-office and out-of-office research, interview collateral contacts, make home visits and/or conduct an in-office interview. Once an investigator has completed these actions, the investigator prepares a written report of investigation within the appropriate time frames. Reports must be clear, concise and easily readable because they are a critical part of what eligibility workers use to make eligibility determinations. The investigator must explain how information was resolved or not resolved, and provide information on the investigative tools used to gather the information (collateral contacts, home visit, etc.). The investigator must be willing to defend the information contained in his or her report, as well as any suggested recommendation for action taken on the application, in a fair hearing. For example, an eligibility worker may have referred an application because the applicant did not have a utility bill in his own name and believed that the applicant's residence might be in question. The investigator may then have verified through contact with a neighbor that the applicant lived at the address stated on the application. When the investigator attempted a scheduled home visit, however, the

applicant may have failed to cooperate. In this example, both the collateral contact information and the failure to cooperate with the home visit should be listed on the investigation report because both pieces of information should be used by the eligibility worker when making the eligibility determination.

Once an investigator learns of the action taken by an eligibility worker on an application, the investigator should forward the appropriate paperwork to the district's FEDS Coordinator for inclusion into the district's monthly FEDS statistics. Investigators may **not** forward paperwork to a FEDS Coordinator based on their recommendation to the eligibility worker nor on their guess on an action that might be taken on an application. FEDS Coordinators are required to report actual action taken on an application. Investigators are encouraged to inform eligibility workers and their supervisors how much each confirmed FEDS referral saved in cost avoidance or grant reduction.

In instances where an investigator has not completed a report of investigation within the policy time frames and an applicant is otherwise eligible, the application must be approved and the investigation continued until the report of investigation has been completed. Every FEDS referral, once recorded as received, must be resolved on a monthly report, once the FEDS process has been completed.

4. Role of the FEDS Coordinator

Each district must appoint a FEDS Coordinator and the Coordinator must submit a monthly FEDS report by the 10th of each month to OTDA/Program Integrity. This report must contain, by case type:

- the number of applications referred for investigation for the month;
- the number of investigations completed for the month (includes holdovers from prior months), identified as

  - ☐ Applications with no errors found (no reason to deny or reduce) or
  - ☐ Applications with discrepancies detected (denied, withdrawn, or reduced);

- the number of applications confirmed denied, withdrawn; and,
- the number of cases with confirmed grant reduction savings.

Cost Avoidance Calculation

Applications that are denied or withdrawn due to FEDS investigations result in cost avoidance savings for the district. Cost avoidance is the mathematical calculation of what an application might have cost the State and counties if it had not been referred for investigation and had, instead, been approved. In simplest terms, for each referral that results in a denial or withdrawal, a statewide average of the monthly cost for a case is multiplied by six to determine the total cost avoidance for that successful referral. For example, a FA denial that was the result of a FEDS investigation would result in a gross cost avoidance figure of $7,062 ($2,982 for the FA benefit, $3,096 for the Medicaid benefit and $984 for the FS benefit). The monthly average is multiplied by six because, on the average, if a case is opened, it is not reviewed until six months later.

A grant reduction savings is calculated in instances where the report of investigation provides a finding that gives the applicant a budget that is lower than if the finding was not present.

Calculation for Denials/Withdrawals For Reasons In Addition To FEDS Investigation Findings

In some instances, an applicant may be referred for a FEDS investigation, and the investigation may subsequently result in a reason for denial. Meanwhile, an applicant may also have caused another reason for denial, such as failure to comply with an employment requirement. If an eligibility worker has two simultaneous denial reasons and chooses to deny the application for the non-FEDS reason, the district may claim the cost avoidance savings for that application, since the FEDS investigation did result in a reason for denial.

However, if a FEDS investigation has not been completed yet, and an eligibility worker denies the application for a reason not related to the investigation (e.g., failure to submit verification within 10 days), districts should report this under "applications with no errors found." The investigation should stop, and no cost avoidance savings may be claimed.

**If an application is referred to FEDS, but an investigation is not completed until after the application is approved and recurring benefits have been issued, the FEDS process should continue until it is resolved.** If the investigative finding ultimately results in either a grant reduction or closing (since the case has opened), districts may claim the cost avoidance or grant reduction savings. This would be a "late FEDS."

If an applicant is referred to FEDS on one indicator, but the applicant withdraws the application because of a different issue discussed during the FEDS interview/home visit, the district may claim the savings.

D. FEDS Referral Process/Form

A FEDS referral process/form must be developed by the district to track a referral to its conclusion (see Attachment II of this directive for a sample of a referral form that districts may download and modify according to their FEDS plans; this Attachment is not mandated). Districts must refer applications with indicators for FEDS investigations. They may use a manual form, e-mail or an automated process. Eligibility and investigative staff should have input into this process so that the referrals are timely. The information included on the referrals is intended to assist investigators. In addition to including the mandated information (the five State-mandated indicators, and State-approved optional indicators specified in approved FEDS plans), OTDA recommends including:

- applicant demographic information (name, gender, address, SSN) so the investigator has the information to conduct WMS and other searches;
- primary language, so the investigator can arrange for an interpreter if a home visit or interview is required; and,
- the reason for referral/short narrative explaining the indicator checked.

Referrals should include access to or provisions for review of the application and any verification documents presented, particularly questionable or suspicious documents. OTDA encourages counties who have an Eligibility Verification Review (EVR) fraud referral process to use discrete referral forms so that applications without FEDS indicators are not accidentally referred for FEDS and claimed under the wrong program.

E. Indicators for Referral

Indicators are the core of the FEDS process. They help eligibility workers to focus on an application as it is being reviewed and to decide if further information is needed to make an eligibility determination. Indicators related to income ensure that the eligibility worker attempts to obtain, through the FEDS referral and investigation, all possible income information that might affect the household's final budget. Indicators related to household composition help ensure that an eligibility worker accounts for the needs and additional income of all household members budgeted. Indicators related to shelter and address, if any, help ensure that an applicant resides at the address stated within the county, and that the proper shelter costs are budgeted.

1. State-Mandated Indicators

There are five State-mandated indicators used in the FEDS referral process:

- financial obligations are current, but stated expenses exceed income *without a reasonable explanation;*
- working off the books *(currently or previously);*
- supported by loans or gifts from family or friends;
- current application is inconsistent with prior case information; and,
- prior history of denial, case closing or overpayment *resulting from an investigation.*

2. State Approved Optional Indicators

There are 10 other indicators that are not mandated but are available to districts for incorporation into their FEDS plans. **Of these ten, OTDA strongly recommends the use of the following three indicators because they historically have shown to provide the highest rate of success on a FEDS referral:**

- **no absent parent information or information is inconsistent with the application;**
- **no documentation to verify identity or documentation of identity is questionable; and,**
- **landlord does not verify household composition or provides information inconsistent with the application.**

The remaining seven optional indicators are also available to districts for inclusion in their FEDS plans:

- self-employed but without adequate business records to support financial assertions;
- alien with questionable or no documentation to substantiate immigration status

NOTE: When an individual is unable to verify eligible alien status, the eligibility of the remaining household members must be determined based on available information. For example, an ineligible alien's citizen children, if otherwise eligible, must not be denied assistance or FS solely because of their parent's immigration status.

- documents or information provided are inconsistent with application, such as different name used for signature or invalid SSN;
- P.O. box is used as a mailing address *without a reasonable explanation;*
- primary tenant with no utility bills in his/her name;
- children under the age of six with no birth certificates available; and,
- unsure of own address.

If the district chooses to include any or all of these optional indicators in its plan, eligibility workers must also refer any applications with these indicators to FEDS:

Districts may also create their own indicators to reflect situations that are unique to their district. Districts must write in and submit these indicators in their FEDS plan for approval by OTDA. These indicators must be pre-filled on the district's referral form and not be left blank to be completed as an "other" by the eligibility worker. If a district chooses to include an indicator it created in its FEDS plan, and it is approved by OTDA/Program Integrity, eligibility workers must also refer to FEDS any applications with this indicator.

F. Emergency Benefits

The FEDS process is dependent on resolving the referral before the application is approved or denied. It may be difficult for a district to complete the FEDS process in an emergency situation, due to the accelerated time frames. While there may be questionable or suspicious information that has triggered one or more indicators, programmatic timelines **must** prevail. In emergency situations, the district should complete and resolve the investigation before recurring benefits begin. For example, an applicant may be in an emergency situation and apply for food stamps on January 1, 2005. The FS interview is January 3, 2005 and the eligibility worker completes a FEDS referral on that applicant the same day. The applicant receives an expedited food stamp issuance on January 5, 2005. The district should complete the FEDS process before the applicant's first recurring benefit in February 2005. In instances where a district opens a TA case in order to issue a FS benefit with expedited processing, the FEDS process should be completed before the recurring FS benefit begins and before an initial TA benefit is issued.

Some counties may implement a process in which emergency applicants have same day FEDS investigation interviews. OTDA encourages this practice if staffing within the district allows it. If an applicant does not complete the remaining eligibility requirements necessary to receive ongoing benefits, and a FEDS referral has been made, the district must close out the FEDS referral on the monthly report. The district will need to make a determination as to whether the applicant was aware of the FEDS referral and did not complete the remaining requirements because of that referral.

G. Home Visits and Office Interviews During FEDS Investigations

Once a FEDS referral has been sent to the investigative unit because an indicator has been triggered, for both TA and FS applicants, a home visit by a FEDS investigator may be conducted. The home visit by a FEDS investigator is one of several tools available for investigating an applicant's situation, and is normally made after other tools, such as computer checks and collateral contacts, have been used. Home visits need not be conducted for every FEDS referral, but should be conducted at the discretion of the local district when an on-site visit is most likely to resolve the indicator(s) on the referral form.

A home visit to an applicant by a FEDS investigator must be conducted during normal business hours, unless the applicant's circumstances make scheduling during business hours impractical. FEDS investigators must properly identify themselves. Consent by an applicant to a home visit is not considered permission to search the premises. However, a FEDS investigator may question the applicant about people or objects in plain view. Also, aside from possible fraud, a FEDS investigator can observe the need for services to develop parenting skills or whether the residence has obvious health and safety defects that should be reported to appropriate staff.

1. Unscheduled FEDS Home Visits

For TA and FS applicants, unscheduled (unannounced) FEDS home visits are allowable. However, if an applicant refuses to allow entry or declines to cooperate in an unannounced FEDS home visit, failure to cooperate **cannot** be used as the basis for denying the application. The FEDS investigator must **not** lead the applicant to believe that failure to cooperate in an unscheduled FEDS home visit will result in a denial. If an applicant does not cooperate, the FEDS investigator may schedule an appointment with the applicant to continue the FEDS investigation.

2. Scheduled FEDS Home Visits and Office Interviews

FEDS investigators may schedule a home visit or an office interview to complete their investigation. The scheduled time must be reasonable and defendable at a fair hearing. If an office interview is scheduled instead of a home visit, an effort must be made to prevent hardship on the applicant.

As explained above, an investigator should conduct a home visit or an office interview when other investigative tools did not or will not resolve the indicator. If an investigator is unable to resolve an indicator due to the applicant's failure to cooperate with a scheduled home visit or office interview, the investigator must so inform the eligibility worker on the report of investigation. As stated in the "Role of the Investigator" section, the investigator must forward to the eligibility worker any information gained through the use of any investigative tools. The eligibility worker will then weigh the investigator's information (if it is provided within programmatic time frames), the application and all documentation and will make the eligibility decision based on all this information.

H. Intentional Misrepresentation and Intentional Program Violations (IPVs)

During the course of an investigation, it may become clear to the investigator that there has been an *intentional* misrepresentation about the needs and resources of the applicant or information regarding responsible relatives. For TA applications only, if this occurs, the investigator may, on the report of investigation, recommend to the eligibility worker that the TA application may be denied, according to State regulation 351.1(b)(2):

> Each applicant and recipient must, as a condition of eligibility for themselves or others: (1) provide accurate, complete and current information on his or her needs and resources as well as the whereabouts and circumstances of responsible relatives.

Investigators must document on their reports the reason for determinations of intentional misrepresentation and must be prepared to defend their determination at a fair hearing. An investigator may **not** recommend a denial because of an applicant's misunderstanding or confusion about completion of the application or other information. It is possible, that an eligibility worker also may discover something leading to a determination of intentional misrepresentation in the areas listed above. In such cases, eligibility workers must document in the case record the reason for their determination and must be prepared to defend the denial in a fair hearing. In addition to denying a TA application for an intentional misrepresentation by the applicant, districts may also pursue a TA-IPV for filing a false instrument, even if no benefits are issued.

TA Example 1: An applicant reports via the application document that she has five children; however, the district is aware that the applicant has only three children. This apparent inconsistency would suggest to the reasonable person that someone ask the applicant why she stated that she has five children. The response might suggest that the applicant was lying or it might suggest new circumstances that may or may not be material. For example, if the applicant alleges that the two additional children in the household are her nieces whose mother was recently hospitalized, she may be eligible for TA. However, further investigation may establish that the nieces' mother was not in the hospital when the application was completed. Denying the application would be appropriate in such a situation because the information presented was determined to be an attempt to intentionally misrepresent circumstances for the purposes of qualifying for TA.

TA Example 2: An applicant indicates that he has not recently worked, but through further questioning reveals that he babysat for someone three times last month, and was paid for that service, but did not realize that a non-regular babysitting job was reportable. The prudent person might or might not determine that the omission of that information from the application document was due to applicant error or misunderstanding.

18 NYCRR 351.1(b)(2) applies only to TA it does **not** apply to the FS Program. For FS applications, once an investigation has been completed, any remaining suspicion by a district that an FS applicant has committed fraud or has lied is not a reason to deny the application. The district may deny only for reasons that make the application ineligible, such as excess income, resources, etc. If an applicant is eligible otherwise, districts must pursue a FS-IPV to prove that a FS applicant has lied and/or has filed a false instrument with the intent to defraud. If the IPV is imposed, then action may be taken. If an applicant is denied for reasons such as excess income, districts may pursue a FS-IPV for filing a false instrument, even though no benefits have been issued.

It is critical that eligibility workers complete thorough interviews to ensure, as much as possible, that all sections of the application are completed and understood. During an eligibility interview, an applicant should fill in the answer to a question that has not been completed or may change an answer (e.g., wrote in his net income instead of his gross) based on a clarification during the interview. Any change to a previously stated answer should be initialed and dated by the applicant. However, when a district discovers information that the applicant did not declare on the application or during the interview, the district may then elect to pursue an IPV.

If a district elects to pursue an IPV, the evidence package may be forwarded to an Administrative Hearing Office or a District Attorney's Office, depending upon the district's agreement with its District Attorney. In pursuing an IPV, it is critical that the county ensure that the original application and documentation not contain any subsequent "pen and ink" corrections to the original documentation after the eligibility interview. For example, if a FS applicant fails to list income on the application and does not reveal it during the eligibility interview, but the FEDS investigation reveals a current income source that the applicant *then* acknowledges, the district could pursue a FS-IPV. The applicant must not then correct and initial the income amount on the original application, since that application will be used as evidence in the IPV process. The district should have the applicant attest to the income on a separate sheet of paper.

## VI. Systems Implications

Action on an application for failure to comply with the FEDS process should utilize one of the notices below. This would include a denial as well as a closing (for those cases when the FEDS investigation was not concluded in a timely fashion and the case was opened).

Upstate

**Upstate - TA Action**

| | |
|---|---|
| CNS Code N15 | Failure to Keep Appointment EVR/FEDS [*Scheduled]* Home Visit |
| CNS Code W10 | Failure to Keep Investigatory Appointment [Office Interview] |
| CNS Code V21 | Failure to Provide Verification* |

**Upstate - FS Action (If the district has an approved FS-FEDS plan)**

| | |
|---|---|
| CNS Code V21 | Failure to Provide Verification* |

***When using V21, districts are providing proper notice to the applicant by *specifying* what has not been verified. The V21 code offers the eligibility worker a drop-down box of selections of what has not been verified, as well as an "other" box that allows the eligibility worker to explain an item that is not available from the selections. It is imperative that the applicant is informed specifically in the denial notice of what has not been verified.**

NYC (Note: New York City does not do FEDS for FS applications)

**NYC - TA Action - Denial**

There are no case level denials in CNS for TA, so a manual denial notice would be sent with one of the following reasons written in:

245 - Fail to Keep EVR Appt
246 - Ineligible Based upon EVR Evaluation
285 or 286 – Other (for Failure to Verify situation)

**NYC - TA Action - Closing**

| | |
|---|---|
| CNS Code N15 | Failure to Keep Appointment EVR/FEDS [*Scheduled]* Home Visit |
| CNS Code E18 | Failure to Keep EVR Office Appointment |

(Failure to Verify codes can be found in the "Worker's Guide to Codes", starting on Page 1.3-44)

## VII. Additional Information

### A. OTDA/Program Integrity Responsibilities

OTDA/Program Integrity has the following responsibilities regarding FEDS:

- Establish FEDS policy and procedures
- Review local district FEDS plans to ensure that they comply with regulatory mandates and that selected indicators are not discriminatory
- Provide oversight of the FEDS process and corrective action if problems exist
- Prepare the monthly State FEDS report which aggregates results from the counties.

Each year A&QC prepares a report for cost avoidance figures by district to each county commissioner. This report covers the State fiscal year, April-March, and gives similar information to that given to OTDA by each district in the monthly local district report as follows:

- Cases referred;
- Cases investigated;
- Cases with no errors;
- Cases with detected discrepancies;
- Cases denied or withdrawn;
- Cost avoidance for cases denied or withdrawn;
- Cases with grant reductions;
- Cost avoidance for cases with grant reduction; and,
- Total cost avoidance.

**OTDA is recalculating the cost avoidance amounts and the monthly reporting form. We expect to issue the new amounts and a new form later this year.**

### B. Training

OTDA/Program Integrity, with the assistance of the SUNYA Professional Development Program, completed twelve regional trainings on FEDS in Summer 2004. Training activities included reviewing a sample application and accompanyng documentation to try to identify mandated indicators, writing a FEDS referral, identifying current barriers to the FEDS process and the benefits of FEDS for the eligibility worker, investigator, agency, community and applicant. Counties who would like to apply for on-site FEDS training from OTDA may contact Maria Schollenberger at:

Phone Number: 518-402-0127
E-mail Address: maria.schollenberger@otda.state.ny.us

On October 7, 2004, OTDA broadcast statewide a FEDS teleconference to more than 200 district staff. In addition to reinforcing FEDS policy and explaining cost avoidance calculations, a senior investigator from the State Police discussed interviewing techniques, and two local district representatives explained the value of FEDS. Counties may view this teleconference on their pcs on the OCFS Bureau of Training intranet page:

From the DFA Home Page, select Training
Select OCFS Bureau of Training
Select On Line Presentation Center from the What's New menu on the left
Search by Date: 10/7/04; scroll down to FEDS

The direct link is: http://sdssnet5/ohrd/distancelearning/presentations/

A PC-based Computer Assisted Instruction (CAI) module will be available to district staff in the second quarter of 2005.

C. FEDS Audits

Twenty-six counties will be audited in State Fiscal Year 2004-2005. OTDA will continue to audit counties and review performance measurements. FEDS "best practices" will be collected from counties being audited and will be compiled and released in an LCM in 2005.

D. Performance Measures

As part of OTDA's statewide program integrity efforts, OTDA has developed performance measures for a number of programs, including FEDS. County commissioners will receive these numbers on a quarterly basis in order to assist them in their analysis of staffing and training needs. For FEDS, the measures reflect the number of FEDS referrals against the number of applications, and the number of FEDS referrals that resulted in cost avoidance/grant reduction against the total number of referrals.

## VIII. Effective Date

This administrative directive is effective immediately.

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**Issued By**
**Name:** Mary Meister
**Title:** Deputy Commissioner
**Division/Office:** Program Support & Quality Improvement (PSQI)

County_____ Date_____

FRONT END DETECTION SYSTEM (FEDS) PLAN OF OPERATION

If an application has one or more of the indicators checked below on the district's approved FEDS plan, and the eligibility worker is not confident that an indicator has been explained or supported adequately, the application must be referred for a FEDS investigation. The wording of each indicator must appear exactly on the FEDS plan as well as the FEDS referral process/form.

**Section 1 – State Mandated Indicators**

All district plans must include these indicators:

(X) **Financial obligations are current, but stated expenses exceed income *without a reasonable explanation***
(X) **Working off the books (currently *or previously*)**
(X) **Supported by loans or gifts from family/friends**
(X) **Application is inconsistent with prior case information**
(X) **Prior history of denial, case closing, or overpayment *resulting from an investigation.***

**Section 2 – State-Approved Optional Indicators**

This section may be left blank if a county chooses not to select any of these optional indicators for its FEDS process. If the district chooses to include any or all of these optional indicators in its plan, eligibility workers must also refer to FEDS any applications with these indicators:

( ) No absent parent information or information is inconsistent with application

( ) No documentation to verify identity or documentation of identity is questionable

( ) Landlord does not verify HH composition or provides information inconsistent with application

( ) Self-employed but *without adequate business records* to support financial assertions

( ) Alien with questionable or no documentation to substantiate immigration status

( ) Documents or information provided are inconsistent with application, such as different name used for signature or invalid SSN

( ) P.O. Box is used as a mailing address *without a reasonable explanation,* e.g., high crime area

( ) Primary tenant with no utility bills (e.g., phone or electric) in his/her name

( ) Children under the age of six with no birth certificates available

( ) Unsure of own address

**Section 3 – State-Approved County-Specific Indicators**

Eligibility workers are not allowed to refer cases based on an "other" box that they fill in for each FEDS referral. Indicators listed and checked here must be pre-approved by the State and must be pre-filled on the district's FEDS referral process/form. This section may be left blank if a district chooses not to create any county-specific indicators for their FEDS process. Once the State approves this indicator, eligibility workers must also refer to FEDS any applications with these indicators:

( ) County-Specific Indicator: _____
( ) County-Specific Indicator: _____

**Section 4 – Description of FEDS Process** - Please describe your FEDS process:

a. Specify what program areas will use FEDS:

X TA ___FS ___ Medicaid ___CC _____ Other (specify)

b. Describe how an application will be referred by the eligibility worker to the investigative unit. Include if this is a manual, e-mail or automated process, and if there is eligibility supervisory review. OTDA strongly encourages eligibility supervisory review.

c. Describe how the investigative unit logs and tracks the referral, as well as how it processes it (i.e., home visit, collateral contact, office interview, etc.).

d. Specify the targeted time frames for reporting investigative results back to the eligibility worker for final determination.

e. If your district contracts out for investigations, such as with a local sheriff's department, explain this process and staffing and identify the contractor.

f. Describe how and when the investigative unit is informed of the final action taken on the application, for inclusion in the FEDS monthly report.

g. Attach copies of:
- Any letter used to inform an applicant of a FEDS interview or home visit
- Any letter used to inform an applicant that they may be investigated for FEDS
- The FEDS referral form
- Any other FEDS form that passes between eligibility and investigations, such as a report of investigation.

This Plan was completed by (please print): _____

Title: _____

Email Address: _____ Phone: _____

_____ Co. Front End Detection System/Resolution/Cost Avoidance Savings Form

Name of Applicant: _____ SSN: _____
Address: _____ Prim. Lang.: _____

( ) **Application has no FEDS indicators**
**Eligibility Worker:** _____ **Date:** _____

Eligibility: Check the indicator(s) below and give a brief explanation: attach any necessary documentation:

( ) **Financial obligations are current, but stated expenses exceed income *without a reasonable explanation***_____

( ) **Working off the books (currently *or previously*)**_____

( ) **Supported by loans or gifts from family/friends**_____

( ) **Application inconsistent with prior case information**_____

( ) ***Resulting from an investigation*: Prior history of ___ denial ___ case closng ___ overpymt**

( ) No absent parent information or information is inconsistent with application_____

( ) No documentation to verify identity or documentation of identity is questionable _____

( ) Landlord does not verify IIII composition or provides information inconsistent with application_

( ) Self-employed but *without adequate business records* to support financial assertions_____

( ) Alien with questionable or no documentation to substantiate immigration status_____

( ) Documents or information provided are inconsistent with app., such as different name used for signature or invalid SSN_____

( ) P.O. box used as a mailing address *without reasonable explanation*, e.g., high crime area_____

( ) Primary tenant with no utility bills (e.g., phone or electric) in his/her name_____

( ) Children under the age of six with no birth certificates available_____

( ) Unsure of own address_____

( ) County-specific *Pre-filled* Indicator
(Specify)_____
**Eligibility Worker:** _____ **Date:**_____
**Phone:**_____

**Investigative:**

Give Report of Investigation:

_____
_____
_____
_____
_____
_____

Suggested Recommendation (optional)_____
_____
_____
_____
_____
_____
_____

**Investigator:**_____ **Date:**_____
**Phone:**_____

**Eligibility Action:**

___ App Denied – FEDS Related
___ App Withdrawn – FEDS Related
___ Grant Reduced – FEDS Related

___App Denied – NON-FEDS Related

___App Withdrawn – NON-FEDS Related

(reason for action) _____

**Investigative:** Monthly Cost Avoidance Savings Due to Eligibility/Investigative Work on FEDS:

| Denied App | | | | | |
|---|---|---|---|---|---|
| FA Only | $497 | SNA Only | $401 | Non-TA/FS Only | $169 |
| MA in FA case | $516 | MA in SNA case | $753 | MA Only | $683 |
| FS in FA case | $164 | FS in SNA case | $ 95 | | |

Grant Reduction Case
FA $185
SNA $383

TOTAL SAVINGS DUE TO ELIGIBILITY/INVESTIGATIVE WORK

(Monthly Cost Savings x 6 Mos) =$_____

# Appendix I

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 93 ADM-8

DIVISION: Economic Security

TO: Commissioners of Social Services

DATE: April 6, 1993

SUBJECT: Disqualifications for Intentional Program Violations

SUGGESTED DISTRIBUTION:
- Public Assistance Staff
- Food Stamp Staff
- Investigations Staff
- Fair Hearing Staff
- Accounting Staff
- Staff Development Coordinators
- Child Support Enforcement Staff

CONTACT PERSON:
- Call 1-800-342-3715
- Public Assistance: Mark Schaffer, extension 4-9346
- Case Integrity Unit: Frank Carioto, 1-518-432-8216
- Fair Hearings: Susan Verrastro, extension 4-5768
- Local Financial Operations: Metropolitan Office - Marvin Gold 1-212-804-1108, Upstate Office - Roland Levie, extension 4-7549
- Food Stamps: District Representative, extension 4-9225

ATTACHMENTS:
- Attachment I - Listing of all Attachments - available on-line

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|---|---|---|---|---|---|
| 89 ADM-21 | | 348<br>352.30(h)<br>352.31(d)<br>359 | 145<br>145-c<br>Chapter 41<br>of the Laws<br>of 1992 | FSSB<br>Section<br>XV-all | 92 LCM-115 |

DSS-296EL (REV. 9/89)

I. PURPOSE

The purpose of this directive is to inform social services districts (SSDs) of the mandate to implement enhanced fraud programs for ADC and HR in conjunction with the already existing fraud program for Food Stamps.

II. BACKGROUND

Chapter 41 of the Laws of 1992 mandated program disqualifications for ADC and HR recipients who have committed an Intentional Program Violation (IPV). The law specifies that when a recipient is found to have committed an IPV by a State or Federal court or State administrative disqualification hearing (ADH), his or her needs must be removed from consideration in determining the grant for a period of time determined by the number of IPVs committed. This program is modeled after and consolidated with the Food Stamp IPV program.

III. PROGRAM IMPLICATIONS

The reimbursement rate to localities under ADC for the administrative costs of this program will be 75% federal, 12.5% State and 12.5% local monies. This enhanced funding is only for investigation and prosecution of IPVs and collection of overpayments. For HR, the reimbursement remains at 50% State and 50% local monies. Food Stamp IPV program reimbursement will remain unchanged.

IV. REQUIRED ACTION

Contents Guide for this Section

A. Intentional Program Violation

For the purposes of this directive, an Intentional Program Violation (IPV) is defined as an act of any person who applies for or receives ADC, HR or Food Stamps and who intentionally misrepresents, conceals or withholds facts for the purpose of establishing or maintaining eligibility or the level of benefits for public assistance and/or food stamps. In order to be subject to disqualification penalties, the person must have been found by a criminal or civil court or an ADH to have committed an IPV or signed a waiver or a Disqualification Consent Agreement (DCA).

B. Referral to the Investigation Unit

When an inconsistency in the facts of a public assistance and/or food stamp case is discovered, the IM worker must document the inconsistency, including the amount of any overpayment and/or over-issuance and determine whether it was the result of a potential IPV as defined in A. If the worker has reason to suspect an individual has committed an act which may be an IPV, the worker starts the recoupment. For public assistance, a timely and adequate notice must be sent and if there is a food stamp impact, a repayment agreement must also be sent. This may be done concurrently with referring the case to the SSD's Investigation Unit. The procedures for making the referral must be established by the local district. The Investigation Unit then conducts an investigation of the alleged/potential IPV. Note that there does not have to be an actual overpayment and/or over-issuance to be an IPV.

If the Investigation Unit determines that the allegation is unfounded or that all the elements necessary to process the case further as an IPV are not present (e.g. unavailability of pieces of documentary evidence required to prove the intent of the client), no further action is taken and the eligibility worker is notified to begin the recovery of overpayments and/or over-issuances if this has not already begun.

C. District Investigation Unit Operations Plan

SSDs must file their Investigation Unit Plan with the Department by July 1, 1993. This plan must include:

(1) A brief description of the organizational units responsible for the investigation and prosecution of allegations of client fraud;

(2) A brief description of any claims establishment (recoupments) and collection activities for which this organizational unit may also be responsible;

(3) An explanation of the coordination between the investigation units and the prosecutor, i.e. courts in which cases of alleged fraud are heard, referral process, etc;

(4) 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

(5) A copy of or a statement of the agreement with the District Attorney's office in accordance with Department Regulation 18 NYCRR 348.2(c).

All Plans must be submitted to:

New York State Department of Social Services
Audit and Quality Control - Case Integrity Unit
40 North Pearl Street
Albany, NY 12243

SSDs must report information on individuals who have been found to have committed IPVs in the public assistance and/or food stamp programs to the Department's Case Integrity Unit. The disqualification report form that should be used will be forwarded at a later date under separate cover.

D. Submission to the Local District Attorney or Other Prosecuting Official

The Investigation Unit must refer a case in which it believes the facts warrant civil or criminal prosecution to the local district attorney or other prosecuting official first and not to this Department for an Administrative Disqualification Hearing. We recommend that every case referred to the district attorney be accompanied by documentary evidence which sustains the agency's allegations in addition to any investigation summary. It should also include any existing mitigating facts or circumstances known to the SSD.

Unless you have an arrangement with the prosecutor for other forms or procedures to be used, you may provide the prosecutor with the forms in Attachment VII-A and VII-B for advising the client on the record. The purpose of these forms is to facilitate the fulfillment of the requirement that an individual who pleads guilty be advised on the record of the disqualification provision.

Cases do not have to be referred when the local district attorney or other prosecuting official has previously notified the SSD that the amount of the overpayment and/or over-issuance is less than the amount for which the district attorney or other prosecuting official will prosecute. SSDs must file with the Department a copy or written statement of the agreement they

have with their local district attorney or other prosecuting official for referrals. That agreement must be sent to the address listed in section IV. C. of this Directive.

When the case is accepted by the local district attorney or other prosecuting official for prosecution, the Investigation Unit must follow the current procedures for cooperation with the district attorney or other prosecuting official as referred to in section IV. C. of this Directive.

E. Disqualification Consent Agreement (DCA)

When a case is referred to the local district attorney and accepted for prosecution, the district attorney may choose to settle the case when the accused individual admits to having committed an IPV. In cases such as these, the SSD may use the DCA as described below.

SSDs using DCAs must have a written agreement with the local district attorney that gives SSDs an opportunity to send an advance written notice (which must be sent at least 10 days in advance of the proposed date for signing the DCA when the SSD assists the district attorney in obtaining a DCA) to recipients to make them aware of the consequences of signing such an agreement. A copy of that notice is attached (Attachment III-A).

The matter of an IPV can be resolved by the individual signing a disqualification consent agreement (DCA). This is an agreement signed by an accused individual in which the accused individual admits committing an IPV (Attachment III-B). Disqualification consent agreements for ADC and HR cases must receive court confirmation, but food stamps (FS) DCAs do not need court confirmation. However, it is recommended that all DCAs receive court confirmation (Attachment IV). The DCA process must include:

1. Notification of the consequences of signing the agreement and consenting to a disqualification penalty;

2. A statement that the individual understands the consequences of signing the agreement. If the individual is accused of an IPV in the ADC program, this document must also include a statement that the caretaker relative must also sign the agreement if the accused individual is not the caretaker relative. If the individual is accused of an IPV in the Food Stamp program, this document must also include a statement that the head of household must also sign the agreement if the accused individual is not the head of household;

3. A statement that signing the agreement will result in disqualification and reduction or discontinuance of payment for the disqualification period even if the accused individual is not found guilty of civil or criminal misrepresentation or fraud;

4. A statement of which disqualification period will be imposed; and

5. A statement that the remaining members of the appropriate assistance unit, if any, will be held responsible for repayment of the overpayment and/or over-issuance, unless the accused individual has already repaid as a result of meeting the terms of agreement with the prosecutor or the court order.

The period of disqualification must begin within 45 days of the date a court confirms a DCA signed by the accused individual, unless the court specifies a different date. In these cases, the SSD must follow the court order. If an individual who has signed a DCA is not currently receiving public assistance or food stamps, the disqualification period will be postponed until the person reapplies for and is again found eligible for public assistance or food stamp benefits. Once the disqualification period starts, however, it continues even if the case closes before the end of the period.

F. The Administrative Disqualification Hearing (ADH) Process

If the local district attorney declines to prosecute or the amount of the overpayment and/or overissuance is less than the amount for which the district attorney will prosecute or fails to take action on the referral within a reasonable period of time, the investigator must initiate procedures for an ADH. In that case, the investigator must formally withdraw the referral in writing to the local prosecuting official before referring the case to State DSS. If the SSD fails to present evidence of the withdrawal, it may not be able to proceed with the ADH. If an individual is convicted in a State or a federal court based on a plea of guilty and there is not documentation to prove that individual was notified on the record in the court proceeding of the PA disqualification penalties prior to entering any plea, then no IPV sanction can be imposed based upon the court proceeding alone. The social services district may, however, begin an ADH proceeding based on the same set of circumstances, but the hearing officer may not be informed of the court proceedings.

If the investigator decides to process a case for an ADH, he/she must assemble documentary evidence which is sufficient to support the determination of an IPV and forward the evidence in the form of an evidentiary packet to the Office of Administrative Hearings, New York State Department of Social Services, along with a request that the Department schedule an ADH. Where factual issues arise from the same or related

circumstances, an ADH must be consolidated with any ADH for food stamp purposes. A single evidentiary packet must be submitted at one time for both programs.

The evidentiary packet must include Transmittal Form DSS-3921, have consecutively numbered pages, be submitted in three copies and include the following:

1. The full name, including middle name, the complete address including county of residence, the social security number, the case number and the date of birth of the person(s) charged;

2. A list of the particular charge(s) and the individual or individuals whose disqualification is sought together with a statement of the particular IPV(s) being alleged and the sanction sought for each alleged IPV, including any IPV and sanction for the Food Stamp program if the case has been consolidated with a public assistance IPV because the factual issues arise from the same or related circumstances;

3. A summary of the evidence to be introduced;

4. A list of the names, titles and phone numbers of all social services district personnel and district witnesses who will appear in support of the determination;

5. An itemized list of all the exhibits included in the packet with the page number(s) on which each exhibit is found;

6. Copies of all documents to be used in support of the determination;

7. Information as to when and where the original evidence in the case may be reviewed;

8. Information as to the availability of free legal services; and

9. A statement indicating whether the individual has previously been determined to have committed an ADC-IPV, HR-IPV, FS-IPV or has previously signed a disqualification consent agreement (DCA) or waived an ADH. If so, supporting documentation of such facts must be included in the evidentiary packet.

The Department will review the evidentiary material that is submitted. If there is either insufficient documentary evidence to establish that an IPV was committed or the packet does not meet the above criteria, the Department will return the packet to the SSD and will not schedule an ADH.

If upon review, the Department determines that the packet complies with the requirements for an evidentiary packet and contains sufficient documentary evidence to substantiate an IPV, the Department will schedule an ADH. The Department will send the notice of the scheduled hearing, along with a form which the accused individual can use to waive the scheduled hearing, to the accused. In addition, the Department will notify the SSD of the time, date and place of the ADH.

G. Waiver of an ADH

The Department will send a waiver of an ADH form to the individual at the same time the individual is notified that an ADH has been scheduled. This must be properly executed by the individual and the ADC caretaker relative or Food Stamp head of household, if the accused individual is not the caretaker relative or Food Stamp head of household, and received by the Department. The Department will then send written notification to the SSD that it may impose the appropriate disqualification penalty, after proper notice, without an ADH.

If an individual, and the ADC caretaker relative or Food Stamp head of household if appropriate, waive the right to an ADH and a disqualification penalty has been imposed, the penalty cannot be changed by a subsequent fair hearing decision, and there is no right to appeal the penalty by a fair hearing.

When an individual waives his or her right to appear at an ADH, the disqualification must result regardless of whether the individual admits or denies the charges. If the individual is not currently in receipt of public assistance and/or food stamps, the disqualification period will begin when a public assistance and/or food stamp case is reopened for that person. Once imposed, it continues even if the case closes before the end of the period.

H. Adjournment

A scheduled ADH will be adjourned at the request of the accused individual or the individual's representative if the request is made at least 10 days in advance of the scheduled ADH. A request for an adjournment made less than 10 days before the ADH will be granted if there is good cause for the adjournment. However, the ADH cannot be adjourned for a total of more than 30 days.

I. Client Rights When an ADH is Scheduled

The accused individual, or such individual's representative, must have the opportunity to:

1. Examine the contents of the case file and all documents and records to be presented into evidence by the social services district at the ADH before the date of the ADH and during the ADH;

2. Present the case himself or herself, or with the aid of an authorized representative or attorney;

3. Bring witnesses;

4. Establish all pertinent facts and circumstances;

5. Advance any arguments without undue influence; and

6. Question or refute any testimony or evidence, including the opportunity to cross-examine adverse witnesses.

J. Default of Opportunity to Appear at an ADH

If an accused individual fails to appear at the ADH, the opportunity to appear at an ADH may be considered to be defaulted unless the individual contacts the Department within 10 days after the date of the scheduled ADH and presents good cause for the failure to appear. A new date will then be scheduled for the ADH. The determination that good cause exists must be entered into the record.

If an opportunity to appear at an ADH is defaulted, the ADH will be conducted without the accused individual being present. Even though the accused individual is not present, the hearing officer is required to carefully consider the evidence and determine if an IPV was committed.

If the accused individual who defaulted is found to have committed an IPV, but a hearing official later determines that the individual has good cause for not appearing, the decision will not remain valid and the Department will conduct a new ADH.

K. Decision After the Administrative Disqualification Hearing

After the SSD is notified by an ADH decision that the individual had committed an IPV, the SSD must:

1. Send the individual a notice of disqualification;

2. Begin the period of disqualification no later than the first day of the second month following the date of the notice of disqualification; and

3. If the individual is not currently in receipt of public assistance and/or food stamps, postpone imposition of the disqualification until the individual applies for and is determined to be eligible for public assistance and/or food stamps.

A decision of intentional program violation made after an ADH cannot be reversed by a subsequent fair hearing. However, the

disqualified individual can seek relief in a court having appropriate jurisdiction. In other words, the individual may commence a legal action pursuant to the provisions of Article 78 of the Civil Practice Law and Rules (CPLR).

L. Penalties

If a person is convicted by a court or found by a State ADH to have committed a public assistance IPV or has waived the right to an ADH or has signed a DCA, that person cannot receive public assistance for a certain period of time. The length of time will depend on two things. It will depend on which program the person is receiving benefits under, either Aid to Dependent Children (ADC) or Home Relief (HR, or sometimes PG-ADC or HR-PG). Also, it will depend on whether or not the person has committed an IPV previously. If it is determined that the acts which are the basis of the public assistance IPV also constitute a FS-IPV, a person may lose his/her food stamps, but the person will not lose his/her food stamps solely on the basis of the ADC-IPV or HR-IPV.

A person who has been determined to have committed either an HR-IPV or an ADC-IPV will be unable to receive HR for a time period of six months times the total number of HR-IPVs and ADC-IPVs he or she has been determined to have committed. In addition, a person who has been determined to have committed an ADC-IPV will also be unable to receive ADC for six months for the first time, 12 months for the second time and permanently for the third time that such person commits an ADC-IPV. A person who is permanently disqualified from the ADC program may receive HR instead of ADC after the appropriate HR disqualification period has expired, but the amount of HR received may not exceed the amount of ADC that would have been received had the person not been disqualified from receiving ADC. Additionally, a person who has been determined to have committed a FS-IPV will be unable to receive food stamps for six months for the first time, 12 months for the second time and permanently for the third time. Instructions for completing penalty forms for public assistance and food stamp IPVs are contained in Attachment II.

Once a disqualification has started, it will continue uninterrupted until completed, regardless of the eligibility of the other household members. If there are other individuals in the case, these individuals will have to repay the overpaid benefits.

No individual may be sanctioned for an HR-IPV or an ADC-IPV on the basis of a conviction in a court if that conviction is based on a plea of guilty, unless the individual was advised on the record in the court proceeding of the disqualification provisions prior to entry of the plea. The completed forms in Attachments VII-A and VII-B will be accepted as proof that the individual has been properly advised on the record. However, any other proof that the individual has been so advised is

acceptable. An individual not so advised may, however, be subject to an administrative disqualification hearing on the same set of facts as the court proceeding, provided that neither the conviction itself nor the records of the court proceeding may be used in any manner in the administrative disqualification hearing.

When the SSD receives notice that a client (1) was determined to have committed an IPV after an ADH, (2) waived his or her right to an ADH, (3) was found guilty by a court of law of committing an IPV, or (4) signed a DCA, the SSD must send the client an Intentional Program Violation Disqualification Notice for Public Assistance and Food Stamp Programs (Attachment V). The period of disqualification must begin no later than the first day of the second month following the date of the notice of disqualification resulting from an ADH or waiver, or 45 days from a court determination or the signing and confirmation of a DCA.

M. Notices

1. Notification of Disqualification Penalties for IPV. This notice (Attachment VI) outlines for applicants and recipients the disqualification penalties for fraud. SSDs must provide all applicants with the notice at the time of application, and all recipients, no later than the next recertification.

   There will be no bulk shipment of this notice. It must be photocopied and distributed. This notice will be added to Book 1 - DSS-4148A of the client information booklets at the time of the next printing.

   Note: Until such time as the wording is added to the client information booklet, the attached notice must be given to all applicants at the time of application and all recipients at either next client contact or regular recertification (either face-to-face or mail in). It is our policy that IPVs committed prior to such notice will not be subject to the disqualification penalties. Therefore, it is very important that these notices be given to applicants and recipients.

2. Notice of Disqualification (Attachment V). A written notice must be sent by the SSD to an individual who has been found by a court or an ADH to have committed an IPV, an individual who has waived his or her right to appear at an ADH, or an individual who has signed a DCA (confirmed by a court if it relates to an ADC-IPV or HR-IPV). The notice must:

(a) Inform the individual as to when the disqualification period will take effect and the date upon which it will end and the length of the period of disqualification;

(b) Inform the individual of the amount of public assistance and/or food stamps, if any, that the assistance unit will receive during the period of disqualification;

(c) In the case of the disqualification of an individual who is not currently in receipt of assistance, inform the individual that the imposition of the disqualification will be pended until he/she applies for and is otherwise found eligible for assistance;

(d) In the case of an individual who has been found after an ADH to have committed an IPV, inform such individual of the decision and the reason for the decision, and

(e) Inform the individual to be disqualified and the remainder of the assistance unit, if any, of its right to request a fair hearing to contest:

(1) the amount of the overpayment or overissuance, if this amount has not been established by an ADH or court determination or set forth in a DCA or waiver of an ADH;

(2) the public assistance payment and/or food stamp issuance to be provided to the remaining members of the assistance unit, if any, during the disqualification period; and

(3) the SSD's failure to restore the disqualified individual to the assistance unit when the individual requested the restoration after the end of the disqualification period indicated in the written notice.

NOTE: This notice must be reproduced and used by social services districts until it is replaced by a preprinted or electronic form to be prepared and supplied by the New York State Department of Social Services at a future date. In the interim the form in this attachment must be used with no revisions except those specifically authorized or required by the New York State Department of Social Services. This Notice of Disqualification supersedes and replaces any previous form notices relating to intentional program violation disqualifications from the Food Stamp program.

N. Budgeting of Disqualified Individuals

The income and resources of the disqualified individual, but not his or her needs, must be considered in determining the remaining case members' eligibility and degree of need for public assistance and/or food stamps.

O. Claiming

Claiming instructions for this program will be included in future updates to the Local District Cost Allocation Manual - Bulletin 143b. Interim claiming procedures can be found in Local Commissioners Memorandum 92 LCM-115 dated July 30, 1992.

P. Food Stamp Implications

The established rules and regulations regarding food stamp IPVs remain unchanged by the new public assistance fraud mandates. Food stamp procedures also remain the same with the exception that the combined PA/FS IPV notices and notice procedures are to be used if there are public assistance and food stamp IPVs to be determined together.

It is important to note that a household disqualified for a public assistance IPV shall not be disqualified for food stamps solely by reason of a public assistance IPV. Districts must establish whether a public assistance IPV also results in a food stamp IPV. Therefore, for PA/FS cases where a public assistance IPV disqualification is imposed, districts must make a separate determination for the food stamp portion of the case.

Q. Medical Assistance Implications

Continuation of Medical Assistance (MA) for applicants/recipients (A/Rs) of PA who have been determined to have committed an IPV depends on the category of the A/R. For ADC and ADC-U-related A/Rs, under 21 year olds, and parents residing with their children, MA will be continued as in Rosenberg situations. For these situations, households will continue to include the A/R who has been determined to have committed the IPV.

Since HR-related A/Rs who are over 21 years old and under 65 years old and not residing with their children must be eligible for PA to receive MA, HR-related A/Rs are ineligible for MA until PA eligibility again exists.

VI. SYSTEM IMPLICATIONS

Upstate

A sanction/ineligible reason code of "20 - Other Sanction" should be

entered on screen 03 for an individual being sanctioned under the provisions of this ADM. Districts will be advised at a future date under separate cover when any new codes are developed to support this activity.

When an individual has been sanctioned in PA but is eligible for MA, an MA-Only case must be opened in order to continue the individual's MA coverage. No sanction code should be entered in the MA case.

NYC

NYC system implications will be provided under separate cover.

VII. EFFECTIVE DATE

This ADM is effective immediately.

Oscar R. Best, Jr.
Deputy Commissioner
Division of Economic Security

Listing of All Attachments (All Attachments Available On-Line)

| | | |
|---|---|---|
| Attachment II | - | Instructions for completing penalty forms for Intentional Program Violations |
| Attachment III-A | - | Notice of Consequences of Consenting to a DCA |
| Attachment III-B | - | Disqualification Consent Agreement |
| Attachment IV | - | Order Confirming Disqualification Consent Agreement |
| Attachment V | - | Intentional Program Violation Disqualification Notice for Public Assistance and Food Stamp Programs |
| Attachment VI | - | Notification of Disqualification Penalties for IPV |
| Attachment VII-A | - | Notice to Advise Individuals on a Court Record of Disqualification Provisions |
| Attachment VII-B | - | Order Entering Statement Into Record |

# I N S T R U C T I O N S

for completing penalty forms for
Intentional Program Violations

Look to see what the last public assistance program violation [IPV] is or will be.

If the last IPV is an HR-IPV, mark "The Home Relief (HR) Program" box and mark the appropriate penalty box for 6 months, twelve months or more months (and fill in the number of times and the number of months of disqualification for a disqualification of more than 12 months). Do NOT mark any boxes relating to "The Aid to Dependent Children" (ADC) Program."

If the last IPV is or will be an ADC-IPV, mark "The Aid to Dependent Children (ADC) Program" box and mark the appropriate penalty box for 6 months, 12 months or permanent disqualification. ALSO mark "The Home Relief (HR) Program" box and mark the appropriate penalty box for 6 months, twelve months or more months (and fill in the number of times and the number of months of disqualification for a disqualification of more than 12 months).

Food Stamp Intentional Program Violation [FS-IPV] penalties are calculated separately from and without reference to Public Assistance IPV penalties. Mark "The Food Stamp (FS) Program" box and any FS-IPV penalty box ONLY if there is or will be a specific determination that an FS-IPV has been committed.

[Letterhead of Social Services District]

Date:

TO:

N O T I C E OF CONSEQUENCES OF CONSENTING
TO A DISQUALIFICATION CONSENT AGREEMENT

Pursuant to 18 NYCRR 359.4(b)

PLEASE TAKE NOTICE that:

* You or a member of your family or household have been suspected and accused of committing an intentional program violation (IPV) by making a false or misleading statement or committing an act intended to mislead, misrepresent, conceal or withhold facts concerning your eligibility for the Home Relief (HR) assistance program, the Aid to Dependent Children (ADC) assistance program and/or the Food Stamps (FS) assistance program.

* When a social services official believes that there are facts that warrant civil or criminal prosecution for such an IPV, the official must refer a case involving an IPV to the appropriate District Attorney (DA) or other prosecutor.

* A DA or other prosecutor who accepts a case referred by a social services official may choose to settle a referred case by permitting the accused individual, a caretaker relative or a head of household to sign a Disqualification Consent Agreement (DCA) instead of seeking a criminal conviction of the accused individual.

* Pursuant to an agreement with the DA or other appropriate prosecutor(s), you must be given notification of the consequences of signing a DCA before you can be given an opportunity to enter into such an agreement. If the DA or other prosecutor has requested social services officials to assist in obtaining a DCA from you, you must be provided with this notification at least ten (10) days before signing a DCA and you must be provided with an opportunity to consult with and be represented by a lawyer or other representative.

* A copy of the DCA you may or may not choose to sign must accompany this notification and this copy of the DCA must set forth the specific penalties and consequences that will occur if you sign this agreement. If you choose to sign this agreement, you will be disqualified from and unable to be eligible for participation in certain assistance programs as follows:

+----------+
| +-+ The Aid to Dependent Children (ADC) Program |
| +-+ |
| +-+ for 6 months because this was the first time that you committed |
| +-+ an ADC-IPV. In addition, you will be ineligible to participate in the Home Relief Program for the number of months set forth below. |
| +-+ for 12 months because this was the second time that you committed |
| +-+ an ADC-IPV. In addition, you will be ineligible to participate in the Home Relief Program for the number of months set forth below. |
| +-+ permanently because this was the third time that you committed an |
| +-+ ADC-IPV. In addition, you will be ineligible to participate in the Home Relief Program for the number of months set forth below. |
+----------+

+----------+
| +-+ The Home Relief (HR) Program |
| +-+ |
| +-+ for 6 months because this was the first time that you committed |
| +-+ either an HR-IPV or an ADC-IPV. |
| +-+ for 12 months because this was the second time that you committed |
| +-+ either an HR-IPV or an ADC-IPV. |
| +-+ for ____ months because this was the ____ time that you committed |
| +-+ either an HR-IPV or an ADC-IPV. |
+----------+

+----------+
| +-+ The Food Stamp (FS) Program |
| +-+ |
| +-+ for 6 months because this was the first time that you committed |
| +-+ an FS-IPV. |
| +-+ for 12 months because this was the second time that you committed |
| +-+ an FS-IPV. |
| +-+ permanently because this was the third time that you committed |
| +-+ an FS-IPV. |
+----------+

* Your eligibility for other assistance programs, such as Medical Assistance, Child Care Assistance, Emergency Assistance or other Social Services assistance or services, may be affected if you must be eligible for ADC or HR in order to receive the particular assistance or services.

* If you are not getting benefits now, your disqualification penalty will be effective when you are eligible and apply for assistance again.

* If you sign the DCA, you also will be held responsible for repaying the stated amounts of any overpayments of assistance paid to you, or the overissuance value of any Food Stamps issued to you. This repayment amount should be the amount of assistance received by you which is more than the amounts of assistance that you should have received. If there are other members of your family or household that will remain eligible for assistance during any period when you will not be eligible, those remaining members of the assistance unit will be held responsible for repayment of the overpayment and/or overissuance stated in the DCA unless you already make the identified repayment.

* If you choose not to sign this DCA, the DA or other prosecutor may choose to continue the criminal prosecution of your case or the case may be returned to social services officials for consideration of administrative prosecution by means of an administrative disqualification hearing as described in social services regulations in 18 NYCRR 359.7.

* If you choose to sign this DCA or would like to discuss the consequences of signing this Agreement, on or before the below stated time you must contact:

Name: _____

Place: _____

Telephone: _____

Date/Time: _____

* If you do not contact or appear before the named person or do not contact a social services official in charge of this matter, it will be assumed that you have chosen not to sign a DCA and any pending investigations or prosecutions will be resumed.

* A DCA related to the HR assistance program or the ADC assistance program must be confirmed by a court before the DCA will be effective.

* We encourage you to consult with a lawyer before signing the agreement. The Local Legal Services Office in your area is:

_____
_____
_____ Call: _____

The Local Public Defender is:

_____
_____
_____ Call: _____

DISQUALIFICATION CONSENT AGREEMENT

The undersigned individual(s) understand and agree that:

1. He/she or a member of his/her family or household have been suspected and accused of committing an intentional program violation (IPV) by making a false or misleading statement or committing an act intended to mislead, misrepresent, conceal or withhold facts concerning his/her eligibility for the Home Relief (HR) assistance program, the Aid to Dependent Children (ADC) assistance program and/or the Food Stamps (FS) assistance program.

2. He/she has received notification of the consequences of consenting to this Disqualification Consent Agreement (DCA) and certifies that he/she understands the consequences of consenting to this DCA.

3. He/she is suspected and accused of committing one or more IPVs as follows:

| | |
|---|---|
| ☐ The Aid to Dependent Children (ADC) Program resulting in an overpayment in the amount of | $_____ |
| ☐ The Home Relief (HR) Program resulting in an overpayment in the amount of | $_____ |
| ☐ The Food Stamp (FS) Program resulting in an overissuance amount valued at | $_____ |

4. He/she agrees to repay to social services officials the amounts received as overpayments or the value of amounts received as overissuances of food stamps as follows:

_____
_____
_____
_____

5. If he/she chooses to sign this agreement, he/she will be disqualified from and unable to be eligible for participation in certain assistance programs as follows:

+-+ The Aid to Dependent Children (ADC) Program

+-+ for 6 months because this was the first time that he/she committed
+-+ an ADC-IPV. In addition, he/she will be ineligible to participate in the Home Relief Program for the number of months set forth below.

+-+ for 12 months because this was the second time that he/she
+-+ committed an ADC-IPV. In addition, he/she will be ineligible to participate in the Home Relief Program for the number of months set forth below.

+-+ permanently because this was the third time that he/she committed
+-+ an ADC-IPV. In addition, he/she will be ineligible to participate in the Home Relief Program for the number of months set forth below.

+-+ The Home Relief (HR) Program

+-+ for 6 months because this was the first time that he/she committed
+-+ either an HR-IPV or an ADC-IPV.

+-+ for 12 months because this was the second time that he/she
+-+ committed either an HR-IPV or an ADC-IPV.

+-+ for ____ months because this was the ____ time that he/she
+-+ committed either an HR-IPV or an ADC-IPV.

+-+ The Food Stamp (FS) Program

+-+ for 6 months because this was the first time that he/she
+-+ committed an FS-IPV.

+-+ for 12 months because this was the second time that he/she
+-+ committed an FS-IPV.

+-+ permanently because this was the third time that he/she committed
+-+ an FS-IPV.

6. If he/she is not eligible for an assistance program from which he/she is disqualified at the time the disqualification period is to begin, the period will be postponed until the individual(s) become(s) eligible for such benefits.

7. The remaining members of the assistance unit of the individual(s) must agree to and will be held responsible for repayment of the overpayment and/or overissuance stated in the DCA unless the individual(s) already make the identified repayment.

8. Further prosecution by social services officials of the individual regarding the IPVs 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.

9. If this DCA includes an ADC-IPV or an HR-IPV, it shall be executory and not be effective or complete until it has been confirmed by a court.

10. The individual(s) signing this Agreement shall be disqualified from the above indicated assistance programs commencing within forty-five (45) days of the date on which this DCA is executed and effective, which shall not be until after it is confirmed by a court if the DCA includes an ADC-IPV or an HR-IPV.

For Individual(s) to be disqualified:

Date_____ Signature_____

Date_____ Signature_____

For an ADC-IPV if the individual(s) (is) (are) not the caretaker relative:

Date_____ Signature_____
Caretaker Relative

For an FS-IPV if the individual(s) (is) (are) not the head of household:

Date_____ Signature_____
Head of Household

STATE OF NEW YORK
COURT COUNTY OF

---

People of the State of New York

v.

ORDER

CONFIRMING

DISQUALIFICATION

CONSENT AGREEMENT

---

Upon examining the Disqualification Consent Agreement in this matter, together with the accompanying Notice describing the consequences of consenting to a Disqualification Consent Agreement, and the said Disqualification Consent Agreement having been submitted to be confirmed by this Court in accordance with regulations of the New York State Department of Social Services at 18 NYCRR 359.4(b)(2) and regulations of the United States Department of Health and Human Services at 45 CFR 235.113(d)(1), it is hereby

ORDERED that the said Disqualification Consent Agreement be and hereby is CONFIRMED.

Date:_____

_____

Intentional Program Violation
Disqualification Notice For Public Assistance and Food Stamp Programs

| NOTICE DATE: | | NAME AND ADDRESS OF AGEI |
|---|---|---|
| CASE NUMBER | CIN/RID NUMBER | |
| CASE NAME (And C/O Name if Present) AND ADDRESS | | |
| | | GENERAL TELEPHONE NO. FOI QUESTIONS OR HELP<br>OR Agency Conference<br>Fair Hearing informat<br>and assistance<br>Record Access<br>Legal Assistance info |
| OFFICE NO. | UNIT NO. | WORKER NO. | UNIT OR WORKER NAME |

This is to inform you and members of your family, household or other assistance unit that you, _____, are disqualified from receiving the benefits described in section II.

I. Reason For Disqualification

The reason for the disqualification is that you:

[ ] were determined to have committed an intentional program violation. This was determined by an administrative disqualification hearing held on _____, which resulted in a decision dated _____.

[ ] waived rights to an administrative disqualification hearing by signing a Waiver on _____.

[ ] were found guilty of a crime or offense by a court of law on _____ for committing an intentional program violation.

[ ] signed a disqualification consent agreement on _____ and this agreement:

[ ] did not need to be confirmed by a court.

[ ] was confirmed by a court on _____.

The regulation which allows us to disqualify you is 18 NYCRR 359.9.

II. Disqualification Period(s)

You, the recipient named in this notice, are disqualified from receiving the following benefits for the period(s) checked:

[ ] The Aid to Dependent Children (ADC) Program

[ ] for 6 months because this is the first time that you committed an ADC-IPV. In addition, you are ineligible for Home Relief as shown in the Home Relief Box.

[ ] for 12 months because this is the second time that you committed an ADC-IPV. In addition, you are ineligible for Home Relief as shown in the Home Relief Box.

[ ] permanently because this is the third time that you committed an ADC-IPV. In addition, you are ineligible for Home Relief as shown in the Home Relief Box.

[ ] For _____ months because this is the penalty ordered by the court. This is the _____ time that you committed an ADC IPV. In addition, you will be ineligible for Home Relief as shown in the Home Relief Box.

[ ] The Home Relief (HR) Program

[ ] for 6 months because this is the first time that you committed an HR-IPV or an ADC-IPV.

[ ] for 12 months because this is the second time that you committed a HR-IPV or an ADC-IPV.

[ ] for ___ months because this is the ___ time that you committed an HR-IPV or an ADC-IPV.

[ ] for ___ months because this is the penalty ordered by the court. This is the ___ time you committed an HR-IPV or a ADC-IPV.

[ ] The Food Stamp (FS) Program

[ ] for 6 months because this is the first time that you committed an FS-IPV.

[ ] for 12 months because this is the second time that you committed an FS-IPV.

[ ] permanently because this is the third time that you committed an FS-IPV.

[ ] for ___ months because this is the penalty ordered by the court. This is the _____ time that you committed an FS-IPV.

[ ] This is your _____ violation of the food stamp rules. Normally this means you cannot get food stamps for _____ months, but because we did not notify you in time [ ] you will not be disqualified, [ ] you will be disqualified for _____ months beginning _____.

NOTE: Your eligibility for other assistance programs, such as Medical Assistance, Child Care Assistance, Emergency Assistance or other social services assistance or services, may be affected if you must be eligible for ADC or HR in order to receive the particular assistance or services.

When does the disqualification begin and end?

[ ] You are currently receiving assistance and/or benefits under [ ] ADC [ ] HR [ ] FS (check programs which apply). Your disqualification will begin _____ for ADC/HR and _____ for FS, and will end _____ for ADC/HR and _____ for FS.

[ ] You are not receiving benefits under [ ] ADC [ ] HR [ ] FS (check programs which apply). You will be subject to the above disqualification penalties if you apply for and are found eligible for assistance or benefits for these programs in the future.

To prevent a delay in getting assistance and/or benefits again, you must contact your social services district no later than 30 days before the disqualification period ends if you want to reapply for ADC or Food Stamps. For HR, you must reapply 45 days before that date. Your case will not automatically be reopened when the disqualification period ends.

III. Revised Benefit Levels And Recoupment/Repayment Information

Public Assistance

How much public assistance (ADC or HR) will the remaining members of your public assistance unit get?

[ ] Your public assistance will be discontinued as noted in Section II.
[ ] Your public assistance will remain unchanged because you are disqualified only from the Food Stamp Program.
[ ] Your household's public assistance will be reduced from $ _____ to $ _____. The reduction will begin as noted in Section II. (We do not count the disqualified person in the public assistance household, but we must count that person's income. This amount includes a recoupment).

Public Assistance Repayment Agreement

The amount of the public assistance overpayment made to your household is $ _____.

[ ] The amount of the public assistance owed by your household is $ _____. (This is different from $ _____ because you have already repaid $ _____).

[ ] A recoupment at the rate of _____ percent (%) is being taken against the grant of the remaining household members. If you believe that this reduction will cause your family an undue hardship, you may contact your worker to explain your reasons. An undue hardship occurs when a person does not have enough income to eat, to pay for shelter or utilities, to clothe and purchase general incidentals, or to pay for extraordinary medical needs that are not covered by medical assistance. Your worker will let you know what kind of evidence you will need to support your hardship claim. If it is determined that the recoupment will cause an undue hardship, the recoupment may be changed to a reduction of between 5 and 10 percent (%) in cases where the grant is provided in the Aid to Dependent Children(ADC) category. The recoupment may be changed to a reduction between 5 and 15 percent (%) in cases where the grant is provided in the Home Relief (HR, PG-ADC or VA) category. The regulation which allows us to do this is 18 NYCRR 352.31(d).

[ ] You are not currently receiving assistance, but you will be responsible to repay the overpayment if you reapply and are found eligible for public assistance in the future.

Food Stamps

How much Food Stamps will the remaining members of your Food Stamp household get?

[ ] Your food stamps will be discontinued as noted in Section II.
[ ] Your food stamps will remain unchanged because you are disqualified only from public assistance.
[ ] Your household's monthly amount of food stamps will be reduced from $ _____ to $ _____. This reduction will begin as noted in section II. In figuring the amount of food stamps your household will get, we do not count the disqualified person in the household, but we must count the disqualified person's income. Also your household got more in food stamps than it should have during the months of _____ to _____.

You got $ _____ more in food stamps than you should have because you intentionally violated food stamp rules.

The amount of food stamps owed by your household is:

[ ] $ _____.
[ ] $ _____. This amount is different from $ _____ because you have already repaid $ _____.
[ ] $ _____. This amount is different from $_____ because we have subtracted $ _____ in food stamps that we owed you, or your household, for the month(s) of _____.
[ ] The amount of food stamps you owe is more since we previously notified you of the overissuance because we found that _____ intentionally violated food stamp rules. Because the violation was intentional the food stamp repayment rules are stricter, and allow us to go back up to six years to figure the amount of food stamps you owe. We also figured earned income differently if your household failed to report the income. We told you this would happen if we investigated and found that there was an intentional violation of food stamp rules.

Food Stamp Repayment Agreement

[ ] You have already signed a "Disqualification Consent Repayment Agreement" or have been given a court order on repayment. You must make repayment as follows:

_____

_____

_____

[ ] You must repay the amount you owe. We will automatically reduce your household's food stamps unless you complete, sign and return the enclosed Repayment Agreement by _____. If you want us to automatically reduce your food stamps to get back what you owe, do not return the Repayment Agreement.

Normally, if we discover that by mistake you were underpaid food stamps, we give you food stamps to make up for the underpayment. However, if this occurs and you have not repaid us, we will first subtract what you owe us and give you the difference, if any.

The regulations which allow us to do this are 18 NYCRR 387.19 and 359.9(f).

IV. Fair Hearings

You or any members of your family or household may request a fair hearing ONLY to review (1) the amount of an overpayment or over-issuance, but only if the amount was not determined when your disqualification was determined, (2) the amount of the public assistance or food stamp allotment to be provided to the remaining members of your family or household during the disqualification period and (3) the failure to restore you to the household or assistance unit at the end of the disqualification period after you request such restoration.

You or members of your family or household do not have a right to a fair hearing to review the fact that you have been disqualified. You may contest this action in an appropriate court of law pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

PLEASE READ THE NEXT PAGE FOR MORE ABOUT YOUR RIGHTS

_____ County

Intentional Program Violation: Disqualification Notice for Public Assistance and Fo

RIGHT TO A CONFERENCE: You may have a conference to review the amount of the overpay overissuance of food stamps if the amount was not determined when your disqualifi review the amount of the public assistance or food stamp benefits to be provided to your household or assistance unit during the disqualification period, or the dist disqualified individual upon request to the assistance unit's public assistance budg stamp budget after the end of the disqualification period. If you want a conferenc soon as possible. At the conference, if we discover that we made a wrong decision o you provide, we determine to change our decision, we will take corrective action and may ask for a conference by calling us at the number on the first page of this notic request to us at the address listed at the top of the first page of this notice. asking for a conference. It is not the way you request a fair hearing. If you ask for a confe still entitled to a fair hearing. Even if you ask for a conference, you still have this notice to request a fair hearing about your public assistance and 90 days to as your food stamp benefits. Read below for fair hearing information.

RIGHT TO A FAIR HEARING: You may request a State fair hearing by:

(1) Telephoning: (PLEASE HAVE THIS NOTICE WITH YOU WHEN YOU CALL)

If you live in: New York City (Manhattan, Bronx, Brooklyn, Queens, Staten Islar

If you live in: Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans or Wyoming County: 4868

If you live in: Allegany, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Way County: (716) 266-4868

If you live in: Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Onondaga, Oswego, St. Lawrence, Tompkins or Tioga County: (315) 422-4868

If you live in: Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, I Montgomery, Nassau, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington or Westchester County: 474-8781

OR

(2) Writing: By sending a copy of this notice completed, to the Office of Administ State Department of Social services, P.O. Box 1930, Albany, New York 12201. Please

[ ] I want a fair hearing. The Agency's action is wrong because:

_____

_____

Signature of Client _____ Date _____

Address_____

Case #_____Telephone Number_____

YOU HAVE 60 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING ABOUT YC
YOU HAVE 90 DAYS FROM THE DATE OF THIS NOTICE TO REQUEST A FAIR HEARING ABOUT YC

If you request a fair hearing, the State will send you a notice informing you hearing. You have the right to be represented by legal counsel, a relative, a f represent yourself. At the hearing you, your attorney or other representative present written and oral evidence to demonstrate why the action should not be taken question any persons who appear at the hearing. Also, you have a right to br favor., You should bring to the hearing any documents such as this notice, paystu

Dear Public Assistance Applicant/Recipient:

This notice is to tell you about changes in the law which will change the amount of public assistance benefits you will get if you or someone in your case has committed an act of lying about or concealing money, property or resources. This is called an Intentional Program Violation or IPV. The food stamp program has similar rules for IPVs.

If a person is determined to have committed an IPV by a court or a State administered hearing, that person cannot receive public assistance for a certain period of time. The length of time will depend on two things. It will depend on which program the person is receiving benefits under either Aid to Dependent Children (ADC) or Home Relief (HR, or sometimes PG-ADC or HR-PG). Also, it will depend on whether or not the person has committed an IPV before.

A person who has been determined to have committed either an HR-IPV or an ADC-IPV will be unable to receive HR for a time period of six months times the total number of HR-IPVs and ADC-IPVs he or she has been determined to have committed. In addition, a person who has been determined to have committed an ADC-IPV will also be unable to receive ADC for six months for the first time, 12 months for the second time and permanently for the third time. A person who is permanently disqualified from the ADC program may receive HR instead of ADC after the appropriate HR disqualification period has expired, but the amount of HR received may not exceed the amount of ADC that would have been received had the person not been disqualified from receiving ADC.

In addition to losing benefits due to a disqualification, you will be required to repay the amount of benefits you wrongly received. You will either have to pay back the benefits in cash or, when you begin receiving benefits again, the benefit will be reduced until the amount owed is repaid. If you live in a household with other people and these other individuals continue to receive benefits during the disqualification period, these other household members may have their benefits reduced to repay the overpayment.

If a person has been determined to have committed an IPV for the public assistance programs of ADC or HR, he or she may also lose his or her medical assistance because the eligibility for public assistance may be the basis for medical assistance eligibility. If the acts constituting fraud for public assistance are also used to obtain a FS-IPV as well as the public assistance IPV, then a person may lose his or her food stamps, but the person will not lose his or her food stamps solely on the basis of the ADC-IPV or HR-IPV.

If a person is disqualified from FS, he or she cannot receive FS benefits for six months for the first IPV occasion and 12 months for the second occasion. The third occasion results in permanent disqualification. The person would also have to pay back the amount of overpaid food stamps.

If a person is no longer receiving assistance when he or she is determined to have committed an IPV, the disqualification is postponed until after the person is eligible for assistance again.

Before we take any action on your case, however, you will be sent a notice and given a chance to dispute our actions.

If you have any questions, please speak to your worker.

STATE OF NEW YORK
COURT COUNTY OF

People of the State of New York

v.

STATEMENT

for the

RECORD

# STATEMENT

To Advise Individuals on the Record
of Disqualification Provisions Contained in
Social Services Law Section 145-c and
Regulations at 18 NYCRR 359.9

If you or a member of your family or household enter a plea of guilty or are convicted of making a false or misleading statement or committing an act intended to mislead, misrepresent, conceal or withhold facts concerning your eligibility for the Home Relief assistance program, the Aid to Dependent Children assistance program and/or the Food Stamps assistance program, you may be determined to have committed an intentional program violation which may result in your being disqualified from participating in those assistance programs.

If you are determined to have committed an intentional program violation in either the Home Relief assistance program or the Aid to Dependent Children assistance program, you will be unable to receive Home Relief assistance for a time period of six months times the total number of Home Relief and Aid to Dependent Children intentional program violations you have been determined to have committed.

In addition, if you are determined to have committed an intentional program violation in the Aid to Dependent Children program, you will also be unable to receive Aid to Dependent Children for six months for the first time, twelve months for the second time and permanently for the third time. A person who is permanently disqualified from the Aid to Dependent Children assistance program may receive Home Relief assistance instead of Aid to Dependent Children assistance after the appropriate Home Relief assistance disqualification period has expired, but the amount of Home Relief assistance received may not exceed the amount of Aid to Dependent Children assistance that would have been received had the person not been disqualified from receiving Aid to Dependent Children.

If you are determined to have committed an intentional program violation in the Food Stamps assistance program, you will be unable to receive Food Stamps assistance for six months for the first time, twelve months for the second time and permanently for the third time.

If you are determined to have committed an intentional program violation in either the Home Relief assistance program or the Aid to Dependent Children assistance program, your eligibility for other assistance programs, such as Medical Assistance, Child Care Assistance, Emergency Assistance or other Social Services assistance or services, may be affected if you must be eligible for Aid to Dependent Children or Home Relief in order to receive the particular assistance or services.

If you are not getting benefits now, your disqualification penalty will be effective when you are eligible and apply for assistance again. If you are determined to have committed an intentional program violation, you also will be held responsible for repaying any overpayments of assistance paid to you, or the overissuance value of any Food Stamps issued to you. This repayment amount should be the amount of assistance received by you which is more than the amounts of assistance that you should have received. If there are other members of your family or household that will remain eligible for assistance during any period when you will not be eligible, those remaining members of the assistance unit will be held responsible for repayment of the overpayment and/or overissuance unless you already make the identified repayment.

This statement is offered on the record to satisfy the requirements of subdivision 4 of Section 145-c of the Social Services Law and paragraph (5) of subdivision (d) of section 359.9 of title 18 of the State of New York Codes, Rules and Regulations.

STATE OF NEW YORK
COURT COUNTY OF

---

People of the State of New York

v.

ORDER

ENTERING

STATEMENT

INTO RECORD

---

Upon examining the accompanying Statement for the Record, and having advised the defendant on the record of the disqualification provisions contained in Section 145-c of the Social Services Law in accordance with the requirements of subdivision 4 of Section 145-c of the Social Services Law and paragraph (5) of subdivision (d) of section 359.9 of title 18 of the State of New York Codes, Rules and Regulations, it is hereby

ORDERED that the said Statement for the Record be and hereby is ENTERED into the record of these proceedings.

Date:_____

_____

# Appendix J

IN THE MATTER OF JAMES v. PROUD, 401743/13 (4-25-2014)

2014 NY Slip Op 31064(U)

In the Matter of the Application of KEITH JAMES, Petitioner, For a Judgment Pursuant to Section 3001 and Article 78 of the Civil Practice Law and Rules, v. KRISTIN M. PROUD, as Commissioner of the New York State Office of Temporary and Disability Assistance; ROBERT DOAR, as Commissioner of the New York City Human Resources Administration; and, JACQUELINE DUDLEY, as Deputy Commissioner of the New York City HIV/AIDS Services Administration, Respondents.

401743/13

Supreme Court of the State of New York, New York County.

April 25, 2014

[EDITOR'S NOTE: This case is unpublished as indicated by the issuing court.]

CAROL E. HUFF, Judge.

Page 2

In this Article 78 proceeding, petitioner seeks to annul the May 15, 2013, Disqualification Notice he received following a Decision after Administrative Disqualification Hearing ("Decision") rendered by the New York State Office of Temporary and Disability Assistance, dated April 15, 2013. Respondents Robert Doar, as Commissioner of the New York City Human Resources Department ("HRA"), and Jacqueline Dudley, as Deputy Commissioner of the New York City HIV/AIDS Division ("City Respondents") cross move to dismiss the petition on grounds including noncompliance with the statute of limitations, improper raising of new issues, and a substantial evidence issue requiring transfer to the Appellate Division.

Page 3

Petitioner is a recipient of public assistance under the Safety Net Assistance program administered by HRA under the HIV/AIDS Services Administration. Petitioner was investigated by City Respondents' Bureau of Fraud Investigations, and was accused of an intentional program violation in that he failed to report to the Department of Social Services two bank accounts containing funds totaling more than $25,000. Petitioner does not dispute the existence of the accounts, but contends that he did not

intentionally fail to report information that he knew he was required to report. Following a March 19, 2013, hearing at which petitioner appeared pro se and presented no evidence or testimony, the ALJ determined that petitioner intentionally failed to report resources that would have made him ineligible for the benefits he received from March 8, 2011 to October 11, 2011. The ALJ found that petitioner should be disqualified from receiving benefits for a period of eighteen months, and should be required to pay the overissuance of benefits totaling $5,377.50.

Petitioner contends that the Disqualification Notice should be annulled because respondents failed to comply with the provisions of 18 NYCRR § 359.6, which provides that, prior to a hearing, written notice must be provided to a person accused of an intentional violation and must include, among other things, "copies of the sections of this Part relevant to the hearing process." 18 NYCRR § 359.6(9). One such section sent to petitioner (18 NYCRR § 359.3), which sets forth "The standards for determining whether an individual has committed an intentional program violation" was an outdated version that had been amended twelve years previously.

Respondents concede the error and argue that it was harmless, and that petitioner should not be permitted to raise the issue in this proceeding since he did not raise it in the hearing. They

also contend that the proceeding is untimely and that it should be transferred to the Appellate Division because petitioner also asserts that the Decision is not supported by the evidence.

Where the issue of substantial evidence is raised, before transferring "the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue." CPLR 7804(g).

As for the statute of limitations defense, petitioner has presented a letter, dated July 30, 2013, from respondent New York State Office of Temporary and Disability Assistance, which states that "we will not raise the Statute of Limitations as an affirmative defense provided that the Article 78 proceeding is commenced within 30 days of the date of our letter setting forth our final position in the matter." That final position letter was dated August 26, 2013, and petitioner commenced this proceeding on September 25, 2013. Accordingly the proceeding is not time-barred.

With respect to the service to petitioner of outdated standards, the City Respondents' contention that petitioner should be precluded from raising the issue since he failed to raise it at the hearing where he appeared pro se is disingenuous at best. A policy guideline of the State of New York Department of Social Services, dated December 11, 1996, states:

> The content requirements of for notices of intent set forth in [18 NYCRR § 358, relating to fair hearings determining benefit entitlement] reflect concern for appellant's due process rights. Where a hearing involves a notice of intent, the hearing officer must review the sufficiency of the notice to assess whether it complies with regulatory requirements and whether any deficiencies in the notice impinge on the appellant's due process rights.

This guideline should be no less applicable to a § 359 hearing. See also18 NYCRR § 358-5.9(a)
Page 5
("At a fair hearing concerning the denial of an application for public assistance . . . the social services agency must establish that its actions were correct.").

As for respondents' argument that the error was harmless, it should not be for the court to parse different versions of a statute to weigh the relative harm of providing a petitioner with the wrong one. In amending 18 NYCRR § 359.3, the Legislature determined that a change was needed and was presumably significant.

An administrative determination will be upheld unless it is shown that it "was affected by an error of law . . . or was arbitrary and capricious or an abuse of discretion." CPLR 7803(3). Petitioner has stated a claim that respondents committed an error of law in failing to provide him with a correct version of the "standards for determining whether an individual has committed an intentional program violation," as was required by 18 NYCRR § 359.6(9).

Accordingly, it is

ORDERED that the cross motion is denied and City Respondents are directed to file an answer to the petition within twenty days of service of notice of entry of this decision, unless the parties agree otherwise.

# Appendix K

HUMAN RESOURCES ADMINISTRATION
BUREAU OF FRAUD INVESTIGATION INTERVIEW PROCESS

I. The client's preferred language is established or confirmed at the reception area. If a client is in need of an interpreter, the Telephone Interpreter Service System is utilized to conduct the interview unless: (1) there is an investigator available who speaks the client's preferred language, in which case the investigator will conduct the interview in the client's preferred language; or (2) the client is hearing impaired, in which case in-person interpretation will be provided.. Two investigators conduct the interview and identify themselves to the client prior to beginning the interview.

II. The client's proof of identification is requested at the beginning of the interview. The client may be asked to bring the following documents to the interview: (1) marriage certificate, (2) lease or letter showing the A/R's residence, and (3) EBT card.

III. The client is asked if they read the call-in letter and if they understand their rights as stated in the letter. Under the heading "Important Notice About Your Rights" the call-in letter states:

> I understand that I may bring an attorney and/or other representatives with me. If I cannot afford an attorney, I may seek free legal representation at a legal services or legal aid office. I may answer questions or choose not to answer. If I do not answer questions at the interview or do not sign a voluntary statement at the end of the interview, my Food Stamp benefits cannot be stopped or reduced solely for these reasons. If the investigators present any documents or evidence during the interview, I may view and comment on them.

IV. An explanation of the purpose of the interview is provided to the client. For example, the investigators of a marriage match will inform the A/R that he/she has been called in to discuss a marriage match that was conducted.

V. The client is interviewed and appropriate documents and evidence are shared with the client. For example, if the purpose of the interview is to discuss the marriage match that was conducted, the following documentation and evidence is shared with the client:

a. FS Application/Recertification
b. Marriage Match Report

VI. In some instances, a signed voluntary statement is requested of the client. The client may either write the statement him- or herself or the statement may be written by an investigator, pertaining to what the client stated. The investigators explain to the client that he/she may choose not to sign the voluntary statement at

the end of the interview, and that his/her food stamp benefits will not be stopped or reduced as a result.

VII. At the end of the interview, the investigators prepare an investigative report which summarizes their findings.

Human Resources Administration
Department of Social Services

INVESTIGATION REVENUE AND ENFORCEMENT ADMINISTRATION
BUREAU OF FRAUD INVESTIGATION

Page ____ of ____

# VOLUNTARY STATEMENT

My name is _____. I live at _____
_____ Apt # _____ Telephone # (____) _____.
On _____, 20___, I identified myself by showing _____,
I was interviewed by Investigators _____ and
_____, at _____.
Investigator _____ explained the call-letter and I understand that I have a right to have an attorney or other representative present and that my cash assistance and/or food stamp benefits cannot be stopped or reduced solely because I chose not to answer. I make the following Voluntary Statement of my own free will:

This Voluntary Statement was written by: _____

By signing here, I indicate that I either wrote or have read the above-voluntary statement and that it consists of an accurate and complete description of what I told the investigators. No promises or threats have been made to make me sign this statement. I fully understand my rights described above.

_____
Signature

Witnessed by:

Signature: _____
Title: _____
Date: _____

Signature: _____
Title: _____
Date: _____

BFI-25C (R)
Rev. 12/09

NYC
Human Resources Administration
Department of Social Services

INVESTIGATION REVENUE AND
ENFORCEMENT ADMINISTRATION
BUREAU OF FRAUD INVESTIGATION
250 CHURCH STREET, 3RD FLOOR
NEW YORK, N.Y. 10013

Date:

Case No.:

Dear

This Office is conducting an investigation concerning your eligibility for Food Stamp benefits.

An interview has been scheduled for you to discuss this matter on:

**Date:**
**Time:**
**Address: 250 Church Street, 3rd Floor, NY, NY 10013**

If for any reason you cannot appear at the time and place shown above, please call Investigator _____ at telephone # (  ) _____

Please bring your Photo ID card, this letter and the following document(s):

Yours truly,
BUREAU OF FRAUD INVESTIGATION

Investigator _____
Signature

## IMPORTANT NOTICE ABOUT YOUR RIGHTS:

I understand that I may bring an attorney and/or other representatives with me. If I cannot afford an attorney, I may seek free legal representation at a legal services or legal aid office. I may answer questions or choose not to answer. If I do not answer questions at the interview or do not sign a voluntary statement at the end of the interview, my Food Stamp benefits cannot be stopped or reduced solely for these reasons. If the investigators present any documents or evidence during the interview, I may view and comment on them.

_____ _____
Participant's Signature Date

TRAVEL INSTRUCTIONS: No. 1 train to Franklin Street, A, E, 2 & 3 trains to Chambers Street. Office located between Leonard and Franklin Streets.

# Appendix L

RUSH v. SMITH, 573 F.2d 110 (2nd Cir. 1978)

BARBARA RUSH, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD ROBERTO BOYCE, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS-APPELLEES, v. J. HENRY SMITH, INDIVIDUALLY AND AS COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, AND CARMEN SHANG, INDIVIDUALLY AND AS ACTING COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, DEFENDANTS-APPELLANTS.

No. 523, Docket 77-7518.

United States Court of Appeals, Second Circuit.

Argued December 9, 1977.

Decided January 19, 1978.

Page 111

Leonard Koerner, New York City (W. Bernard Richland, Corp. Counsel of the City of New York, and Edward J. Schwarz, New York City, of counsel), for defendant-appellant J. Henry Smith.

Marion Buchbinder, Deputy Asst. Atty. Gen., State of New York, New York City (Louis J. Lefkowitz, Atty. Gen. of the State of New York, Samuel A. Hirshowitz, First Asst. Atty. Gen., and Rosalind Fink, Asst. Atty. Gen., New York City, of counsel), for defendant-appellant Carmen Shang.

Marshall W. Green, Staten Island, N.Y. (John E. Kirklin and Constance P. Carden, New York City, Joan Mangones and David Goldfarb, Staten Island, N.Y., of counsel), for plaintiffs-appellees.

Appeal from the United States District Court for the Southern District of New York.

Before FRIENDLY, SMITH and MESKILL, Circuit Judges.

Page 112

FRIENDLY, Circuit Judge:

[1] This appeal from an order of Judge Stewart in the District Court for the Southern District of New York, raises the question how far the Social Security Act (the Act), 42 U.S.C. § 601, et seq.,[fn1] preempts the City and State of New York from combatting fraud by recipients of Aid for Dependent Children (AFDC) benefits.

[2] The Supreme Court has described the AFDC program as a "scheme of cooperative federalism," *Jefferson v. Hackney*, 406 U.S. 535, 542, 92 S.Ct. 1724, 32 L.Ed.2d 285 (1972); see *Batterton v.*

*Francis*, 432 U.S. 416, 97 S.Ct. 2399, 53 L.Ed.2d 448 (1977). As is now well known, basic standards of eligibility are set by Congress, with the Secretary of Health, Education and Welfare (HEW) authorized by §§ 602(a)(5) and 1302 of the Act to flesh out the administrative details by regulations. Sections 601 and 602 require that a State plan, which must conform to twenty-eight separate requirements, shall be submitted to and, if found to conform, be approved by the Secretary. Each state may determine the level of need it proposes to meet; the Federal Government pays a percentage of the cost. Administration of the plan is left to the states and their subdivisions, subject to some general provisions of § 602(a) which require *inter alia* that the State plan must "either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan," § 602(a)(3); must "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness," § 602(a)(4); and must "provide such methods of administration . . . as are found by the Secretary to be necessary for the proper and efficient operation of the plan," § 602(a)(5).[fn2]

[3] The commission of fraud with respect to any of the programs under the Act is made a misdemeanor by 42 U.S.C. § 1307. Pursuant to § 1302, the Act's general authorization for agency rulemaking, the Secretary has adopted 45 C.F.R. § 235.110, entitled "Fraud." This requires that the State plan provide:

> (a) That the State agency will establish and maintain:
>
> (1) Methods and criteria for identifying situations in which a question of fraud in the program may exist, and
>
> (2) Procedures developed in cooperation with the State's legal authorities for referring to law enforcement officials situations in which there is valid reason to suspect that fraud has been practiced. The definition of fraud for purposes of this section will be determined in accordance with State law.
>
> (b) For methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.
>
> (c) For the designation of official position(s) responsible for referral of situations involving suspected fraud to the proper authorities.

[4] In response to this requirement, New York has adopted Social Services Law § 145 making various welfare frauds misdemeanors and

18 N.Y.C.R.R. § 348.2. Paragraph (a) directs each social service district to:

> (a) Establish and maintain clear and adequate policies, procedures and controls in
> Page 113
> order to effectively handle cases of suspected fraud in the administration of public assistance and care.

[5] Paragraph (d) provides that each such district shall:

> (d) Designate a person, either of administrative or supervisory responsibility or in a consultative capacity to the local district such as a welfare attorney, or establish a unit which shall consist of persons of similar responsibility, to which all cases of known or suspected fraud shall be referred, to perform the following functions:
>
> (1) review district material referred, including any that may be legal evidence;
>
> (2) determine whether that material indicates that reasonable grounds exist to believe that fraud was committed by the applicant or recipient and/or others;
>
> * * * * * *
>
> (4) determine the existence of any mitigating facts or circumstances;
>
> (5) promptly refer to the appropriate district attorney or other prosecuting official all cases wherein reasonable grounds exist to believe that fraud was committed. . . .
>
> Any existing mitigating facts or circumstances known to the department shall be included in the referral;
>
> (6) maintain liaison with such appropriate district attorney or other prosecuting official and endeavor to secure reports of actions taken with respect to cases referred;
>
> (7) promptly advise the appropriate district attorney or other prosecuting official whenever restitution, or arrangements for restitution of fraudulently received public assistance funds has been made, or is being made.

[6] Pursuant to these requirements New York City's Income Maintenance Procedure 78-76 provides for four units in the Office of the Inspector General of its Human Resources Administration, entitled respectively Duplicate Check Unit, Eligibility Investigation, Concealed Assets, and Special Investigation. The

Duplicate Check Unit was established to call in and interview clients who are believed to have fraudulently cashed two or more checks which they reported as lost, stolen or undelivered and were subsequently replaced. The procedures provide that failure by a recipient of benefits without good excuse to report for an interview requested by the Office will result in a termination of benefits.[fn3]

[7] In March, 1977, the Inspector General sent a letter to plaintiff Barbara Rush requiring her to report for an interview; the text of the letter is set out in the margin.[fn4] Ms. Rush consulted the Legal Aid Society; a law intern wrote the Inspector General that Ms. Rush would not attend the interview and considered the threatened termination of benefits to be a violation of the United States and New York Constitutions and of the Social Security Act. After a "fair hearing," see note 3, assistance under the AFDC program was terminated.
Page 114

[8] Ms. Rush then brought this action, pursuant to 28 U.S.C. § 2201 and 2202, 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3), for declaratory and injunctive relief on behalf of herself and all other persons similarly situated. She contended that the request to appear, coupled with a threat to terminate benefits for nonappearance, violated her privilege against self-incrimination and imposed a condition of eligibility not authorized by the Social Security Act. In response to her request for interlocutory relief, defendants submitted an affidavit of the Director of the Fraud Control Division describing the way in which interviews were carried out. This was as follows:[fn5]

> 12. In addition, all case workers who interview welfare recipients in the Fraud Control Division are instructed to always begin their interviews with "*Miranda* like" warnings by:
>
> (a) Clearly explaining why their case is being administratively reviewed.
>
> (b) Clearly explaining that the Fraud Control Division cannot arrest the welfare recipient for any fraud but that any information of possible fraud must be turned over to the District Attorney as a matter of State law.
>
> (c) Clearly explaining that since the welfare recipient has appeared, their benefits cannot be cut off, even if the welfare recipient admits to having committed fraud.
>
> (d) Clearly explaining that the welfare recipient has three options when asked questions about the alleged fraudulent cashing of welfare checks — the welfare recipient can acknowledge, contest or stand mute, that they cashed welfare checks they previously had reported as lost, stolen or undelivered.

13. When a welfare recipient does elect to stand mute, the interview is immediately ended and the investigation continued without the use of a personal interview.

14. Under no circumstances are the welfare recipient's benefits terminated because of the welfare recipient's refusal to answer any questions, or even if the welfare recipient has admitted committing fraud.

15. As long as the welfare recipient reports to the Fraud Control Division office, the welfare recipient's benefits are continued.

16. Furthermore, as soon as the plaintiff agrees to report to the Fraud Control Division, her benefits will immediately be restored, even if the plaintiff refuses to answer any questions, or even if the plaintiff acknowledges that she fraudulently cashed checks she had previously claimed were lost, stolen or undelivered.

[9] Judge Stewart denied the request for class action certification because plaintiff had failed to satisfy the numerosity requirement of F.R.Civ.P. 23(a)(1) and also because certification was ". . . unnecessary and would not provide a superior method of adjudicating the issue since retroactive monetary relief cannot be awarded under the facts of this case . . . and since it is clear that the prospective efforts of declaratory and injunctive relief will inure to the benefit of all the requested class members," citing *inter alia Edelman v. Jordan,* 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), and *Galvan v. Levine,* 490 F.2d 1255, 1261 (2 Cir. 1973), *cert. denied,* 417 U.S. 936, 94 S.Ct. 2652, 41 L.Ed.2d 240 (1974). Holding that, as a matter of law, termination of financial assistance for unexcused failure to appear at an interview imposed a condition of eligibility not authorized by 42 U.S.C. § 602(a), the judge granted a permanent injunction against enforcement of this portion of New York City's Income Maintenance Procedure 78-76 and declared it to be invalid. In view of this disposition he found it unnecessary to consider the constitutional claim. After having reinstated Ms. Rush, the City and State sought a stay pending appeal. The judge denied this; we expedited the appeal.

[10] Appellants concede that New York cannot impose conditions of eligibility for
Page 115
AFDC benefits which are in conflict with those specified in § 602(a). The concession is well advised in light of a number of familiar Supreme Court decisions, to wit, *King v. Smith,* 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968) (denial of AFDC payments to children of a mother who cohabits with an able-bodied man held to be in conflict with definition of "dependent child" in § 606); *Townsend v. Swank,* 404 U.S. 282, 92 S.Ct. 502, 30 L.Ed.2d 448 (1971) (denial of

benefits to 18 to 20 year old children attending a college or university held to be in conflict with § 606(a)(2)(B)); *Carleson v. Remillard*, 406 U.S. 598, 92 S.Ct. 1932, 32 L.Ed.2d 352 (1972) (denial of benefits to child when father's absence was due to military service held to be in conflict with provision as to "continued absence from the home" in § 606(a)); *Philbrook v. Glodgett*, 421 U.S. 707, 95 S.Ct. 1893, 44 L.Ed.2d 525 (1975) (state provision denying benefits for any week during which father was *eligible* for unemployment compensation held to conflict with § 607(b)(2)(C)(ii), permitting denial of such benefits during any week in which father *received* unemployment compensation); *VanLare v. Hurley*, 421 U.S. 338, 95 S.Ct. 1741, 44 L.Ed.2d 208 (1975) (state regulations reducing shelter allowance to the extent nonpaying lodgers live in AFDC household held to conflict with § 606(a)).

[11] Plaintiff here pointed to no such conflict between the New York City procedure and any provision of § 602(a) (or of the definitions in § 606) as existed in the cases just cited. Her argument depended rather upon an unarticulated premise of greater generality than that which these decisions declared and applied. This is that unless an AFDC recipient is or has become ineligible under some specific provision of § 602(a), a State is forbidden to terminate benefits, even when, as here, there is a legitimate ground for believing the recipient has engaged in fraud and has refused to cooperate in the State's investigation of it. We find nothing to support this broader premise and much to refute it.

[12] We begin with the statement in *Jefferson v. Hackney*, 406 U.S. 535, 541, 92 S.Ct. 1724, 1729, 32 L.Ed.2d 285 (1972), that courts may not void state action under the AFDC program "so long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act." We have been cited to no provision of the Social Security Act which reads on the challenged New York City procedure. To the contrary, § 602(a)(5) requires a State plan to "provide such methods of administration . . . as are found by the Secretary to be necessary for the proper and efficient operation of the plan" and, under the Act's general rulemaking authorization, 42 U.S.C. § 1302, the Secretary has adopted regulation 45 C.F.R. § 235.110 requiring the State agency to provide *inter alia:*

> (b) For methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

[13] Section 602(a) states what persons are eligible; it does not attempt to list all the circumstances in which an otherwise eligible mother may render herself ineligible. Congress has simply not thought it necessary to say anything so patent as that persons who have engaged in fraud or refused to comply with reasonable requests to assist in its investigation may be removed from the rolls.

[14] If there were any doubt about this, *Wyman v. James*, 400 U.S. 309,

91 S.Ct. 381, 27 L.Ed.2d 408 (1971), would dispel it. The New York law there at issue provided that when there had been a refusal to allow home visits, the appropriate public welfare official might suspend or terminate payments, see 400 U.S. 211 n.2, 91 S.Ct. 381. Assistance to Mrs. James had in fact been terminated because of her refusal, 400 U.S. at 314, 91 S.Ct. 381, and the Court upheld this. Appellee seeks to dispose of *James* on the basis that it "was premised and decided on exclusively Fourth Amendment grounds, with no attention or thought being given to the question of the
Page 116
validity of the New York rule under the Social Security Act." (Brief, p. 29). But the *James* Court was, of course, well aware of the "time-honored doctrine," noted by Mr. Justice Marshall in his dissent, 400 U.S. 345 n. 7, 91 S.Ct. 401, "that statutes and regulations are first examined by a reviewing court to see if constitutional questions can be avoided," and of its own recent decision in *King v. Smith, supra,* 392 U.S. 309, 88 S.Ct. 2128, that a state cannot impose a condition of eligibility in conflict with the Social Security Act. It is hardly conceivable that the *James* Court would have undertaken the decision of a difficult constitutional question if the case could have been disposed of on the simple basis that New York had established a condition of eligibility forbidden by the Social Security Act. *James* was "a Fourth Amendment case" (Appellee's brief, p. 29) since New York could not terminate benefits because of a recipient's exercise of a constitutional right; the Court simply regarded it as too clear for argument that if the New York regulation did not violate the Fourth Amendment, the provision for termination was not in conflict with the Social Security Act. Were there doubts regarding the program's statutory validity, the Court would certainly not have stated, as it did, that New York's home visitation plan "serves a valid and proper administrative purpose for the dispensation of the AFDC program," 400 U.S. at 326, 91 S.Ct. at 390. This was made abundantly clear by *New York State Department of Social Services v. Dublino,* 413 U.S. 405, 422, 93 S.Ct. 2507, 2517, 37 L.Ed.2d 688 (1973), where, in rejecting a contention that the Social Security Act preempted a New York work requirement program more severe than the federally sanctioned WIN program, 42 U.S.C. §§ 602(a)(19), 630, et seq., a considerably closer question than that here presented, the Court said:

> Such programs and procedures are not necessarily invalid, any more than other supplementary regulations promulgated within the legitimate sphere of state administration

[15] and cited *Wyman v. James* in support of this.

[16] We find no basis for a contrary conclusion in *Lascaris v. Shirley,* 420 U.S. 730, 95 S.Ct. 1190, 43 L.Ed.2d 583 (1975), affirming *Shirley v. Lavine,* 365 F.Supp. 818 (N.D. N.Y. 1973) (three-judge court), on which appellee heavily relies. A three-judge court, following the lead of other lower courts, had struck down as in conflict with the Social Security Act a New York statute requiring "recipient cooperation in a paternity or

support action against an absent parent as a condition of [AFDC] eligibility . . . ." 420 U.S. at 731, 95 S.Ct. at 1190. The lower court did not find the New York statute to be saved by a provision of federal law which "require[d] a state . . to develop and implement . . . a program to establish the paternity of the child and to secure support from the deserting parent," 365 F.Supp. at 821. While affirming the three-judge court's decision, the Supreme Court noted that Congress had since then resolved the issue by amending the Social Security Act to require as a condition of eligibility that, like the New York law, "the recipient . . . cooperate to compel the absent parent to contribute to the support of the child," 420 U.S. at 731, 95 S.Ct. at 1190, but also provided that despite the termination of payments to the mother, protective payments should continue to be made to the child. The Court therefore stated that "[i]n light of the resolution of the conflict by Pub.L. 93-647, we have no occasion to prepare an extended opinion," and merely affirmed the lower court without explaining its rationale.[fn6]

[17] The issue that had come before the three-judge court (prior to the Social Security's Act's amendment) was quite different than that raised here. In that case, Congress had placed the obligation with respect to establishing paternity and support upon the state, not upon the mother, and granted "no authority for engrafting such a condition" on the AFDC program. 365 F.Supp. at 821. Here, by contrast, it was hardly necessary
Page 117
for Congress to say in § 602(a) that the mother should not engage in fraud; if anything was needed, the criminal provision in § 1307 would suffice.

[18] Appellee makes the further point that New York has procedures for dealing with the duplicate check problem independent of those here challenged. As soon as the New York City Department of Social Services detects the probability that a recipient who has obtained a duplicate check has also cashed the original one, it issues a Notice of Intent to Reduce Public Assistance and institutes recoupment limited to 10% of household needs, 18 N.Y.C.R.R. § 352.31(d)(4), within 20 days unless a fair hearing is demanded, in which event recoupment is postponed. New York City Dept. of Soc. Services Proc. No. 72-20; cf. *Jackson v. Weinberger,* Civ. 75-280 (W.D. N.Y., Oct. 11, 1977) (upholding as consistent with the Act state regulations permitting gradual recoupment of AFDC overpayments that result from willful withholding of information); *Lomax v. Lavine,* 72 Civ. 2457 (S.D.N.Y., July 31, 1972) (denying motion for preliminary injunction against state regulations providing for recoupment from future public assistance grants of prior duplicate payments).

[19] However, the interests of the State are not limited to the gradual recoupment of funds when an AFDC recipient has obtained a duplicate check and then has cashed both. There is a legitimate interest in sorting out the cases where the illegality might have been minor or in some way excusable and those representing a deliberate and continued plan to mulct the State.[fn7] In view of the number of cases, the futility of fines and the undesirability

of incarceration except as a last resort, a tough lecture may be the best prescription for cases of the former type, with a recommendation for prosecution reserved for the latter. The State also has an interest in detecting persons other than the recipient who have assisted in or even encouraged such frauds, and the recipient's cooperation is extremely valuable. All these considerations are in conformance with the Secretary's regulation, 45 C.F.R. § 235.110, to which we have already referred, and with 45 C.F.R. § 233.10(a)(1)(ii)(B), which provides that:

> A State may . . .. Impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

[20] We find nothing in the Social Security Act that forbids a state to terminate benefits to a recipient who engages in conduct, here the cashing of duplicate checks, which, if done on a considerable scale, would render continued conduct of the AFDC program impossible, or refuses to appear for an interview about this.

[21] We therefore conclude that the district court was unjustified in striking down New York City Income Maintenance Procedure 78-76 as a violation of the Social Security Act. On the other hand, we think a more modest injunction is required.

[22] Our first concern is with the form of the letter sent to the AFDC recipient. Although the affidavit of the Director of the Fraud Control Division quoted above tells us that when the AFDC recipient appears, she is told that she has, and that in fact she does have, the option to stand mute, and that her welfare benefits are not terminated because of exercise of this option or even because of an admission of fraud, the letter sent to the recipient does not state this. This omission could well lead to refusals to appear on the part of recipients who would come if they knew what in fact would occur. This would result in an unnecessary increase in terminations and consequent hardship. The City's interest is in having people come in the hope they will cooperate,



not in having them stay away because of ignorance of what the City's policy in fact is. Whether or not the form of notice "infringe[s] on the legal rights of persons involved," 45 C.F.R. § 235.110(b), it is unreasonable in the respect noted. It also should be made clear that the "representative" whom the recipient is entitled to bring with her may (although need not be) a lawyer.

[23] While the point is less clear, we also believe that the City's procedures require change in another respect. Appellee's brief notes that (p. 40[*]):

> Each time Congress has amended the Social Security Act to add new conditions of eligibility, such as the duty to register for employment (42 U.S.C. § 602(a)(19)), the duty to assign all support rights to the State (42 U.S.C. § 602(a)(26)(A)), or the duty to cooperate in establishing paternity and obtaining support payments (42 U.S.C. § 602(a)(26)(B)), it has expressly provided that if a parent fails to comply with the condition the children are not to be penalized, but are to receive protective payments pursuant to Section 606(b)(2). 42 U.S.C. § 602(a)(19)(F)(i); 42 U.S.C. § 602(a)(26)(B). This specific tailoring of the conditions to preserve the rights of needy children is strikingly absent from the blunderbuss approach of Income Maintenance Procedure 78-76, under which assistance to the entire family is terminated if the parent fails to appear at an OIG interview.

[24] Although, for reasons previously indicated, we do not regard termination for refusal by a recipient to cooperate in an investigation of possible fraudulent conduct as a "condition of eligibility" in any real sense, the instances cited do tend to show a kind of common law of the AFDC statute that the sin of the mother, even such an egregious one as refusing the very modest cooperation New York City has required with regard to her own fraud, shall not be visited upon the children.[fn8] Recognizing that a restriction will have a dampening effect on the City's procedure, we nevertheless believe that the termination of benefits to the parent must be accompanied by a provision for protective payments for the children similar to those in the statutory sections cited by appellee.

[25] Because of his belief that the New York Income Maintenance Procedures violated the Social Security Act, Judge Stewart had no occasion to consider plaintiff's Fifth Amendment claim, and plaintiff's concession of the accuracy of the Director's description of the method of conducting interviews did not reach that far, see note 5 *supra*. The issue will have a changed aspect in view of the alterations in the notice we have directed. This point can be further considered if plaintiff should wish to press it.

[26] The order is vacated and the cause is remanded for further proceedings consistent with this opinion. No costs.

[fn1] Section references to the Act will be by the section numbers appearing in 42 U.S.C.

[fn2] As Representative Doughton said in reporting the Social Security Act of 1935 out of committee:

> In fact, these provisions limit very strictly the supervisory powers of the Social Security Board over the States, and provide a maximum of State control in these matters. The federal standards or conditions

included in the law may, indeed, be regarded as minimum conditions, leaving to the States the determination of policies, the detailed administration, the amount of aid which shall be given, and questions of personnel.

79 Cong.Rec. 5469 (1935).

[fn3] Such termination can occur only after a State "fair hearing" (if requested) in which the recipient may challenge the proposed discontinuance. N.Y.C. Dept. of Soc. Services, Notice of Intent to Discontinue Public Assistance; N.Y.C.R.R. § 351.23(b); 42 U.S.C. § 602(a)(4).

[fn4] Dear Public Assistance Clients:

Our records indicate that you have cashed 2 checks since 1974 which you had reported to us as lost, stolen or undelivered. At the time we replaced those checks, you had signed an affidavit stating that you would not cash the missing checks if they came into your possession.

A review of the case must be conducted and if the evidence indicates fraudulent receipt of public assistance, Section 145 of the State Social Services Law requires that the case be referred to the District Attorney. Therefore, you must report to the Office of the Inspector General of the Human Resources Administration at the following address and time:

* * * * * *

You are entitled to bring a representative to be present at the interview. Please bring your photo ID card and this letter for purposes of identification. If you have any questions about this letter, you can call 553-5159. Failure to report will result in termination of your public assistance payments.

Signature illegible
Inspector General

[fn5] Plaintiff agreed to accept the affidavit as true as far as concerned her statutory claim. *Rush v. Smith,* 437 F.Supp. 576 at n.2 (S.D.N.Y., 1977) (Stewart, *J.*).

[fn6] Three Justices dissented without opinion.

[fn7] During 1971 the New York City Department of Social Services paid out approximately $5.4 million in duplicate checks, *Lomax v. Lavine, supra.*

[fn8] Indeed, New York's own practice, where a recipient is found

to have actually committed fraud, is merely to reduce the assistance grant by 10-15% until the overpayments occasioned by the fraud are recovered. Defendant-Appellant's Br. at 11; 18 N.Y.C.R.R. § 352.31(d). To terminate all payments solely for failure to appear seems disproportionate.

# Appendix M

MICHAEL G. BRESLIN
COUNTY EXECUTIVE

COUNTY OF ALBANY
DEPARTMENT OF SOCIAL SERVICES
LEGAL DIVISION – 7TH FLOOR
162 WASHINGTON AVENUE
ALBANY, NEW YORK 12210-2304
(518) 447-7360 - FAX (518) 447-7722
www.albanycounty.com

VINCENT COLONNO
COMMISSIONER

SSI recipient.
SNAP only –
no temporary
assistance.

**September 13, 2011**

[redacted]

You have been scheduled for an interview at the Department of Social Services on:

Tuesday 9/27/11 @ 3:00pm.

The interview will take place at **162 Washington Avenue Albany, NY 12210.** If you are unable to appear for this interview you can contact me at **518-447-7073** to discuss this matter.

***Failure to appear may result in negative action towards your current and or future Social Service case(s) and the referral of this matter to the Albany County District Attorney's Office for review.***

D FAZIL 3:00

Respectfully,

Investigator J. Fazio
ACDSS
Welfare Fraud Unit
518-447-7073

3:00 FAZIL 00

[redacted] J FAZIO

# Broome County Department of Social Services

Debra A. Preston, County Executive . Arthur R. Johnson, LCSW, Commissioner

Client receives SNAP & Medicare Savings Program benefits. No temporary assistance.

May 27, 2014

[redacted]

Currently a review of your Social Services case is being conducted. You are required to appear for an interview at the Broome County Department of Social Services, 36-38 Main Street, Binghamton, New York. Your Interview is scheduled for Thursday, June 5, 2014 at 10:00 am. Please arrive at the scheduled time of your appointment. If you need to reschedule please call prior to your scheduled appointment. Upon your arrival for your appointment @ the Department of Social Services please advise the front desk staff that you have an appointment with the Case Integrity Unit or bring your letter with you.

You have a right to have a representative with you at this appointment.

You must immediately contact our office at (607) 778-2519 if you are unable to keep this appointment. Failure to appear for your scheduled interview or promptly offer a reasonable explanation as to why you cannot appear may result in your receiving notice that your case will be closed within ten (10) days.

Sincerely,
Case Integrity Unit

**From:** HEDDERMAN, TOM (OTDA) [mailto:Tom.Hedderman@otda.ny.gov]
**Sent:** Friday, June 06, 2014 3:28 PM
**To:** Cathy Roberts
**Cc:** Haettenschwiller, Inez (OTDA)
**Subject:** RE: problems w/ Broome County case integrity unit call-in notices

Cathy,
Broome DSS is being notified of correct policy by both the OTDA SNAP Bureau and Program Integrity. They have been told to remove the incorrect language from their notice. Their investigators just received reinforcement training on this at the NYWFIA conference, so there is no excuse for this continuing. Please let us know ASAP if you learn of any future incidents like this. Thank you.


**Tom Hedderman**
Director of Food and Nutrition Policy

NYSOTDA/CEES


**From:** Cathy Roberts [mailto:CRoberts@empirejustice.org]
**Sent:** Thursday, June 05, 2014 5:01 PM
**To:** Haettenschwiller, Inez (OTDA)
**Cc:** HEDDERMAN, TOM (OTDA)
**Subject:** problems w/ Broome County case integrity unit call-in notices

Please see attached.
The notice improperly threatens to terminate benefits if the person doesn't show up for the case integrity appointment. This was sent to an individual who receives SNAP only (no TA) and Medicare Savings Program benefits.

--Cathy


Empire Justice Center
**Cathy Roberts**

(518) 462-6831 518) 935-2852
croberts@empirejustice.org
www.empirejustice.org

# Appendix N

# Supplemental Nutrition Assistance Program

April 24, 2003

**SUBJECT:** Food Stamp Program Cooperation with Fraud Investigations

**TO:** Program Directors
All Regions

We are writing to resolve a concern that has arisen in response to an earlier memorandum on household cooperation with fraud investigations. In a March 4, 2002, memorandum to all regional Food Stamp Directors, we addressed concerns over a provision in the Noncitizen Eligibility and Certification Provisions of Public Law 104-193 final rule that prevented State agencies from terminating recipients who fail to appear for an in-office interview during their certification periods, including Intentional Program Violation (IPV) investigation interviews. We noted that households that failed to cooperate with an IPV investigation could still be penalized under current rules if, as part of the IPV investigation, the State agency sends the household a Request for Contact (RFC) and the household fails to respond to it. We also noted that although the State agency could not require the household to attend a meeting with fraud investigators, it could suggest in the RFC that such a meeting might be in the best interest of the household. We noted that households might be more willing to have a face-to-face meeting with an IPV investigator than face closure of their case for failure to respond to an RFC.

After a further review of this matter, and upon advice of our legal counsel, we have reconsidered our position on the use of the RFC to facilitate household cooperation with fraud investigations. We have decided that the RFC may only be issued by State eligibility workers and only when the State agency learns of a change in the household's circumstances that calls into question the household's continued eligibility for the program or its current level of benefits. The RFC may not be issued as an attempt to require an individual to meet with, or supply information to, a fraud investigator. Threatening to terminate the individual/household for failure to respond to an RFC, when the response involves communicating with a fraud investigator, circumvents the right to remain silent pursuant 7 CFR 273.16(e)(2)(iii) & (f)(1)(ii)(B).

Also, under the IPV rules, an individual does not face termination if the accused fails to attend an administrative disqualification hearing (ADH), nor is the individual determined guilty of the IPV for failure to appear at the ADH unless the State is able to successfully argue its case before the hearing official. Thus, it would be inappropriate to terminate the individual for failure to cooperate in an investigation when there is no such required adverse consequence if the individual does not participate in his/her own ADH.

Finally, consistent with policy memoranda of March 28, 2001 and June 4, 2001 concerning the Head of Household as Individual Responsible for Intentional Program Violations, only the individual(s) directly involved in the IPV may be held responsible. No additional household members may be disqualified unless there is convincing evidence of their complicity in the prohibited acts. Thus again it would be inappropriate to terminate the entire household for failure of an individual to cooperate in an investigation of that individual.

Contact with the individual prior to initiation of a disqualification procedure is not required by the Food Stamp Program regulations. Investigators having sufficient evidence of an individual's guilt may schedule an ADH, properly notify the individual, and proceed with a disqualification action without any intervening communication with the client. Or, having determined that an ADH is appropriate, the investigator may offer the individual the opportunity to forego the ADH by signing a waiver.

Nevertheless, contacting the individual prior to initiating a formal procedure affords the individual the opportunity to explain away questionable circumstances and avoid the necessity of further action. It also provides the investigator an opportunity to gather further evidence if obtained from the individual voluntarily. To this end, investigators may request but not require individuals to attend meetings to discuss investigators' suspicions. Further, they may ask individuals to discuss the issues over the telephone or respond in writing. If the individual fails or refuses to respond to any such request, the investigator, having otherwise completed his/her investigation and having sufficient evidence, may proceed with an ADH action to disqualify the individual. In no event, however, may the individual or the household be threatened with the possibility of termination for non-cooperation.

If a State agency has terminated the participation of an individual for failure to cooperate with a fraud investigation, the State agency should reinstate the individual in the food stamp household. If

an entire household has been terminated, the State agency should advise the household to submit a new food stamp application.

/s/ Arthur Foley
Arthur T. Foley
Director
Program Development Division

/s/ Lou Pastura
Lou Pastura
Director
Program Accountability Division

*Last modified: 07/25/2013*

# Appendix O

**SUBJECT:** Fraud Policy: 7 CFR 273.16

**TO:** Regional Food Stamp Program Directors
All Regions

**Background**

This memorandum is to reiterate and clarify current policy governing intentional Program violations (IPV) as set forth at 7 CFR 273.16 of the Food Stamp Program (FSP) regulations. As a result of recent Food and Nutrition Service (FNS) reviews, we noted some procedures that are not consistent with the letter or intent of 7 CFR 273.16. For example, we found that administrative disqualification hearing (ADH) waivers are sometimes offered to clients suspected of an IPV prior to the State agency's completion of its investigation and of its determination to hold an ADH. We also found that some State agencies combine administrative and judicial procedures rather than pursuing one or the other. Given these findings, a clarification of the fraud provisions would be both helpful and appropriate at this time.

In addition, both State agency staff and legal aid advocates have offered suggestions that we think merit consideration. We are passing along these practices for consideration by other State agencies in the operation of their fraud prevention and detection efforts.

**Use of ADH Waiver**

Section 7 CFR 273.16 (f)(1)(i) reads; "Prior to providing this written notification [that the individual can waive his/her right to an ADH] to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing." This provision requires the State agency to make a determination that there is sufficient evidence to hold an ADH and it intends to do so prior to offering the individual an opportunity to sign an ADH waiver. Waivers should not be offered when there is a suspicion of guilt but the evidence is not convincing. If a State agency determines that it has sufficient evidence to hold a hearing and has offered the individual an opportunity to waive the hearing, the State agency should then go ahead and schedule a hearing if the individual does not sign the waiver. For example, an investigator having reviewed an individual's electronic benefits transfer transactions in a store previously disqualified for trafficking, might believe based on these transactions, that the individual has committed an IPV. However, unless the investigator is willing to take this evidence before a hearing official, an ADH waiver should not be offered.

**Administrative Hearings Versus Court Referrals**

Section 6 (b)(2) of the Food Stamp Act of 1977, as amended 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.) The FSP regulations at 7 CFR 273.16 (a)(1) reiterate the substance of this language and add that "The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution. Finally, sections 7 CFR 273.16 (e) concerning ADHs and 7 CFR 273.16 (g) concerning court referrals describe two separate and distinct procedures.

Thus stated, 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. 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. If an ADH waiver is offered, it should be because the State agency has already determined that an administrative hearing is appropriate in this case and is offering an individual the opportunity to opt out by signing the waiver. For individuals to make an informed decision with respect to waiving the right to a hearing, they must be fully informed of due process rights, hearing procedures, and consequences they face if determined guilty of an IPV at the hearing. Offering an ADH waiver accompanied by the required notices appropriate to the administrative proceeding does not properly inform the individual of the consequences of not signing the waiver if he or she is to be referred for prosecution. Individuals, based on the penalty specified in the ADH waiver notice for example, may decide to go ahead with the ADH only to find themselves facing prosecution and a far more significant penalty. Thus, whenever State agencies have sufficient evidence to hold a hearing and have offered an ADH waiver to the individual, an ADH and not a referral for prosecution is the appropriate course of action.

Similarly, suggesting to the client that his/her case may be referred for prosecution if he/she does not sign an ADH waiver is confusing or misleading and again makes it difficult for the individual to make an informed decision. Additionally, 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 ADH waivers rather than risk the alternative.

The prohibition against conducting both administrative and judicial procedures simultaneously, or in combination, does not preclude the State agency from prosecuting an individual upon completion of the administrative process. In fact, 7 CFR 273.16 (e)(3)(iii)(H) requires a statement informing the individual that having a hearing does not preclude the State or Federal Government from subsequently prosecuting the individual. Similarly, cases referred for prosecution that are declined by the prosecutor, or in which no action has been taken against the individual by the prosecutor or court, may be pursued administratively. Finally, FNS recognizes that circumstances sometimes change or that new evidence may be introduced that causes the State agency to reconsider its original decision to hold an ADH and instead refer the case for prosecution. This may be appropriate on a case-by-case basis, but not as a matter of practice.

**ADH Waiver Forms**

Section 7 CFR 273.16(f)(1)(iii) states; "The State agency shall develop a waiver of [the] right to administrative disqualification hearing form which contains the information required by this section as well as the information described in paragraph (e)(3) of this section for advance notice of hearing." Paragraph (e)(3) further requires, among other things, that a list of the individual's rights as contained in 7 CFR 273.15 (p) be included. In other words, the ADH waiver form provided to individuals must include the information contained in each of three separate sections of the Program regulations: 273.16 (f)(1)(ii), 273.16 (e)(3)(iii), and 273.15 (p). For reference, a summary of these rights and procedures is attached. However, readers should consult the regulations for the exact regulatory text when necessary.

We have included these requirements because our reviews showed that important information was sometimes omitted or was presented in such a way as to be confusing to the client. Omission of due process rights and other information from the waiver form not only fails to provide the individual information necessary to make a decision about signing the waiver; it may also jeopardize the State agency's case.

In general, all forms used by the State agency to advise individuals about the investigation due process rights and hearing procedures, should be simply stated and in a manner that is clear and understandable to clients.

**Suggested Practices**

These suggestions have come from both State agencies and legal aid advocates. We believe adoption of these practices would serve the interests of both investigators and clients by increasing clarity and reducing the appearance of intimidation.

The first suggestion is to include a statement on the ADH waiver form that would allow the individual to assert that they do not wish to waive their right to an administrative hearing. For example, such a statement might read, "I have read this notice and wish to exercise my right to have an administrative hearing." Current regulations at 7 CFR 273.16(f)(1)(ii)(D) require that the individual be permitted to indicate on the waiver form whether they agree or disagree with the facts of the case as presented. Some clients might wrongly conclude that they should sign the waiver to disagree with the facts as presented and exercise their right to have a hearing. We believe the inclusion of this additional statement will allow the individual to sign the waiver form while affirmatively asserting his or her desire to have a hearing.

Second, clients unfamiliar with administrative hearings may confuse the ADH with a court proceeding and may wrongly believe that the consequence of a hearing is essentially the same as that of a conviction in court. Thus, individuals may believe the waiver is a way of avoiding a more serious penalty they might be subject to were they to go ahead with the hearing. Adding a statement to the waiver form indicating that the penalty remains the same whether the individual chooses to have a hearing and is determined guilty, or whether the individual waives the hearing, might permit a more objective consideration of the merits of agreeing to the waiver versus having an administrative hearing.

Third, we are passing along for your consideration procedures adopted by a couple of State agencies that permit individuals that agree to meet with investigators the same opportunity for reflecting on their decision to sign an ADH waiver as those individuals that receive their ADH waivers by mail. In one instance, rather than having individuals sign the waiver during the interview, individuals are asked to take the waiver form home and return it signed by a specified date if they want to waive their right to an ADH. Alternatively, one State agency permits individuals that sign waivers during the interview to contact the investigator and ask instead to withdraw the waiver and to have an ADH. Adopting such procedures may not greatly increase the burden on investigators and may help to ensure that individuals do not impetuously waive their right to a hearing, particularly those that might be innocent.

The last suggested practice concerns cases in which the person suspected of committing an IPV has a documented mental disability (e.g., noted in the case record or discovered during the investigation). Because some mentally disabled individuals may lack the ability to form the intent necessary for establishing an IPV, and may not fully understand the consequences of signing an ADH waiver, the State agency may schedule an administrative hearing without offering a waiver. This ensures that the procedures of the State agency fully protect the rights of the individual to seek legal counsel or assistance without raising the issue that the waiver was questionable.

Barbara Hallman
Acting Director
Program Accountability Division



Attachment -- Administrative Rights List

# Appendix P

# SFARS Recipient Report - 102

*CinId Selection Used*

*Order by Date*

**Period Covered:** Jun 1, 2012 **To:** Jun 14, 2012 **Program Type:** FS & CASH **WRTS Recip Id:** 16124722

**Recip Name:** DEEALISA V. **SSN:** **Region:** MxO **District #/Name:** 66/New York City

**Case Type:** Safety Net FNP Cash Assistance (SN-CSH) **Case Status:** Active **Case#:**

**Individual Status:** Active (Include Individuals Sanctioned Prorata)

**Office:** 035 **Unit:** **Worker:** 00202 **CIN App Reg#:**

| FNS # | Terminal ID | Retailer Name | Terminal Address | Store Type | Retailer County | Card No | Auth Rep Y/N | Prod Type | Manual Voucher # | Tran Log Date/Time | DB/CR Ind | Tran Type | Card Entry Type | $ Amt Compl | Cash Back Amt | Acct Bal |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 3288897 | 06039E | Hamilton Corner Meat Market Inc | 1 HAMILTON PL, NEW YORK, NY 10031 | MG | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 1, 2012 6:42:18 PM | DB | 301 | K | $3.00 | $0.00 | $264.75 |
| 3288897 | 06039E | Hamilton Corner Meat Market Inc | 1 HAMILTON PL, NEW YORK, NY 10031 | MG | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 1, 2012 6:46:54 PM | DB | 301 | K | $2.18 | $0.00 | $262.57 |
| 0144941 | 35829406 | El Gallo Meat Market Inc | 538 W 138TH ST, NEW YORK, NY 10031 | SS | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 2, 2012 9:17:31 PM | DB | 301 | K | $3.23 | $0.00 | $259.34 |
| 0079887 | 001 | A&J FAMILY CORP | 1440 AMSTERDAM AVE, NEW YORK, NY 10027 | SS | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 3, 2012 2:30:52 PM | DB | 301 | K | $12.16 | $0.00 | $247.18 |
| 0108536 | 37990D | Manhattan Fish Market Corp | 3344 BROADWAY, NEW YORK, NY 10031 | SE | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 3, 2012 6:08:36 PM | DB | 301 | K | $10.75 | $0.00 | $236.43 |
| 0211328 | 67290D | MI PAIS SUPERMARKET INC | 3361 BROADWAY, NEW YORK, NY 10031 | LG | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 3, 2012 7:45:57 PM | DB | 301 | K | $1.29 | $0.00 | $235.14 |
| 3288897 | 06039E | Hamilton Corner Meat Market Inc | 1 HAMILTON PL, NEW YORK, NY 10031 | MG | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 3, 2012 7:51:54 PM | DB | 301 | K | $1.00 | $0.00 | $234.14 |
| | | BENEFIT UPDATE | | | | 6004868128202150021 | N | 02 | | Jun 4, 2012 12:14:52 AM | CR | 201 | | $132.00 | $0.00 | $132.00 |
| | | BENEFIT UPDATE | | | | 6004868128202150021 | N | 01 | | Jun 4, 2012 12:39:45 AM | CR | 202 | | $367.00 | $0.00 | $601.14 |
| 0144941 | 35829406 | El Gallo Meat Market Inc | 538 W 138TH ST, NEW YORK, NY 10031 | SS | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 4, 2012 9:41:12 PM | DB | 301 | K | $10.26 | $0.00 | $590.88 |
| 0211328 | 67290D | MI PAIS SUPERMARKET INC | 3361 BROADWAY, NEW YORK, NY 10031 | LG | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 4, 2012 9:53:26 PM | DB | 301 | K | $1.00 | $0.00 | $589.88 |
| | P142899 | Rite Check | | | | 6004868128202150021 | N | 02 | | Jun 5, 2012 4:59:21 PM | DB | 306 | K | $132.00 | $0.00 | $0.00 |
| 02678S4 | 07749E | Best American Inc | 3589 BROADWAY, NEW YORK, NY 10031 | CS | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 5, 2012 6:31:56 PM | DB | 301 | K | $1.65 | $0.00 | $588.23 |
| 0144941 | 35829404 | El Gallo Meat Market Inc | 538 W 138TH ST, NEW YORK, NY 10031 | SS | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 5, 2012 7:34:52 PM | DB | 301 | K | $8.36 | $0.00 | $579.87 |
| 0211328 | 84964D | MI PAIS SUPERMARKET INC | 3361 BROADWAY, NEW YORK, NY 10031 | LG | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 5, 2012 7:51:28 PM | DB | 301 | K | $1.98 | $0.00 | $577.89 |
| 0121791 | 58526702 | FAMILY DOLLAR #7136 | 228A NAGLE AVE, NEW YORK, NY 10034 | CO | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 7, 2012 6:09:02 PM | DB | 301 | K | $5.45 | $0.00 | $572.44 |
| 0144941 | 35829404 | El Gallo Meat Market Inc | 538 W 138TH ST, NEW YORK, NY 10031 | SS | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 9, 2012 9:24:55 PM | DB | 301 | K | $6.97 | $0.00 | $565.47 |
| 3288897 | 06039E | Hamilton Corner Meat Market Inc | 1 HAMILTON PL, NEW YORK, NY 10031 | MG | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 9, 2012 9:34:54 PM | DB | 301 | K | $0.99 | $0.00 | $564.48 |
| | 06039E | HAMILTON C | 1 HAMILTON PL, NEW YORK, NY 10031 | | | 6004868128202150021 | N | 01 | | Jun 11, 2012 6:15:18 PM | NV | 309 | K | $0.00 | $0.00 | $564.48 |
| 0079887 | 001 | A&J FAMILY CORP | 1440 AMSTERDAM AVE, NEW YORK, NY 10027 | SS | NEW YORK (Manhattan) | 6004868128202150021 | N | 01 | | Jun 11, 2012 6:53:04 PM | DB | 301 | K | $20.10 | $0.00 | $544.38 |
| 0199824 | BJ017612 | BJ's Wholesale Club #176 | 610 EXTERIOR ST, BRONX, NY 10451 | SS | BRONX | 6004868128202150021 | N | 01 | | Jun 11, 2012 9:21:31 PM | DB | 301 | K | $392.00 | $0.00 | $152.38 |

| | FS | CR | CA | FS | DB | CA | Others |
|---|---|---|---|---|---|---|---|
| Grand Total # of Trans | 1 | | 1 | 17 | | 1 | 1 |
| Grand Total $ Amt Completed | $367.00 | | $132.00 | $482.37 | | $132.00 | $0.00 |
| Total Avg $ Per Trans | $367.00 | | $132.00 | $28.37 | | $132.00 | $0.00 |

# Appendix Q

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

CASE# PXXXXXX
CENTER# Nassau
FH# 4093011R

In the Matter of the Appeal of the
Nassau County
Department of Social Services (Agency)

vs

LG, Recipient

DECISION AFTER ADMINISTRATIVE DISQUALIFICATION HEARING

JURISDICTION

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on October 7, 2004, in Nassau County, before Philip Nostramo, Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient

LG, Appellant; Ms. Kaslow, Esq.; Nassau/Suffolk Law Services

For the Social Services Agency

Ms. Mergentheimer, Fair Hearing Representative;
Ms. Zaetz, Social Welfare Examiner

ISSUE

Was the Agency's determination that the recipient had received an overpayment of Public Assistance and an overissuance of Food Stamps for the period of March 2001 through July 2001 as a result of an intentional program violation correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient has been in receipt of Public Assistance and Food Stamps.

2. The Agency determined that the recipient had committed an intentional program violation under a Public Assistance Program and of the Food Stamp Program by concealing receipt of UIB while the recipient and/or the recipient's household was in receipt of such benefits, resulting in an overpayment of Public Assistance in the total amount of $1755 and an overissuance of Food Stamps in the total amount of $475 during the period March 2001 through July 2001.

3. The Agency requested the Office of Administrative Hearings of the New York State Office of Temporary and Disability Assistance (Office) to

schedule this administrative disqualification hearing based upon its determination.

4. Pursuant to such request and based upon the documentation submitted to the Office in support of the Agency's allegation, this hearing was scheduled by notice dated May 21, 2004. The notice indicated that the recipient would be disqualified from receiving Public Assistance for a period of 12 months and Food Stamps for a period of 12 months.

5. The recipient was in receipt of UIB in the amount of $73 weekly for the period of March 2001 through July 2001 and such income was not budgeted by the agency. The Agency instituted a recovery action by notice of August 1, 2002 to recover the overpayments of assistance from the ongoing public assistance and food stamp cases.

APPLICABLE LAW

The New York State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and Food Stamp Programs. 18 NYCRR 359.2; 7 CFR 273.16.

For purposes of an administrative disqualification hearing relating to Public Assistance benefits, a person has committed an intentional program violation if the individual, for the purpose of establishing or maintaining eligibility for public assistance, or of increasing or preventing a reduction in the amount of such public assistance, individually, or as a member of a family, applies for or receives public assistance and is found to have:

(1) 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; or

(2) 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 assistance; or

(3) engaged in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370 of 18 NYCRR.

Social Services Law Section 145-c, 18 NYCRR 359.3.

Individuals found to have committed an intentional program violation of a Public Assistance Program, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement confirmed by a court, will be ineligible, individually or as a member of an assistance unit, to receive Public Assistance for:

(i) six months upon the first commission of a first public assistance-IPV,

(ii) 12 months for the commission of a second public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount between $1,000 and $3,900,

(iii) 18 months for the commission of a third public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount in excess of $3,900, and

(iv) five years for the commission of a fourth or subsequent public assistance-IPV.

Findings of the commission of intentional program violations in the ADC and HR programs prior to August 20, 1997 must be considered in determining the sanction to be imposed for a public assistance-IPV.

Social Services Law 145-c, 18 NYCRR 359.9(a).

Individuals found to have committed an FS-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the Food Stamp Program for a period of time specified by law. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

DISCUSSION

The determination of the Agency that the recipient committed an intentional program violation was not supported by clear and convincing evidence.

The Agency case is based primarily on the recipient's statement on the January 16, 2002 recertification that there were no changes from the last recertification. The agency argues that he was in receipt of UIB during that prior recertification period and the termination of the UIB would be a change that should have been reported on the January 16, 2002 recertification. While the agency argument is technically correct it is too insubstantial to clearly and convincingly find that the recipient intentionally concealed the UIB from the agency during the period of March through July 2001. An examination of all the evidence leads to a different conclusion.

The recipient credibly testified that he had provided his caseworker with the UIB award letter and later provided a letter indicating that the UIB terminated. The recipient explained that he probably failed to indicate the termination of the UIB on the January 16, 2002 application because the UIB had ended several months before and because he had already provided

verification to the agency caseworker at that time. While the agency has no record of the report to the caseworker, the client's testimony was consistent and reasonable.

In response to the Agency's argument that the recipient should have been aware that the UIB was not budgeted, the appellant's representative properly pointed out that the case was first opened in March 2001 and that no budget was attached to the March 2001 opening notice. Accordingly the recipient would not know that the UIB was not budgeted.

DECISION

The Agency's determination that the recipient committed an intentional program violation under a Public Assistance Program and of the Food Stamp Program is not correct and is reversed.

The Agency is directed not to further prosecute the recipient for an intentional program violation.

DATED: Albany, New York
November 16, 2004

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

CASE #: Nxxxxxxx
AGENCY: Westchester
FH #: 4626082R

In the Matter of the Appeal of

Westchester County
Department of Social Services (Agency)

vs.

P M, Recipient

**DECISION AFTER ADMINISTRATIVE DISQUALIFICATION HEARING**

## JURISDICTION

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on April 23, 2007, in Westchester County, before Thelma L, Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient
P M, Recipient
D L, Witness
Mary Mahoney, Esq., Legal Services of the Lower Hudson Valley, Representative

For the Social Services Agency
Mary Alyce Dailey and Cora Adalin, Fair Hearing Representatives

## ISSUE

Was the Agency's determination that the recipient had received an over issuance of $607.00 in Food Stamps from December 28, 2005, to April 30, 2006, as a result of an intentional program violation correct?

## FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient, P M, was in receipt of Food Stamps for a one person household.

2. The recipient is also certified disabled, in receipt of monthly SSI and Medical Assistance benefits for himself.

3. The recipient currently resides at the address of record with his sister, D L.

4. The Agency determined that the recipient committed an intentional program violation of the Food Stamp Program by redeeming benefits from Florida, while the recipient was in receipt of these benefits from Westchester County. This resulted in an over issuance of $607.00 in Food Stamps from December 28, 2005, to April 30, 2006.

5. The Agency requested the Office of Administrative Hearings (OAH) of the New York State Office of Temporary and Disability Assistance to schedule this administrative disqualification hearing based upon its determination.

6. Pursuant to such request and based upon the documentation submitted to OAH in support of the Agency's allegation, this hearing was scheduled by notice dated March 21, 2007. The notice indicated that the recipient would be disqualified from receiving Food Stamps for a period of ten years.

7. The recipient was in receipt of $607.00 in Food Stamp benefits from December 28, 2005, to April 30, 2006.

8. The recipient was advised of the affirmative and continuing duty to report promptly to the Agency any employment of the recipient or any member of the household or any relocations or moves from the address of record.

9. The recipient did not inform the Agency that he had relocated to New York State from Florida.

**APPLICABLE LAW**

The New York State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and Food Stamp Programs. 18 NYCRR 359.2; 7 CFR 273.16.

Individuals found to have committed an FS-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the Food Stamp Program for a period of time specified by law. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

Administrative Directive 97 ADM 4, issued February 28, 1997, provides that any applicant, recipient or former recipient found by a Department administrative disqualification hearing (ADH) or convicted by a court of having made a fraudulent statement or misrepresentation of identity or residence in order to receive multiple Food Stamp benefits simultaneously is ineligible to participate in the Food Stamp Program for 10 years. A finding by the Department

includes a disqualification consent agreement (DCA) or waiver of an ADH, in addition to the above ADH decision.

The Food Stamp Source Book at VI-H 2 provides for disqualification for multiple benefits: As of September 21, 1996, any applicants, recipients or former recipients found by a Department administrative disqualification hearing (ADH) or convicted by a court, of having made a fraudulent statement or misrepresentation of identity or residence in order to receive multiple Food Stamp benefits simultaneously, is ineligible to participate in the Food Stamp program for 10 years. A finding by the Department includes a disqualification consent agreement (DCA) or waiver of the ADH, in addition to the above ADH decision.

However, if a court of appropriate jurisdiction determines that an individual has engaged in conduct that constitutes an intentional program violation, the individual must be disqualified for the length of time specified by the court, if the court has imposed a disqualification period for such a violation. If a court fails to impose a disqualification period for an intentional program violation, the local Social Services district must impose the disqualification penalties specified in 18 NYCRR 359.9 unless such imposition is contrary to court order. 18 NYCRR 359.9(d); 7 CFR 273.16(g)(2).

**DISCUSSION**

The recipient, via his attorney, Miss Mahoney, asserted that he was unaware that he had to notify the Agency that he was in receipt of Food Stamps from Florida after his move to Westchester County. The recipient acknowledged that the benefit card issued by Florida was used in Westchester County from May to November, 2005. Mr. M relocated to New York State in May, 2005. Miss Mahoney maintained that this failure to notify the Agency that these benefits were approved by Florida was without any fraudulent intention.

The recipient filed an application with the Social Security Administration to transfer the SSI case from Florida to New York State in or about May, 2005. By notice dated June 11, 2005, the Agency advised the recipient that: "You have been automatically included in New York State's Nutritional Improvement Project (NYSNIPP) and that You will receive Food Stamp benefits of $149.00 each month". Based on this notice, the recipient assumed that the Food Stamp case was transferred automatically by Florida to New York State. D L, the recipient's witness, testified that she arrived at this assumption also after reading this notice.

The recipient further stated that on or about November, 2005, the benefit card issued by Florida stopped working. The recipient filed an application for Food Stamps with the Agency on December 27, 2005. The recipient filed a negative response to the question this application, "if any one in the household was applying for or in receipt to benefits from another state". This response was based on the assumption that his case had been transferred automatically to New York State as of June 2005. Miss Mahoney also noted that the recipient had already been living in New York for seven months when the December, 2005, application was filed in Westchester County.

The Agency presented a copy of the December 27, 2005, Food Stamp application signed by the recipient, acknowledging that he was duly advised of the penalties and consequences of intentionally and fraudulently concealing information which would affect eligibility for these benefits. The Agency produced a PARIS (Public Assistance Recipient Information System) Match which confirmed that Mr. M was in simultaneous receipt of these benefits from Florida and New York State. An April 4, 2006, letter from the Florida Department of Children and Families was supplied which verified that the recipient was in active receipt of Food Stamps during the period at issue.

Mary Alyce Dailey, the Agency's Fair Hearing Representative, asserted that the recipient should have contacted the Agency to report his move from Florida after receiving the June 11, 2005, notice approving NYSNIP. Miss Daily maintained that the recipient's belief pertaining to an automatic transfer of Food Stamps was self-serving.

The Agency presented evidence that Mr. M received the following over issuance of Food Stamp benefits:

| Month | Entitlement | Amount Received | Over issuance |
|---|---|---|---|
| 12/28/05 to 4/30/06 | 0 | $607.00 | $607.00 |

The recipient's testimony that his failure to duly advise the Agency that he was in receipt of Food Stamps authorized by another state was credible and persuasive. Mr. M presented sufficient evidence, through his attorney, that there was no fraudulent intent to conceal these circumstances from the Agency. The recipient received approval to receive Food Stamps, via NYSNIP, within one month after his relocation to New York State, without filing an application for these benefits. The Agency contended that the language cited in this June 11, 2005, notice at page 2 that: "Letting your Food Stamp worker know when you move also will ensure that you will receiving important notices regarding your case" should have prompted Mr. M to advise the case worker of his Food Stamp case from Florida. However, a reasonable interpretation of this language does not support the Agency's contention. Thus, the Agency's request to disqualify the recipient from the Food Stamp Program for ten years cannot be sustained.

## DECISION AND ORDER

The Agency's determination that the recipient received an over issuance of $607.00 in Food Stamps from December 28, 2005 to April 30, 2006 as a result of an intentional program violation was correct when made.

1. The Agency is directed to take the appropriate steps to recoup the over issuance of $607. in Food Stamps.

2. The Agency is directed not to impose the ten year disqualification of the recipient from the Food Stamp Program.

As stated in the Department's Regulations at 18 NYCRR Section 358-6.4, the Agency is directed to comply immediately with the directives set forth above.

DATED: Albany, New York
May 16, 2007

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

[[Signature]]

Commissioner's Designee

| | | |
|---|---|---|
| STATE OF NEW YORK | CASE# | PXXXXXXTZ |
| OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE | CENTER# | Erie |
| | FH# | 3714754R |

| | |
|---|---|
| In the Matter of the Appeal of the<br>Erie County<br>Department of Social Services (Agency) | |
| vs | DECISION AFTER ADMINISTRATIVE DISQUALIFICATION HEARING |
| NM, Recipient | |

JURISDICTION

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on June 24, 2003, in Erie County, before Robert Davis, Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient

NM, Recipient; Marilyn Bradly representative and witness AB

For the Social Services Agency

P. Goerner, Fair Hearing Representative

Farsi Interpreter

PM

ISSUE

Was the Agency's determination that the recipient had received an overpayment of Public Assistance for the period May 1, 2001 to September 30, 2001 and an overissuance of Food Stamps for the period July 1, 2001 to September 30, 2001 as a result of an intentional program violation correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient age 46 has been in receipt of Public Assistance and Food Stamps for herself.

2. Recipient is Iranian and does not speak or read English proficiently. Her primary language is Farsi.

3. Without a Farsi translation, the Agency instructed the recipient as to the affirmative and continuing duty to report promptly to the Agency any employment, income or resources of the recipient or any member of the household and any change in residence, shelter costs or household

composition.

4. The Agency determined that the recipient had committed an intentional program violation under a Public Assistance Program and of the Food Stamp Program by concealing household income and providing false information regarding household income while in receipt of such benefits, resulting in an overpayment of Public Assistance benefits in the total amount of $995.00 from May 1, 2001 to September 30, 2001 and an overissuance of Food Stamps in the total amount of $316.00 during the period July 1, 2001 to September 30, 2001.

5. The Agency requested the Office of Administrative Hearings of the New York State Office of Temporary and Disability Assistance (Office) to schedule this administrative disqualification hearing based upon its determination.

6. Pursuant to such request and based upon the documentation submitted to the Office in support of the Agency's allegation, this hearing was scheduled by notice dated May 22, 2003. The notice indicated that the recipient would be disqualified from receiving Public Assistance for a period of 6 months and Food Stamps for a period of 12 months.

7. On May 8, 2001, the recipient commenced employment with DBB and did not report this fact to the Agency.

8. On August 23, 2001, the recipient's employment with DB ended. [Recipient's exhibit 1]

9. On August 27, 2001, without the assistance of anyone, the recipient completed a Mail-In Eligibility Review [B2310 form] she stated that she was not receiving money from any other source then Public Assistance.

10. The recipient was in receipt of Public Assistance benefits in the amount of $995.00 during the period from May 1, 2001 to September 30, 2001 and Food Stamp benefits in the amount of $390.00 during the period from July 1, 2001 to September 30, 2001.

11. On December 4, 2001, the Agency discovered by a RFI Report that DB employed the recipient.

12. The Agency received a statement from DB, stating that the recipient employment ended on September 15, 2001.

13. The recipient received $6,207.50 in unreported and unbudgeted wages from May 2001 to September 2001, as verified by employer statements from DB.

14. Due to the receipt of unreported and unbudgeted income from employment, the recipient's household was entitled to receive Public Assistance in the total amount of $0.00 during the period May 2001 to September 2001.

15. Due to the receipt of unreported and unbudgeted income from employment, the recipient's household was entitled to receive Food Stamp benefits in the total amount of $74.00 during the period July 2001 to September 2001.

16. In Spring 2002, the recipient attended ECC, Reading/Writing 1

course. The Reading/Writing 1 is a course intended to teach Basic English reading and writing skills to students whose dominant language is not English. [Recipient's exhibit 2]

17. The recipient failed the Reading/Writing 1 course. [Recipient's exhibit 2]

18. In Fall 2002, the recipient again attended ECC, Reading/Writing 1 course. The recipient once again failed the course. [Recipient's exhibit 2]

19. On June 24, 2003, at the instant fair hearing, the recipient and her representative agreed that the recipient had received an overpayment of Public Assistance benefits in the total amount of $995.00 from May 1, 2001 to September 30, 2001 and an overissuance of Food Stamps in the total amount of $316.00 during the period July 1, 2001 to September 30, 2001. Therefore the only issue before the Commissioner, is the Agency's determination that the recipient had committed an intentional program violation correct?

APPLICABLE LAW

The New York State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and Food Stamp Programs. 18 NYCRR 359.2; 7 CFR 273.16.

For purposes of an administrative disqualification hearing relating to Public Assistance benefits, a person has committed an intentional program violation if the individual, for the purpose of establishing or maintaining eligibility for public assistance, or of increasing or preventing a reduction in the amount of such public assistance, individually, or as a member of a family, applies for or receives public assistance and is found to have:

(1) 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; or

(2) 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 assistance; or

(3) engaged in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370 of 18 NYCRR.

Social Services Law Section 145-c, 18 NYCRR 359.3.

Individuals found to have committed an intentional program violation of a Public Assistance Program, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement confirmed by a court, will be ineligible, individually or as a member of an assistance unit, to receive Public Assistance for:

(i) six months upon the first commission of a first public assistance-IPV,

(ii) 12 months for the commission of a second public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount between $1,000 and $3,900,

(iii) 18 months for the commission of a third public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount in excess of $3,900, and

(iv) five years for the commission of a fourth or subsequent public assistance-IPV.

Findings of the commission of intentional program violations in the ADC and HR programs prior to August 20, 1997 must be considered in determining the sanction to be imposed for a public assistance-IPV. Social Services Law 145-c, 18 NYCRR 359.9(a).

Individuals found to have committed an FS-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the Food Stamp Program for a period of time specified by law. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

However, if a court of appropriate jurisdiction determines that an individual has engaged in conduct that constitutes an intentional program violation, the individual must be disqualified for the length of time specified by the court, if the court has imposed a disqualification period for such a violation. If a court fails to impose a disqualification period for an intentional program violation, the local Social Services district must impose the disqualification penalties specified in 18 NYCRR 359.9 unless such imposition is contrary to court order. 18 NYCRR 359.9(d); 7 CFR 273.16(g)(2).

DISCUSSION

The Agency's determination that the recipient committed an intentional program violation was not correct.

The record showed that on August 27, 2001 the recipient completed an English language B2310 form and stated that she did not receive any other income except Public Assistance. At the time the document was signed DB no longer employed the recipient.

The Agency contended that because the recipient still received her last pay check on September 7, 2001, she was receiving money from another source, when she fill out the B2310 form. Therefore her statement on the form was false.

The recipient testified that she stated that she was not receiving money from another source because she had stopped working for DB. She further testified that she translated the form by a dictionary and with the translation she thought she had filled it out correctly. To support the recipient's testimony her representative submitted documents from ECC.

The recipient's testimony was credible because it was persuasive and consisted with her supporting documents from ECC, which indicate that months after filling out the B2310 form the recipient's English proficiently was very low.

Although the evidence failed to establish an intentional program violation, it was undisputed that the recipient would not have received Public Assistance for the period of May 1, 2001 to September 2001 and the recipient would have only received $74.00 in Food Stamp benefits during the

period of July 2001 to September 2001, had income been reported and budgeted. Accordingly, the Agency may seek recovery of the overpayment and overissuance, but may not disqualify the recipient from participating in the program.

DECISION AND ORDER

The Agency's determination that the recipient committed an intentional program violation is not correct and is reversed.

The Agency is directed not to further prosecute the recipient for an intentional program violation.

The Agency determination that the recipient received an overissuance amount of Food Stamp benefits in the amount of $316.00 and an overpayment of Public Assistance in the amount of $995.00 resulting from the recipient's failure to report her wages since May 2001 was correct. Recovery is limited to methods available for inadvertent household error.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
July 14, 2003

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

CASE#
CENTER# Erie
FH# 3251583M

In the Matter of the Appeal of the
Erie County
Department of Social Services (Agency)

vs

Recipient

DECISION AFTER ADMINISTRATIVE DISQUALIFICATION HEARING

JURISDICTION

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on April 4, 2000, in Erie County, before Michael P. McKeating, Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient

Recipient;
Esq.;
Esq.

For the Social Services Agency

Paul Goerner, Fair Hearing Representative

ISSUE

Was the Agency's determination that the recipient had received an overissuance of Food Stamps for the period February, 1999 through September, 1999 as a result of an intentional program violation correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient, age 74, was in receipt of a grant of Food Stamps benefits for a 2 person household.

2. The Appellant's household consists of herself and her 39-year old handicapped daughter, for whom she is sole caretaker.

3. The Agency determined that the recipient had committed an intentional program violation under the Food Stamps Program by concealing household income while the recipient and/or the recipient's household was in receipt of such benefits, resulting in an overissuance of Food Stamps in the total amount of $ 208.00 during the period February, 1999 through September, 1999.

4. On December 23, 1999 the Agency requested the New York State Office of Temporary and Disability Assistance (Office), Office of Administrative Hearings, to schedule this administrative disqualification hearing based upon its determination.

5. Pursuant to such request and based upon the documentation submitted to the Office in support of the Agency's allegation, this hearing was scheduled by notice dated March 1, 2000. The notice indicated that the recipient would be disqualified from receiving Food Stamp benefits for a period of 12 months.

6. The recipient was in receipt of Food Stamps in the amount of $288.00 during the period from February, 1999 through September, 1999.

7. On January 22, 1999 the recipient was advised of the affirmative and continuing duty to report promptly to the Agency any employment, income or resources of the recipient or any member of the household and any change in residence, shelter costs or household composition.

8. The recipient did not inform the Agency that she was receiving a pension.

9. The recipient completed a certification application on January 22, 1999 and stated that the only income in her household was Social Security.

10. The Agency discovered the pension income through a New York State Wage Report on July 28, 1999.

11. The recipient's household received $ 496.80 in unreported and unbudgeted pension income from February, 1999 through September, 1999.

12. Due to the receipt of unreported and unbudgeted income, the recipient's household was entitled to receive $ 80.00 in Food Stamp benefits during the period February, 1999 through September, 1999.

APPLICABLE LAW

The New York State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and Food Stamp Programs. 18 NYCRR 359.2; 7 CFR 273.16.

For purposes of an administrative disqualification hearing relating to Public Assistance benefits, a person has committed an intentional program violation if the individual is found to have for the purpose of establishing or maintaining the eligibility of the individual or the individual's family for assistance or of increasing, or preventing a reduction in, the amount of such assistance::

(1) made a false or misleading statement, or misrepresented, concealed or withheld; or

(2) committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity concerning the individual's eligibility for assistance; or

(3) engaging in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370 of 18 NYCRR.

Social Services Law Section 145-c, 18 NYCRR 359.3.

Individuals found to have committed an intentional program violation of a Public Assistance Program, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement confirmed by a court, will be ineligible, individually or as a member of an assistance unit, to receive Public Assistance for:

(i) six months upon the first commission of a first public assistance-IPV,

(ii) 12 months for the commission of a second public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount between $1,000 and $3,900,

(iii) 18 months for the commission of a third public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount in excess of $3,900, and

(iv) five years for the commission of a fourth or subsequent public assistance-IPV.

Findings of the commission of intentional program violations in the ADC and HR programs prior to August 20, 1997 must be considered in determining the sanction to be imposed for a public assistance-IPV.

Social Services Law 145-c, 18 NYCRR 359.9(a).

For purposes of an administrative disqualification hearing relating to Food Stamp benefits, a person has committed an intentional program violation if the 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 that constitutes a violation of the Food Stamp Program, including, but not limited to, acts constituting a fraudulent use, presentation, transfer, acquisition, receipt, possession or alteration of Food Stamp coupons or Authorizations to Participate or any other evidence of the individual's eligibility for Food Stamps.

18 NYCRR 359.3(c) and 7 CFR 273.16(c).

Individuals found to have committed an FS-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the Food Stamp Program for a period of time specified by law. Prior to September 21, 1996, the disqualification period was six months for the first violation, twelve months for the second violation, and permanently for the third violation. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

An administrative disqualification hearing shall proceed in the absence of the household member suspected of an intentional program violation. 18 NYCRR 359.7(g), 7 CFR 273.16(e)(4). If a person fails to appear at a scheduled administrative disqualification hearing:

- the person can contact the Office within 30 days after a decision is issued in the hearing and claim good cause for failing to appear, if the claim is based on non-receipt of the notice of hearing or the notice was returned as undeliverable. In such situations, a hearing will be scheduled at which the commissioner or the commissioner's designee will determine whether the individual had good cause for failing to appear at the hearing; or

- the person can contact the Office within 10 days after the date of the scheduled hearing and claim good cause for failing to appear. In such a case, a hearing will be scheduled at which the commissioner or the commissioner's designee will determine whether the recipient had good cause for failing to appear at the administrative disqualification hearing.

If good cause is established, the recipient and the agency will have an opportunity to present any evidence or testimony concerning the agency's allegation that the recipient committed an intentional program violation.

After consideration of such evidence and/or testimony, the prior hearing decision will be vacated and a new hearing decision will be issued; the hearing officer who originally presided at the hearing may conduct the new hearing.

A decision confirming an Agency determination of an intentional program violation shall be based upon clear and convincing evidence. 18 NYCRR 359.7(f), 7 CFR 273.16(e)(7).

DISCUSSION

The Agency's determination is not correct because the Agency has failed to introduce any evidence of intent, and therefore has failed to meet its burden of proof by clear and convincing evidence.

The record showed that the recipient signed an application on January 22, 1999 indicating that the recipient had no income other than Social Security. This statements was not correct. She was receiving a pension from the X Hospital and Nursing Home Union of $62.10 per month, which was going into her checking account by direct deposit.

However the Appellant both testified and introduced documentary medical evidence showing that she had suffered three TIA's (strokes), which have resulted in memory loss and confusion. She has also suffered a heart attack. She is on medication for the TIA's. She testified that she did not deliberately make false or misleading statements, but merely forgot about the pension when she filled out the application, because it was so small and because it goes directly into her bank account, and because her medical condition causes memory loss and confusion. The Appellant's testimony was credible because it was sincere, plausible and coherent, and because her demeanor conveyed the impression of veracity. The Agency failed to introduce any evidence to rebut her testimony, but merely stated that it wished to stand on its documentary packet. The mere showing of an incorrect statement on an application, without more, is insufficient to prove fraudulent intent by clear and convincing evidence, when, as in the case at bar, the recipient appears and offers a plausible, coherent and credible explanation of the error. Therefore the Agency's determination cannot be affirmed. The Agency should, however, take appropriate action to recover the overissuance of Food Stamp benefits.

DECISION AND ORDER

The Agency's determination that the recipient committed an intentional program violation is not correct and is reversed.

The Agency is directed not to further prosecute the recipient for an intentional program violation.

As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

CASE# FXXXXXX
CENTER# Nassau
FH# 3782706L

In the Matter of the Appeal of the
Nassau County
Department of Social Services (Agency)

vs

PS, Recipient

DECISION AFTER ADMINISTRATIVE DISQUALIFICATION HEARING

JURISDICTION

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on March 13, 2003, in Nassau County, before Dennis D'Andrea, Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient

Palma Stein, Appellant
Douglas Ruff and Amy King, Esqs., Nassau-Suffolk Law Services

For the Social Services Agency

Helene Mergentheimer and Susan Zaetz, Fair Hearing Representatives

ISSUE

Was the Agency's determination that the recipient had received an overissuance of Food Stamps for the period March 1 to August 31, 2001, as a result of an intentional program violation correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient has been in receipt of Food Stamps for a one-person household.

2. The Agency determined that the recipient had committed an intentional program violation of the Food Stamp Program by concealing earned income while the recipient and/or the recipient's household was in receipt of such benefits, resulting in an overissuance of Food Stamps in the total amount of $510.00 during the period March 1 to August 31, 2001.

3. The Agency requested the Office of Administrative Hearings of the New York State Office of Temporary and Disability Assistance (Office) to schedule this administrative disqualification hearing based upon its determination.

4. Pursuant to such request and based upon the documentation submitted to the Office in support of the Agency's allegation, this hearing was scheduled by notice dated October 4, 2002. The notice indicated that the recipient would be disqualified from receiving Food Stamps for a period of 12 months.

5. The recipient was in receipt of Food Stamp benefits in the amount of $630.00 during the period from March 1 to August 31, 2001.

6. The recipient was advised of the affirmative and continuing duty to report promptly to the Agency any employment of the recipient or any member of the household and any income derived therefrom.

7. The recipient did not inform the Agency that she was employed by HRB and C.

APPLICABLE LAW

The New York State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and Food Stamp Programs. 18 NYCRR 359.2; 7 CFR 273.16.

Individuals found to have committed an FS-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the Food Stamp Program for a period of time specified by law. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

However, if a court of appropriate jurisdiction determines that an individual has engaged in conduct that constitutes an intentional program violation, the individual must be disqualified for the length of time specified by the court, if the court has imposed a disqualification period for such a violation. If a court fails to impose a disqualification period for an intentional program violation, the local Social Services district must impose the disqualification penalties specified in 18 NYCRR 359.9 unless such imposition is contrary to court order. 18 NYCRR 359.9(d); 7 CFR 273.16(g)(2).

DISCUSSION

The Appellant contended through counsel that she was too mentally impaired to comprehend the reporting instructions on the recertification form she signed on July 30, 2001, and because the July 30, 2001, recertification form is her earliest acknowledgment of reporting instructions included in the Agency fair hearing evidentiary packet, the overpayment amount should be computed only for the months of July and August 2001, not for the period March 1 to August 31, 2001. The Appellant entered into evidence a Comment Sheet from the Agency case record dated January 25, 2001, prior to the overpayment period, which states in part, "Client has a Nassau case manager, BP @ X-XXXX." The Appellant has been in receipt of Supplemental Security Income (SSI) since 2000 for her mental impairment. The Appellant entered into evidence medical reports from the Mental Health Counseling Center--SNC

Hospital dated September 20 and November 15, 2000, which stated the Appellant was seen for 39 sessions March 12 to November 18, 1998, then an additional 52 sessions with an additional 20 sessions from October 30 to November 14, 2000, had an inpatient hospitalization from November 20 to December 22, 1998, that her functioning was impaired at a moderate to serious level especially in the occupational, family, interpersonal and self-maintenance areas, that progress was not noted, that her diagnosis is major depressive disorder recurrent, that she suffers severe psychiatric disability and that the patient began to decompensate. An intensive case manager was assigned to the Appellant in 1999 by Nassau County Case Management.

On October 29, 2001, the Agency mailed a letter to the Appellant requesting employment information within 10 days. There is a letter from HRB fax-receipted November 9, 2001, which would be within 10 days of the date the Appellant likely received the Agency's letter. There is also a hand-written response by the Appellant concerning C fax-receipted December 3, 2001. C reported the Appellant's last pay period as ending January 12, 2002, and HRB reported the last pay period as ending April 17, 2001. The Appellant explained that she was able to work at C but not comprehend a recertification form in July 2001 because although she was decompensating her C work hours were decreasing. She further explained that her case manager advised her what to write on the Agency form.

The Agency contended that page 5 of the recertification signed by the Appellant states, "I agree to inform the Agency promptly of any change in my . . . needs . . ." The Agency noted that although the Appellant did not inform the Agency of her earned income, she knew to inform the Social Security Administration, and that on page four of the recertification the Appellant in her own handwriting reported unearned income but not her earned income. The Agency further noted that although the Appellant was unable to comprehend her rectification form she was able to complete an application for employment at HRB where she was a receptionist and for C where she was a cashier.

The controverted documentary evidence and testimony establish that the recipient failed to report earned incomes.

The record clearly establishes that the recipient was advised at the time of her recertification dated July 30, 2001, of the duty to report all income, any changes in household income, composition and needs and other eligibility information and that the intentional failure to disclose such information could result in disqualification from the and Food Stamp program, as well as the imposition of other penalties.

The recipient reported on the eligibility review questionnaires that she completed and signed on July 30, 2001, that she had disclosed all eligibility information.. This statement was false.

The medical reports support the Appellant's position that she was unable to comprehend the instructions on the recertification form and overly relied on her case manager. The Agency has not clearly and convincingly shown that the mentally impaired Appellant intentionally concealed employment information. Therefore, the Agency's determination that the recipient had received an overissuance of Food Stamps for the period March 1 to August 31, 2001, as a result of an intentional program violation cannot be sustained.

As to the period of overpayment, although the Appellant reviewed the case record prior to the fair hearing and introduced into evidence a comment sheet from that record, the Agency evidentiary packet presented at the fair hearing did not include any application or recertification forms earlier than July 30, 2001. That is the only document within the evidentiary packet that provides evidence showing the Appellant was on notice as to reporting requirements. However, the Agency made the case record available before and throughout the fair hearing, and whether the Appellant received the recertification notification or did not, she had unreported income and consequently received an overpayment. Therefore, that part of the Agency's determination that the Appellant received an overpayment from March 1 to August 31, 2001, is correct.

DECISION AND ORDER

The Agency's determination that the recipient committed an intentional program violation is not correct and is reversed.

1. The Agency is directed not to further prosecute the recipient for an intentional program violation.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
March 27, 2003

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

CASE# P734498ARC
CENTER# Erie
FH# 3339309N

In the Matter of the Appeal of the
Erie County
Department of Social Services (Agency)

vs

GL(G), Recipient

DECISION AFTER
ADMINISTRATIVE
DISQUALIFICATION
HEARING

JURISDICTION

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on September 19, 2000, in Erie County, before Michael P. McKeating, Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient

GL(G), Recipient
Penny Selmonsky, Esq., Neighborhood Legal Services
Marilyn Bradley, Neighborhood Legal Services
Theresa Simmons, Neighborhood Legal Services

For the Social Services Agency

Paul Goerner, Fair Hearing Representative;
Paul Provenzo

ISSUE

Was the Agency's determination that the recipient had received an overpayment of Public Assistance benefits during the period July, 1999 through November, 1999 and an overissuance of Food Stamps for the period September, 1999 through November, 19999 as a result of an intentional program violation correct?

FACT FINDING

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient is in receipt of a grant of Public Assistance benefits and Food Stamps benefits for a 3 person household.

2. The Agency determined that the recipient had committed an intentional program violation under the Public Assistance and Food Stamps Program by concealing employment income while the recipient and/or the recipient's household was in receipt of such benefits, resulting in an overpayment of Public Assistance benefits in the total amount of $ 1217.00 during the period December, 1999 through February, 2000 and an overissuance

of Food Stamps in the total amount of $ 357.00 during the period January, 2000 through February, 2000.

3. On May 23, 2000 the Agency requested the New York State Office of Temporary and Disability Assistance (Office), Office of Administrative Hearings, to schedule this administrative disqualification hearing based upon its determination.

4. Pursuant to such request and based upon the documentation submitted to the Office in support of the Agency's allegation, this hearing was scheduled by notice dated August 21, 2000. The notice indicated that the recipient would be disqualified from receiving Public Assistance benefits for a period of 12 months and Food Stamp benefits for a period of 12 months.

5. The recipient was in receipt of Public Assistance benefits in the amount of $ 1217.00 during the period December, 1999 through February, 2000.

6. The recipient was in receipt of Food Stamps in the amount of $512.00 during the period from January, 2000 through February, 2000.

7. On January 8, 1999 the recipient was advised of the affirmative and continuing duty to report promptly to the Agency any employment, income or resources of the recipient or any member of the household and any change in residence, shelter costs or household composition.

8. The recipient did inform the Agency that she was employed and receiving income, on December 8, 1999.

APPLICABLE LAW

The New York State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and Food Stamp Programs. 18 NYCRR 359.2; 7 CFR 273.16.

For purposes of an administrative disqualification hearing relating to Public Assistance benefits, a person has committed an intentional program violation if the individual is found to have for the purpose of establishing or maintaining the eligibility of the individual or the individual's family for assistance or of increasing, or preventing a reduction in, the amount of such assistance::

(1) made a false or misleading statement, or misrepresented, concealed or withheld; or

(2) committed any act intended to mislead, misrepresent, conceal, or

withhold facts or propound a falsity concerning the individual's eligibility for assistance; or

(3) engaging in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370 of 18 NYCRR.

Social Services Law Section 145-c, 18 NYCRR 359.3.

Individuals found to have committed an intentional program violation of a Public Assistance Program, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement confirmed by a court, will be ineligible, individually or as a member of an assistance unit, to receive Public Assistance for:

(i) six months upon the first commission of a first public assistance-IPV,

(ii) 12 months for the commission of a second public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount between $1,000 and $3,900,

(iii) 18 months for the commission of a third public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount in excess of $3,900, and

(iv) five years for the commission of a fourth or subsequent public assistance-IPV.

Findings of the commission of intentional program violations in the ADC and HR programs prior to August 20, 1997 must be considered in determining the sanction to be imposed for a public assistance-IPV.

Social Services Law 145-c, 18 NYCRR 359.9(a).

For purposes of an administrative disqualification hearing relating to Food Stamp benefits, a person has committed an intentional program violation if the 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 that constitutes a violation of the Food Stamp

Program, including, but not limited to, acts constituting a fraudulent use, presentation, transfer, acquisition, receipt, possession or alteration of Food Stamp coupons or Authorizations to Participate or any other evidence of the individual's eligibility for Food Stamps.

18 NYCRR 359.3(c) and 7 CFR 273.16(c).

Individuals found to have committed an FS-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the Food Stamp Program for a period of time specified by law. Prior to September 21, 1996, the disqualification period was six months for the first violation, twelve months for the second violation, and permanently for the third violation. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

A decision confirming an Agency determination of an intentional program violation shall be based upon clear and convincing evidence. 18 NYCRR 359.7(f), 7 CFR 273.16(e)(7).

DISCUSSION

The Agency's determination is not correct. The evidence adduced at the hearing clearly established that the Appellant did report her employment at Office Team to the Agency's employment unit on December 8, 1999, which was her first day of work. On that date, she went to the Agency's employment unit, disclosed her employment, and filed a request for child care allowance while she was working. The record also reflects that she presented employment verification from her employer to the Agency on December 27, 1999. The Agency relies solely on an eligibility review questionnaire on which the recipient had checked a box indication that she had no income form any other source but Public assistance. This questionnaire was dated December 9, 1999. The recipient credibly explained that discrepancy by explaining that she did not receive her first pay until December 15, 1999, so at the time she filled out the questionnaire she had no other income, and she knew that the Agency was already aware of her impending employment, because she had reported it the day before. The Agency admitted that it never questioned the recipient, or gave her an opportunity to explain any discrepancy in its records.

In an administration disqualification hearing, the Agency must prove its allegations by clear and convincing evidence. The Agency has failed to meet this burden. The recipient, on the other hand, has presented evidence rebutting the agency's allegation by demonstrating that she reported her

employment to the Agency on December 8, 1999 and again on December 27, 1999.

DECISION AND ORDER

The Agency's determination that the recipient committed an intentional program violation is not correct and is reversed.

The Agency is directed not to further prosecute the recipient for an intentional program violation.

As required by Department Regulations at 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
September 29, 2000

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: May 14, 2013
[redacted]
AGENCY: Westchester
FH #: 6377135N

In the Matter of the Appeal of

Westchester County
Department of Social Services (Agency)

vs.

[redacted], Recipient

**DECISION AFTER ADMINISTRATIVE DISQUALIFICATION HEARING**

## JURISDICTION

Pursuant to 18 NYCRR 359.7, an administrative disqualification hearing was held on July 18, 2013, in Westchester County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Recipient

[redacted]

For the Social Services Agency

Narciso Pena, Fair Hearing Representative (Supervising Examiner)

## ISSUE

Was the Agency's determination that the recipient had received an overpayment of Public Assistance (PA) and an overissuance of Supplemental Nutrition Assistance Program (SNAP) benefits for the periods [redacted] (PA) and [redacted] (SNAP) as a result of an intentional program violations correct?

## FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The recipient had been in receipt of Public Assistance and Supplemental Nutrition Assistance Program (SNAP) benefits for a five person household.

2. The Agency determined that the recipient had committed an intentional program violation under a Public Assistance Program and of the SNAP Program by intentionally concealing from the Agency her relocation to [redacted] while the recipient and/or the recipient's household was in receipt of such benefits from the Agency, resulting in an overpayment of Public Assistance in the amount of [redacted] and an overissuance of SNAP benefits in the total amount of [redacted].00 during the periods [redacted] (PA) and [redacted] (SNAP).

3. The Agency requested the Office of Administrative Hearings of the [redacted] State Office of Temporary and Disability Assistance (Office) to schedule this administrative disqualification hearing based upon its determination.

4. Pursuant to such request and based upon the documentation submitted to the Office in support of the Agency's allegation, this hearing was scheduled by notice dated May 27, 2013. The notice indicated that the recipient would be disqualified from receiving Public Assistance for 18 months and SNAP benefits for a period of two years as this was her second SNAP IPV.

5. The recipient has previously committed an IPV of the SNAP Program, determined after an Administrative Disqualification Hearing [redacted]).

6. The recipient was in receipt of Public Assistance in the amount of [redacted] and [redacted] in SNAP benefits during the respective periods in question.

7. The recipient was advised of the affirmative and continuing duty to report promptly to the Agency any employment of the recipient or any member of the household and any income derived therefrom in a PA and SNAP application dated [redacted] The recipient was further advised to inform the Agency promptly of any change in her needs, income, property, **living arrangements or address** to the best of her knowledge or belief.

8. The recipient was a six month reporter for SNAP purposes.

9. The recipient did not inform the Agency that [redacted] 9. Although duly notified of the date, time and place of this hearing by first class mail, the recipient has not appeared to contest the Agency's allegations.

## APPLICABLE LAW

The [redacted] State Office of Temporary and Disability Assistance and local agencies are required to investigate cases of alleged intentional program violations (IPVs) in Public Assistance and SNAP Programs. 18 NYCRR 359.2; 7 CFR 273.16.

For purposes of an administrative disqualification hearing relating to Public Assistance benefits, a person has committed an intentional program violation if the individual, for the purpose of establishing or maintaining eligibility for public assistance, or of increasing or

preventing a reduction in the amount of such public assistance, individually, or as a member of a family, applies for or receives 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 or the individual's family's eligibility for public assistance; or

(2) 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 assistance; or

(3) engaged in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370 of 18 NYCRR.

Social Services Law Section 145-c, 18 NYCRR 359.3.

Individuals found to have committed an intentional program violation of a Public Assistance Program, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement confirmed by a court, will be ineligible, individually or as a member of an assistance unit, to receive Public Assistance for:

(i) six months upon the first commission of a first public assistance-IPV,

(ii) 12 months for the commission of a second public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount between $1,000 and $3,900,

(iii) 18 months for the commission of a third public assistance-IPV or when the offense results in the wrongful receipt of benefits in an amount in excess of $3,900, and

(iv) five years for the commission of a fourth or subsequent public assistance-IPV.

Findings of the commission of intentional program violations in the ADC and HR programs prior to August 20, 1997 must be considered in determining the sanction to be imposed for a public assistance-IPV.

Social Services Law 145-c, 18 NYCRR 359.9(a).

For purposes of an administrative disqualification hearing relating to Supplemental Nutrition Assistance Program (SNAP) benefits, a person has committed an intentional program violation if the individual has intentionally:

(1) made a false or misleading statement, or misrepresented, concealed or withheld facts concerning the individual's eligibility for SNAP benefits; or

(2) committed any act that constitutes a violation of the SNAP Program, including, but not limited to, acts constituting a fraudulent use, presentation, transfer, acquisition, receipt, possession or alteration of SNAP coupons or Authorizations to Participate or any other evidence of the individual's eligibility for SNAP benefits.

18 NYCRR 359.3(b); 7 CFR 273.16(c).

Individuals found to have committed a SNAP-IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement, are ineligible to participate in the SNAP Program for a period of time specified by law. As of September 21, 1996, the disqualification period is one year for the first violation, two years for the second violation, and permanently for the third violation. 7 CFR 273.16; 18 NYCRR 359.9(c).

However, if a court of appropriate jurisdiction determines that an individual has engaged in conduct that constitutes an intentional program violation, the individual must be disqualified for the length of time specified by the court, if the court has imposed a disqualification period for such a violation. If a court fails to impose a disqualification period for an intentional program violation, the local Social Services district must impose the disqualification penalties specified in 18 NYCRR 359.9 unless such imposition is contrary to court order. 18 NYCRR 359.9(d); 7 CFR 273.16(g)(2).

**DISCUSSION**

The Agency's determination that as a result of concealing her actual residence, the recipient committed an intentional program violation of the Supplemental Nutrition Assistance Program (SNAP) was not correct and is reversed.

It was undisputed that the recipient was a six month reporter for SNAP purposes. In this case, the Agency premised its allegations of an intentional program violation on the Recipient's concealment of her change in permanent legal residence from [redacted] to [redacted]. The Agency showed that the recipient recertified for SNAP benefits in July 2012, using a [redacted] County, [redacted] State residence. However, the Agency failed to present sufficient information to establish by clear and convincing evidence that the recipient had made a false claim as to her residence at the time of the most recent SNAP recertification in July 2012. The Agency evidence failed to establish clear and convincing proof of a change in the recipient's residence until September 2012. While the Agency should have conducted an recertification interview after receiving the July 2012 recertification application either by telephone or in person prior to the commencement of the next certification period on October 1, 2012, the Agency offered no evidence of such interview as part of the present hearing, making it impossible to ascertain whether false information was provided at such interview.

Absent evidence of a false statement or concealment made at a recertification interview, recertification application, or Six-Month Contact, a six month reporter is only required to report an increase in income that causes gross monthly income in any month to exceed 130% of the federal poverty level. See, 04 ADM-1. As no evidence was presented to suggest that recipient's change in residence caused the household's gross monthly income to exceed 130% of the federal poverty level, the recipient was under no obligation to report her change in residence for SNAP purposes during the household's certification period. As a result, the Agency evidence presented fails to establish by clear and convincing evidence that the concealment of the recipient's change in residence was done intentionally for the purpose of deceiving the Agency, and therefore the allegations that the recipient committed an intentional program violation of SNAP cannot be sustained based on the evidence presented here.

The Agency's determination that as a result of concealing her actual residence, the recipient committed an intentional program violation of the Public Assistance Program was correct and is affirmed.

Unlike the rules regarding SNAP benefits discussed above, the recipient was required to report changes that affect her Public Assistance benefits within 10 days. The clear and convincing evidence establishes that the recipient was advised as part of her September 1, 2011 application for Public Assistance and her July 2, 2012 recertification of the affirmative and continuing duty to report promptly to the Agency changes in living arrangements and address. The clear and convincing evidence further showed that the recipient concealed her move to [redacted] from September 6, 2012 through March 15, 2013.

The Agency presented confirmation from the local [redacted] School District (in [redacted] County) confirming that in September 2012 school records for the recipient's elementary age children had been transferred to [redacted] Elementary School in [redacted], [redacted]. Moreover, on April 30, 2013, the Agency received a School Verification and Attendance Report from the [redacted] Elementary School in [redacted], [redacted] which confirmed a registration/attendance date of September 6, 2012 for the recipient's elementary age children. Included in the school report was a signed, authenticated by photo ID parental release of student information by the recipient, which contained both a [redacted] address verification and Post Office clearance indicating a [redacted] address for the recipient. In addition, the Agency showed that all of the recipient's Public Assistance and SNAP benefits had been redeemed in [redacted] since at least October 2012. Detailed information concerning the PA and SNAP redemptions in [redacted] was confirmed by an EBT Cash and SNAP Transaction History dated April 29, 2013. It will be noted that no evidence was presented to suggest any duplicate receipt of benefits from the State of [redacted]. The Agency argued that the change in school district, as well as her continued redemption of benefits in the State of [redacted] throughout the period of fraud establishes that the recipient's move was a permanent as opposed to a temporary change of her legal residence or domicile. Although duly notified of the date, time and place of this hearing by first class mail, the recipient has not appeared to contest the Agency's allegations.

Based upon the evidence presented, it is found that the Agency established that the

Recipient's concealment of her true residence was done intentionally for the purpose of receiving Public Assistance that she was not otherwise entitled to. Pursuant to 18 NYCRR 351.1 and 351.2, accurate, complete and current information as to a recipient's residence is a condition of eligibility for Public Assistance. The Recipient's continued concealment of her true residence for a period in excess of 6 months, as well as the evidence showing that recipient's change of residence was permanent as opposed temporary established that the concealment in this case was intentional as opposed to mistaken, and supports by clear and convincing evidence the allegation of fraud alleged herein. In addition, the Agency properly concluded that the concealment of this eligibility information resulted in an overpayment of Public Assistance in the total amount of [redacted]. Accordingly, the determination is sustained in full as to a Public Assistance IPV.

**DECISION AND ORDER**

The Agency's determination that as a result of concealing her move and actual place of residence in [redacted], while the recipient and/or the recipient's household was in receipt of such Public Assistance benefits from [redacted] County the recipient received an overpayment of Public Assistance for the period [redacted] thereby committing an intentional program violation under a Public Assistance Program is correct.

The Agency is directed to disqualify the recipient and to take appropriate action to recover an overpayment of Public Assistance.

The Agency's determination that as a result of concealing her move and actual residence in [redacted], the recipient committed an intentional program violation of the Supplemental Nutrition Assistance Program (SNAP) was not correct and is reversed.

The Agency is directed not to further prosecute the recipient for the SNAP intentional program violation nor take any action to recover a SNAP overissuance for the period in question based upon the facts and circumstances alleged herein.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

FH# 6377135N

DATED: Albany, [redacted]
08/28/2013

[redacted] STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Commissioner's Designee

# Appendix R

## Improving Fairness and Accuracy in Food Stamp Investigations: Advocating Reform Under Food Stamp Regulations

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University of Maryland School of Law

Legal Studies Research Paper

No. 2006 - 23

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# Improving Fairness and Accuracy in Food Stamp Investigations: Advocating Reform Under Food Stamp Regulations

**David A. Super**

University of Maryland
School of Law

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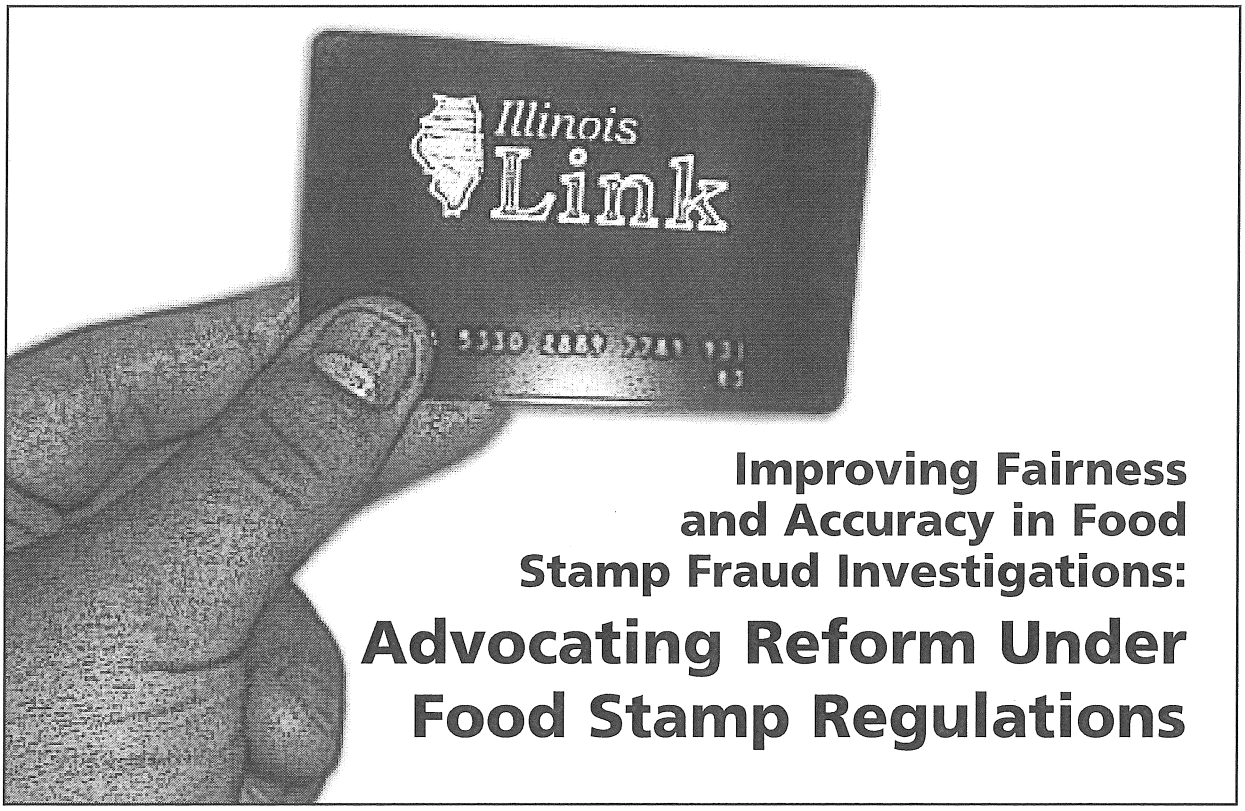


# Improving Fairness and Accuracy in Food Stamp Fraud Investigations: Advocating Reform Under Food Stamp Regulations

By David A. Super

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The fundamental goal of food stamp fraud investigations without burdening honest claimants should be to identify and punish people who have abused the program. Failure to punish fraud wastes public funds and diminishes public confidence in the program. However, intrusive investigations, harassment, disqualification, or prosecutions of innocent claimants undermine the program's goals by increasing stigma, discouraging eligible people from seeking aid, and reducing public confidence by creating the impression that fraud is more prevalent than it is.

Although the states' performance varies widely, some states appear to engage in campaigns that are so aggressive and poorly targeted that they harm many innocent food stamp claimants, who may sign agreements to be disqualified from benefits because they believe that their only alternative is criminal prosecution or termination of their entire household for noncooperation. This approach defeats the purpose of getting food assistance to families in need.

The Food and Nutrition Service's regulations offer the means to advocate reforming these efforts. Moreover, its recent policy guidance provides for valuable tools for advocating fairer procedures. In this article I propose four key principles that should guide states' antifraud efforts. Within each, I identify specific policies that advocates might urge their states to adopt and suggest legal and policy arguments in support of those policies.

## I. Determine that All Elements of an Intentional Program Violation Have Occurred Before Taking Enforcement Action

Three elements are necessary to establish most types of intentional program violations (IPVs). First, except in trafficking cases, some event must occur, such as a new job or new household member, which affects the household's eligibility or benefit level and which the food stamp office does not take into account. Second, there must

be a violation of the program's rules, typically a failure to report that event at or between certifications. Third, the violation must be intentional. Investigators who ignore any one of these elements are likely to accuse innocent households of IPVs. Federal regulations require states to have *documentary* evidence of an IPV before seeking to punish a claimant.[1] This requirement is a basis for criticizing state practices that fail to establish properly all elements of an IPV and for advocating policies ensuring that only appropriate cases are pursued for disqualification or criminal prosecution.

## A. Confirming the Underlying Facts

States receiving wage matches and other information indicating a discrepancy in circumstances affecting eligibility or benefit levels must independently verify that information before taking action unless the information comes from one of the few sources that are considered "verified upon receipt."[2] This rule applies in all cases, whether or not fraud is suspected. The state agency should send routine inquiries to employers in all cases of wage matches on which the agency decides to follow up for any reason.[3] These requests for information should not be identified as part of a fraud investigation since that would disclose confidential information and possibly lead to incorrect and stigmatizing inferences—in violation of federal confidentiality and verification regulations.[4]

Some states average income from a wage match over a quarter when an employer fails to respond; this could result in inaccurate assessments.[5] For example, all quarterly earnings may have taken place during a month before the household's application for benefits. Earnings from late in the quarter may not have been budgeted against the household because of the "10-10-10" principle (or because they were not sufficiently certain to be received in the future to be anticipated under the strict, recipient-friendly federal standards for income budgeting).[6] Households subject to quarterly reporting, simplified reporting, or some other systems may not be required to report the income. Thus there may be no overissuance at all. Alternatively, if the earnings were concentrated in one month, that month's benefits might have been inappropriate but the benefits for the other two months correct, resulting in a significantly smaller discrepancy than if the earnings were spread so that all three months' benefits were erroneous. Also, the earnings which could be from seasonal employment should be averaged over a longer period. States' management evaluation reviews should include assessments of the accuracy of policy application by fraud investigation units.

Offering the household an opportunity to respond to information received from other sources is another way to ensure that only appropriate cases are pursued as IPVs. With identity theft becoming

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[1] 7 C.F.R. § 273.16(a)(1) (2004).

[2] *Id.* § 273.2(f)(9)(v).

[3] Note that the 1996 welfare law gives states complete discretion regarding use of the Income and Eligibility Verification System that gives much of the matching information available to states. 7 U.S.C. § 2020(e)(18) (2000). States sought the discretion to drop the system because many found that it too often contained erroneous or outdated matches. States electing to continue using the system may disregard any matches that they do not believe merit follow-up.

[4] 7 C.F.R. §§ 272.1(c), 273.2(f)(4)(ii) (2004).

[5] Michigan Family Independence Agency Program Policy Bulletin 2003-001, page 10, attributes this policy to Food and Nutrition Services advice.

[6] Under the "10-10-10" principle neither the state agency nor the household is liable for any overissuance of benefits based on unreported information if the issuance takes place less than thirty days from the date of the event that the household should have reported. This is because food stamp regulations give households ten days to make reports, the state agency ten days to act on those reports, and the household at least ten days to respond to a notice of adverse action before its benefits may be reduced. 7 C.F.R. § 273.10(a)(2), (c)(2)(i) (2004). Thus, for any issuance made within thirty days of a change, no one can be sure that the issuance would have been any different if the household and the state agency had fully complied with their obligations under the regulations. The state agency may not be charged with a quality control error, and the household may not be charged with a claim, much less an intentional program violation (IPV). As for receiving food stamps in the future, see *id.* § 273.10(c)(1).

more widespread, employers may be mistaken about workers' true names and social security numbers. Since federal rules require states to have sufficient evidence to believe that an IPV has been committed before taking action, state food stamp agencies should make clear to their staffs that sending confirming notices to households is an important part of verifying third-party information.[7] Indeed, federal rules require states to notify households when the states receive unclear or uncertain information.[8] These notices should clearly specify the dates of the alleged discrepant information, the identities of any household members in question, and the source and amount of any alleged unreported income or unjustified deductions.[9] The notices should inform the household that failure to respond would not be held against it. And, of course, notices should be written in plain, easy-to-read terms and translated into appropriate languages to comply with states' obligations under the due process clause and federal rules.[10]

### B. Determining Violations of Food Stamp Regulations

A household that experiences a change but reports it or is not required to report it under program rules commits no violation at all, much less an intentional violation. The food stamp agency therefore must determine that a household violated program rules before the agency implements the IPV process.[11] This involves several steps.

First, fraud investigators should be required to review the entire case file before determining that no report was made. Federal rules require a full review by someone other than the eligibility worker prior to the solicitation of a waiver of an administrative disqualification hearing.[12] By implication, the same principle should apply to cases scheduled for hearings and those referred for prosecution.[13] If the eligibility worker sends the fraud investigator only portions of a case file, this independent review cannot take place, and evidence that the household did report the change—a loose pay stub, a phone message, or a note scrawled on the case folder jacket itself—may be overlooked. This particularly applies to states with high turnover, where the eligibility worker referring a case may not have handled it at the crucial juncture.

Full review of a case file that has been purged is clearly impossible, as purged items might have contained formal or informal notations that the household did report the circumstances in question. Once a case file has been purged, the state agency cannot possibly fulfill its obligation to accused claimants to make all relevant evidence available.[14] Absent specific state policies to the contrary, local offices are free to purge documents from case files after three years.[15] States should not pursue a matter as an IPV or a household error claim if the case file has become subject to purging under the state's document retention policy. States also should protect files from future

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[7] *Id.* § 273.16(a)(1).

[8] *Id.* § 273.12(c)(3); see also *id.* § 273.2(f)(9)(v).

[9] To facilitate meaningful responses, these notices should identify what would constitute relevant, and irrelevant, responses. E.g., the response would be relevant if the claimant did not work for the employer named, did work for the employer but not during the months specified, or tried to report that information to the eligibility worker; on the other hand, what would not be relevant is that the household could not afford to have its food stamps reduced.

[10] *Id.* § 272.4(b); see, e.g., *Santiago v. D'Elia*, 435 N.Y.S.2d 333 (App. Div. 1981) (disallowing recoupment of overpayment where there was "no indication whatsoever that the Spanish-speaking petitioner understood the English acknowledgment that she signed").

[11] 7 C.F.R. § 273.16(a)(1) (2004).

[12] *Id.* § 273.16(f)(1).

[13] See *id.* § 273.16(a)(1), (f)(1).

[14] See *id.* §§ 273.16(e)(3)(iii)(C), (G), 273.15(p)(1).

[15] *Id.* § 272.1(f).

purging where a possible claim or IPV is being investigated.

Fraud investigators should consider whether the income or resources in question might be excluded or was not reasonably certain to be received (and hence could not have been anticipated) and whether a report of the income might not have been required (or, if it was, whether the report was due) under the reporting policy applicable to the household for the relevant month.[16] Neither should IPVs be founded on unusual or even foolish uses of benefits or electronic benefit transfer cards (such as giving food to a friend, writing a personal identification number on a card, or giving a card to a friend to purchase food for the household) unless the program's regulations clearly prohibit those uses and the prohibitions are carefully explained to claimants. For example, federal rules permit the household to allow any nonhousehold member to purchase food with the household's benefits; the household need not go through any particular procedure to do so.[17] Similarly, although federal rules require states to train households about electronic benefits transfer security procedures, they do not impose requirements upon households.[18] And, although those rules impose a general requirement on state agencies, issuers, and retailers to take steps to prevent improper use of food stamp benefits, they do not impose any specific requirements on recipients—who can hardly be expected to be security specialists—relating to the handling of these benefits.[19] Violations of security procedures that state agency personnel believe—probably with good reason—to be advisable should not be equated with violations of specific program rules. Recipients who follow poor security practices may lose benefits (a not insignificant penalty for someone poor enough to qualify for food stamps), but, absent a clear rule that prohibits their specific conduct and has been clearly explained, recipients should not be disqualified for IPVs. Moreover, even where food stamps have been trafficked, the Food and Nutrition Service emphasizes that "the head of household may not be held 'automatically' responsible for trafficking the household's benefits if there is no direct evidence identifying him/her as the guilty party."[20]

In cases of suspected trafficking, determining whether the program's rules have been violated is even more difficult. A quirky pattern of purchases could mean nothing more than that, even if the pattern takes place at a store that is later disqualified for trafficking. Typically, even at dishonest stores, most customers are honest and likely oblivious of what may be going on in the backroom.[21] Unusual purchases also could mean that the claimant's card and PIN (personal identification number) were stolen and abused by someone in or out of the food store. In negotiating arrangements with the Food and Nutrition Service under which the agency will follow up on possible trafficking that Alert, its automated system, identifies, states should ensure that "hits" have been screened carefully enough to limit fraud accusations to

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[16] See *id.* §§ 273.8(e), 273.9(c) (excludable income or resources), 273.10(c)(1) (unanticipated income or resources), 273.12(a) (reporting policy).

[17] *Id.* § 273.2(n)(3).

[18] *Id.* § 274.12(g)(10)(iv).

[19] *Id.* § 271.5(c).

[20] Lou Pastura, Food and Nutrition Service, FSP—Revisiting Policy Regarding Head of Household as Individual Responsible for Intentional Program Violations (IPV) (2001), available at www.fns.gov/fsp/rules/Memo/04/fraud_ipv.htm. The Food and Nutrition Service does note, however, that the head of household may be charged if the state has sufficient evidence to prove, with regard to the IPV, that "he/she was aware of it, may have benefited from it, and took no actions to correct it." *Id.*

[21] In guidance in 2004 the Food and Nutrition Service acknowledged that patterns of suspicious activity often fall short of actionable proof of IPVs. Barbara Hallman, U.S. Department of Agriculture, Fraud Policy: 7 CFR 273.16, at 1 (Feb. 4, 2004) [hereinafter FNS 2004 Fraud Memo], available at www.fns.usda.gov/fsp/rules/Memo/04/fraud_policy.htm.

households that are very likely to have abused the program.[22] Data on the household alone rarely will be sufficient to show an IPV because relatively few transactions are involved and because unsophisticated households that are uncomfortable with electronic benefits transfer may adopt a variety of coping mechanisms that appear anomalous when viewed out of context.

Since trafficking is impossible without the collaboration of a corrupt retailer, limiting attention to households engaging in suspicious patterns of benefit usage at retailers that have been found to have trafficked can be a more reliable means of identifying fraud. Current agency practice focuses on households that shop at stores that are *suspected* of trafficking and that have not been adjudicated to be guilty of actual IPVs. Whether the store owners have an innocent explanation of *their* suspicious conduct is impossible to know without a criminal or administrative adjudication. An adjudication also would allow determination of the period during which a store was trafficking. To accuse recipients of trafficking at a store makes no sense if the trafficking was the work of a single employee and if the recipients' patterns of usage were the same before, during, and after that employee's tenure. Similarly, if the guilty employee worked the day shift, recipients who shopped at night should not be accused of trafficking. States should pursue Alert referrals only where households shopped in suspicious patterns at stores that have been administratively or criminally found guilty of trafficking. States should apply as much information as possible about the patterns of trafficking at convicted stores to determine which subset of recipients with unusual shopping patterns at that store are likely to have trafficked.

Before accusing households of fraud, investigators should be required to check for indications that third parties have accessed the recipient's account inappropriately. For example, benefit utilization through key entries when swiping an electronic benefits transfer card fails, or through manual vouchers, often indicates that someone was seeking to access an account with the correct numbers but without an authentic electronic benefits transfer card. Alert should have this information or be able to retrieve it from system records. The information should be relied upon to eliminate potential IPV cases unless other evidence strongly suggests the household's involvement in fraud.

### C. Determining Whether Any Violation Is Intentional

The most difficult and error-prone element of establishing an IPV is intent. A system that finds claimants guilty of IPVs only when they make explicit, written confessions is vulnerable to abuse by unscrupulous claimants—and gives investigators strong incentives to coerce confessions from claimants who may not be guilty. At the other extreme, a system that presumes intent based solely on a claimant's signature on an application or other program document that includes boilerplate language about reporting amid a host of other cautions and advisories can ensnare numerous innocent claimants with limited literacy as well as those who failed to read the document carefully during a tense or hurried interview. A sensible middle ground is needed.

#### 1. Case File Reviews

Evidence of the claimant's intent (or lack thereof) can often be found in the case file.

**Claimant's Reporting History.** A claimant who was not given the change report form may be less likely to understand the need to submit a report. A claimant with a solid record of reporting changes is more likely to have forgotten or given up after unsuccessful efforts to reach the eligibility worker. A claimant who failed to respond to written notices in the past when doing so would have

[22] Alert is the Food and Nutrition Service's automated system for monitoring the millions of food stamp electronic benefits transfer transactions for suspicious patterns. The acronym is for Antifraud Locator using EBT (electronic benefits transfer) Retail Transactions. Many potentially innocent events—evening transactions at stores thought to be open only during the day, transactions in even numbers of dollars, large transactions at small stores, transactions at stores that are suspected of wrongdoing—can contribute to a case being flagged as suspicious.

been advantageous may have a literacy problems that prevented understanding instructions or declarations on the application form or in other program information. A claimant with a documented history of being subjected to domestic violence is more likely to have had her electronic benefits transfer card taken from her and used improperly by her abuser (and to have been coerced into supplying her identification number).

**Eligibility Worker's Documentation History.** The case file (or the experience of supervisors) also may disclose that the eligibility worker poorly documents contacts with the claimant. If the file includes no record of contacts that clearly took place (as evidenced by subsequent actions in the case), the absence of a record of a report of a change should not be relied upon as proof that none was made—much less that the claimant intentionally withheld information. Similarly, if an eligibility worker was found in prior cases to have told recipients not to bother reporting information until their next recertification, the state should not assume that the worker gave a claimant accurate information about disclosure obligations. Cases involving an eligibility worker who has been responsible for prior "failure to act" errors should be examined closely.

**Records of Phone Calls.** Many claimants lack home telephones and make their calls from pay phones, friends' houses, and borrowed cell phones that are difficult to trace. In some cases, however, the local telephone company can produce records of local calls made from a particular telephone. States alleging IPVs should offer to request local phone company records to show attempts to report changes if a claimant asserts having tried unsuccessfully to reach the eligibility worker through an identifiable telephone account. States should offer to request telephone company records to support claimants' assertions that they attempted to report changes and should retain telephone message records in such a way that the records can be checked when claimants assert attempts to reach their eligibility worker.[23] This should be done particularly in areas with high turnover and those where eligibility workers' caseloads routinely prevent them from returning or responding to all calls.

**Inculpatory Behavior.** Claimants who lied to avoid having certification interviews scheduled during the hours of a job that they failed to report demonstrate an intent to deceive. A claimant who misled the state agency about one issue is more likely to have deceived it about others. Doctored social security cards, third-party verification letters, or other documents that a claimant submitted in the past can support inference of a current intent to deceive even if those documents have no direct bearing on the current problem. States should target the strongest cases: those with documentary evidence of a pattern of dishonest acts.

**Evidence of Language Barriers or Mental Disabilities.** A few case files may raise such serious questions about intent that proceeding to treat the case as an IPV would be unreasonable. A claimant identified as having limited English proficiency should not be presumed to have understood declarations or instructions not given in the appropriate language. Even if the eligibility worker used as a translator a friend or relative of the claimant, or spoke to the claimant with the help of a telephone translator not familiar with food stamp rules, the eligibility worker may not have sufficient basis to be sure that the claimant understood exactly what the program's rules required. The Food and Nutrition Service notes that "some mentally disabled individuals may lack the ability to form the intent necessary for establishing an IPV."[24] File notations that an individual receives social security, Supplemental Security Income, or other disability benefits should alert eligibility workers and fraud investigators to the need to determine whether the individual is capable of

[23]States should retain telephone messages and copies or logs of voicemail messages under the record retention policy of 7 C.F.R. § 272.1(f) and make that information available to accused claimants under 7 C.F.R. § 273.16(e)(3)(iii)(C).

[24]FNS 2004 Fraud Memo, *supra* note 21, at 3.

forming an intent to defraud the program. An approach that tends to presume an intentional act when a claimant with a mental disability fails to comply with administrative requirements can have, in violation of the Americans with Disabilities Act, the effect of discriminating against persons with disabilities. States should advise their fraud investigators that to charge claimants with IPVs where important information was delivered in an inappropriate language or where the claimant has a documented serious mental disability that may have caused the incident in question would be inconsistent with the Food Stamp Act's requirement of "accurate and fair service," the federal regulations' requirements of intent, and Title VI and the Americans with Disabilities Act.[25] Where a state is contemplating charging a disability benefit recipient with an IPV, the fraud investigator should seek to determine whether a mental impairment is part of the identified disability, whether the accused claimant has been exempted from food stamp work requirements on the basis of at least a partially mental incapacity, or whether the state's Medicaid records show that the claimant is receiving medications consistent with the presence of a mental impairment.

**Reliance on Overissuance as Evidence of Intent.** Officials in some states describe policies of automatically considering overissuances that exceed an arbitrary threshold to be IPVs. Federal regulations, however, permit state agencies to rely on such thresholds only when deciding which of the cases already determined to be IPVs to refer for prosecution.[26] These regulations do not authorize states to dispense altogether with determinations of intent in cases over a certain threshold amount.

### 2. Review of Electronic Benefit Transactions

Many Food and Nutrition Service rules for using electronic benefits transfer cards may be counterintuitive to claimants. For example, a claimant may not see anything wrong with making a food purchase in which the stores provide the food late in one month, when the household is in distress, and accepts payment early the following month, after benefits are issued. The prohibition on credit transactions and other usage rules should be explained in electronic benefits transfer training. States often do not specifically require clear coverage of these matters in training sessions. Many states also now "train by mail," sending recipients brochures rather than actually training them in benefit usage. Some recipients may be unable to read or understand these prohibitions; others may fail to grasp their significance and forget them. States should not assume an intentional violation of the program's rules in electronic benefits transfer transactions that do not involve dishonesty unless the state has direct evidence that the prohibition in question was explained to the recipients. A recipient who has been warned once about credit transactions may be charged with any subsequent occurrence of prohibited conduct.

In some cases Alert may show a pattern of transactions sufficiently suspicious to convince fraud investigators that an IPV has taken place. Who engaged in the prohibited transactions may not be clear if the household has more than one member. Some states simply assume that the head of the household is responsible and should be disqualified. This presumption has no basis in the statute and regulations and may often be false. Indeed, the head of the household may feel more responsibility for the household's well-being, and less inclined to traffic than a young adult or extended family household member. The head of the household certainly is likely to be more concerned about preserving the household's future eligibility than a boyfriend, neighbor, or

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[25] 7 U.S.C. § 2020(e)(2)(B) (2000) ("accurate and fair service"); 7 C.F.R. § 273.16(a)(1), (c), (e)(6), (f)(1)(i) (2004) (intent); 42 U.S.C. § 2000d (2000); see 7 C.F.R. pt. 15 (2004) (Title VI requirements for U.S. Department of Agriculture programs) and *id.* § 272.4(b) (Food Stamp Program requirements for serving people with limited English proficiency); 42 U.S.C. § 12132 (2000) (Americans with Disabilities Act). Regarding language access, see also Mary Ellen Natale & David A. Super, *Securing Access to the Food Stamp Program for the Non-English-Speaking Poor*, 23 Clearinghouse Review 954 (Dec. 1989).

[26] 7 C.F.R. § 273.16(g)(1) (2004).

babysitter to whom a household member entrusts an electronic benefits transfer card and PIN when the household member is unable to go to the store.

Some food stamp recipients may be unaware that they have been made victims of trafficking by those to whom they entrusted their cards. Unlike credit cards, electronic benefit transfer cards generate no monthly statements that would allow claimants to see where their benefits were spent. Recipients juggling work, child care, and other responsibilities may be unable to find transaction receipts and to track the balances in their electronic benefits transfer accounts. Many, too, have arithmetic or reading skills so limited that they cannot understand and draw conclusions from any transaction receipts available.

Moreover, recipients realizing that they have been the victims of trafficking may not report the incidents for any of several reasons that have nothing to do with fraud. Some may simply see no point in reporting trafficking since the program will not replace the benefits. Indeed, for this reason some may prefer to confront the trafficker themselves to obtain some food to compensate them for their loss, not realizing that the Food and Nutrition Service considers the program, together with the household, to be a trafficking victim. Some may see no point in reporting trafficking after they resolve to prevent a recurrence by not entrusting their card to the offender again. Some may believe that reporting the trafficking will mean that they must take time off from work to wait in line at the food stamp office and that their household will be without benefits during a lengthy investigation. And some may try to contact the food stamp office but cannot get through to the appropriate caseworker. States should train their fraud investigators to recognize that some recipients who appear to be perpetrators of food stamp trafficking may be its victims.

## II. Keep Each Stage of the Process Separate

Criminal prosecution, administrative disqualification hearings, and waiver and consent forms all are integral parts of the system that punishes claimants for abusing the Food Stamp Program. Each has its own strengths and weaknesses, and each is appropriate only to certain types of situations. The regulations give states significant discretion to determine which approach is most appropriate in each case. Those regulations do, however, require states to choose among these tools; states may not combine the various techniques in a single case to overwhelm a claimant. Proper application of these regulations that distinguish the various enforcement devices can greatly enhance the fairness and accuracy of states' antifraud systems.

### A. The Decision to Refer a Case for Prosecution or Pursue It Administratively

Serious abuses in some states' IPV investigations result from threats of prosecution. Making such threats to win concessions in a civil dispute, even where a crime actually occurred, is unfair and may be extortionate. On a number of occasions, the U.S. Supreme Court found constitutional violations when the government tried to "whipsaw" accused individuals between threats of criminal prosecution and loss of public benefits or employment.[27] Ethical rules governing attorneys (including those in prosecutors' offices) prohibit threats of prosecution to gain advantage in civil disputes, as do many states' fair debt collection practices statutes. The risk of abuse is exacerbated where the accused has no viable opportunity to consult counsel since none is appointed before criminal charges are brought but civil legal services are not available. The Food and Nutrition Service notes that

> suggesting to the client that his/her case may be referred for

[27] See, e.g., *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977); *Lefkowitz v. Turley*, 414 U.S. 70 (1973); *Gardner v. Broderick*, 392 U.S. 273 (1968); *Spevak v. Klein*, 385 U.S. 511 (1967); *Garrity v. New Jersey*, 385 U.S. 493 (1967).

> prosecution if he/she does not sign an [administrative disqualification hearing] waiver is confusing or misleading and again makes it difficult for the individual to make an informed decision. Additionally, 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 [administrative disqualification hearing] waivers rather than risk the alternative.[28]

This doubtlessly leads to numerous erroneous disqualifications by coerced consent. Both federal regulations and recent U.S. Department of Agriculture guidance, however, direct that the decision whether to prosecute or proceed administratively be made at the beginning of a case:[29]

> The State agency must not offer an [administrative disqualification hearing] waiver if it intends to refer the case for prosecution nor suggest prosecution if the waiver is not signed. If an [administrative disqualification hearing] waiver is offered, it should be because the State agency has already determined that an administrative hearing is appropriate in this case.... [T]hese 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. Thus, whenever State agencies have sufficient evidence to hold a hearing and have offered an [administrative disqualification hearing] waiver to the individual, an [administrative disqualification hearing] and not a referral for prosecution is the appropriate course of action.[30]

Indeed, obtaining a waiver through threats of prosecution may deny the accused due process of law. A waiver cannot be knowing or intelligent unless the individual is informed that an IPV hearing is one consequence of not signing. To this end, federal rules require that states describe the administrative disqualification hearing process and the penalty that can result when soliciting waivers.[31] However, "[o]ffering an [administrative disqualification hearing] waiver accompanied by the required notices appropriate to the administrative proceeding does *not* properly inform the individual of the consequences of not signing the waiver if he or she is to be referred for prosecution."[32]

States should recognize that federal regulations do not permit threats of criminal prosecution to be employed in the administrative process or concurrent with requests for administrative waivers. States should remind their staffs that federal financial participation is available for work on cases being referred for prosecution only for activities necessary to the prosecution, such as organizing evidence, briefing the prosecutor, and testifying at a trial, and not for activities inconsistent with the decision to prosecute, such as requesting waivers.

### B. Delaying Waiver Requests Until the Investigation Is Complete

Some states combine the notice of the apparent discrepancy with a request that the household sign a waiver or acknowl-

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[28]FNS 2004 Fraud Memo, *supra* note 21, at 2.

[29]7 C.F.R. § 273.16(a)(1) (2004); FNS 2004 Fraud Memo, *supra* note 21, at 1–2.

[30]FNS 2004 Fraud Memo, *supra* note 21, at 2; *see* 7 C.F.R. § 273.16(f)(1) (2004).

[31]7 C.F.R. § 273.16(f)(1) (2004); FNS 2004 Fraud Memo, *supra* note 21, at 2.

[32]FNS 21004 Fraud Memo, *supra* note 21, at 2 (emphasis supplied). The Food and Nutrition Service goes on to note that confusion about the consequences of each course of action could make a decision different from what they would be if fully informed.

edgment of an IPV. Inherently intimidating, the combined letters are unlikely to elicit informative responses to the notice of the discrepancy even if the state's information is demonstrably erroneous. A claimant who infers that the state already has determined guilt of fraud—as the request for a waiver implies—may feel that any explanation is too late to be taken seriously. Alternatively the claimant may fail to appreciate the consequences of a waiver and believe that signing it is merely responsive to the request for information. Also, as a practical matter, once fraud investigators send a letter accusing a claimant of an IPV and demanding that the claimant sign a waiver, the investigators' position has likely hardened to the point that the investigators are no longer open to any but the most overwhelming defenses.

This practice violates federal rules because, by soliciting more information from the claimant, the state implicitly acknowledges that it is still gathering data and has not definitely decided that the case warrants scheduling an administrative disqualification hearing.[33] This practice, because it is so likely to mislead or confuse innocent claimants into signing away their right to receive food stamps, also violates the Food Stamp Act's "accurate and fair service" requirement.[34] In 2004, the Food and Nutrition Service advised states that "[w]aivers should not be offered when there is a suspicion of guilt but the evidence is not convincing."[35]

### C. Delaying Waiver Requests Until the Case Is Ready for a Hearing

Some states reportedly have one threshold for cases for which they will schedule administrative disqualification hearings and another, lower, standard for claimants whom the states will ask to sign hearing waivers. Thus, for example, a state might schedule hearings only for overissuances exceeding $1,000 but send letters demanding hearing waivers in all cases of overissuances that exceed $500. Alternatively a state might schedule a hearing only where it has proof of the claimant's intent to violate program rules but solicit waivers in all cases of overissuances over a certain amount. Presumably, in cases that do not meet the threshold for scheduling a hearing, the state drops the case as an IPV and merely processes it as an inadvertent household error or agency error claim if the claimant does not sign the waiver. Because sending standardized letters asking claimants to sign waivers is so much easier than proving a case at a hearing, this practice is likely to lead to meritless allegations against innocent claimants, some of whom nonetheless will sign waivers out of fear or confusion. Federal rules and Food and Nutrition Service guidance prohibit states from soliciting waivers unless they have first obtained an independent determination that the case is strong enough to merit scheduling a hearing.[36] The agency instructs states that they should invite an individual to sign a waiver only when they will schedule a hearing if the individual does not sign.[37]

### D. Delaying Requests for "Consents to Disqualification" Until a Criminal Case Is Resolved

Although similar in effect, "consents to disqualifications" and "waivers of administrative disqualification hearings" are under separate sections of the federal regulations and authorized under very different cir-

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[33] See *id.* § 273.16(f)(1)(i).

[34] 7 U.S.C. § 2020(e)(2)(B)(i) (2000).

[35] FNS 2004 Fraud Memo, *supra* note 21, at 1, illustrates this point forcefully: E.g., an investigator having reviewed an individual's EBT transactions in a store previously disqualified for trafficking, might believe, based on these transactions, that the individual has committed an IPV. However, unless the investigator is willing to take this evidence before a hearing official, an administrative disqualification hearing waiver should not be offered.

[36] *Id.*; 7 C.F.R. § 273.16(f)(1)(i) (2004).

[37] FNS 2004 Fraud Memo, *supra* note 21, at 1.

cumstances.[38] Federal regulations allow states to request consents to disqualification only *after* a case is resolved through "deferred adjudication." Only at this point have the prosecutor, the defense counsel, and the judge had the opportunity to consider the merits of the case: the prosecutor having determined that the case was worth prosecuting and the defense counsel having had the opportunity to demand that the case be dismissed as frivolous. Because both will have already been involved by the time a case reaches deferred adjudication, the rules on consent to disqualification (unlike those on administrative disqualification hearing waivers) do not require prior independent review of the merits and a notice explaining the charges and the claimant's right to defend.[39] If states can threaten criminal prosecution to obtain consent to disqualification before the accused claimant has had the opportunity to have a criminal defense lawyer appointed, all of the safeguards of the regulations on waivers of administrative disqualification hearings are rendered meaningless.[40] Innocent claimants can be pressed to agree to disqualification for events which are not properly ascribed to them and for which they may have compelling explanations. States should clarify that federal regulations permit fraud investigators to seek consents to disqualification only when a case is brought to court and the court enters a judgment of deferred adjudication.

## III. Avoid Coerced Concessions

Waivers or confessions signed under coercion are not reliable indications of guilt. To the extent that innocent claimants are disqualified in this manner, the program's goals of fighting food insecurity are undermined, its statutory principle of "accurate and fair service" is disregarded, and its messages about the importance of honest dealing with state agencies become blurred. Consistent with the Food Stamp Act's guarantee of "accurate and fair service" as well as federal regulations, states choosing to solicit waivers of administrative disqualification hearings should do so only through the mail, not in meetings with fraud investigators or eligibility workers.

### A. Preventing Unauthorized Demands on Claimants

Federal regulations strictly limit when households may be required to appear for interviews, and responding to a fraud investigator's questions is not one of these instances. A letter from the food stamp office asking a recipient to appear for a meeting implicitly threatens to terminate benefits if the recipient does not comply—particularly in a program (such as food stamps) requiring frequent face-to-face interviews to continue benefits. This is effectively an unauthorized additional condition of eligibility in violation of the Food Stamp Act and its implementing regulations.[41] The U.S. Department of Agriculture confirmed this interpretation in a 2003 memo.[42]

In practice, these interviews often prove highly coercive. Consider a claimant who lacks a complete knowledge of the program's rules and is questioned about their violation by investigators who know the rules. The claimant may feel the need to satisfy the investigators to avoid termination of benefits for the entire household or a criminal charge. Food stamp offices cultivate a culture in which claimants believe they must sign any form placed in front of them in order to

[38]Compare 7 C.F.R. § 273.16(f) (providing for waivers of administrative disqualification hearings by persons whom the state agency is trying to disqualify through an administrative hearing) with *id.* § 273.16(h) (authorizing state to seek consents to disqualification from persons against whom prosecutors brought charges but whose criminal cases ended with a court order of "deferred adjudication").

[39]*Id.* § 273.16(h)(1).

[40]*Id.* § 273.16(f)(1).

[41]7 U.S.C. §§ 2014(b), 2020(e)(5) (2000); 7 C.F.R. § 273.2(a)(1) (2004).

[42]Arthur T. Foley & Lou Pastura, Food Stamp Program Cooperation with Fraud Investigators (April 24, 2003), available at www.fns.usda.gov/fsp/rules/Memo/03/fraud.htm.

receive essential benefits, despite uncertainty about the consequences. In other contexts, failure to sign a paper presented by the food stamp agency means that the entire household is denied food stamps until the claimant relents and signs. Many papers that food stamp offices ask claimants to sign are mere acknowledgments of decisions already taken by the state agency or ordained by the program's rules.[43]

With few cues that different rules apply in fraud investigators, an accused claimant may believe that disqualification has already been decided upon and that failure to sign would leave other household members without food stamps. Some fraud investigators reportedly tell claimants that signing the waiver will allow their children to continue receiving food stamps—misleadingly implying that refusal to sign will cause the children to be cut off.

Some state agencies may demand that claimants appear for meetings with fraud investigators in the hope of getting admissions of guilt. Important as it is to determine claimants' intent in these cases, meetings with fraud investigators are unlikely to be much help in doing so. Indeed, claimants so unsophisticated as to capitulate in the face of investigators' pressure may be less likely to have the guile to defraud the program than those who defiantly stand their ground. The Food and Nutrition Service reports with approval that some state agencies recognize this problem and either instruct their fraud investigators to accept waivers only by mail rather than at interviews or allow accused individuals to withdraw waivers signed at meetings with investigators.[44]

### B. Ensuring that Claimants Fully Understand the Consequences of Signing a Waiver

Waivers of administrative disqualification hearings can save both state agencies and claimants time and effort where the claimant committed an IPV. In these cases, waivers serve the program's interests. Waivers that innocent claimants sign out of confusion or fear, however, undermine the program's effectiveness in fighting food insecurity. They also undermine the credibility of the program's antifraud message, which should seek to draw a sharp line between the treatment of those who have committed fraud and those who have not. If the disqualification and claim appear to spring from being misled by the state's efforts to solicit the waiver rather than from an act of fraud, the message to other claimants will be to distrust the state (which may even lead to more IPVs) rather than to be more candid. A state that seeks to discourage tricky behavior in claimants should not be engaging in tricky behavior itself. The Food and Nutrition Service recognizes this problem: "For individuals to make an informed decision with respect to waiving the right to a hearing, they must be fully informed of due process rights, hearing procedures, and consequences they face if determined guilty of an IPV at the hearing."[45]

Some states' letters soliciting waivers of administrative disqualification hearings are written so cryptically that accused claimants may not have any clear idea of what they are signing. Particularly problematic are letters that make the waiver seem like routine paperwork that needs to be signed and returned for the claimant to continue receiving food stamps. The Food and Nutrition Service recognizes the potential for confusion and suggests

> includ[ing] a statement on the [administrative disqualification hearing] waiver form that would allow the individual to assert that they do not wish to waive their right to an administrative hearing. For example, such a state-

[43] E.g., although the claimant is required to acknowledge by signing the application form that information that the claimant supplies is subject to third-party verification, 7 C.F.R. § 273.2(b)(1)(i) (2004), the verification that actually takes place is not the result of the claimant's acknowledgment but rather the federal regulations. *Id.* § 273.2(f).

[44] FNS 2004 FRAUD MEMO, *supra* note 21, at 3.

[45] *Id.* at 2.

> ment might read, "I have read this notice and wish to exercise my right to have an administrative hearing." Current regulations at 7 CFR 273.16(f)(1)(ii)(D) require that the individual be permitted to indicate on the waiver form whether they agree or disagree with the facts of the case as presented. Some clients may wrongly conclude that they should sign the waiver to disagree with the facts as presented and exercise their right to have a hearing. We believe the inclusion of this additional statement will allow the individual to sign the waiver form while affirmatively asserting his or her desire to have a hearing.[46]

Some claimants may think they are acknowledging that an overissuance occurred but not realize they are accepting an individual disqualification. Others may believe that they are agreeing not to receive food stamps for a year but not understand that a large claim will be collected from other household members' benefits or recouped from one or more household members' earned income tax credits or other tax refunds. Often the relevant information appears somewhere in the documents presented to the claimant, but many food stamp claimants have limited literacy skills. Even those who read well may not work through the fine print of the waiver if they are misled by the reassuring language in the solicitation letter or frightened by overt or implied threats of what might happen if they do not sign.

The Food and Nutrition Service reports that its "reviews showed that important information was sometimes omitted or was presented in such a way as to be confusing to the client. Omission of due process rights and other information from the waiver form not only fails to provide the individual information to make a decision about signing the waiver; it may also jeopardize the State agency's case."[47] The Food and Nutrition Service also notes that

> clients unfamiliar with administrative hearings may confuse the [administrative disqualification hearing] with a court proceeding and may wrongly believe that the consequence of a hearing is essentially the same as that of a conviction in court. Thus, individuals may believe the waiver is a way of avoiding a more serious penalty they might be subject to were they to go ahead with the hearing. Adding a statement to the waiver form indicating that the penalty remains the same whether the individual chooses to have a hearing and is determined guilty, or whether the individual waives the hearing, might permit a more objective consideration of the merits of agreeing to the waiver versus having an administrative hearing.[48]

Several different federal regulations contain requirements for information that must be on waiver forms.[49] Notices that do not plainly and openly disclose their purpose, and the consequence of signing waivers, fall short of providing the "fair service" that the Food Stamp Act requires.[50] States should have their waiver and waiver solicitation forms reviewed by literacy experts to ensure the forms' accessibility to as large a propor-

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[46] *Id.*

[47] *Id.* at 2.

[48] *Id.* at 3.

[49] The main regulation on waivers, 7 C.F.R. § 273.16(f)(1) (2004), contains several requirements of its own and cross-references *id.* § 273.16(e)(3), which adds more requirements and, in turn, requires a description of all of the rights set out at *id.* § 273.15(p). The Food and Nutrition Service sent states a list of these requirements. FNS 2004 FRAUD MEMO, *supra* note 21 (appendix).

[50] 7 U.S.C. § 2020(e)(2)(B)(i) (2000).

tion of the food stamp caseload as possible. States also should translate these documents into the appropriate languages for households not proficient in English.

An accused claimant who understands the consequences of signing the waiver still may not understand the consequences of *not* signing. The claimant may feel compelled to sign because the consequence of not signing would be disqualification of the entire household for noncooperation. These claimants may reason that having some food stamps continue for other household members is better than having the entire household cut off—especially if the claimants believe that they will have to sign the waiver eventually for any benefits to be reinstated. States should further instruct their staffs not to solicit waivers of administrative disqualification hearings without making clear that the only consequence of failing to sign will be the scheduling of an administrative disqualification hearing at which the state will have to prove its case and in which the most severe consequence would be identical to the consequence of signing the waiver.

Some claimants may be unable to comprehend a letter soliciting a waiver, or the waiver itself, because of language difficulties or a mental disability. The Food and Nutrition Service warns that "all forms used by the State agency to advise individuals about the investigation due process rights and hearing procedures should be simply stated and in a manner that is clear and understandable to clients."[51] It specifically notes that "some mentally disabled individuals ... may not fully understand the consequences of signing an [administrative disqualification hearing] waiver" and urges states to schedule hearings for these individuals without seeking "questionable" waivers.[52] Disqualifying claimants on the basis of waivers they do not understand probably violates the due process clause.[53] In violation of Title VI, the Americans with Disabilities Act, and the Food Stamp Act's requirement of "accurate and fair service," it also has the effect of denying benefits to otherwise eligible claimants because of their disabilities. States should determine whether a mental impairment is part of the basis for any disability for which a claimant receives cash or health care benefits, forms the basis for exempting a claimant from work requirements, or may be indicated by prescriptions filled through the state's Medicaid program; unless the state can rule out any mental impairment in these cases, it should not solicit waivers.

### C. Not Relying on the Availability of Legal Services for Accused Claimants

Our society tolerates intense and sometimes coercive police questioning in criminal matters because suspects have the right to request and receive free counsel. Because the right to free legal representation does not apply at all in civil cases, or in criminal cases until an arrest is made, a similar safeguard is not available in food stamp IPV cases. Many, if not most, legal aid programs do not take food stamp IPV cases at all, and many of the rest take only a small fraction of those that occur. Abusive and coercive interviews are likely to produce incorrect confessions and disqualifications and thus violate the Food Stamp Act's requirement of "accurate and fair service," but they cannot meaningfully be controlled by telling people of a right to counsel that is likely to be largely illusory.

The Legal Services Corporation (LSC) Act prohibits LSC-funded programs from becoming involved in criminal matters.[54] When states send claimants notices on prosecutors' letterhead or

[51] FNS 2004 Fraud Memo, *supra* note 24, at 2.

[52] *Id.* at 3.

[53] See, e.g., *Canales v. Sullivan*, 936 F.2d 755 (2d Cir. 1991) (failure to meet deadline may not be held against claimant with severe mental disability); *Young v. Bowen*, 858 F.2d 951 (4th Cir. 1988) (same); *Elchediak v. Heckler*, 750 F.2d 892 (11th Cir. 1985) (same); *Parker v. Califano*, 644 F.2d 1199, 1203 (6th Cir. 1981) (same); *Torres v. Secretary*, 475 F.2d 466 (1st Cir. 1973) (same).

[54] See 45 C.F.R. § 1613.3 (2004) (enforcing prohibition).

other notices threatening criminal prosecution, these programs may feel that they may not take the case (or that taking it would be futile since it apparently is on the brink of becoming criminal). As noted above, legal representation will never be available to the vast majority of claimants investigated for IPVs. Nonetheless, when a state makes its administrative pursuit of an IPV appear to be the prelude to a "criminal" proceeding, the state effectively prevents the claimant from obtaining counsel even where it might otherwise be available. This is inconsistent with the state's obligation to inform accused claimants of their right to legal counsel and is one more reason for states to follow carefully the regulations' requirement to determine early in the process whether a case will be referred for prosecution or pursued administratively.[55] States should advise their staffs that using letterhead from criminal justice agencies or threatening criminal action while seeking information or waivers in an administrative matter is inconsistent with federal regulations.[56]

## IV. Correct Questionable State Fiscal Practices

The ferocity of some states' antifraud efforts puzzles some advocates because states do not pay any of the costs of food stamp benefits.[57] Moreover, states receive no credit against their quality control error rates when the recipient of an overissuance is prosecuted or disqualified.[58] Part of the explanation, of course, is that food stamp fraud is illegal and hence inherently offensive. Another part is a combination of history and finances. For more than a decade before 1993, states received a 75 percent federal match for money spent on antifraud activities. This encouraged some to build large antifraud units, many of which have proven effective at lobbying for continued funding even after the federal match rate was reduced to the same 50 percent that other activities receive.[59] States retain 35 percent of overissuances collected from households where someone was disqualified for an IPV, but only 10 percent for inadvertent household errors.[60] Some antifraud units depend on these claim retentions to support their budgets. During the 1980s and 1990s, most states incurred large quality-control penalties that Food and Nutrition Service allowed the states to "reinvest" in activities designed to improve program integrity. Reinvestment moneys ordinarily cannot pay the salaries of regular state employees, but antifraud units have proven effective at getting these funds spent to support their activities.

Although the need for strong, effective antifraud enforcement is unassailable, advocates may and should question inappropriate spending in the name of fraud prevention and detection.

### A. Questioning Wasteful, Stigmatizing Practices

Some states (notably Ohio) have spent significant amounts of program or reinvestment funds on bus signs, movie theater ads, and other widely disseminated advertising calling attention to food stamp fraud and encouraging people to report suspected instances. These materials certainly give the public the impression that food stamp fraud is widespread. Whether they accomplish anything meaningful in identifying actual cases of fraud is far less clear, however. Most members of the general public are in no position to report food stamp fraud because they do not know what a household may have told its eligibility worker or what the program's eligibility rules are. Many people probably believe that receiving food stamps while one is

[55]This right exists directly under 7 C.F.R. § 273.16(e)(3)(iii)(I) and by cross-reference under *id.* § 273.16(f)(1)(iii).

[56]*Id.* §§ 273.16(a)(1), (e)(3)(iii)(I), (f)(1)(iii).

[57]7 U.S.C. §§ 2019, 2024(d) (2000).

[58]*Id.* § 2025(c).

[59]*Id.* § 2025(a).

[60]*Id.*

employed is fraudulent—even though 38 percent of food stamp recipients live in a household with at least one earner.

The effectiveness of these broad-scale campaigns is speculative at best. Absent evidence that these are effective and efficient means of program administration, their costs may not be eligible for federal financial participation and may not be included in reinvestment plans.[61]

### B. Prohibiting Improper Personal Incentives for Individuals Pursuing Fraud Cases

Georgia's food stamp agency has had contractual arrangements with many county prosecutors to provide bounties of a certain amount for each claimant whom prosecutors disqualify from the Food Stamp Program. This funding may be critical to preserving the jobs of some junior prosecutors, who are precisely the people responsible for pressuring claimants into accepting disqualification through waivers, consents to disqualifications, or fee bargains. Other states reportedly tie the funding of their antifraud units, and hence the jobs of the investigators working there, to the state-retained share of collections of IPV claims. In times of state and local financial crises and a generally weak employment market, these incentives are likely to be particularly powerful. Naturally any individual whose personal financial security depends upon the number of people disqualified for IPVs has a conflict of interest that is likely to make the individual less responsive to the explanations that innocent claimants may offer. These payments reward investigators for doing only one part of their job—winning disqualifications—and ignore another, equally important aspect—exonerating innocent claimants. As such, these arrangements violate the Food Stamp Act's "fair service" requirements.[62] They also violate the Act's command that "[t]he officials responsible for making determinations of ineligibility under this Act shall not receive or benefit from revenues retained by the State under the provisions of this subsection."[63] Moreover, paying fixed bounties for disqualifications rather than reimbursing actual costs violates the Food Stamp Act's general limitations on activities eligible for federal financial participation.[64] Although some may find bounties appealing in this particular case, providing a federal match for the payments opens the program to widespread financial abuse. States should not tie funding for any person involved with fraud investigations, prosecutions, or disqualifications to the number of claimants disqualified or the amounts of the resulting claims.

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[61] See 7 C.F.R. § 276.1(a)(4) (2004) (describing reinvestment as alternative to payment of sanctions).

[62] 7 U.S.C. § 2020(e)(2)(B)(i) (2000).

[63] *Id.* § 2025(a).

[64] *Id.* § 2025(a).

# Biographies

**Ian Feldman** began his legal services career in 1972 as an attorney with The Legal Aid Society in New York City. After 35 years with the Society, Ian joined the Urban Justice Center as the director of legal services for the Center's Mental Health Project. At administrative hearings, individual lawsuits in state and federal courts, class actions in federal courts, and state and federal appellate courts, Ian has represented people seeking to obtain or maintain government benefits involving the disability, public assistance, food stamps, medical assistance, unemployment insurance, and housing rental subsidy programs. He is a recipient of New York State Bar Association Legal Services Award and the Association of the Bar of the City of New York Legal Services Award. Ian is a graduate of the City University of New York, Queens College, and Brooklyn Law School.

**Maryanne Joyce**, a longtime legal services attorney, is currently working with Part of the Solution in the Bronx, assisting with POTS' weekly legal clinic. She most recently worked at Legal Services of the Hudson Valley where she supervised the benefits practice. Prior to that, Maryanne worked as a staff attorney at Legal Services NYC-Bronx from 1999 to 2012, where she specialized in public benefits issues, representing clients at administrative hearings, including Administrative Disqualification Hearings, and in New York State Supreme Court. At LSNYC-Bronx, Maryanne litigated several Article 78 proceedings that resulted in policy changes benefitting public assistance applicants and recipients. One of her cases was *Boyd v. Doar*, which resulted in replacement food stamp and public assistance benefits being issued to a client who was a victim of repeated theft of his benefits from the EBT system. Maryanne has conducted numerous trainings on benefits issues, including several on IPV/fraud issues in the public benefits context. Maryanne received her undergraduate degree from Yale University, and has an M.A. in Counseling from N.Y.U. She received her J.D. from Columbia Law School.

**Diana C. Proske** is a Staff Attorney in the Public Benefits Unit at Neighborhood Legal Services, Inc. in Buffalo, New York. Ms. Proske represents low income clients, primarily those experiencing homelessness, on public benefits matters. Most of her practice involves applications for ongoing benefits and emergency assistance issues including accessing shelter through local social services departments. Ms. Proske supervises the Homeless Task Force, a supportive services project funded by the United States Department of Housing and Urban Development through the local Continuum of Care agency, including direct supervision of volunteers and staff members providing outreach and legal advocacy to people experiencing homelessness in the Buffalo area. Ms. Proske represents individual clients using both informal advocacy and the state administrative hearing process. Ms. Proske also represents Neighborhood Legal Services in local organizations including the Western New York Coalition for the Homeless and the Homeless Alliance of Western New York. Prior to her employment at Neighborhood Legal Services, Inc., Ms. Proske practiced before the New York State Workers' Compensation Board in both the Northeastern and Western New York districts. Ms. Proske is a graduate of the State University of New York, University at Buffalo School of Law. Ms. Proske also holds a Bachelor of Arts in Political Science and a Master's degree in Library and Information Science from Kent State University.

**Cathy Roberts** is a senior paralegal at the Albany office of the Empire Justice Center. She provides technical assistance and training to legal services advocates and community based organizations on SNAP and Medicaid issues and monitors SNAP fraud policies and practices.

Cathy formerly worked as a food stamp specialist for the Nutrition Consortium of NYS (now known as Hunger Solutions New York), and as a paralegal at the Legal Aid Society of Northeastern NY where she provided advocacy services to clients in need of government benefits. She has over 20 years of legal services experience and holds a B.A. in English Education from the State University of New York at Albany.