

207 – FRAUD AND INTENTIONAL PROGRAM VIOLATIONS

Change No. 13-02

April 1, 2002

I. DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION

An administrative disqualification hearing or referral for prosecution will be initiated by the county department of social services for cases in which the county department has sufficient documentary evidence to substantiate that an individual has committed one or more acts of Intentional Program Violation (IPV). An **INTENTIONAL PROGRAM VIOLATION is defined as: Any action by a Work First unit member to knowingly, willfully, and with deceitful intent, make a verbal or written false statement to obtain or attempt to obtain benefits for which they are not eligible, or hide or withhold information to obtain benefits for which they are not eligible.**

- A. The county will conduct administrative disqualification hearings in cases in which the county department believes the facts of the individual case do not warrant criminal prosecution; or cases previously referred for prosecution but for which the prosecution was declined by the appropriate legal authority; and in previously referred cases where no action was taken within a reasonable period of time, and the referral was formally withdrawn by the county.
- B. Administrative disqualification hearings will be conducted on cases where the act of fraud was committed on or after December 1, 1998. Do not complete the administrative disqualification hearing process for acts of fraud made prior to December 1, 1998.
- C. The county department will initiate an administrative disqualification hearing or refer a case for prosecution regardless of the current eligibility of the individual.
- D. A State level hearing is held only when a county level hearing finds a violation was committed and the decision is appealed to the State level.
- E. The administrative disqualification hearing may be waived.
- F. More than one violation may be the subject of a single hearing, but only one disqualification penalty may be assigned. Enhanced penalties must be based on a prior hearing or court action.
- G. A Work First and Food Stamp administrative disqualification hearing may be held at the same time.

If the county does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of IPV, the county shall take action to collect the overissuance as a recipient responsible overpayment.

II. LIMITATIONS

- A. Administrative disqualification hearings will be conducted only on cases where the act of fraud was committed on or after December 1, 1998.
- B. Administrative disqualification hearings are not conducted if the amount of the overpayment is less than \$100.00.
- C. The county may not conduct an administrative hearing first and then prosecute the individual in criminal court regardless of the outcome of the hearing. Additionally the county also may not have the client sign a waiver of administrative hearing and then prosecute the individual in criminal court.
- D. The county cannot conduct an administrative disqualification hearing on a case that was referred to the court system for prosecution if the charges were dismissed, or if the individual was found not guilty by the court. However, if prosecution by the appropriate legal authority is **declined** then an administrative disqualification hearing may be held.
- E. The burden of proof that an individual has committed IPV rests with the county department.
- F. The county department will **not** initiate an administrative disqualification hearing or refer a case for prosecution based solely on client's failure to cooperate with an investigation.

III. TIMELY ACTION

The hearing must be held and any administrative action initiated within 90 days of the date the individual is notified in writing that the hearing has been scheduled. The household member is entitled to a postponement of the scheduled hearing provided the request for postponement is made at least 10 days in advance of the date of the hearing. The hearing shall not be postponed for more than a total of 30 days. **The county may limit the postponement to one time.** If the hearing is postponed, the above time limits are extended for as many days as the hearing is postponed.

IV. HEARING OFFICER FOR ADMINISTRATIVE DISQUALIFICATION HEARINGS

For county level hearings, the board of social services shall designate the county director or another impartial county employee to act as the hearings officer. It is recommended that neither investigators nor anyone directly connected with a particular case (for example, the caseworker or the supervisor involved with that case), be designated as the Hearings Officer.

For State level hearing, the Hearings Officer is a State Hearings Officer who represents the State Director, Division of Social Services. The duties of the hearing officer are to 1) provide written notification of a hearing date, time, and location to the client at least 30 days in advance of the hearing date. The notification, shall include the client's right to have legal representation, a witness or witnesses, and the right to waive the hearing, 2) conduct the hearing to collect all evidence and testimony, 3) render a written decision to the client and the Department of Social Services within 15 calendar days, advising if an intentional program violation has occurred. Notification of the hearing decision will be mailed "Certified Mail-Return Receipt Requested". 4) The notice will inform the client of the right to further appeal to the state (or higher local authority) and the procedures for such appeal.

V. ADVANCE NOTICE OF HEARING

Written notice is provided to the Work First unit member suspected of an IPV. Notice is given by the county on the Advance Notice of Disqualification Hearing (DSS-8556, [Figure 1](#)).

- A. The county department must provide the notice at least 30 calendar days in advance of the county level hearing. This notification shall include the hearing date, time, and location, and the client's right to have legal representation, a witness or witnesses, or waive the hearing. The notice must be mailed "Certified Mail-Return Receipt Requested", or provided by any other method as long as proof of receipt is obtained. It is recommended that "addressee only" be used. The county may also provide the notice while conducting the investigative review. Even though the client chooses to waive the hearing, a copy of the advance notice must be retained in the case record.
- B. When advance notices are returned as "unclaimed", "refused", or otherwise not delivered to the individual by the Postal Service, one of the following alternatives may be used:
 - 1. Hold the hearing as scheduled and render a decision without further notice.

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2. Reschedule the hearing, and attempt another mailing by certified mail. If the second notice is returned, hold the hearing and render a decision.
 3. In place of or concurrent with 2 above, reschedule the hearing, mail a copy of the notice by certified mail or have a county representative contact the work first unit member in person or by telephone. Hold the hearing as rescheduled.
 4. If the hearing is held, the individual has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear based upon a showing of non-receipt of the hearing notice. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.
- C. Following written advance notification, the individual accused of committing an IPV may waive his right to an administrative disqualification hearing by signing the "Waiver of Disqualification Hearing" (DSS-8588, [Figure 2](#)). The county must provide notification to the Work First unit member that the hearing can be waived. Prior to issuing the notification, the county must ensure that the evidence against the Work First unit member is sufficient to justify an administrative disqualification hearing. A county worker other than the caseworker who discovered the overpayment must inform the Work First unit member of the waiver option. It is recommended that the investigator inform the individual of the waiver unless the investigator is the same person who discovered the overpayment. If so, another person must be designated as the person to notify the Work First unit member. Once signed, this notice cannot be voided or rescinded.

VI. SCHEDULING OF HEARING

Reasonable efforts shall be made to schedule the hearing at a time and place convenient to the Work First unit member suspected of an IPV. If the Work First unit member or his representative cannot be located or fails to appear at the hearing without good cause, the hearing shall be conducted without the Work First unit member represented. Even though the Work First unit member is not represented, the Hearing Officer is required to carefully consider the evidence and determine if an IPV was committed based on clear convincing evidence.

VII. FAILURE OF THE WORK FIRST UNIT MEMBER TO APPEAR

- A. If the Work First unit member is found guilty of an IPV but the Hearing Officer later determines that the Work First unit member or representative failed to appear with good cause, the previous decision is no longer valid, and the county department must conduct a new hearing. The Hearing Officer who originally ruled on the case may conduct the new hearing.
- B. The Work First unit member has 10 days after the date of the hearing decision to present reasons indicating a good cause for failure to appear.
- C. The Hearing Officer must enter this decision into the record.
- D. If a local administrative disqualification hearing decision is appealed to a State level hearing but the Work First unit member or his representative fails to appear for the State level hearing, the hearing request shall be dismissed and the Work First unit member notified that he/she will be disqualified for the appropriate time period in accordance with the local hearing decision unless good cause is provided, within 10 days of receipt of notice, for not appearing at the hearing. (See DSS-1894, Notice of State Hearing Decision) If the Hearing Officer determines that the Work First unit member or representative had good cause for not appearing, the hearing shall be rescheduled.

VIII. NOTIFICATION FOLLOWING WAIVER OF HEARING

When the individual accused of committing an IPV waives his right to an administrative disqualification hearing by signing the Waiver of Disqualification (DSS-8588, [Figure 2](#)), the county must provide notification to the Work First unit using "Action Taken On **Waiver Of Administrative Disqualification** Hearing," (DSS-8587, Figure 3). The disqualification is effective the first month after receipt of the notice by the Work First unit. There are no appeal rights when the waiver is signed.

A pending administrative disqualification hearing shall not affect the individual's or the Work First unit's right to be certified and participate in the program. Because the county department cannot disqualify a Work First unit member of an IPV until the Hearing Officer finds the individual guilty of an IPV, the county department shall determine the eligibility and benefit level of the Work First unit in the same manner it would be determined for any other Work First unit. However if the county has facts to substantiate that the Work First unit is ineligible or eligible for fewer benefits, actions will be taken to reduce or terminate benefits.

IX. ARRANGEMENTS FOR THE HEARING

The responsibilities of the county department in preparation for the hearing include the following:

- A. Arranging a suitable place for the hearing. Though the hearing is normally held in the offices of the county department, it may be held in some other mutually acceptable place. The location shall entail no undue travel expense to the appellant. The room should be physically comfortable, afford as much privacy as possible, and be furnished with equipment necessary to insure the efficiency of the proceedings.

Any problems and handicaps, such as illness or deafness, must be taken into consideration in making the arrangements. When the Work First unit member's physical and/or mental state would seem to hinder significantly his participation in the hearing, or the hearing itself might aggravate his condition, every effort shall be made to encourage him to have a representative.

- B. Prepare the following information which must be made available to the Hearing Officer at the time of the hearing:
1. Copies of a hearing summary which should be a brief report of facts about the situation. The hearing summary should reference the appropriate policy regulations which support the county's position. Unrelated material should be omitted. General format may be the same as used for State level hearings.
 2. Copies of all other supportive material, including copies when appropriate, of the application and notices sent to the Work First unit.
 3. Any other pertinent information helpful in establishing the facts.

X. ATTENDANCE AT THE HEARING

The hearing will be attended only by persons concerned directly with the issue and will not be open to the public unless requested specifically by the appellant. The appellant may bring witnesses and legal representation at his expense. The hearing is normally attended by a representative of the county department and the Work First unit member suspected of the IPV and/or his representative. The hearing will be conducted even if the Work First unit member fails to appear.

XI. RIGHTS AND DUTIES OF PARTICIPANTS

The rights and duties of the Hearing Officer, the Work First unit member, and the county department are described in detail below.

XII. DUTIES OF THE HEARING OFFICER

- A. Administer an oath to all participants of the hearing;
- B. Ensure that all relevant issues are considered;
- C. Request, receive, and make part of the record all evidence determined necessary to decide the issue;
- D. Regulate the conduct and course of the hearing consistent with the Work First unit member's rights shown below to ensure an orderly hearing;
- E. Advise the Work first unit member or representative that they may refuse to answer questions during the hearing;
- F. Render a hearing decision in the name of the county.

XIII. THE WORK FIRST UNIT MEMBER

The Work First unit member may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that make the Work First unit member feel most at ease. The Work First unit member or representative must be given adequate opportunity to:

- A. Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file, including the application form and documents of verification used by the county department to establish the basis for an IPV shall be made available provided that confidential information is protected from release. The county department shall provide free copies of relevant portions of the case file if requested by the Work First unit member or representative. Confidential information that is protected from release and other documents or records which the Work First unit member will not otherwise have an opportunity to contest or challenge shall not be presented at the hearing.
- B. Present the case himself or have it presented by a legal counsel or other person.
- C. Bring witnesses.
- D. Advance arguments without undue interference.
- E. Question or refute any testimony or evidence including an opportunity to confront and cross examine adverse witnesses.

- F. Submit evidence to establish all pertinent facts and circumstances in the case.
- G. Refuse to answer questions during the hearing.

XIV. THE COUNTY DEPARTMENT

The county representative has the same rights as the Work First unit member. This includes the right to examine documents, bring witnesses, advance arguments, question evidence, and submit evidence.

XV. CONDUCTING THE HEARING

The hearing officer presides at and conducts the hearing informally. Every effort shall be made to put the participants at ease and to remove tensions. The recording procedures, if used should be explained so that each person will understand the importance of speaking slowly and distinctly. The hearing format is as follows:

- A. The hearing officer explains the following:
 - 1. The hearing decision is based solely on the evidence and testimony introduced at the hearing.
 - 2. Final decision provisions including notification to the parties involved.
 - 3. Following a state level hearing, the Work First unit member's rights to take the case to court for judicial review.
 - 4. The Work First unit member's right not to answer questions during the hearing.
- B. A county representative shall review the hearing summary and introduce the summary into the record.
- C. The hearing officer shall make a statement of the points at issue.

- D. Opportunity is provided to the participants for a correction or modification of the statement of the situation. It is the duty and responsibility of the Hearing Officer to assist both the Work First unit member and the county department in making a full statement of the case so that the relevant facts are brought out to develop the points at issue.

Each person present is given an opportunity to speak. Any oral testimony or written documents which in the judgment of the hearing officer appear to be reasonably related to the issue involved and to be of value in determining the fact at issue, are received. The Work First unit and county have the opportunity to offer rebuttal.

XVI. HEARING RECORD

The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, all papers and requests filed in the proceeding, oral or written arguments, and the final decision shall constitute the hearing record.

- A. This record must be retained permanently. The three year retention requirement does not apply.
- B. Confidential or other information which the Work First unit member or representative does not have an opportunity to hear, see, and respond to shall not be introduced at the hearing nor shall it become a part of the hearing record.

XVII. HEARING DECISION

The hearing decision must take into consideration all issues questioned at the hearing and shall be factually based on the hearing record. The decision may not run contrary to State and Federal law, regulation, or policy.

- A. A determination of an IPV is based on clear and convincing evidence which demonstrates that the Work First unit member knowingly, willfully, and with deceitful intent committed an IPV.
- B. The decision must specify the reasons for the decision, identify the supporting evidence, identify the pertinent Work First regulations, and respond to reasoned arguments made by the Work First unit member or representative.
- C. The decision of the County Hearing Officer is rendered in final form.

XVIII. HEARING OFFICER'S DECISION

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The county hearing officer must notify the Work First unit member of his decision in writing. If the individual did not commit an IPV, a written notice informs them of the decision. No state form is provided, therefore a letter will complete this task. If the county rules that the individual is guilty of an IPV, the Hearing Officer provides a written notice which informs the individual of the decision. The form "Action Taken On Your Administrative Hearing," (DSS-8558, [Figure 4](#)), will be used and is signed by the "County Representative". The county also provides the Work First unit member with the reasons for the decision, identifies the supporting evidence, identifies the pertinent regulations, and respond to reasoned argument made by the Work First unit member or representative. The county agency's stationery will suffice in providing this information to the Work First unit member. If the Work First unit member is not satisfied with the county level decision the member has a right to request a state hearing within 15 calendar days of the receipt of the notice. The request is made through the local Department of Social Services.

- A. A list of the Work First unit member's rights and the State level hearing procedures must be enclosed with county level ADH decision notice.
- B. Notification of the decision will be mailed by "Certified Mail--Return Receipt Requested". The Work First unit member has 15 calendar days after receiving the notice to appeal the decision to a State level hearing. If the notification is returned by the Postal Service as refused, unclaimed, etc., the 15 day appeal period starts on the first calendar day after return. If the receipt is not returned within 7 days of mailing, the 15 day appeal period starts on the 8th calendar day after mailing. If the 15 day appeal period ends on a weekend or holiday, accept an appeal request through the end of the following work day.
- C. If a State level hearing is not requested within the 15 day period, the Work First unit member shall be disqualified for the appropriate time period beginning with the first calendar month after the 15 day period has expired.
- D. If, however, the Work First unit member requests a State level hearing within the 15 day period, the Work First unit member shall not be Disqualified unless the State level hearing also finds the Work First unit

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disqualified unless the State level hearing also finds the Work First unit member has committed an IPV.

XIX. STATE LEVEL DECISION

A state level hearing is held when the Work First unit member is not satisfied with the county level decision. The state level hearing safeguards the interest of the Work First unit member and assures fair and equitable administration of assistance programs. See Notice and Hearing process in the Section 264, Notice and Hearings Process for state hearing level procedures.

XX. OVERTURNED INTENTIONAL PROGRAM VIOLATION DISQUALIFICATION

In cases where the determination of an IPV is overturned or reversed by a State level hearing or a court of appropriate jurisdiction, the county department must reinstate the Work First unit member in the program if the Work First unit member is eligible. The county department must supplement any benefits that were lost as a result of the disqualification by issuing a supplemental check.

XXI. DISQUALIFICATION PENALTIES

The following disqualification penalties are effective with the act of fraud committed on or after December 1, 1998.

- A. Mandatory disqualification periods for an IPV are imposed the month following the expiration of the 15 day appeal period when an ADH is held. However, for the waiver of the ADH and court ordered cases, the 15 day appeal period is not considered. In cases where a waiver of the ADH was signed, the disqualification is effective the first month following receipt of the notice by the Work First unit. If the case was referred to a court of law, the disqualification period is as specified by the court. If the court fails to impose a disqualification period, the county will set the period as appropriate, unless contrary to the court order. A twelve month disqualification period is imposed for the first offense, a twenty four month disqualification period is imposed for the second offense, and a permanent disqualification is imposed for the third offense. A ten year disqualification is imposed for fraudulently misrepresenting residence in order to receive multiple benefits in more than one county or state. A judge can impose disqualification penalties in excess of the specified periods stated above.

For disqualification handled through the courts, the county department must impose the penalties within the following deadlines:

1. If the court orders the disqualification, it must be imposed by the date ordered by the court;

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2. If the court orders the disqualification, but does not specify a date for imposing the disqualification, it must be imposed within 45 days of the court order;
3. If the court finds the accused person guilty, but does not address disqualification, the disqualification must be imposed within 45 days of the guilty decision.

NOTE: THE DISQUALIFICATION MUST BEGIN ACCORDING TO THE DATE SPECIFIED BY THE COURT ORDER OR WITHIN 45 DAYS OF THE COURT ORDER OR GUILTY DECISION.

THE WORK FIRST DISQUALIFICATION MUST BE ENTERED IN THE SYSTEM BY THE 5TH WORKING DAY FROM THE END OF THE MONTH TO BE EFFECTIVE THE NEXT MONTH.

- B. The individual must be provided written notification of the date the disqualification begins. Also, the individual must be advised that remaining Work First unit members may be eligible. Once a disqualification penalty is imposed, it continues uninterrupted until completed, regardless of the eligibility of the disqualified member's Work First unit.

NOTE: You must remove the disqualified individual from the needs standard. The disqualified member's countable income and resources are counted available to any remaining Work First unit members.

1. The disqualification of an individual remains in effect in North Carolina, and will follow the individual if they transfer to any county within the state.
2. Benefits to remaining Work First unit members may not increase due to the disqualification of any individual member.

XXII. NOTIFICATION-REPAYMENT NOT DIRECTED BY THE COURT

If the court finds that the Work First unit member committed an IPV, the county department must mail a written notice to the Work First unit member. The notice must be sent prior to disqualification.

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- A. The notice must inform the Work First unit member of the decision and the reason for the decision, and the date the disqualification is effective.
- B. The caseworker must notify the client of the correct check amount.
- C. The Notice of Disqualification, (DSS-8586, Figure 5) is provided as a State form. This notice is sent by the county.
- D. If the court finds the Work First unit member committed an IPV, but does not define repayment requirements, an agreement letter for restitution must be provided, if a repayment agreement has not already been negotiated.

XXIII. NOTIFICATION-REPAYMENT DIRECTED BY THE COURT

When the court finds the Work First unit member guilty of fraud, notification of disqualification is given. Use of a county repayment agreement is not appropriate, however, and is not used when the court directs payments be made to the Clerk of Court and/or the member has worked out a repayment arrangement with the court.

- A. The notice must inform the Work first unit member of the decision and the reason for the decision, and the date the disqualification is effective.
- B. The caseworker must notify the client of the correct check amount.
- C. The Notice of Disqualification (DSS-8586, [Figure 5](#)) is provided as a State form. This notice is sent by the county.
- D. In place of the repayment agreement, obtain a copy of the court order, providing repayment details such as the total amount to be repaid, the payment schedule, and the length of time allowed for repayment.
- E. If the Work First unit member makes no payment or pays a smaller amount, the county department must notify the court but should take no collection action on its own without consulting its legal counsel.
- F. If the court has ordered repayment in cash, the county department may not impose check reduction, unless the court order is amended to allow check reduction.