



Department of Human Resources
311 West Saratoga Street
Baltimore MD 21201

Family Investment Administration
ACTION TRANSMITTAL

Control Number: 05-06

Effective Date: Upon Receipt

Issuance Date: September 1, 2004

**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT
FAMILY INVESTMENT SUPERVISORS AND ELIGIBILITY STAFF
OFFICE OF THE INSPECTOR GENERAL**

**FROM: KEVIN M. MCGUIRE, EXECUTIVE DIRECTOR
LARRY J. GRAY, SR, INSPECTOR GENERAL**

RE: INTENTIONAL PROGRAM VIOLATION POLICY

PROGRAM AFFECTED: FOOD STAMP PROGRAM

ORIGINATING OFFICE: OFFICE OF POLICY, RESEARCH AND SYSTEMS

SUMMARY:

A recent Food and Nutrition Service (FNS) review noted that some states are not following the intentional program violation (IPV) rules. Although we do not believe there is a problem in Maryland, we are issuing clarification of the fraud rules. We are also including a reminder about the importance of reporting fraud cases to the National Disqualified Recipient Subsystem and the impact of simplified reporting on IPV decisions and overpayments.

CURRENT PROCEDURE:

When the local department of social services (LDSS) receives information that an applicant or recipient may have committed an intentional program violation (IPV), it refers the information to the Office of the Inspector General (OIG). The OIG conducts the investigation. When the investigation is complete the OIG prepares a report for the director of the local department and designee (such as the overpayment coordinator).

ACTION REQUIRED:

Administrative Hearings versus Court Referrals

- When the LDSS and/or OIG decides there is enough documentary evidence that an individual has committed an IPV, the LDSS:
 - Must proceed against the person **either** through administrative hearing procedures, **or** by referring the matter to the local State's attorney for civil or criminal action in a court of law.

- Must decide which procedure, administrative or judicial, it believes appropriate for each case and pursue that procedure to its conclusion.
- Cannot offer an ADH waiver if it intends to refer the case for prosecution.
- Cannot threaten prosecution if the customer does not sign the waiver.

Example 1: Mr. A was suspected of failing to report a self-employment enterprise and was referred to OIG for investigation. Since the first application, he had reported only Mrs. A's earnings. The OIG investigator confirmed that Mr. A has had a lawn service and snow removal business since before the household was first certified 3 years ago. The LDSS and the OIG decided that there is enough evidence that the household had committed an IPV. They also decided, based on the evidence and large overpayment, to refer this case for prosecution in court. Mr. A would not be referred for an administrative disqualification hearing or offered a waiver of the ADH.

- When the LDSS or OIG offers an ADH waiver, there should have already been a determination that an administrative hearing is appropriate.

Example 2: Ms. B and her two children have received food stamps for the last three years. At her last recertification in June 2004, she again stated that her household included her two children. In May, the LDSS received an anonymous report that the oldest child had moved to North Carolina in December 2003 to live with his father. The OIG investigator verified that the child was living with his father and has been enrolled in school in North Carolina since January 2004. The OIG and the LDSS decides that Ms. B should be referred for an ADH. After this decision, the investigator offers Ms. B the opportunity to waive her right to an ADH by signing a DHR OIG 7. She did not sign it, so the LDSS refers the case for the disqualification hearing.

- To help household members make an informed decision about whether to waive the right to a hearing, the LDSS or OIG investigator must fully inform them of:
 - Their due process rights,
 - The hearing procedures, and
 - The consequences they face if found guilty of an IPV at a hearing.

Although the LDSS cannot conduct both administrative and judicial procedures simultaneously, or in combination, it can prosecute someone upon completion of the administrative process. The Waiver to an Administrative Disqualification Hearing form (DHR OIG 7) informs the individual that having a hearing does not prevent the State or Federal Government from subsequently prosecuting the individual.

Additionally, the LDSS may pursue administrative action against a person whose case was referred for prosecution when the prosecutor declines the case, or when the court or prosecutor takes no action against the person.

Use of ADH Waiver

- Supervisory Review. Before sending advance notification to the household of the LDSS's intent to refer an individual for an ADH, someone other than the case manager must review the evidence against the household member and determine that the evidence warrants scheduling an ADH. This could be a supervisor or unit designated to make such decisions.
- The LDSS and/or OIG, must:
 - Decide if there is enough evidence to hold an ADH.
 - Intend to hold an ADH prior to offering the individual an opportunity to sign an ADH waiver.
 - Never offer an ADH waiver when there is a suspicion of guilt but the evidence is not convincing.
- If the LDSS has enough evidence to hold a hearing and has offered the individual an opportunity to waive the hearing, the agency should schedule a hearing if the individual does not sign the waiver.

See example 2.

Suggested Practices

FNS provided these suggestions from both State agencies and legal aid advocates. We believe adoption of these practices would serve the interests of local departments, investigators and customers by increasing clarity and reducing the appearance of coercion.

- **It is important to inform the customer that the penalty is the same whether the individual chooses to have a hearing and is found guilty, or waives the hearing.** Customers who are unfamiliar with administrative hearings may confuse the ADH with a court proceeding. They may think that the consequence of a hearing is the same as a conviction in court. Individuals also 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.
- Another suggested practice concerns cases in which the person who is suspected of committing an IPV has a documented mental disability. Some individuals with a mental disability may lack the ability to form the intent necessary for establishing an IPV. Additionally, they may not fully understand the consequences of signing an ADH waiver. In these situations, the agency may choose to schedule an administrative hearing without offering a waiver. This will help protect the rights of the individual without raising the issue that the waiver was questionable.

Disqualified Recipient Report

A recent FNS audit found that some disqualified individuals did not show up on the national Disqualified Recipient Subsystem (DRS). When someone signs a waiver to an ADH or is found guilty of an IPV through a hearing or court proceeding, the LDSS must make sure that it is reported to the Disqualified Recipient Subsystem (DRS). To do this the LDSS must complete a Disqualified Recipient Report (DHR/FIA 962) and forward it to:

Office of Policy, Research, and Systems
311 West Saratoga Street, Room 648
Baltimore MD 21201

Important Note: Complete and forward the DHR/FIA 962 for food stamp cases only. There is no database for other programs.

The Impact of Simplified Reporting on an IPV

During the certification period households in food stamp simplified reporting have to report when their household income is more than 130 percent of the federal poverty rate (food stamp gross income limit). They must report all changes and new information at every food stamp recertification. Case managers must take action on any reported change.

If the household receives another program, such as medical assistance or TCA, the household must follow the reporting requirements for that program. This does not mean that for food stamps the household has a reporting requirement other than simplified reporting. If the household fails to report an increase in income that does not exceed 130 percent of the poverty level, there is no overpayment or potential IPV for food stamps. There may be an overpayment or potential IPV for the other benefit program.

Example: Mr. and Mrs. A and their children receive food stamps and TCA. Mr. A was working part time and provided proof of income at the last recertification. This income was used to calculate the TCA and food stamp benefit. Mrs. A got a part time job after recertification. The household's income was still below the food stamp gross income limit. Although Mrs. A's new job was a reportable change for TCA, the household was not required to report the change for food stamps because of simplified reporting. The agency took action on the reported change for all programs. There would be no overpayment or potential fraud determination for food stamps. There may be for TCA because this was a reportable change for TCA.

ACTION DUE:

This policy is effective upon receipt of the action transmittal.

INQUIRIES:

Please direct food stamp policy questions to Kay Finegan at 410-767-7939.

cc: FIA Management Staff Constituent Services DHR Help Desk