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| DEPARTMENT OF HUMAN RESOURCES INCOME MAINTENANCE ADMINISTRATION 7 W. Saratoga Street 4 Baltimore, Maryland 21201 | IMA ACTION TRANSMITTAL |
| ISSUANCE DATE: December 22, 1995 | EFFECTIVE DATE: February 1, 1996 CONTROL NUMBER: IMA OPA #96-26 |

**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES
DEPUTY/ASSISTANT DIRECTORS FOR INCOME MAINTENANCE
INCOME MAINTENANCE SUPERVISORS**

**FROM: *Katherine L. Cook*
KATHERINE L. COOK, ACTING EXECUTIVE DIRECTOR, IMA**

RE: DISQUALIFICATION PENALTIES

PROGRAMS AFFECTED: FOOD STAMPS

ORIGINATING OFFICE: OFFICE OF POLICY ADMINISTRATION

SUMMARY

This transmittal notifies local departments of a change in policy regarding disqualification penalties.

BACKGROUND

Recently, the Food and Consumer Service (FCS) sent a notice about the implementation of provisions of a court order regarding disqualification penalties. The U.S Court of Appeals for the Ninth Circuit held that federal policy requiring states to postpone food stamp program disqualifications is contrary to the Food Stamp Act of 1977.

CURRENT POLICY

The local department must disqualify the individual found to have committed the Intentional Program Violation (IPV). The disqualification period shall begin no later than:

- the date ordered by the court if the court addressed this in its decision or within 45 days of the court decision if the court did not speak to the effective date of the disqualification.
- within 45 days of the date the individual signed the Disqualification Consent Agreement.
- the beginning of the month which follows the date the household member receives written notification of the Administrative Disqualification Hearing decision.
- the beginning of the month which follows the date the household receives written notification of the disqualification when the right to a disqualification hearing has been waived.

In July FCS provided an interpretation of when the disqualification period must begin to take into consideration issuance cycles. Although it is desirable to start the disqualification within the 45 day time frame, if the state takes the necessary action within 45 days of the date the disqualification is ordered, it is in compliance with food stamp regulations.

If the individual is not eligible when the disqualification is to start, the penalty is postponed until the individual applies and is found eligible. If the individual is eligible and the disqualification period is imposed, the disqualification period continues uninterrupted until completed.

NEW POLICY

The disqualification penalties will no longer be postponed when an individual is not eligible for food stamps at the time a disqualification penalty is imposed. The penalty period must begin within the time frames required under current policy, regardless of eligibility for food stamps, and continue until the time has elapsed.

In addition to no longer postponing future disqualification penalties, any disqualification currently pending is considered served if the time elapsed from the decision date is greater than or equal to the length of the disqualification period. If the time elapsed from the decision date is less than the length of the disqualification period, the individual is disqualified until the time elapsed is equal to the length of the disqualification period.

Example 1

Mr. Jones signs a Disqualification Consent Agreement on February 5, 1996. The case is not open at the time of the decision. The disqualification period must begin or be acted on within 45 days of the determination and continue until the time has elapsed .

Example 2

A determination is made on December 7, 1995, that an IPV was committed by Mr. Brown. The household was not participating at the time of the determination. The disqualification period begins January 1, for six months. Ms. Brown reapplies on February 5. The household is found eligible, however, Mr. Brown is disqualified until July.

Example 3

A 12-month disqualification period was imposed on Ms. Smith on June 1, 1993. Her household was not participating at that time and did not apply for food stamps until September 15, 1995. She is not a disqualified household member.

ACTION REQUIRED

CARES

For an active case:

- Enter the appropriate code on the **DEM2** screen for the disqualified individual, in the IPV IND field. This is usually "M" - Maryland-guilty.
- Enter the counter (the number of times disqualified) and the decision date.
- The system will track the disqualification.

When the case is closed at the time an IPV decision is made:

- Use option "M" from the Assistant Unit/Client Submenu, and the food stamp AU#, to reinstate the case.
- Enter the IPV information on the DEM2 screen for the disqualified individual.
- Check the **ELIG** and **FSFI** screens to make sure the case is still closed. If not, enter a worker entered code on the **STAT** screen. Suppress notices to the household.
- The system will track the disqualification period and prevent the individual from being included in the household if the household reapplies.

AIMS/AMF

There is no change in coding or local department procedure on AIMS and AMF.

Please place the attached replacement manual page in the Food Stamp Manual by the February effective date.

ACTION DUE

This change is effective February 1, 1996.

INQUIRIES

Please direct questions to Kay Finegan at (410) 767-7939.

DHR Executive Staff
IMA Management Staff
Arnold Dixon

REF: 7 CFR
273.16Section Title
INTENTIONAL PROGRAM VIOLATION DISQUALIFICATIONSection
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F. Render a hearing decision in the name of the Income Maintenance Administration.

480.16 Hearing the Case

At the hearing the individual or representative, shall have the opportunity to:

- A. Present the case for the individual;
- B. Examine witnesses;
- C. Advance arguments without undue interference;
- D. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses, and
- E. Submit evidence to establish facts and circumstances in the case;

At the hearing the hearings examiner shall advise the individual or representative that he/she may remain silent concerning the charges.

Confidential information that is protected from release and other documents or records which the household does not have an opportunity to contest or challenge may not be introduced into the hearing record and may not be used by the hearings examiner in making a decision.

The local department has the burden of proving Intentional Program Violation by clear and convincing evidence.

480.17 "No - Show" Hearings

If the individual or representative fails to appear at the hearing without good cause, the hearings examiner shall conduct the hearing without the individual being present or represented. Even though the individual is not present or represented, the hearings examiner is required to carefully consider the evidence and determine if an Intentional Program Violation was committed.

If the client has not notified the Hearing Unit within 10 days after a hearing that the he/she client had good cause for not attending the hearing, the hearings examiner shall close the hearing record.

480.18 Hearings Decision

The hearing decision shall be issued within 90 days from the date when the advance notice of the hearing was sent unless the 90 day period was extended.



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| REF: 7 CFR 273.16 | Section Title INTENTIONAL PROGRAM VIOLATION DISQUALIFICATION | Section 480 | P. 8 |
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Hearing decisions shall be based on the hearing record.

A hearing decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent federal or State regulations and respond to reasoned arguments made by the household member or representative. The decision shall become a part of the record.

A hearing decision shall be binding on the local department. The individual and the local department shall be notified in writing of the decision, and the reasons for the decision. If the decision upholds the local department's action, the household shall be notified of its right to judicial review of the decision.

480.19 Application of Disqualification Penalties

The local department shall disqualify only the individual found to have committed the Intentional Program Violation and not the entire household.

The disqualification period shall begin no later than:

o Court Referrals

- the date ordered by the court if the court addressed it's decision;
- within 45 days of the court decision date if the court did not speak to the disqualification or it's effective date;

o Disqualification Consent Agreement (FS-72)

- within 45 days of the date the individual signed the Disqualification Consent Agreement.

o Administrative Disqualification Hearing

- the beginning of the month which follows the date the household member receives written notification of the hearing's decision.

o Waiver of Right to an Administrative Disqualification Hearing

- the beginning of the month which follows the date the household member receives written notification (FS-93) of the disqualification.

If the individual is not eligible for food stamps at the time the penalty is imposed, the penalty period must begin within the above time frames and continue until the time has elapsed.