

**State of Alabama**  
**Department of Human Resources**  
**Food Assistance Division**  
**Office of Program Integrity**



**CLAIMS**  
**HANDBOOK**

# **FOOD ASSISTANCE PROGRAM CLAIMS HANDBOOK**

(September 3, 2019)

# FOOD ASSISTANCE PROGRAM CLAIMS

## HANDBOOK

*(Federal References: 7 CFR 273.16 – 273.18)*

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## 100 CLAIMS AGAINST HOUSEHOLDS

### 101 General

A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked. These claims are federal debts subject to regulation 7 CFR 273.18 and other regulations governing federal debts. The State must establish and collect any claim by following these regulations.

A claim shall not be established if the county department fails to ensure that a household fulfilled the following procedural requirements:

- Signed the application form
- Completed a current work registration form
- Was certified in the correct project area
- The client was not required to report a change

The following individuals are responsible for paying a claim:

- Each person who was an adult member when the overpayment or trafficking occurred.
- A sponsor of an alien household member if the sponsor is at fault.
- A person connected to the household, such as an authorized representative, who actually causes an overpayment or trafficks.

All identified overissuances shall be registered as possible claims within 10 days of discovery unless all of the following conditions exist:

- The amount is \$125.00 or less
- The household is not currently participating in the program
- The claim was not discovered as a result of a Quality Control (QC) review

**Note:** All QC overissuances must be registered and processed regardless of the amount of the claim.

## 102 Types of Claims

**I. Intentional Program Violation (IPV) Claim** – Any claim for an overpayment or trafficking resulting from the household and/or its representative making false or misleading statements, or misrepresenting, concealing or withholding facts or committing 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 SNAP benefits or EBT cards.

A claim is considered a Suspected Intentional Program Violation (SIPV) claim until a determination is made that an Intentional Program Violation occurred through either the Administrative Disqualification Hearing process or court proceedings.

**II. Inadvertent Household Error (IHE) Claim** – any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

Situations that may result in an IHE claim include but are not limited to the following:

- The household unintentionally failed to provide the county department with correct or complete information.
- The household unintentionally failed to report to the county department changes in its household circumstances.
- The household unintentionally received benefits that it was not entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.

If the household requests continuation of benefits when it knows it is not entitled to such benefits, the agency may determine that an Administrative Disqualification Hearing is appropriate, as the household may have committed an act of Intentional Program Violation.

**III. Agency Error (AE) Claim** – any claim for an overpayment caused by the agency's action or failure to take action on information known to the agency.

The County Food Stamp Office must consider as “known to the agency” only that information that is or has been reported to the Food Stamp Office and/or the Family Assistance Office. Information known to a service worker, child support worker or adult services worker is not considered known to the Food Stamp Office for the purpose of establishing a claim.

Administrative Errors that may result in a claim include, but are not limited to:

- The county department failed to take prompt action on a change reported by the household.
- The county department incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment.
- The county department continued to provide the household food assistance benefits after its certification period ended without a redetermination of eligibility.
- The county department failed to provide a household a reduced level of benefits when the Family Assistance (FA) grant was approved or changed.
- Data was incorrectly entered in the computer, resulting in an incorrect allotment being issued to the household.
- The county department either failed to take timely action on information provided through the Income Eligibility Verification System (IEVS) which was considered verified upon receipt, or failed to follow up on IEVS information which was not considered verified upon receipt.

**IV. Trafficking-Related Claims – The act of:**

- 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;
- The exchange of firearms, ammunition, explosives, or controlled substances.
- Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash with the intent of obtaining cash by intentionally discarding the product and returning the container for the deposit amount.
- Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently selling reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:

- The individual's admission
- Adjudication
- The documentation that forms the basis for the trafficking determination

### **103 Claims Processing Standards**

All claims must be established within 180 days of the discovery of the over-payment or trafficking incident. In order to comply with federal regulations, the state must ensure that no less than 90 percent of all claims referrals are either established or disposed of in accordance with the time frame. Therefore, it is imperative that all claims are registered within 10 days of the discovery of a potential overissuance to avoid federal sanction and to ensure that this time frame is met.

Regional Claims Centers have the responsibility of processing AE, IHE and SIPV non-assistance (NA) and FA food assistance cases claims for the State.

Records (originals or copies) should be transferred between the county and Regional Claims Center using the following forms:

- The Regional Claims Center File Request Form
- The Completed Claims Transmittal Form
- The Pending Possible Claims File Transmittal (For county use)

The claims centers will maintain a Master Log of the records they receive and records that are returned to the counties. These procedures have been established to ensure that case files are properly tracked and accounted for by the county and the claims center staff at all times.

### **104 Period for Establishing Claims**

Action should be taken on claims for which 6 years or less have elapsed between the month an overissuance occurred and the month it was discovered. When taking action on claims involving reportable changes, the first month subject to a claim shall be the month the change should have been made.

The first month of the claim is determined by the reporting requirement applicable to the household's correct circumstances considering the following:

- What month did the change occur?



- When should the change have been reported?
- What was the appropriate issuance month to reflect the change? This month becomes the first month of the claim.

If a claim involves a change, which would have made an active household prospectively ineligible, the first month of the claim will be the first month the household was ineligible and the first month for which the case should have been terminated. The first month of the claim will be the first month of the certification period if the applicant household failed to report known or reasonably anticipated information at the time of the initial or recertification interview.

## 200 CALCULATING THE CLAIM

### 201 General

No claim (IPV, IHE or AE) shall include any overpayment amounts that occurred more than six years before the date the overpayment was discovered.

An AE claim that extends beyond 12 months prior to the discovery date shall be calculated for no more than 12 months prior to discovery.

An IPV or IHE claim that extends beyond 12 months prior to the discovery date must be calculated for all months of the claims period, subject to the six-year limit specified above.

The Comprehensive Claims System (CCS) should be used to compute the total overissuance and to generate the Overpayment Report (818), the supporting budgets and the budget work-up.

A separate claim record shall be set up on each claim established. The following documents should be included in each claim file:

- The Overpayment Report (hard copy)
- The summary of circumstances
- The supporting budgets
- The budget work-up
- All documents used to support the claims
- Any correspondence relating to the claim
- A record of contacts

For each month that the claim covers, the claim shall be established for the difference between the allotment the household received and the allotment the household should have received.

The client's eligibility and amount of allotment must be based on the budgeting procedures under which the client should have been certified had the reported information been used.

The Food Stamp *Points of Eligibility Manual* should be referred to and used for the specific policy on household types and budgeting procedures to calculate a claim.

The entitled allotment shall be used excluding any retroactive or restored amounts for a month not included in the claim.

In computing the correct allotment, all known facts related to the overissuance shall be considered, even though they may not have been reported or known at the time the original allotment was determined.

Deductions not claimed by the household during the claim period shall be used in determining the correct allotment, if the household can verify the deduction (s).

It is only necessary to verify the information that is the basis for the claim, unless there are questions about other information provided by the client and used to determine eligibility and/or the allotment.

Once the claim has been established, all restorations due the household shall be used to reduce the total amount of the claim or any balance remaining on the claim. Do not offset against supplemental benefits, which are benefits due for the current month.

If the agency is aware of an expungement of benefits occurring within the previous three years, adjust the claim by the amount of the expunged benefits.

There may be instances when additional information becomes available after the claim has been completed and confirmed. If this information will affect the amount of the claim, a re-determination and adjustments shall be made. A new Overpayment Report (818) shall be completed and the original claim referenced in the summary of circumstances with an explanation of the reasons for the re-determination.

A client who refuses to cooperate in providing information needed to calculate the overissuance should not be terminated from the program for this reason.

If the client *refuses* to cooperate in providing information in an area that is *critical* to determining the household's continued eligibility for benefits, the county department should take action to deny or terminate benefits following the policy specified in the *Points of Eligibility Manual*.

The request for information must be reasonable and clearly stated. The client must refuse to cooperate or assist the department rather than be unable to assist or simply fail to provide the needed information.

**STEPS FOR CALCULATING A CLAIM**

	<b>Unless...</b>	<b>Then...</b>
<b>(A) Determine the correct amount of benefits for each month that the household received an overpayment.</b>		
<b>(B) Do not apply the earned income deduction to that part of any earned income that the household failed to report in a timely manner when this act is the basis of the claim.</b>	<b>The claim is an AE claim</b>	<b>Apply the earned income deduction.</b>
<b>(C) Subtract the correct amount of benefits from the benefits actually received. The result is the amount of the overpayment.</b>	<b>The result is zero or negative.</b>	<b>Dispose of the claim referral.</b>
<b>(D) Reduce the overpayment amount by any EBT benefits expunged from the household's EBT account. The difference is the amount of the claim.</b>	<b>You are not aware of any expunged benefits.</b>	<b>The amount of the overpayment calculated in (C) is the amount of the claim.</b>

## **202 Special Considerations for Calculating a Claim**

### **I. Income**

Unreported wages are the basis of most claims against households. Verification of this income for each month of the claim is necessary to compute a claim. In fact, the same verification requirements used to determine the allotment at application also apply in determining the overissuance for a claim.

The DIR Wage Match information on IEVS is only an indicator that the client has unreported income. The Department of Industrial Relations (DIR) has not verified this income in any way. The information provided is the total wages for a three-month period and is not the actual verified wages for each month of the three-month period. It is possible that the amount shown was earned in one month and there were no earnings in the other two months.

In calculating a claim, independent verification of unverified information from the Income Eligibility Verification System (IEVS) shall be obtained to substantiate information by contacting the household and/or the appropriate income resource or benefit source. Contact shall be made with the appropriate source by the means best suited to the situation.

If contact with the household is indicated, it must be in writing, inform the household of the information that has been received and request that the household respond within 10 days. The claim will be calculated using the before mentioned information. Any discrepancies between the information the client provides and what the employer reports shall be resolved before the information is used to calculate the claim.

There may be instances when neither the client nor the employer can provide verification of the actual income. The employer may refuse to provide the information to the client or to the county department. In addition, the employer may no longer be in business, has moved, or cannot be located.

If the above action has occurred, the best available information shall be used to calculate the claim (i.e. client statement, income as listed on the IEVS document). However, the client should be contacted when other appropriate sources are not available to assist in clearing up IEVS information.

If the IEVS information is the best available information, proceed to calculate the claim using an average or one-third of the total income listed for each month in the quarter.

The claim record shall be thoroughly documented as to any and all steps taken to obtain verification of actual wages before the averaged amount is used.

If the client later disputes the information used to calculate the claim, it will be the client's responsibility to resolve the discrepancy. Assistance shall be provided to the client if requested.

When the client and the agency have been unable to obtain verification of actual income for the claim period, a subpoena may be requested through the Food Assistance Division's Claims Unit to obtain needed income verification. However, in order to prevent the claim from exceeding the established processing standard, the claim shall be established using the average of the quarterly income from the DIR wage match. An adjustment shall be made using the actual wages when or if they are obtained.

NOTE: The issuance of a subpoena to an out-of-state home office of a company operating in Alabama is not legally binding. Out-of-state companies are not required to honor such subpoenas. Therefore, the subpoena will be issued to the client's local employer, whose responsibility it will be to obtain the needed information.

When requesting a subpoena to be issued, please provide the following information:

- Case name, case number and the social security number for the head of household.
- The name of the person for whom verification of income is needed, if different from case name, and his/her social security number.
- Employers name, address and telephone number and name of person to contact if known.
- The specific dates for which income verification is needed.

## **II. Unemployment Compensation Benefits (UCB)**

Unreported UC benefits are also the basis of many claims.

UC benefits are listed on the Department of Industrial Relations (DIR) UCB printout for each week a client has been mailed a check. Use this information, without additional verification, to calculate the claim.

If the client disagrees with the amount shown on the DIR printout, it will be necessary for the client to work with DIR to resolve this discrepancy. Assistance shall be provided to the client if it is requested. If there are other sources that can verify the amount of UCB received by the client these should also be used.

## **III. Family Assistance (FA)**

When there is a food stamp overissuance the claim is calculated using the actual amount of the FA benefits the client received each month to determine the amount of the overissuance. Prior to calculating the food stamp claim with family assistance benefits, it is necessary to determine if the FA benefits the client received during the claim period was being recouped for a prior FA fraud claim. If so, the FA entitlement should be used rather than the actual amount of the check. The food stamp claim period may cover months in which the

entitlement amount will be used and months when the actual amount will be used to calculate the food stamp overissuance.

A food assistance claim may not exist if the household incorrectly received FA due to categorical eligibility.

#### **IV. Child Support of the Family Assistant Household**

In calculating the allotment, food stamp policy excludes child support payments received by a FA recipient, which must be turned over to the State. However, if the FA client fails to report that he/she received child support, a claim for food stamp overissuance may exist.

If the amount of child support received and not reported would have made the household ineligible for FA, the total amount of the child support plus the amount of FA actually received by the client will be used to calculate the overissuance.

If the amount of child support received and not reported was not enough to make the household ineligible for FA, the child support would have been an income exclusion for food stamp purposes. Therefore, in calculating the overissuance, do not use the child support payment.

#### **V. Suspected Program Abuse with Zero Issuance**

Food stamp regulations allow for dealing with program abuses that do not necessarily result in a loss to the program. An applicant or recipient may provide false and/or misleading statements, conceal, misrepresent or withhold facts regarding the household's circumstances.

If the county department suspects an applicant has done so with the intent to obtain food assistance for which the household was not entitled to, then an IPV may be considered. However, an Administrative Disqualification Hearing must be held in order to determine intent. The appropriate disqualification shall be imposed on the client if intent is established.

#### **VI. Use of IEVS**

The following information obtained through IEVS is considered verified upon receipt and no additional verification is required:

- Unemployment Compensation Benefits from the Department of Industrial Relations.
- FA grants from the Clearinghouse Report.
- Social Security from the Social Security Administration (SSA).

- Supplemental Security Income (SSI) Benefits from SSA.

The following information obtained through IEVS is considered unverified upon receipt and shall be independently verified:

- Unearned income from the Internal Revenue Service.
- Wage information from SSA and wage and employment (New Hire) information from the Department of Industrial Relations.
- Questionable IEVS information, (i.e. information from IEVS which is considered verified upon receipt) but for which there is conflicting information.
- Information from the Prison Verification Systems.
- National Directory of New Hire (NDNH) Information (New Hire, Quarterly Wage, and Unemployment Insurance).



## **300 ADMINISTRATIVE DISQUALIFICATION HEARING (ADH)**

### 301 Administrative Responsibility

The State agency shall be responsible for investigating any case of alleged intentional Program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation .

**Definition/Criteria of Intentional Program Violation--**A claim shall be handled as an Intentional Program Violation (IPV) claim only if an Administrative Disqualification Hearing Official or a court of appropriate jurisdiction has determined that:

- A household member made a false or misleading statement, or misrepresented, concealed or withheld facts.
- Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program regulations or any statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.

**Notification to Applicant Households** – The household shall be informed in writing of the disqualification penalties for an Intentional Program Violation each time an application for program benefits is made. The information should be clear and prominent in boldface letters on the application form.

Administrative Disqualification Hearings shall be conducted in the following situations:

- The facts of the case do not warrant civil or criminal prosecution.
- The case was previously referred for prosecution but was declined by the appropriate legal authority.
- The case was previously referred for prosecution but no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency.

The agency shall not initiate an ADH against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances.

Administrative disqualification procedures or referral of a case for prosecution shall be made regardless of the current eligibility of the individual.

The administrative disqualification for Intentional Program Violations shall be based on the determination arrived at through an Administrative Disqualification Hearing, on determinations reached by courts of appropriate jurisdiction, the individual waiving his/her rights to the ADH or the signing of a Disqualification Consent Agreement for cases in which adjudication is deferred.

### 302 Waiver of Disqualification Hearings

The accused individual has the option of waiving his/her right to an ADH when the monetary value of the claim is less than \$1000.00 or when there was no action taken by the court on a case with a monetary value of \$1000.00 or more, that was referred for prosecution.

Prior to scheduling the ADH, a written notification (*Notification of Suspected Food Stamp Program Violation, DHR-OFAO-1599*) shall be provided to the household member suspected of the IPV informing him that he can waive his/her right to an ADH.

Prior to providing this notification to the household member, someone other than the worker(s) assigned to the accused individual's household/case shall review the evidence against the household member and render a decision that the evidence does or does not warrant scheduling a hearing.

In addition to the notice, include the following:

- The Waiver of Administrative Disqualification Hearing (DHR-FSD-1385)
- A Repayment Agreement (DHR-OFAO-1562) shall be included if the case is no longer active
- A copy of the Disqualification Hearing Procedures Pamphlet

The household shall be given **15 days** (*this includes mail time*) to respond. If the member returns the signed waiver, proceed with the disqualification. The disqualification penalty shall begin the first month which follows the date the household member receives written notification of the disqualification (No adverse action is required). The remaining household members shall be notified of the allotment they will receive during the period of disqualification or of any change in the status of their certification.

If the repayment agreement is returned, update CCS to begin collection. However, if a repayment agreement is not received, collection action will begin automatically once the case has been updated on CCS as an IPV and demand notices are released. If the case is active, recoupment will be automatically imposed.

No further administrative appeal procedure exists after an individual waives his/her right to an ADH and a disqualification penalty has been imposed. The disqualification period cannot be changed by a subsequent fair hearing decision. However, the household member is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to a stay by a court of appropriate jurisdiction or other injunctive remedy.

Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

### **303 Disqualification Hearing Procedures**

The agency may choose to use the same Hearing Official for Administrative Disqualification Hearings (ADH) and for fair hearings or may designate a Hearing Official to conduct only Administrative Disqualification Hearings.

At the hearing, the Hearing Official shall advise the household member or representative that they may refuse to answer questions during the hearing.

Within 90 days of the date the household member is notified in writing, using the Advance Notice of a Hearing (DHR-FSD-1048) that a hearing has been scheduled, the agency shall:

- Conduct the hearing
- Arrive at a decision
- Notify the household member of the county office's decision

The household member or representative is entitled to one postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

Note: Prior to providing this notification to the household member, someone other than the worker(s) assigned to the accused individual's household/case shall review the evidence against the household member and render a decision that the acquired evidence does warrant scheduling an ADH.

### **304 Advance Notice of Hearing**

Advance Notice of a Hearing (DHR-FSD-1048) shall be provided to the individual suspected of committing an IPV at least 30 days in advance of the date a disqualification hearing has been scheduled. The notice should be mailed to suspect's last known address. The notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

- A copy of the Disqualification Hearing Procedures pamphlet shall be attached to the DHR-FSD-1048.
- If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

### **305 Scheduling the Hearing**

Schedule the hearing and mail a notice of the hearing to the household member(s) suspected of IPV within six months from the date that the DHR-818 is prepared.

The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of the IPV.

The household member or his/her representative is entitled to a postponement of the scheduled hearing, providing the request is made at least 10 days in advance of the hearing date. The hearing shall not be postponed for more than a total of 30 days.

If the household member or its representative cannot be located or fails to appear at a hearing without good cause, the hearing shall be conducted without the household member being represented.

Even though the household member is not represented, the Hearing Official is required to carefully consider the evidence and determine if an IPV was committed based on clear and convincing evidence. If the household member is found to have committed an IPV but a Hearing Official later determines that the household member or representative had good cause for not appearing the previous decision shall no longer remain valid and a new hearing shall be conducted. The Hearing Official who originally ruled on the case may conduct the new hearing.

When good cause for failure to appear is based on a showing of non-receipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. 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. The Hearing Official must enter the good cause decision into the record.

Since the agency cannot disqualify a household member for IPV until the Hearing Official

finds the individual has committed an IPV, a pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the program.

### **306 The Hearing Record**

A hearing record shall be established when a hearing is scheduled. This record is independent of the case record and the claims record.

The hearing record begins with a copy of the scheduling letter. Any correspondence from and to the client regarding the hearing will be added to the record.

At the hearing, copies of information, documents and any other types of evidence presented by the agency to substantiate the claim will be placed in the hearing record. Added to this will be a copy of the transcript or tape of the hearing. A copy of the overpayment report will be put in the hearing record if information from the overpayment report is presented at the hearing.

- Any material not presented at the hearing shall not be placed in the hearing record.
- The hearing record shall be maintained separate from all other records.

### **307 Conducting the Hearing**

The hearing shall be conducted by an impartial official who:

- does not have any personal stake or involvement in the case;
- was not directly involved in the initial determination of the action which is being contested;
- was not the immediate supervisor of the eligibility worker/claims worker who took the action.

The hearing shall be attended by:

- A representative of the agency
- Any witnesses the county has called
- The household member and/or his/her representative(s)
- Witnesses called by the household member

The individual suspected of the IPV may choose to have friends, relatives and/or other household members attend the hearing. However, the Hearing Official has the authority to limit the number of persons in attendance at the hearing if space limitations exist.

All hearings will be recorded verbatim by the use of a cassette or tape recorder. The tape then becomes a part of the hearing record. The hearing tape may be transcribed.

Prior to beginning the hearing, the Hearing Official will identify him/herself to those present and determine the name of those persons present and their role at the hearing.

The Hearing Official will also explain that:

- This is an informal hearing not a court of law.
- The hearing will be recorded verbatim, it is necessary that only one person speaks at a time and that the person speaking speak clearly.
- Only the testimony and/or evidence presented during the hearing will be considered in making a decision.

The Hearing Official will open (begin recording) the hearing by identifying the following:

- Type of hearing (Administrative Disqualification)
  - Date, time and location of the hearing
  - Name(s) of household member(s) suspected of IPV and the case number; and a statement of the reason the person is suspected of an IPV
  - The names of those present, their title, purpose, and also indicate if the household member(s) is or is not being represented.
- Ascertain if the household member(s) suspected of IPV was properly notified of the hearing.
  - The Hearing Official should advise the household member(s) that they are not required to offer any testimony in their defense and that they may refuse to answer questions during the hearing. However, they may ask questions, offer evidence, or speak to their defense if they desire.
  - Ascertain from the agency representative if the case file/record has been made available for review by the household member or his/her representative.
  - The agency representative will then be asked to present the county department's case, submit any evidence and present any witnesses. Information contained on the overpayment report is not considered in the hearing decision unless the agency representative specifically presents this information at the hearing.

- Following the agency representative's testimony, the household member or his/her representative is afforded the opportunity to make statements on their behalf, ask questions, submit evidence, or present witnesses.
- When all testimony has been given, the Hearing Official will ascertain if anyone present has additional statements.
- At this time the agency representative may wish to question the household member or his/her representative or clarify statements made by them. The agency representative may also question the household witnesses, if any are present.
- The household and the agency representative have the right to offer a rebuttal to the testimony presented.
- When there are no additional statements to be made, the Hearing Official shall advise the household member and/or his/her representative that a written notice of the decision will be mailed to the household.
- The hearing is then closed. The hearing record containing the evidence submitted and the recorded tape is then given to the Hearing Authority for the final decision.

If the individual failed to appear and was not represented, he/she has 10 days from the date of the hearing to show good cause for failure to appear. If good cause is established, a new hearing shall be scheduled.

### **308 The Hearing Decision**

The hearing decision shall be based on clear and convincing evidence that demonstrates that the household member(s) committed, or intended to commit an IPV.

The hearing decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS regulation, and respond to reasonable arguments made by the household member or representative.

The decision of the Hearing Authority is rendered in final form; there are no tentative hearing decisions.

If the Hearing Official finds that the household member did not commit an Intentional Program Violation, the Hearing Authority shall provide a written notice to the accused individual (DHR-FSD-501), which informs the household member of the decision along with a copy of the decision summary.

If the Hearing Authority rules that the individual has committed an IPV, the appropriate disqualification must be imposed. Prior to imposing the disqualification, the Hearing Authority will provide a written notice to the accused individual (DHR-FSD-501) along

with a copy of the decision, which informs the individual of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date the disqualification will take affect. The notice will also inform the remaining household members of any resulting changes in the household's allotment or eligibility. Copies of the notice shall be placed in the hearing and claims record.

The appropriate disqualification period shall be imposed the first month following the date the household member receives written notification of the disqualification (DHR-FSD-501).

The appropriate screens on CCS shall be updated to show the action taken and the current status of the claim. Reference should be made to the Comprehensive Claims System User Guide for instructions.

No further administrative appeal procedure exists after an adverse State level Administrative Disqualification Hearing. The determination of Intentional Program Violation made by a Disqualification Hearing Official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to a stay by the court.

- **Reversed Disqualification**—In cases where a court of appropriate jurisdiction reverses the determination of Intentional Program Violation, the state agency shall reinstate the individual to the food stamp program if the household is otherwise eligible. The state agency shall restore benefits that were lost as a result of the Administrative Disqualification Hearing.

### **309 Administrative Disqualification Hearing (ADH) Timeline**

- The hearing must be scheduled by mailing the Advance Notice of Disqualification Hearing (DHR-FSD-1048) to the client within six months (180 days) from the date that a claim no greater than \$999 is prepared.
- On claims over \$1000, the hearing shall be scheduled within six months (180 days) from the date the notice is received from the Food Assistance Claims Unit that prosecution is declined. The ADH shall then be scheduled in accordance with the procedures set out in this section.
- The client must receive notification of the ADH at least 30-days prior to the date of the hearing. Weekends and holidays must be considered in determining the schedule date and the mailing date.
- The hearing can be postponed once for up to 30-days. The number of days the hearing is postponed will be added to the time the decision is due.



- The client must receive the decision of the Hearing Authority within 90 days of the date that the household member is notified in writing that the hearing has been scheduled.
- If the client fails to appear for the hearing, he/she has 10 days from the date of the hearing to establish good cause for this failure. If good cause is established, a new hearing will be scheduled and the Food Assistance Division will have a new 60-day period.

## 400 LEGAL PROCEEDINGS

### 401 Cases Referred for Criminal Action

The Code of Alabama, Section 13-A-8-2 (Theft of Property), 13-A-2-23 (Complicity), 13-A-9-6 (possession of a forged Instrument) and 13-A-9-18 (Criminal Impersonation) are the primary provisions under which someone suspected of fraud may be prosecuted.

The Food Assistance Division, through the Office of Program Integrity (Claims Unit) has the responsibility for reviewing, initiating and coordinating legal or related actions involving Food Assistance and Family Assistance SIPV claims. All appropriate SIPV claims with the monetary value of \$1000.00 or more are referred to the Attorney General's Office for investigation and possible prosecution.

When referring cases for possible criminal prosecution, the original and two copies of the completed claim document (DHR-OFAO-818 hard copy) printed from the Comprehensive Claims System (CCS) should be sent for processing. Combination claims, where the client has received an overissuance for food stamps and Family Assistance benefits totaling \$1000.00 or more, shall also be sent to the Claims Unit for possible legal action.

A Notice of Suspected Intentional Program Violation (DHR-FSD-2137) shall be sent to the client giving him/her the opportunity to discuss the claim prior to referring the case to the Food Assistance Division for prosecution. The client shall be allowed 10 days to respond before a referral is made.

**Once a case has been referred for possible prosecution, the agency shall not initiate administrative disqualification procedures, negotiate or accept payments, or take any other actions until a response is received from the Food Assistance Division Claims Unit.**

- Contacts to negotiate or make repayment on a claim referred for prosecution must be reported to the Food Assistance Division Claims Unit. Negotiation or acceptance of any payment(s) will jeopardize any court action that is scheduled or that is in progress.

The Attorney General's Office will issue a Suspected Fraud Status Report (AG-1) to the Food Assistance Division Claims Unit when the case has been processed through the courts or when prosecution is declined.

The Food Assistance Division will forward it to the Regional Claims Center or county office with instructions for the appropriate action. The regional center or county will then update CCS to reflect the results of the Attorney General's action (Reference the CCS User Guide).

If the court finds that the household member committed an Intentional Program Violation, the agency shall send the household member a written Notice-Action Taken on Your Disqualification Proceedings--DHR-FSD-501.

The disqualification shall be imposed within 45 days of the date the disqualification was ordered unless the court specifies the imposition date. The DHR-FSD-501 shall be provided prior to disqualification, whenever possible.

The notice shall inform the household member of the disqualification and the date the disqualification will take effect. It also provides written notice to the remaining household members of the allotment they will receive during the period of the disqualification, or informs them that they may reapply because the certification period has expired.

Once a disqualification penalty has been imposed against a household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance that resulted from the disqualified member's Intentional Program Violation regardless of its eligibility or ineligibility for program benefits.

If the case is declined for prosecution, it shall either be considered for the ADH process or other appropriate action when it has been determined that there is not sufficient evidence to support criminal prosecution. If the ADH process is indicated, the regional center/county shall proceed to initiate the ADH process.

## **402 Disqualification Consent Agreement**

If the household member suspected of an Intentional Program Violation signs the Disqualification Consent Agreement (DCA), the household member shall be disqualified in accordance with the disqualification periods specified in *Section 501*, unless it is contrary to the court order.

The period of disqualification shall begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the state agency shall disqualify the household member in accordance with the court order.

If the household member suspected of Intentional Program Violation signs the disqualification consent agreement, the state agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible.

The notice (*DHR-FSD-501*) shall be used to inform the household member of his/her disqualification period and the date the disqualification will take effect. The remaining household members, if any, shall be notified of the allotment they will receive during the

period of disqualification, or that they may reapply because the certification period has expired.

The disqualification period shall begin within 45 days of the date the household member signed the DCA or the date of the court order even though disqualification may not have been addressed.

## 500 IPV DISQUALIFICATIONS

### 501 Penalties

Individuals found to have committed an IPV either through an ADH, by a court of appropriate jurisdiction, or by a signed waiver or consent agreement, shall be ineligible to participate in the food stamp program:

- For a period of twelve months for the first IPV.
- For a period of twenty-four months for the second IPV.
- Permanently for the third occasion of any IPV.
- Individuals found by a federal, state or local court to have used or received benefits in a transaction involving the sale of a controlled substance shall be ineligible to participate in the program for a period of twenty-four months upon the first occasion of such violation and permanently upon the second occasion of such violation.
- Individuals found by a federal, state or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of such violation.
- Individuals convicted by a federal, state or local court having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the food stamp program upon the first occasion of such violation.
- Individuals found to have made a fraudulent statement or representation with respect to their identify and/or place of residence in order to receive multiple benefits simultaneously shall be ineligible to participate in the Food Stamp Program for a period of 10 years.

There are situations where a client is suspected of multiple Intentional Program Violations over a period of time. Multiple violations may be the subject of a single hearing. The client may be found guilty of each violation separately, but only one disqualification penalty shall be imposed.

- When there are two or more separate program violations causing overissuances at different times, but discovered at the same time, one claim shall be established and one penalty imposed when fraud is confirmed.
- When there have been two program violations occurring at essentially the same time, but the second violation is not discovered until the client is already serving a disqualification period, a second disqualification shall not be imposed. This is due to the fact that a disqualification for that period of time is already being served.
- The second violation must have occurred after the client was interviewed about the first violation and

advised of penalties for subsequent violations before a second disqualification can be imposed. However, there must be a hearing to determine what classification should be given to this second violation.

- Should a second program violation occur after the claim for the first program violation has been established, a new claim shall be established. The next level of disqualification will be imposed if the household is found guilty of IPV.
- If a second disqualification, for whatever reason, is imposed while a client is currently serving a disqualification, the second disqualification shall run concurrently with the first disqualification.

If a court fails to impose a disqualification or a disqualification period for any IPV case, the agency shall impose the appropriate disqualification penalty specified in this section.

One or more IPV's that occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

Only the individual found to have committed the IPV, or who signed the waiver or the consent agreement shall be disqualified and not the entire household.

Although the individual is disqualified, the household, as defined in Section 100, is responsible for making restitution for the amount of any overpayment. All IPV claims must be established and collected in accordance with established procedures.

The Disqualified Recipient Subsystem (DRS), found on the Comprehensive Claims System's fraud menu, allows states to share disqualification records. This system should be accessed to determine if the individual to be disqualified has any prior Intentional Program Violations in order to determine the appropriate period of disqualification for the current offense.

Once an individual has been found guilty of an IPV, the appropriate disqualification penalty should be registered on the Comprehensive Claims System Disqualification Add screen for tracking of the disqualification imposed and to allow adding the disqualification to the DRS.

**NOTE:** The disqualification of an individual for Intentional Program Violation in one political jurisdiction shall be valid in another.

## **502 Failure to Apply Disqualification**

If the county department fails to apply an IPV disqualification at the appropriate time, the following action shall be taken:

- Determine if any of the disqualification period remains.
- Disqualify the individual(s) for only the remaining period of the time.
- Prepare an AE claim for the month(s) the individual should have been disqualified but was not.