

DEPARTMENT OF HUMAN RESOURCES FAMILY INVESTMENT ADMINISTRATION	FOOD SUPPLEMENT PROGRAM MANUAL	
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480.1 Purpose

This section describes the policy and procedure applied to those Food Supplement Program (FSP) benefit applicants or recipients who commit an intentional program violation (IPV).

480.2 Definition of Intentional Program Violation

An intentional program violation is when a FSP benefit applicant or recipient intentionally:

- A. Makes a false or misleading statement;
- B. Misrepresents, conceals or withholds facts; or
- C. Violates the FSP Act or program regulations relating to the use, presentation, transfer, acquisition, receipt, or possession of FSP benefits.

480.3 Penalties

- A. Individuals disqualified for intentional program violations are ineligible to participate in the FSP for the following periods of time:
 - 1. One year for the first violation.
 - 2. Two years for the:
 - (a) Second violation, or
 - (b) First finding by a court of trading FSP benefits for illegal drugs.
 - 3. Permanently for the:
 - (a) Third violation,
 - (b) Second finding by a court of trading FSP benefits for illegal drugs, or
 - (c) First finding by a court of trading FSP benefits for firearms, ammunition, or explosives.
 - 4. An individual is permanently disqualified if convicted by a court of trafficking FSP benefits of \$500 or more.
 - 5. An individual is ineligible for FSP benefits for ten years if found by the courts or an Administrative Disqualification Hearing (ADH) to have made a fraudulent statement or representation about residence or identity in order to receive multiple FSP benefits at the same time.

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480.3 Penalties (continued)

- B. Impose the penalties described in 480.3 A above if the violation occurred after the individual signed a FSP application that described the penalties.
- C. Treat recurring acts of the same intentional program violation as one violation.
- D. Inform the household in writing of the disqualification penalties for committing an IPV each time it applies for benefits.

480.31 Additional Penalties – Non-IPV

- A. An individual is permanently ineligible if convicted after August 22, 1996 of any offense that is classified as a felony and which has an element of possession, use, or distribution of a controlled substance except as described in Section 100.7I.

NOTE: This means that an individual may be disqualified from participation for a conviction of a drug-related felony only if the crime was committed after August 22, 1996.

- B. Fleeing felons and parole and probation violators are ineligible for FSP benefit.

NOTE: Count the entire amount of the income and resources of a disqualified individual as available to other eligible household members.

480.4 Determination of the Commission of an IPV

Apply disqualification penalties only after there is a determination that the individual committed an IPV. The determination of an IPV is made as follows:

- A. The individual is found guilty of violating a Federal or state law concerning the FSP in a court of appropriate jurisdiction;
- B. The individual signs a *Disqualification Consent Agreement* (DHR/FIA FS-72);
- C. The individual is found to have committed an IPV in an Administrative Disqualification Hearing; or
- D. The individual signs a *Waiver of the Right to an Administrative Disqualification Hearing* (DHR/FIA FSP –112 or OIG - 7).

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480.5 The Impact of Simplified Reporting on an IPV

- A. During the certification period households in FSP benefit simplified reporting have to report when their household income is more than 130 percent of the federal poverty rate (FSP benefit gross income limit). They must report all changes and new information at every FSP benefit recertification. Case managers must take action on any reported change.
- B. 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 FSP benefits 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 FSP benefits. There may be an overpayment or potential IPV for the other FSP benefit program.

Example: Mr. and Mrs. A and their children receive FSP benefits 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 FSP benefit. Mrs. A got a part time job after recertification. The household's income was still below the FSP benefit 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 FSP benefits 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 FSP benefits. There may be for TCA because this was a reportable change for TCA.

480.6 Local Department Responsibility

- A. Each director of a local department will designate an individual in an administrative or supervisory position to review all overissuances where there are indications that an IPV has been committed. The director's designee will determine the following:
 1. The presence of clear indications that the violation was committed **with the intent** to obtain FSP benefits to which the households was not entitled;
 2. The presence of sufficient documentation to substantiate that an IPV was committed; and
 3. The potential acceptance by the local State's Attorney's Office of the case for prosecution.
- B. If the local department does not initiate administrative disqualification procedures or refer a case for prosecution of a suspected IPV, the local department must take action to collect the overissuance by establishing an inadvertent household error claim.

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480.7 Court Referrals and Decisions

The local department will:

- A. Confer with the State's Attorney to determine which cases are acceptable for prosecution.
- B. Disqualify a household member in accordance with a court order if the court imposes a disqualification period and specifies the date it begins.
- C. Impose the appropriate penalty and disqualify the individual within forty-five days of the court decision date if the court does not specify or address the disqualification period.

480.8 Administrative Hearings versus Court Referrals

- A. When the LDSS and/or OIG decides there is enough documentary evidence that an individual has committed an IPV, the LDSS:
 1. 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.
 2. Must decide which procedure, administrative or judicial, it believes appropriate for each case and pursue that procedure to its conclusion.
 3. Cannot offer an ADH waiver if it intends to refer the case for prosecution.
 4. Cannot threaten prosecution if the customer does not sign the waiver.

Example: 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.

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

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480.8 Administrative Hearings versus Court Referrals (continued)

Example: Ms. B and her two children have received FSP benefits 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.

- C. 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:
 1. Their due process rights,
 2. The hearing procedures, and
 3. The consequences they face if found guilty of an IPV at a hearing.

480.9 Disqualification Consent Agreement

- A. The local department, in conjunction with the State's Attorney, may allow the accused individual to sign a *Disqualification Consent Agreement (DHR/FIA FSP-72)*, which averts any formal fraud adjudication.
- B. Do not disqualify an individual (unless a *Disqualification Consent Agreement* is signed by the individual) if the court renders a decision other than guilty (e.g. Stet, nol-pros, Probation before Judgement).

480.10 Advance Notice for a Disqualification Consent Agreement

The local department must provide the accused household member with advance written notification of the consequences of consenting to a disqualification. The notice must include the following information:

- A. A statement for the accused to sign signifying that the individual understands the consequences of consenting to disqualification, along with an explanation that the head of household must also sign the agreement if the accused is not the head of household.
- B. A statement that a consent to disqualification will result in disqualification and a reduction in FSP benefits during the disqualification, even though the individual has not been found guilty of a civil or criminal misrepresentation fraud.

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480.10 Advance Notice for a Disqualification Consent Agreement (continued)

- C. A listing of all the disqualification penalties and the one that will be imposed as a result of signing the disqualification agreement.
- D. A statement that unless the accused repays the claim by complying with an agreement with the prosecutor or the court the individual prosecuted for the IPV and any remaining adult household members are responsible for repayment of the claim.

480.11 Administrative Disqualification Hearings

The local department:

- A. May refer a case for an administrative disqualification hearing if the local State's Attorney decides that it does not warrant prosecution or does not meet the agreed upon criteria for a Disqualification Consent Agreement.
- B. May refer an individual for prosecution or initiate disqualification procedures regardless of the current eligibility of the individual.
- C. May not initiate an administrative disqualification hearing against an individual whose case is referred to the State's Attorney for prosecution, or subsequent to any action taken against the individual by a court of appropriate jurisdiction if the factual issues of the case arise out of the same circumstance.

480.12 Waiver of an Administrative Disqualification Hearing

- A. When the local department decides to refer an individual for an administrative disqualification hearing, the case manager will:
 - 1. Notify an individual (*Advance Notice of Administrative Hearing, DHR/FIA FSP-111*) of the intent to refer an individual for an administrative disqualification hearing.
 - 2. Include with the *DHR/FIA FSP-111, The Waiver of the Right to an Administrative Disqualification Hearing, DHR/FIA FSP-112 or OIG - 7*, for the individual to sign if he/she wishes to waive the right to a hearing. The notice and the waiver request must include the following information:
 - (a) A summary of the charge against the individual and the evidence to support it;

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480.12 Waiver of an Administrative Disqualification Hearing (continued)

- (b) A statement that the individual may waive the right to an administrative disqualification hearing;
 - (c) The date the signed waiver must be received by the local department to avoid referral for a hearing. (The waiver must be received no later than twenty days after the notice is sent to the household.);
 - (d) Notification of the requirement that the head of household must also sign the waiver if the individual accused is not the head of household;
 - (e) A statement that the individual has the right to remain silent concerning the charge and that anything said or signed by the individual concerning the charge may be used in any future administrative or judicial proceeding;
 - (f) A statement that signing the waiver will result in disqualification and a reduction or termination of benefits for the household;
 - (g) An opportunity to state whether the individual admits to the facts as presented by the local department;
 - (h) A statement that the disqualified individual and any remaining adult household members are responsible for repayment of any claim resulting from over-issued benefits;
 - (i) The name and telephone number of the person to contact for additional information;
 - (j) A summary of the individual's rights at the disqualification hearing; and
 - (k) A statement that the hearing does not preclude the State or federal government from prosecuting the person for the intentional program violation in a civil or criminal court.
3. Mail the Advance Notice and Waiver form to the individual together or present them to the individual in person. A proof of receipt is required.

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480.12 Waiver of an Administrative Disqualification Hearing (continued)

B. Use of ADH Waiver

1. 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.
2. The LDSS and/or OIG, must:
 - (a) Decide if there is enough evidence to hold an ADH.
 - (b) Intend to hold an ADH prior to offering the individual an opportunity to sign an ADH waiver.
 - (c) Never offer an ADH waiver when there is a suspicion of guilt but the evidence is not convincing.
3. 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.
4. **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.
5. 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.

- C. The signing of the *Waiver of the Right to an Administrative Disqualification Hearing, DHR/FIA FSP-112 or OIG - 7*, terminates the administrative process to establish an intentional program violation.

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480.12 Waiver of an Administrative Disqualification Hearing (continued)

- D. Any subsequent administrative hearing decision cannot change the disqualification penalty.
- E. The individual is entitled to seek judicial review of the disqualification.
- F. The individual may request an administrative hearing if there is disagreement with the amount of the over issuance.

480.13 Referral for a Disqualification Hearing

- A. If a signed waiver for the hearing is not received within twenty days of the notification to the individual of the local department's intent to pursue a hearing, refer the individual to the Office of Administrative Hearings (OAH), using the *Administrative Disqualification Hearing Referral Form, DHR/FIA FSP-113*.
- B. Make the referral within five working days after the twenty-day deadline.
- C. Include the following information in the referral:
 - 1. Identifying case information;
 - 2. A summary of the documentation supporting the IPV; and
 - 3. Copies of the documentation.
- D. Indicate if there is documentation that the individual referred for the disqualification hearing has been disqualified previously for an IPV or been convicted of FSP benefit fraud by a court.

480.14 Scheduling of Hearings

- A. OAH will send written notice to the individual and the local department at least thirty days in advance of the date the hearing is scheduled.
- B. OAH may combine a FSP benefit administrative hearing and a disqualification hearing into a single hearing if the factual issues arise out of the same circumstances and the household receives prior notice that the hearings are combined.
- C. If the hearings are combined to settle a claim and determine an IPV, the household loses its right to a subsequent administrative hearing on the amount of the claim.

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480.14 Scheduling of Hearings (continued)

- D. The individual is entitled to one postponement of the scheduled hearing, provided it makes the request before the hearing. The hearing may not be postponed more than thirty days.
- E. OAH will conduct the hearing, reach a decision and notify the household and the local department of the outcome within ninety days of the date the household is notified in writing of the scheduled hearing.

480.15 Pre-Hearing Procedures

- A. A pending disqualification hearing does not affect the individual's or the household's right to be certified and participate in the program.

NOTE: The local department will terminate or reduce the household's FSP benefits if it is determined that the household fails to request an administrative hearing and continuation of FSP benefits after the notice of the termination or reduction.

- B. The local department will make available to the individual or representative all documents and records used at the hearing.
- C. Prior to the hearing, the local department will make available to the individual or representative the contents of the case file, including the application forms and documents used to establish the household's eligibility and allotment.

NOTE: The local department may not release information that is confidential under State law, such as the names of individuals who have disclosed information about the household without its knowledge, or the nature or status of pending criminal prosecutions.

- D. If requested by the individual or representative, provide, free of charge, a copy of the portions of the case file relevant to the hearing.

480.16 Hearings Procedures

OAH may use the same administrative law judge (ALJ) for the disqualification hearing and administrative hearing. The ALJ will:

- A. Administer oaths or affirmations;
- B. Ensure that all relevant issues are considered;

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480.16 Hearings Procedures (continued)

- C. Request, receive and make part of the record all evidence necessary to decide all the issues raised;
- D. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;
- E. Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household; and
- F. Render a decision in the name of the Family Investment Administration.

480.17 Hearing the Case

- A. At the hearing, the individual or representative will have the opportunity to:
 - 1. Present the case;
 - 2. Examine witnesses;
 - 3. Advance arguments without undue interference;
 - 4. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine hostile witnesses; and
 - 5. Submit evidence to establish facts and circumstances in the case.
- B. The hearings examiner will advise the individual or representative of the right to remain silent concerning the charges.
- C. Confidential information that is protected from release and other documents or records that the household does not have the opportunity to contest or challenge cannot be introduced into the hearing record and cannot be used by the hearings examiner to make a decision.
- D. The local department has the burden of proving an intentional program violation by clear and convincing evidence.

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480.18 Failure to Appear (“No-Show”) Hearings

- A. OAH will conduct the hearing without the individual being present or represented if the individual or representative fails to appear at the hearing without good cause.

NOTE: Even though the individual is not present or is not represented, the hearing examiner will consider the evidence and determine if an IPV was committed.

- B. OAH will close the hearing record if the individual or representative does not notify OAH within ten days after a hearing that he or she had good cause for not attending the hearing.

480.19 Hearings Decision

- A. The hearing decision will be issued within ninety days from the date when the advance notice of the hearing was sent unless the ninety-day period was extended.
- B. Hearing decisions are based on the hearing record.
- C. A hearing decision will:
1. Summarize the facts of the case;
 2. Specify the reasons for the decision;
 3. Identify the supporting evidence and the pertinent Federal or State regulations; and
 4. Respond to reasoned arguments made by the household member or representative.
- D. The decision is part of the record.
- E. A hearing decision is binding on the local department.
- F. The individual and the local department are notified in writing of the decision.
- G. The household is notified of its right to a judicial review of the decision if it upholds the local department’s action.
- H. If the hearings official finds that the household member committed IPV, the local department must provide written notice to the disqualified member prior to the disqualification. Send Letter 0115 in CARES to meet this notice requirement.

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480.19 Hearings Decision (continued)

- I. The local department will also provide a written notice to the remaining household members, if any, of either the allotment they will receive or that they must reapply because the certification period has expired. This is done through regular CARES adverse action and recertification notices.

480.20 Application of Disqualification Penalties

- A. The local department will disqualify only the individual found to have committed the IPV and not the entire household.
- B. The disqualification period begins no later than the following:
 1. Court Referrals
 - The date ordered by the court; or
 - Within forty-five days of the court decision if the court did not speak to the disqualification or its effective date.
 2. Disqualification Consent Agreement (DHR/FIA FS-72)
 - Within forty-five days of the date the individual signed the Disqualification Consent Agreement
 3. Administrative Disqualification Hearing
 - The beginning of the month that follows the date the household receives written notification of the hearing decision
 4. Waiver of the Right to an Administrative Disqualification Hearing
 - The beginning of the month that follows the date the household member receives written notification, *Notice to Disqualified Individual*, CARES letter 0115 (DHR/FIA FS 93) of the disqualification.
- C. If the individual is ineligible for FSP benefits when the penalty is imposed, begin the penalty within the above time frames and continue it until the time elapses.
- D. If a court fails to impose a disqualification period for any intentional program violation, the local department will impose the disqualification periods in section 480.3 unless contrary to the court order.

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480.21 Notification of Disqualification

- A. The local department will provide written notification to the disqualified individual using the *Notice to Disqualified Individual*, CARES letter 0115 (DHR/FIA FS 93) prior to disqualification.
- B. In cases involving an Administrative Disqualification Hearing or the individual's signing of the waiver of rights to such a hearing, provide the notification of disqualification to the individual prior to the disqualification.

Note: Even though the individual is disqualified, the household is responsible for repaying the amount of any overpayment.

- C. Use the CARES letter 0026 (DHR/FIA 66-A) to inform the household of the following:
 - 1. Claim amount owed;
 - 2. The reason for the claim;
 - 3. The period of time the claim covers;
 - 4. Any offsetting done;
 - 5. Method of repayment;
 - 6. The household's right to a administrative hearing if it disagrees with the amount of the claim unless the household had a administrative hearing on the claim as a result of the consolidation of the administrative disqualification hearing with the administrative hearing;
 - 7. The household's right to request re-negotiation of any agreed upon repayment schedule should the household's circumstances change; and
 - 8. Space for the household to indicate the method of re-payment and a signature block.

480.22 Reporting on Disqualified Individuals - Disqualified Recipient Report

- A. The e-DRS is a nationwide data base to which all states have access checking IPV penalties in other states.
- B. The local department must enter all disqualified recipients on the Electronic Disqualified Recipient System (e-DRS) within 30 days after the finding of an IPV or signing of the waiver of an administrative disqualification hearing.