Administrative Disqualification Hearings (ADHs)

Intentional Program Violation (IPVs) for SNAP

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NAHO 10/21

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ADHs are unique:

- The Agency, typically Office of Inspector General (OIG), requests the IPV and ADH
- The Respondent may not "withdraw" from the hearing but can "waive" right to ADH
- OIG may withdraw the request for the ADH
- May proceed without the Respondent present at the hearing
- An ADH *must be conducted prior* to a Recovery/Recoupment hearing unless they are heard together at the same time if the Agency is alleging fraud
- FNS may dial into your ADH to observe and submit findings to hearings department
- What other ways are ADHs unique?

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What is required to ensure due process is met?

- Advance Written Notification from the State Agency
- Advance Notice of the Hearing
- Specific Requirements of Notice of Hearing
- Scheduling of the Hearing
- Respondent's Rights During Hearing

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Advance Notification

The State agency provides written notification of the following:

- The right to waive his/her right to an ADH and the date the waiver must be submitted.
- The waiver will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts.
- The evidence against the household member is reviewed by someone other than the eligibility worker and an ADH is deemed appropriate.
- The right to remain silent concerning the charge(s),

- **Language on Waiver:**
  - 1) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and
  - (2) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;
  - The telephone number and, if possible, the name of the person to contact for additional information; and
  - The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim

If the waiver is signed before the ADH is scheduled, no notice of ADH is required

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Advance Notice of the Hearing

- provide at least 30 days in advance of the date a disqualification hearing.
- sent either first class mail or certified mail-return receipt requested
- if the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

*Best Practice – Schedule out 40 days to allow time for delivery!

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The hearing notice shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(E) A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in disqualification periods as determined by paragraph (b) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the individual's rights as contained in § 273.15(n);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and

(I) 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.

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The Respondent's Rights:

- You have the right to present your case or have it presented by a legal counsel or another person.
- You have the right to present witnesses.
- You have the right to present arguments without undue interference.
- You have the right to question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses, and submit evidence to establish all pertinent facts and circumstances in the case.
- You have the right to refuse any and all questions you do not wish to answer, whether they are asked by me or the Agency Representative
- You have the right to review all evidence submitted by the Agency before and during the hearing.

BEST PRACTICE
Have a Script prepared.

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Scheduling of the Hearing

- The hearing is scheduled at a time accessible to the Respondent

If the Respondent fails to appear without good cause, the hearing moves forward. The Hearings Officer still weighs the Agency's testimony and evidence and determines if there is CLEAR and CONVINCING evidence to support an IPV.

Notice of Administrative Disqualification Hearing

Day: Tuesday **Date:** 08/24/2021 **Time:** 11:00 a.m. CST

Toll Free Number: 1-888-[redacted] **Participant Code:**[redacted]

To participate in the hearing, **all parties must call the toll-free number above, on the scheduled date and time, and enter the participant code when requested**.

The Office of Inspector General (OIG) suspects you have committed an intentional program violation. OIG has requested an Administrative Disqualification Hearing to disqualify you from the Supplemental Nutrition Assistance Program (SNAP) or the Temporary Assistance for Needy Families (TANF) program.

If the hearings officer finds that you committed this violation, you will be disqualified for the following periods:

TANF: **SNAP:** 1 Year

Summary of Evidence: The following is OIG's allegation.

EXAMPLE ONLY

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Criteria for Determining an IPV

- The hearing authority shall base the determination of intentional Program violation on *clear and convincing evidence* which demonstrates that the household member(s) *committed, and intended to commit,* intentional Program violation as defined in paragraph (c) of this section.

- (c) ***Definition of Intentional Program violation.*** Intentional Program violations shall consist of having intentionally:
- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.

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Burden of Proof

- The standard for *clear and convincing evidence* is applicable in an ADH. If preponderance of the evidence is equal to or greater than 51%, then, *clear and convincing evidence* is greater than 51%, but less than the standard required in criminal proceedings of beyond a reasonable doubt.

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ADH Decisions

- Specify the reasons for the decision
- Identify:
  - *the supporting evidence*
  - *the pertinent FNS regulation (CFR)*
  - *arguments*
- A decision will be issued for both "commit" and "did not commit" findings
  - *A decision finding the Respondent did commit must include:*
    - the date the disqualification will take effect.
    - provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired.
    - A written demand letter for restitution

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IPV SANCTIONS

IPV imposed via ADH or Federal/State/Local Court or Signed Waiver	
1st IPV	12 Months
2nd IPV	24 Months
3rd IPV	Permanent
IPV due to fraudulent statement regarding identity or place of residence to receive multiple SNAP benefits simultaneously	**10 years**

*Household may still be eligible for SNAP

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Evidence Presented in ADHs

What types of evidence are you seeing presented in your hearings?

- School records, BVS, Marriage Records, DMV, Utility/Cell Phone Bills, property records…
- FNS Retailer investigation- look at transactions over certain amount, even dollar amounts, or using all SNAP benefits on date issued
- Affidavits
- Fraud Referrals
- AND…

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The Numbers & Public Perception of Fraud

- SNAP Quality Control (QC) has determined that over 98% of SNAP recipients are eligible.
- In 2012, FNS requested cooperation from Facebook, Twitter, Craigslist and Ebay

Public opinion–SNAP Fraud is very common…

USDA-FNS FY2016 State Activity Report, of states' established claims for overpayment, approximately 62% of overpayment claim dollars were for recipient errors, about 28% were for agency errors, and **about 11% were due to recipient fraud.**

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Evidence?

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Evidence?

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Evidence?

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Evidence?

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FNS- Trafficking Report 2015-2017

Small stores—largely composed of smaller and medium sized groceries, and convenience stores-- accounted for about 15 percent of all redemptions but were estimated to account for just over 99 percent of all trafficking redemptions.

USDA Food and Nutrition Service
U.S. DEPARTMENT OF AGRICULTURE

- Trafficking diverted an estimated $1.0 billion annually from SNAP benefits.
- Overall, approximately 1.6 percent of total SNAP benefits were trafficked.
- Approximately 12.7 percent of all authorized SNAP stores engaged in trafficking.
- Fiscal year 2018 issued slightly more than $60 billion in benefits to almost 40.3 million low-income participants

"Extent of SNAP Trafficking: 2015–2017" September 2021

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Trafficking

- Things to consider:
- Size of store
- Distance from home and other full-size grocery stores
- Average dollar transaction from surrounding stores
- Specialty/ethnic foods
- Food in bulk
- Meat butcher
- Other considerations?

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Trafficking

- In FY 2020, FNS implemented 2,192 administrative sanction actions against SNAP retailers.

These actions stem from findings of program violations and include 1,144 retailers being permanently disqualified for trafficking.

https://www.fns.usda.gov/news-item/mwro-092921

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Fraud Cases in the News

News Item

USDA Takes Action Against Detroit SNAP Retailers for Rules Violations

USDA's Food and Nutrition Service announced it has taken action against 40 Detroit retailers suspected of violating USDA rules for accepting Supplemental Nutrition Assistance Program benefits.

09/28/2021

Lubbock Restaurant Owner Accused Of Unlawful Use Of Food Stamp Benefits

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References:

- https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-C/part-273/subpart-F/section-273.16
- https://fns-prod.azureedge.net/sites/default/files/resource-files/Trafficking2015-2017.pdf
- fns.usda.gov
- Congressional Research Service, Errors and Fraud in the Supplemental Nutrition Assistance Program (SNAP), Updated September 28, 2018

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Questions/Comments/Vent Session and

Thank You

Contact me!

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