

207 – FRAUD AND INTENTIONAL PROGRAM VIOLATIONS

October 1, 2024

I. DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION

An Administrative Disqualification Hearing (ADH) or referral for prosecution will be initiated by the county department of social services for cases in which the county department has sufficient documentary evidence to substantiate that an individual has committed one or more acts of Intentional Program Violation (IPV). An Intentional Program Violation is defined as: Any action by a Work First participant to knowingly, willfully, and with deceitful intent, make a verbal or written false statement to obtain or attempt to obtain benefits for which they are not eligible, or hide or withhold information to obtain benefits for which they are not eligible.

- A. The county will conduct ADH in cases in which the county department believes the facts of the individual case do not warrant criminal prosecution; or cases previously referred for prosecution but for which the prosecution was declined by the appropriate legal authority; and in previously referred cases where no action was taken within 180 days, and the referral was formally withdrawn by the county.
- B. The county department will initiate an ADH or refer a case for prosecution regardless of the current eligibility of the individual.
- C. A State level hearing is held only when a county level hearing finds a violation was committed and the decision is appealed to the State level.
- D. The ADH may be waived.
- E. More than one violation may be the subject of a single hearing, but only one disqualification penalty may be assigned. Enhanced penalties must be based on a prior hearing or court action.
- F. A Work First and Food and Nutrition Services administrative disqualification hearing may be held at the same time.

If the county does not initiate administrative disqualification procedures or refer for prosecution a case involving an **over issuance** caused by a suspected act of IPV, the county shall take action to collect the **over issuance** as a **participant** responsible overpayment.

II. LIMITATIONS

- A. **ADH's** will be conducted only on cases where the act of fraud was committed on or after December 1, 1998.
- B. **ADH's** are not conducted if the amount of the overpayment is less than \$100.00.
- C. The county may not conduct an administrative hearing first and then prosecute the individual in criminal court regardless of the outcome of the hearing. **Additionally**, the county also may not have the client sign a waiver of administrative hearing and then prosecute the individual in criminal court.
- D. The county cannot conduct an **ADH** on a case that was referred to the court system for prosecution if the charges were dismissed, or if the individual was found not guilty by the court. However, if prosecution by the appropriate legal authority is declined then an **ADH** may be held.
- E. The burden of proof that a **participant** committed an IPV rests with the county department.
- F. The county department will not initiate an **ADH** or refer a case for prosecution based solely on **participant** failure to cooperate with an investigation.

III. TIMELY ACTION ON HEARINGS

The hearing must be held and any administrative action initiated within 90 days of the date the individual is notified in writing **that** the hearing has been scheduled. The household member is entitled to a postponement of the scheduled hearing provided the request for postponement is made at least 10

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days in advance of the date of the hearing. The hearing shall not be postponed for more than a total of 30 days. The county may limit the postponement to one time. If the hearing is postponed, the above time limits are extended for as many days as the hearing is postponed.

IV. HEARING OFFICER FOR ADMINISTRATIVE DISQUALIFICATION HEARINGS

For county level hearings, the board of social services shall designate the county director or another impartial county to act as the hearings officer. **An impartial employee is one that is not a fraud Investigator, is not directly connected with the case, does not supervise an employee directly connected with the case, and has not discussed the facts of the case with any DSS staff outside of the hearing.** It is recommended that neither investigators nor anyone directly connected with a particular case (for example, the **case manager** or the supervisor. involved with that case), be designated as the Hearings Officer.

For State level hearing, the Hearings Officer is a State Hearings Officer who represents the State Director, Division of Social Services. The duties of the hearing officer are to:

1. Provide written notification of a hearing date, time, and location to the client at least 30 days in advance of the hearing date. The notification shall include, **a translator service, the** client's right to have legal representation, a witness or witnesses, and the right to waive the hearing,
2. conduct the hearing to collect all evidence and testimony,
3. render a written decision to the client and the Department of Social Services within 15 calendar days, advising if an intentional program violation has occurred. Notification of the hearing decision will be mailed "Certified Mail-Return Receipt Requested".
4. The notice will inform the client of the right to further appeal to the state (or higher local authority) and the procedures for such appeal.

Job Aids for scheduling and completing hearings and appeals can be found in FAST Help under Economic Services>Application and Processing>Appeals.

V. ADVANCE NOTICE OF LOCAL HEARING

Written notice is provided to the Work First **participant** suspected of an IPV. Notice is given by the county on the Advance Notice of **Local** Disqualification Hearing DSS-8556.

A. The county department must provide the notice at least 30 calendar days in advance of the county level hearing. This notification shall include the hearing date, time, and location, and the client's right to have legal representation, a witness or witnesses, or waive the hearing. The notice must be mailed "Certified Mail-Return Receipt Requested", or provided by any other method as long as proof of receipt is obtained. It is recommended that "addressee only" be used. The county may also provide the notice while conducting the investigative review. Even though the client chooses to waive the hearing, a copy of the advance notice must be retained in the case record and **sent to the participant with the notice of the hearing.**

1. When advance notices are returned as "unclaimed", "refused", or otherwise not delivered to the individual by the Postal Service, one of the following alternatives may be used:
2. Reschedule the hearing and attempt another mailing by certified mail. If the second notice is returned, hold the hearing, and render a decision.
3. In place of or concurrent with 2 above, reschedule the hearing, mail a copy of the notice by certified mail, or have a county representative contact the work first **participant** in person or by telephone. Hold the hearing as rescheduled.
4. If the hearing is held, the individual has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear based upon a showing of non-receipt of the hearing notice. In all other instances, the household member has

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10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

- B. Following written advance notification, the individual accused of committing an IPV may waive **their** right to an administrative disqualification hearing by signing the “Waiver of Disqualification Hearing” DSS-8588. The county must provide notification to the Work First **participant** that the hearing can be waived. Prior to issuing the notification, the county must ensure that the evidence against the Work First **participant** is sufficient to justify an administrative disqualification **local** hearing. A county worker other than the **case manager** who discovered the overpayment must inform the Work First **participant** of the waiver option. It is recommended that the investigator informs the individual of the waiver unless the investigator is the same person who discovered the overpayment. If so, another person must be designated as the person to notify the Work First **participant**. Once signed, this notice cannot be voided or rescinded.

VI. SCHEDULING OF HEARING

Reasonable efforts shall be made to schedule the hearing at a time and place convenient to the Work First **participant** suspected of an IPV. If the Work First **participant** or **their** representative cannot be located or fails to appear at the hearing without good cause, the hearing shall be conducted without the Work First **participant** represented. The Hearing Officer is required to carefully consider the evidence and determine if an IPV was committed based on clear convincing evidence **even when the Work First participant is not present**.

VII. FAILURE OF THE WORK FIRST PARTICIPANT TO APPEAR

- A. If the Work First **participant** is found guilty of an IPV but the Hearing Officer later determines that the Work First **participant** or representative failed to appear with good cause, the previous decision is no longer valid, and the county department must conduct a new hearing. The Hearing Officer who originally ruled on the case may conduct the new hearing.

- B. The Work First **participant** has 10 days after the date of the hearing decision to present reasons indicating a good cause for failure to appear.
- C. If a local **ADH** is appealed to a State level hearing but the Work First **participant** or **their** representative fails to appear for the State level hearing, the hearing request shall be dismissed and the Work First **participant** notified that **they** will be disqualified for the appropriate time period in accordance with the local hearing decision unless good cause is provided, within 10 days of receipt of notice, for not appearing at the hearing. (See **DSS-8557, Notice of State Disqualification Hearing Decision**). If the Hearing Officer determines that the Work First **participant** or representative had good cause for not appearing, the hearing shall be rescheduled.
- D. **The Hearing Officer must enter this decision into the record.**

VIII. NOTIFICATION FOLLOWING WAIVER OF HEARING

When the individual accused of committing an IPV waives **participant's** right to an **ADH** by signing the Waiver of Disqualification **Hearing DSS-8588** the county must provide notification to the Work First unit using "Action Taken on Waiver of administrative disqualification hearings **DSS-8587**. The disqualification is effective the first month after receipt of the **DSS-8587** notice by the Work First **participant**. There are no appeal rights when the waiver is signed.

A pending **ADH** shall not affect the individual's or the Work First unit's right to be certified and participate in the program. Because the county department cannot disqualify a Work First **participant** of an IPV until the Hearing Officer finds the individual guilty of an IPV, the county department shall determine the eligibility and benefit level of the Work First unit in the same manner it would be determined for any other Work First unit. However, if the county has facts to substantiate that the Work First unit is ineligible or eligible for fewer benefits, actions will be taken to reduce or terminate benefits.

IX. ARRANGEMENTS FOR THE HEARING

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The responsibilities of the county department in preparation for the hearing include the following:

- A. Choosing a Suitable Location for the Hearing: Generally, state hearings take place at the County Department Offices with the State Hearing Officer participating through telephone while participant and county department hold their conversation face to face. Alternatively, both parties may agree on another location that suits them both. The participant or representative can request an in-person hearing at their local County DSS Office or Remote Telephone/Video Conference provided it does not cause undue travel expense to either party involved. The location selected should be handicap accessible whenever necessary-for physical accommodation reasons- as well as provide comfort and privacy essential for efficient proceedings. Necessary equipment such as telephones must also be available since remote participation by phone is standard practice for State Officers during hearings. Additionally, health conditions such as deafness cannot prevent participation hence arrangements have nothing but encouragement towards full representation involvement.

Note: Utilize the free language and interpreter assistance, as well as other aids and services that can be requested at your local DSS Office.

- B. Prepare the following information which must be made available to the Hearing Officer at the time of the hearing:
1. Copies of a hearing summary which should be a brief report of facts about the situation. The hearing summary should reference the appropriate policy regulations which support the county's position. Unrelated material should be omitted. General format may be the same as used for State level hearings.
 2. Copies of all relevant documents related to appeal which includes all other supportive material and information helpful in establishing facts, including relevant copies of the application/recertification/affidavits/screen shots from NC FAST showing relevant amounts/information keyed in the system, and notices sent to the household. Information presented for the

hearing must clearly document the reasons for the county's action.

3. Any other pertinent information helpful in establishing the facts.

X. ATTENDANCE AT THE HEARING

The hearing will be attended only by persons **directly concerned** with the issue and will not be open to the public unless **specifically requested** by the **participant**. The **participant** may bring **any friends or witnesses as well as legal counsel** at the **participant's** expense. The hearing is normally attended by **the participant and their representatives**, a representative of the county department and the Work First **case manager directly involved in the issue** of the IPV. The hearing will be conducted even if the Work First **participant** fails to appear.

Note: Attendance of the case manager's supervisor is recommended and should be considered based on local county resources.

XI. RIGHTS AND DUTIES OF PARTICIPANTS

The rights and duties of the Hearing Officer, the Work First **participant**, and the county department are described in detail below.

XII. DUTIES OF THE HEARING OFFICER

- A. Administer an oath to all participants;
- B. Ensure that all relevant issues are considered;
- C. **Ensure translator services are provided in participants chosen language;**
- D. Request, receive, and make part of the record all evidence determined necessary to decide the issue **being appealed;**
- E. Regulate the conduct and course of the hearing consistent with the Work First **participant's** rights to ensure an orderly hearing;

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- F. Advise Work First participant or representative of their rights to ask questions of all local agency witnesses and to call witnesses of their own;
- G. Advise the Work First participant or representative of their right to request a State Level Hearing if they are dissatisfied with the result of the ADH and the deadline for doing so.
- H. Render a hearing decision in the name of the county.

XIII. THE WORK FIRST PARTICIPANT

The Work First participant may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the Work First participant feel most at ease. The Work First participant or representative must be given adequate opportunity to:

- A. Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file, including the application form and documents of verification used by the county department to establish the basis for an IPV shall be made available provided that confidential information is protected from release. The county department shall provide free copies of relevant portions of the case file if requested by the Work First participant or representative. Confidential information that is protected from release and other documents or records which the Work First participant will not otherwise have an opportunity to contest, or challenge shall not be presented at the hearing.
- B. Present the case independently or have it presented by a legal counsel or other person.
- C. Bring their own witnesses.
- D. Advance arguments without undue interference.
- E. Question or refute any testimony or evidence including an opportunity to confront and cross examine adverse witnesses.

- F. Submit evidence to establish all pertinent facts and circumstances in the case.
- G. Refuse to answer questions during the hearing.

XIV. THE COUNTY DEPARTMENT

The county representative has the same rights as the Work First **participant**. This includes the right to examine documents, bring witnesses, advance arguments, question evidence, and submit evidence.

XV. RESPONSIBILITIES OF THE HEARING OFFICER

The **Hearing Officer** presides **over** and conducts the hearing informally **in an orderly and professional manner**. Every effort shall be made to put the participants at ease and to remove tensions. The recording procedures, if used, should be explained so that each person will understand the importance of speaking slowly and distinctly. The hearing format is as follows:

- A. The **Hearing Officer** explains the following:
 - 1. The hearing decision is based solely on the evidence and testimony introduced at the hearing.
 - 2. Final decision provisions include notification to the parties involved.
 - 3. Following a state level hearing, the Work First **participant's** rights to take the case to court for judicial review.
 - 4. The Work First **participant's** right not to answer questions during the hearing.
- B. A county representative shall review the hearing summary and introduce the summary into the record.
- C. The hearing officer shall make a statement of the points at issue.

- D. Opportunity is provided to the participants for a correction or modification of the statement of the situation. It is the duty and responsibility of the Hearing Officer to assist both the Work First **participants** and the county department in making a full statement of the case so that the relevant facts are brought out to develop the points at issue.

Each person present is given an opportunity to speak. Any oral testimony or written documents which in the judgment of the **Hearing Officer** appear to be reasonably related to the issue involved and to be of value in determining the fact at issue, are received. The Work First unit and county could offer rebuttal.

XVI. HEARING RECORD

The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, all papers and requests filed in the proceeding, oral or written arguments, and the final decision shall constitute the hearing record.

- A. This record must be retained permanently. The **3-year** retention requirement does not apply.
- B. Confidential or other information which the Work First **participant** or representative does not have an opportunity to hear, see, and respond to shall not be introduced at the hearing nor shall it become a part of the hearing record.

XVII. HEARING DECISION

The hearing decision must take into consideration all issues questioned at the hearing and shall be factually based on the hearing record. The decision may not run contrary to State and Federal law, regulation, or policy.

- A. A determination of an IPV is based on clear and convincing evidence which demonstrates that the Work First **participant** knowingly, willfully, and with deceitful intent committed an IPV.

- B. The decision must specify the reasons for the decision, identify the supporting evidence, identify the pertinent Work First regulations, and respond to reasoned arguments made by the Work First **participant** or representative.
- C. The decision of the County Hearing Officer is rendered in final form.

XVIII. HEARING OFFICER'S DECISION

The county hearing officer must notify the Work First **participant** of the decision in writing. If the individual did not commit an IPV, a written notice informs them of the decision. No state form is provided; **therefore**, a letter will complete this task. If the county rules that the individual is guilty of an IPV, the Hearing Officer provides a written notice which informs the individual of the decision. The **DSS-8558** is "Action Taken on Your Administrative **Disqualification** Hearing-will be used and is signed by the County Representative. The county also provides the Work First **participant** with the reasons for the decision, identifies the supporting evidence, identifies the pertinent regulations, and respond to reasoned argument made by the Work First **participant** or representative. The county agency's **letterhead** will suffice in providing this information to the Work First **participants**. If the Work First **participant** is not satisfied with the county level decision the member has a right to request a state hearing within 15 calendar days of the receipt of the notice. The request is made through the local Department of Social Services.

- A. A list of the Work First **participant's** rights and the State level hearing procedures must be enclosed with county level ADH decision notice.
- B. Notification of the decision will be mailed by Certified Mail--Return Receipt Requested. The Work First **participant**-has 15 calendar days after receiving the notice to appeal the decision to a state level hearing. If the notification is returned by the Postal Service as refused, unclaimed the 15-day appeal period starts on the first calendar day after return. If the receipt is not returned within 7 **calendar** days of mailing, the 15-day appeal period starts on the 8th calendar day after mailing. If the 15-day appeal

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period ends on a weekend or holiday, accept an appeal request through the end of the following workday.

- C. If a State level hearing is not requested within the 15-day period, the Work First **participant** shall be disqualified for the appropriate time period beginning with the first calendar month after the 15-day period has expired.
- D. If, however, the Work First **participant** requests a State level hearing within the 15-day period, the Work First **participant** shall not be disqualified unless the State level hearing also finds the Work First **participant** disqualified committed an IPV.

XIX. STATE LEVEL DECISION

A state level hearing is held when the Work First **participant** is not satisfied with the county level decision. The state level hearing safeguards the interest of the Work First **participant** and assures fair and equitable administration of assistance programs. See Notice and Hearing process in the Section 264, Notice and Hearings Process for state hearing level procedures.

XX. OVERTURNED INTENTIONAL PROGRAM VIOLATION DISQUALIFICATION

In cases where the determination of an IPV is overturned or reversed by a state level hearing or a court of appropriate jurisdiction, the county department must reinstate the Work First **participant** in the program if the Work First **participant** is eligible. The county department must supplement any benefits that were lost as a result of the disqualification by issuing a supplemental **benefit**.

XXI. DISQUALIFICATION PENALTIES

- A. Mandatory disqualification periods for an IPV are imposed the month following the expiration of the 15-day appeal period when an ADH is held. However, for the waiver of the ADH and court ordered cases, the 15-day appeal period is not considered. In cases where a waiver of the ADH was signed, the disqualification is effective the first month following receipt of the notice by the Work First unit. If the case was referred to a court of law,

the disqualification period is as specified by the court. If the court fails to impose a disqualification period, the county will set the period as appropriate, unless contrary to the court order. A 12-month disqualification period is imposed for the first offense, a 24-month disqualification period is imposed for the second offense, and a permanent disqualification is imposed for the third offense. A ten 10-year disqualification is imposed for fraudulently misrepresenting residence in order to receive multiple benefits in more than one county or state. A judge can impose disqualification penalties in excess of the specified periods stated above.

For disqualification handled through the courts, the county department must impose the penalties within the following deadlines:

1. If the court orders the disqualification, it must be imposed by the date ordered by the court;
2. If the court orders the disqualification, but does not specify a date for imposing the disqualification, it must be imposed within 45 days of the court order;
3. If the court finds the accused person guilty, but does not address disqualification, the disqualification must be imposed within 45 days of the guilty decision.

NOTE: THE DISQUALIFICATION MUST BEGIN ACCORDING TO THE DATE SPECIFIED BY THE COURT ORDER OR WITHIN 45 DAYS OF THE COURT ORDER OR GUILTY DECISION.

- B. The individual must be provided written notification of the date the disqualification begins. Also, the individual must be advised that remaining Work First participants may be eligible. Once a disqualification penalty is imposed, it continues uninterrupted until completed, regardless of the eligibility of the disqualified member's Work First unit.

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NOTE: Case Manager must remove the disqualified individual from the needs standard. The disqualified member's countable income and resources are counted available to any remaining Work First participants.

1. The disqualification of an individual remains in effect in North Carolina and will follow the individual if they transfer to any county within the state.
2. Benefits to remaining Work First participants may not increase due to the disqualification of any individual member.

XXII. NOTIFICATION-REPAYMENT NOT DIRECTED BY THE COURT

If the court finds that the Work First participant committed an IPV, the county department must mail a written notice to the Work First participant. The notice must be sent prior to disqualification.

- A. The notice must inform the Work First participant of the decision and the reason for the decision, and the date the disqualification is effective.
- B. The case manager must notify the client of the correct benefit amount.
- C. The Notice of Disqualification DSS-8586 is provided as a state form. This notice is sent by the county.
- D. If the court finds the Work First participant committed an IPV, but does not define repayment requirements, an agreement letter for restitution must be provided, if a repayment agreement has not already been negotiated.

XXIII. NOTIFICATION-REPAYMENT DIRECTED BY THE COURT

When the court finds the Work First participant guilty of fraud, notification of disqualification is given. Use of a county repayment agreement is not appropriate, however, and is not used when the court directs payments be made to the Clerk of Court and/or the member has worked out a repayment arrangement with the court.

- A. The notice must inform the Work First **participant** of the decision and the reason for the decision, and the date the disqualification is effective.
- B. The **case manager** must notify the client of the correct check amount.
- C. The Notice of Disqualification DSS-8586 is provided as a state form. This notice is sent by the county.
- D. In place of the repayment agreement, obtain a copy of the court order, providing repayment details such as the total amount to be repaid, the payment schedule, and the length of time allowed for repayment.
- E. If the Work First **participant** makes no payment or pays a smaller amount, the county department must notify the court but should take no collection action on its own without consulting its legal counsel.
- F. If the court has ordered repayment in cash, the county department may not impose **benefit** reduction, unless the court order is amended to allow **benefit** reduction.