

1034
1034.05
REV:07/2002

INTENTIONAL PROGRAM VIOLATIONS
ADMINISTRATIVE RESPONSIBILITY

The Claims, Collections, and Recoveries/Fraud Unit (CCR/Fraud Unit) is 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 must be initiated whenever there is sufficient documentary evidence to substantiate that an individual has intentionally committed one or more acts of intentional program violation as defined in Section 1034.15. If the CCR/Fraud Unit does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional program violation, an inadvertent household error claim is established against the household in accordance with the procedures in Section 1024.

The CCR/Fraud Unit refers the following situations for administrative disqualification hearings:

- * Cases in which the facts do not warrant civil or criminal prosecution through the appropriate court systems;
- * Cases previously referred for prosecution that were declined by the appropriate legal authority; and
- * Cases which were previously referred for prosecution and where no action was taken within a reasonable period of time, and the referral was formally withdrawn by the unit.

The CCR/Fraud Unit must not initiate an administrative disqualification hearing 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.

The CCR/Fraud Unit initiates administrative disqualification procedures or refers a case for prosecution regardless of the current eligibility of the individual.

1034.05.05 Basis for Administrative Disqualification
REV:07/2002

The agency bases administrative disqualifications for intentional program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings, in accordance with criteria specified in Section 1034.15, or on determinations reached by courts of appropriate jurisdiction, in accordance with Section 1034.35. However, the agency has the option of allowing accused individuals to waive their rights to administrative disqualification hearings, in accordance with Section 1034.30. If the above option is selected, the administrative disqualification for intentional program violation is based on the waived right to hearing.

1034.05.10 Notification to Applicant Households
REV:02/1985

The household is informed, in writing, of the disqualification penalties for committing intentional program violation each time it applies for program benefits. The penalties are written in clear, prominent and boldface lettering on the application form.

DISQUALIFICATION PENALTIES

Disqualification penalties shall be imposed as follows:

1. Individuals found to have committed an intentional program violation, either through an administrative disqualification hearing, or by a Federal, State, or local court, or who have signed a waiver of right to an administrative disqualification hearing shall be ineligible to participate in the program:
 - * For a period of one (1) year for the first violation, with the exceptions in numbers 2 and 3 below;
 - * For a period of two (2) years for the second violation, with the exceptions in numbers 2 and 3 below; and,
 - * Permanently for the third occasion of any intentional program violation.
2. Individuals found by a Federal, State, or local court to have used or received coupons in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act) shall be ineligible for food stamps:
 - * For a period of two (2) years for the first occasion of such violation; and
 - * Permanently upon the second occasion of such violation.
3. Individuals found by a Federal, State, or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition, or explosives shall be permanently disqualified from the Food Stamp program.
4. Individuals convicted of trafficking food stamp benefits of five hundred dollars (\$500) or more shall be permanently disqualified from the Food Stamp program.
5. Individuals found by the Department of having made, or convicted in a Federal or State court of having made, a fraudulent statement or representation with respect to their identity or place of residency in order to receive multiple benefits simultaneously under the Food Stamp program shall be ineligible to participate in the program for a ten (10) year period.

However, one or more intentional program violation disqualifications which occurred prior to the implementation of these penalties are considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration. If a court fails to impose a disqualification period for the intentional program violation, the agency must impose the disqualification period penalties specified in this section unless it is contrary to the court order. The agency must disqualify only the individual found to have committed intentional program violation or who signed the waiver of right to an administrative disqualification hearing, and not the entire household. Even though only the individual is disqualified, the household is responsible for making restitution for the amount of the overpayment. All

intentional program violation claims shall be established and collected in accordance with Sections 1022 and 1024.

1034.15 CRITERIA FOR DETERMINING AN IPV
REV:02/1985

The hearing authority must 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 below:

- * Made a false or misleading statement, or misrepresented, concealed or withheld facts; or,
- * Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP cards.

1034.20 ADMINISTRATIVE DISQUALIFICATION HEARINGS
REV:07/2002

An administrative disqualification hearing (ADH) is initiated by Claims, Collections, and Recoveries/Fraud Unit (CCR/Fraud Unit) whenever there is sufficient documentary evidence to substantiate that an individual has committed one or more intentional program violations as defined in Section 1034.15. Such cases include alleged intentional program violation claims in discretionary amounts not feasible for prosecution plus those in which the agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system. Other cases may be those previously referred for prosecution, but for which prosecution was declined by the appropriate legal authority.

The agency may initiate an administrative disqualification hearing regardless of the current eligibility of the individual.

If the individual is not eligible for the program at the time the disqualification period is to begin, the disqualification penalty shall be imposed as if the individual were eligible to participate at the time of the penalty imposition.

The administrative disqualification hearing may be conducted regardless of whether other legal action is planned against the household member.

1034.25 ADH PROCEDURES
REV:02/1985

Administrative disqualification hearings are held by the Administrative Disqualification Hearing Officer, who is an impartial designee of the Director of the Department of Human Services (DHS). No person who has participated in the issue under review is eligible to serve as a Hearing Officer, and hearings are conducted according to procedures outlined Sections 1034.25.05 through 1034.25.55.

The agency publishes clearly written rules of procedure for disqualification hearings (RIFS-155). These procedures are made available to any interested party.

1034.25.05 Powers and Duties of the ADH Officer
REV:02/1985

The Hearing Officer has the following powers and duties:

- * The Hearing Officer administers oaths or affirmations.
- * The Hearing Officer must ensure that all relevant issues are considered.
- * The Hearing Officer must request, receive, and make part of the record all evidence determined necessary to decide the issues being raised.
- * The Hearing Officer must regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing.
- * The Hearing Office may order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the agency.
- * The Hearing Officer renders a decision in the name of the agency, in accordance with Section 1034.25.30.

1034.25.10 Advance Notice of Hearing
REV:07/2002

Upon receipt of the referral from the CCR/Fraud Unit, the time, date, and place of the hearing is set by the Administrative Disqualification Hearing Office.

The agency provides written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a disqualification hearing initiated by the State has been scheduled. The notice may be mailed by first class mail, certified mail-return receipt requested, or by any other method. If the notice is sent first class mail to the individual's address of record being maintained by the Department and is returned as undeliverable, the hearing may still be held.

In instances in which the individual claims good cause for failure to appear based on a showing of nonreceipt of the hearing notice, the individual has thirty (30) days after the date of the written notice of the hearing decision to claim good cause. See Section 1034.25.30.

A copy of the State's published hearing procedures (RIFS-155) must be attached to the thirty (30) day advance notice.

A copy of the State's published form Waiver of Right to Administrative Disqualification Hearing (RIFS-121c) must be enclosed with the Advance Notice of Hearing.

If an individual chooses to have legal representation, e.g., be represented by an attorney, paralegal, or legal assistant, the representative must file a written Entry of Appearance with the Hearing Office at or before the hearing. The Entry of Appearance acts as a release of confidential information, allowing the legal representative access to the agency case record. (See DHS Manual Section 0102 regarding confidentiality of information.) It is also needed for the Hearing Office to confirm the representation for purposes of follow-up, review, requests for continuances, etc.

For all administrative disqualification hearings, ten (10) business days prior to the hearing date, the recipient and the agency must exchange a list of any expert witnesses and exchange expert reports to be presented at the hearing. If the recipient does not intend to utilize an expert witness or expert report at

the hearing, s/he does not need to exchange such expert witnesses' names and/or reports.

Failure to include such a witness or document prevents that party from presenting that witness or document at the hearing, unless the hearing officer finds that good cause exists for the failure to produce. If good cause is found to exist, the other party may request a continuance to consider and review the previously undisclosed evidence. If the agency representative receives a request to review the evidence and/or case file before the hearing, a review should be planned by contacting the CCR/Fraud Unit.

An expert witness is defined as a witness who possesses a special knowledge in a subject of a scientific, mechanical, professional, or technical nature; an expert report is a writing of an expert witness.

1034.25.15 Conduct of the Hearing/Household's Rights

REV:09/1983

The household may not be familiar with the rules of order, and it may be necessary to make particular effort to arrive at the facts of the case in a way that makes the household feel at ease.

The household, or its representative, must be given adequate opportunity to 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 agency representative to establish the household's ineligibility, or eligibility and allotment, must be made available, provided that confidential information, 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, is protected from release. If requested by the household or its representative, the agency representative must provide the relevant portions of the case file. All pertinent evidence and documents pertaining to the disqualification hearing will be available for inspection at the Office of the ADH Officer. Confidential information that is protected from release, and other documents or records which the household will not otherwise have an opportunity to contest or challenge, must not be presented at the hearing of affect the Hearing Officer's decision.

The Household's Other Rights

At the disqualification hearing, the Hearing Officer must advise the household member, or representative, that they may refuse to answer questions during the hearing. This refusal must, in no way prejudice the Hearing Officer's decision on the issues.

In addition to its right to examine records, the household must also have the opportunity to:

- * Present the case itself, or have it presented by a legal counsel or other person;
- * Bring witnesses;
- * Advance arguments without undue interference;
- * Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and,
- * Submit evidence to establish all pertinent facts and circumstances in the case.

Attendance at the Hearing

The hearing is attended by the representative(s) of the agency which initiated the action being contested and by the household and/or its representative. The hearing may also be attended by friends and relatives of the household if the household so chooses. However, the Hearing Officer has the authority to limit the number of persons in attendance at the hearing if it is determined that space limitations exist.

1034.25.20 Hearing Decision
REV:07/2002

Decisions of the Administrative Disqualification Hearing Officer must comply with Federal law, regulations, or policy, and must be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for a final decision by the Administrative Disqualification Hearing Officer. This record must be retained for three (3) years and must also be available to the household or its representative for inspection and copying at any reasonable time.

Effect and Content of the Hearing Decision

A decision by the Administrative Disqualification Hearing Officer is binding on the agency and must summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent FCS regulations or policy.

The decision becomes a part of the record.

Judicial Review

The household is notified that it has the right to pursue judicial review of an adverse hearing decision.

1034.25.20.05 Notification of the Hearing Decision
REV:07/2002

The household and the agency representative are notified in writing of:

- * the decision;
- * the reasons for the decision, in accordance with Section 1034.25.20; and
- * the available appeal rights.

1034.25.25 Time Frame for Conduct of the Hearing
REV:07/2002

Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the agency must conduct the hearing, arrive at a decision, and initiate the administrative action to make the decision effective. The household member, or representative, is entitled to a postponement of the scheduled hearing, provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing. However, the hearing must not be postponed for more than a total of thirty (30) days and the agency may limit the number of postponements to one (1). If the hearing is postponed, the above time limits are extended for as many days as the hearing is postponed.

1034.25.30
REV:11/1998

Failure to Appear at the Hearing

If the household member, or its representative, cannot be located or fails to appear at the hearing without good cause, the hearing is conducted without the household member represented. Even though the household member is not represented, the Hearing Officer is required to carefully consider the evidence and determine, based on clear and convincing evidence, if an intentional program violation was committed.

If the household member is found to have committed an intentional program violation, but the Hearing Officer later determines that the household member, or representative, had good cause for not appearing, the previous decision must no longer remain valid and the agency must conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing.

In instances in which the individual claims good cause for failure to appear based upon a showing of nonreceipt of the hearing notice, the individual has thirty (30) days after the date of the written notice of the hearing decision to claim good cause.

In all other instances, the household member has ten (10) days from the date of the scheduled hearing to present reasons indicating good cause for failure to appear.

The individual shall provide evidence of the nonreceipt of the hearing notice to the Administrative Disqualification Hearing Officer for consideration. The Hearing Officer must enter the good cause decision into the record.

1034.25.35
REV:09/1983

Participation While Awaiting a Hearing

A pending disqualification hearing must not affect the individual's or the household's right to be certified and to participate in the program. Since the agency cannot disqualify a household member for intentional program violation until the hearing official finds that the individual has committed intentional program violation, the agency representative must determine the eligibility and benefit level of the household in the same manner as it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional program violation does not affect the household's current circumstances, the household would continue to receive its allotment, based on the latest certification action, or be recertified, based on a new application and its current circumstances.

However, the household's benefits must be discontinued if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The agency representative should also reduce or terminate the household's benefits if the agency has documentation which substantiates that the household is eligible, or ineligible, for fewer benefits (even if these facts led to the suspicion of intentional program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the agency may have facts which substantiate that a household failed to report a change in its circumstances even though the agency has not yet demonstrated that the failure to report involved an intentional act of program violation.

1034.25.40
REV:04/1997

Imposition of Disqualification Penalties

If the hearing authority rules that the household member has committed an intentional program violation, the household member must be disqualified in accordance with the disqualification penalties specified in Section 1034.10,

beginning with the first month which follows the date the household receives written notification of the hearing decision. However, if the act of intentional program violation which led to the disqualification occurred prior to notification of the disqualification penalties specified in Section 1034.10, the household member must be disqualified in accordance with the disqualification penalties in effect at the time of the offense. The same act of intentional program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

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 stay by a court of appropriate jurisdiction or other injunctive remedy.

Even if the individual is not eligible for the program at the time the disqualification penalty is to begin, the disqualification penalty shall be imposed as if the individual were eligible to participate at the time of the penalty imposition.

Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification continues uninterrupted until completed, regardless of the eligibility of the disqualified member's household. However, the disqualified member's household continues 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.

1034.25.45 Notification of Hearing Decision
REV:12/1994

If the hearing official finds that the household member did not commit an intentional program violation, the agency must provide a written notice informing the household member of the decision.

If the hearing official finds that the household member committed an intentional program violation, the agency must provide written notice to the household member prior to disqualification. The notice informs the household member of the decision and the reason for the decision. In addition, the notice informs the household member of date disqualification will take effect. If the individual is no longer participating, the notice must inform the individual that the period of disqualification will be deferred until such time as the individual again applies for, and is determined eligible, for program benefits.

The agency must also provide written notice to the remaining household member(s), 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. The procedures for handling the income and resources of the disqualified member are described in Section 1016.20.

A written demand letter for restitution, as described in Section 1024.20, is also provided.

1034.30 WAIVER OF ADH
REV:07/2002

The agency must allow accused individuals to waive their rights to an administrative disqualification hearing. This is only done when the Claims, Collections, and Recoveries/Fraud Unit (CCR/Fraud Unit) has determined that evidence exists which warrants the scheduling of an Administrative Disqualification Hearing.

After such a determination has been made, the CCRU/Fraud Unit mails the Waiver

of Right to Administrative Disqualification Hearing (Form RIFS-121c) to the household member which notifies the individual of a scheduled appointment at which the individual is offered an opportunity to review all the evidence and any other material relating to the claim.

The written notification, conforming to FNS regulations, informs the household member of the possibility of waiving an administrative disqualification hearing. It must include the following information:

- * The date that the signed waiver must be received by the agency to avoid the holding of a hearing;
- * A signature block for the accused individual, along with a statement that the head of the household must also sign the waiver if the accused individual is not the head of the household, with an appropriately designated signature block;
- * A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against her/him in a court of law;
- * The fact that a waiver of a disqualification hearing 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 as presented by the agency;
- * An opportunity for the accused individual to specify whether or not s/he admits to the facts as presented by the agency;
- * The telephone number and, if possible, the name of the person to contact for additional information; and
- * The fact that the remaining household member(s), if any, will be held responsible for repayment of the resulting claim.

If the household member suspected of intentional program violation keeps the appointment and/or signs and returns the waiver of right to an administrative hearing within the time frames specified by the agency, the household member must be notified and disqualified in accordance with the disqualification penalties and procedures specified in Sections 1034.10 and 1034.25.40. If the household member does not sign the waiver within the time frame indicated on the letter, the claim is forwarded to the Administrative Disqualification Hearing Office.

1034.35 COURT REFERRALS
REV:07/2002

The agency refers for prosecution those cases of alleged intentional program violation which meet the criteria established by the CCR/Fraud Unit. The agency also encourages state prosecutors to recommend to the court that a disqualification penalty, as provided in Section 1034.10, be imposed, in addition to any other civil or criminal penalties for such violations.

1034.35.05 Imposition of Penalties - Court Findings
REV:07/2002

The agency must disqualify an individual found guilty of intentional program violation for the length of time specified by the court. If the court fails to impose a disqualification period, the agency must impose a disqualification

period in accordance with the provisions in Section 1034.10 unless contrary to the court order. If disqualification is ordered, but a date for initiating the disqualification period is not specified, the agency should initiate the disqualification period for currently eligible individuals within forty-five (45) days of the date the disqualification was ordered. Any other court-imposed disqualification must begin within forty-five (45) days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

If the individual is not eligible for the program at the time the disqualification period is to begin, the disqualification penalty shall be imposed as if the individual were eligible to participate at the time of the penalty imposition.

Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification continues uninterrupted until completed, regardless of the eligibility of the disqualified member's household. However, the disqualified member's household continues 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.

1034.35.10 Notification of Disqualification
REV:09/1983

If the court finds that the household member committed intentional program violation, the agency must provide written notice to the household member. The notice must be provided prior to disqualification, whenever possible. The notice must inform the household member of the disqualification and the date disqualification will take effect. The agency must also provide written notice to the remaining household member(s), if any, of the allotment they will receive during the period of disqualification, or that they may reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in Section 1016.20. In addition, the agency must provide the written demand letter for restitution described in Section 1024.20.

1034.40 DEFERRED ADJUDICATION
REV:07/2002

The agency allows accused individuals to sign disqualification consent agreements for cases of deferred adjudication. This option is used for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order, or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor.

1034.45 REVERSED DISQUALIFICATIONS
REV:02/1985

In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the agency must reinstate the individual in the program if the household is eligible. The agency must restore benefits that were lost as a result of the disqualification, in accordance with the procedures specified in Section 1020.