

**OFFICE OF INVESTIGATIVE SERVICES
POLICY AND PROCEDURE #760**

**ADMINISTRATIVE DISQUALIFICATION HEARING and
WAIVER OF DISQUALIFICATION HEARING**

CRITERIA FOR HEARING REFERRAL AND WAIVER:

Food Stamp and TANF suspected IPV claims with a combined dollar loss up to \$199, claims not meeting the criteria for prosecution, claims not meeting the criteria for the PAC Process, or those rejected by the prosecutor should be referred for an Administrative Disqualification Hearing unless the client voluntarily signs a waiver of the hearing.

The following criteria must be taken into consideration when referring a suspected IPV case for a disqualification hearing or pursuing a hearing waiver:

- The evidence of the case must support a suspected intentional program violation.
- The relevant standard of proof must be clear and convincing.
- Local circumstances particularly relevant to the case must be properly considered.
- The age, language barriers, physical and mental condition of the offender must be considered.
- The offender has failed to respond to PAC appointment letters and the prosecutor has determined that criminal prosecution will not be pursued.

Claims involving Respondents with known disabilities – evidenced by the receipt of SSI, RSDI (disability), or other disability payments – will not be given the option of waiving the disqualification hearing before a professional determination of the client's competency is rendered. Prior to establishing a claim against a disabled client, the client must be interviewed to determine if there is sufficient evidence to support an IPV claim. The interview will be scheduled by mailing a general appointment or discrepancy appointment letter. The interview may also be scheduled during a telephone contact with the client. When the client fails or refuses to meet with the Agent, supervisory approval is required before establishing a claim. If a suspected IPV claim is supported, the client must be referred for an Administrative Disqualification Hearing to insure the disabled client under review has a professional determination of competency.

The disabled client should not be offered the option of waiving the hearing prior to a professional determination of competency from the ALJ, medical authority, or until requested by the client's legal representative. The Agent should send an **Administrative Disqualification Hearing (ADH) Letter** to the client the same date the case is referred for a hearing. If the client requests to sign a WDH at the time of the hearing, the ALJ must direct the Agent to allow the client to sign the waiver and the OIS file must be documented.

ADVANCE WRITTEN NOTIFICATION OF WAIVER OF DISQUALIFICATION HEARING (WDH):

Prior to referring a Food Stamp or TANF case for an Administrative Disqualification Hearing, the Agent will offer the Respondent the right to waive the hearing. In scheduling an appointment to discuss the **Waiver of Disqualification Hearing (WDH)**, the Agent will provide written advance notification to the individual suspected of IPV by mailing the standard **WDH Appointment Letter** or **EBT Appointment Letter** allowing at least ten (10) days prior to the appointment.

The Agent will attach to the **WDH Appointment Letter** the Food Stamp Basis of Claim Determination (page 2 of the **Food Stamp Report of Claim Determination**), TANF Overpayment Computation Sheet (page 2 of the **TANF Report of Claim Determination**), and/or the **EBT Report of Claim Determination**, as appropriate.

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If at all possible, the Agent should schedule an appointment to meet personally with the Respondent to assure the client understands the details of the IPV investigation, the provisions of the WDH, and the alternatives to signing the WDH. A **WDH Request Through Mail** (with the Food Stamp Basis of Claim Determination, TANF Overpayment Computation Sheet, and/or EBT Report of Claim Determination attached, as appropriate) is available to resolve allegations through the mail when requested by the client or when the client has left the project area.

On both the **WDH Appointment Letter** and **WDH Request Through Mail**, the Respondent must be informed of the deadline (which is 30 days from the date of the letter) to return the signed WDH before an Administrative Disqualification Hearing is scheduled. The Agent will refer the case for a disqualification hearing promptly after the deadline if the Respondent fails to respond to the appointment letter or return a signed WDH. No second appointment letters will be sent unless the Respondent requests a new appointment or the first appointment letter is returned as undeliverable.

WDH MEETING WITH THE RESPONDENT:

The Agent should carefully interview the Respondent prior to negotiating the WDH. The purpose of the interview is to explore the Respondent's understanding of the regulations and intent to deceive the agency, to explore the sufficiency of proof discovered during the investigation in the light of possible mitigating factors, and to explore the willingness of the Respondent to enter into a WDH as an alternative to the disqualification hearing or prosecution. In this regard, the Agent should explain all the alternatives – civil suit, disqualification hearing, and criminal prosecution.

The Agent must explain to the Respondent, the Head of Household, and the Caretaker Relative the line-by-line provisions of the WDH. The Agent must be personally convinced that the Respondent understands the WDH before permitting all parties to sign.

PROCESSING THE WDH:

After the WDH is negotiated, the Agent will provide a copy of the WDH to the recipient. The Agent will also update the **Case Review Checklist** with the disposition, reason for the disposition, and the contents of the meeting with the client.

Within five working days of obtaining the signed waiver, the Agent will provide notification to the county DFCS of the disqualification of the individual from participating in the Food Stamp/TANF program(s) for the appropriate period(s) of time along with the following documents enclosed with a **Disposition Letter**:

- ✓ Original **WDH**
- ✓ Copies of all appointment letters
- ✓ Copy of **Report(s) of Claim Determination** with budget information
- ✓ Original verification/evidence
- ✓ Copy of **Case Review Checklist** with attached documentation
- ✓ Original Form 5667, **Request for Investigation**

Within the same five-day standard, the Agent will also update the OIS database with a TR code 6 indicating the date of the action, update the claim type, claim status, and repayment schedule in SUCCESS, and document the disposition on the narrative in SUCCESS.

**ADMINISTRATIVE DISQUALIFICATION HEARING and
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PROCEDURES FOR REFERRAL FOR HEARING:

Respondents who fail to sign a waiver by the deadline provided on the **WDH Appointment Letter** will be referred for an Administrative Disqualification Hearing. Referrals for Administrative Disqualification Hearings require the review and approval of the supervisor.

The Agent prepares the **OSAH Form 1 – Disqualification Hearing Referral** and attaches a summary of attached documents to support the suspected IPV. The documentary evidence to attach to the hearing referral should include the claim determination reports, copies of review documents from the client case record (including the review just prior to the suspected IPV period), the Referral for Investigation, benefit histories from SUCCESS, and/or any other pertinent verification on which the claim is based. The Agent will date the OSAH Form 1 with a referral date to correspond with the TR code 1.

The Agent updates the OIS database updates the **Case Review Checklist** with the disposition and updates the TR with a code 1 indicating the date of the action, staples the TR to the top of the hearing referral form, and forwards the stapled forms to EDP for keying and mailing.

Within five working days of the referral, the Agent also schedules the claim as suspected fraud in SUCCESS in an active status and notes the disposition in the narrative on SUCCESS and provides the following documents to the county DFCS with a **Disposition Letter**:

- ✓ Copy of **OSAH Form 1 – Disqualification Hearing Referral**
- ✓ Copies of all appointment letters
- ✓ Copy of **Report(s) of Claim Determination** with budget information
- ✓ Copy of verification/evidence
- ✓ Copy of **Case Review Checklist** with attached documentation
- ✓ Copy of Form 5667, **Request for Investigation**

CORRESPONDENCE WITH THE OSAH/ALJ AFTER A REFERRAL HAS BEEN MADE:

Prior to the assignment of the case to a specific Administrative Law Judge (ALJ), all correspondence should be directed to the Office of State Administrative Hearings (OSAH) on an **Administrative Disqualification Hearing Request Supplemental Information** form. The correspondence should specify the county in which the hearing was originally requested.

Correspondence should be addressed to the assigned ALJ and should also include the OSAH Docket Number once known.

When a notice of a scheduled hearing is received, the Agent should review the notice to assure that a hearing was scheduled in each of the programs requested. If review reveals that the hearing has been scheduled for only one program, the Agent should immediately contact the ALJ.

The Agent will notify OSAH of any address change or any case transfer while the hearing referral is pending.

In the event that the Agent obtains a **WDH** after the hearing has been requested, the Agent will notify OSAH specifying the assigned ALJ, if known, so that the request can be withdrawn and canceled. A copy of the **WDH**, signed by the Respondent/Head of Household, will be attached to the request for dismissal.

All cases pending hearings should be monitored by the Agent to insure that the hearing is scheduled within three months of the referral. Contact should be made with OSAH for cases pending longer than three months to insure that OSAH has a record of the OIS referral.

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EVIDENCE NEEDED FOR HEARING:

The best evidence rule applies to administrative hearings as well as criminal prosecution. In addition to the evidence supplied to OSAH on the referral form, the Agent will assure that the following individuals are present at the hearing to provide testimony, understand their roles at the hearing, and are supportive of the IPV allegations:

- The Agent: To testify to the conduct of the investigation and calculation of the claim.
- The DFCS Representative: To testify to the certification process and program regulations. If the caseworker is no longer employed by DFCS or is unavailable, a designated agency representative should be present to testify.

In addition, any witness who can testify to a fact of the investigation should be present at the hearing. This testimony or evidence may require the use of an administrative subpoena.

If an administrative subpoena is needed, the Agent will complete the **ADH Request for Subpoena** and forward to the assigned ALJ. The Agent will also provide a copy of this **ADH Request for Subpoena** to all parties involved in the hearing. The ALJ will return the completed Administrative Subpoena to the Agent for service.

Certified verification of income and employment has proven to be an efficient method of admitting evidence of unreported wages in the absence of the witness. Copies of actual records should be obtained for certification as evidence, but certified abstracts have been successfully used if the actual records are too voluminous or unobtainable. An **ADH Certification of Employment and Wage Information** letter attaching a **Certification of Copies of Business Records** form and/or a **Certification of Abstract of Business Records** form can be used to obtain the necessary certified verification.

The Agent should forward the ALJ copies of any supplemental evidence that will support an IPV determination prior to the scheduled hearing. If the hearing is conducted in person, the Agent will provide copies of these documents to the ALJ when requested.

GENERAL CONDUCT OF THE HEARING:

Although there is no prescribed format, the administrative disqualification hearing is generally conducted in the following order:

- Swearing in of witnesses and opening remarks by ALJ
- Opening statement by the Agent
- Presentation of the evidence by the Agent
- Presentation of evidence by the Defense (Respondent)
- Cross examination
 - By the Agent
 - By the Defense
- Closing statement
 - By the Agent
 - By the Defense

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The Agent should keep the testimony as succinct as possible without omitting relevant details. If the client wants to dispute the claim, the Agent should not argue with the client. The Agent should clearly present an explanation of the findings of the case.

PROCESSING THE HEARING DECISION:

Final decisions should be received within 30 days of the hearing. The Agent should consult with the supervisor to contact OSAH if decisions are not received within this time period.

For Food Stamp decisions, the ALJ will issue a Notice of Final Decision to the Respondent, the Head of Household, County DFCS, and the Agent on the case. The notice will describe the procedures for filing a Motion for Reconsideration and a Petition for Judicial Review.

For TANF decisions, the ALJ will issue a Notice of Initial Decision to the Respondent, the Caretaker Relative, County DFCS, and the Agent on the case. The notice will describe the procedures for filing a Motion for Reconsideration and a Department of Human Resources Review.

The Agent will not file a Motion for Reconsideration or appeal of the decision without the approval of the supervisor.

Within fifteen days of receiving the decision, the Agent will report to the OIS database the TR code indicating the affirmation or acquittal and the date issued on the Initial or Final decision. In the same time period, the Agent will also update the claim type in SUCCESS (if appropriate) and document the final disposition on the narrative in SUCCESS. The agent will also inform the county DFCS of the appropriate disqualification period on a **Disposition Letter** along with the following documents:

- ✓ Copy of the Hearing Decision
- ✓ Original Verification/Evidence
- ✓ Original Form 5667, **Request for Investigation**

If the Initial Decision is later reversed through the DHR Review, the Agent will delete the decision and date from the OIS database and update the decision with the new date.