

FOOD STAMP PROGRAM

22 VAC 40-601-10. Definitions.

The following words and terms, when used in these guidelines, will have the following meaning unless the context clearly indicates otherwise:

“Access device” means any card, plate, code, account number, or other means of access that can be used alone or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

“Administrative Disqualification Hearing” or “ADH” means an impartial review by a hearing officer of a household member’s actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation (IPV).

“Authorization to Participate” or “ATP” means a document authorizing a household to receive a food stamp allotment in a specific amount for a specific entitlement period from an authorized food coupon issuance agent.

“Hearing Officer” means an impartial representative of the State who receives requests for administrative disqualification hearings or fair hearings. The hearing officer has the authority to conduct and control hearings and to render decisions.

“Intentional Program Violations” or “IPV” means any action by an individual who intentionally made a false or misleading statement to the local department, either orally or in writing, to obtain benefits to which the household is not entitled; concealed information or withheld facts to obtain benefits to which the household is not entitled; or, committed any act that constitutes a violation of the Food Stamp Act, Food Stamp

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regulations, or any state statutes relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons, authorization to participate (ATP) cards, access devices, or food stamp benefits.

“Local department” means the local department of social services of any county or city in this Commonwealth.

22 VAC 40-601-20. Income Conversion.

Whenever income is anticipated for every pay period in a month and it is received on a weekly or biweekly basis, the eligibility worker shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15.

22 VAC 40-601-30. Telephone Standard.

A standard telephone allowance, as determined by the Department of Social Services, annually, shall be used for households that incur a telephone cost in calculating their eligibility and benefit levels instead of actual telephone costs.

22 VAC 40-601-40. Administrative Disqualification Hearing.

A. The local department is responsible for investigating any case of alleged intentional program violation and ensuring that appropriate cases are acted upon either through referral for an administrative disqualification hearing or for prosecution by a court of appropriate jurisdiction

B. In order for a local department to request an ADH, there must be clear and convincing evidence that demonstrates a household member committed or intended to commit an IPV.

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C. The local department shall ensure that evidence against the household member alleged to have committed an IPV is reviewed by either an eligibility supervisor or the local department director to certify that the evidence warrants referral for an ADH.

D. Before submitting the referral for an ADH to the state hearing manager, the local department shall send a notice to the person suspected of an IPV that the member may waive the right to a hearing. The person must sign a waiver request and return it to the local department within 10 days from the date the notice was sent to the household member in order to avoid the submission of the ADH referral.

E. If the local department receives a signed waiver, there will not be a hearing but the person will be disqualified for the length of time prescribed by federal policy.

F. The hearing officer will schedule a date for the ADH and provide written notice to the household member suspected of an IPV by certified mail - return receipt requested or first class mail. The notice must be mailed at least 30 days in advance of the date the ADH scheduled. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held. The hearing officer must compare the household's address on the local department referral with other documents associated with the case. A revised notice must be provided to the household member if an error is discovered in the address used for the original notice of the hearing.

G. The requirement to notify the individual about the ADH will be met if there is proof of receipt of the advance notice of the ADH or if there is proof that the person refused to accept the notice.

H. The time and place of the ADH shall be arranged so that the hearing is acceptable to

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the person suspected of an IPV.

I. The person or representative may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing.

J. The ADH may be held even if the person or representative subsequently cannot be located or fails to appear without good cause.

K. If the hearing officer finds that a household member committed an IPV but the hearing officer later determines there was good cause for not appearing, including that the notice was sent to an incorrect address, the previous decision will no longer be valid. A new ADH shall be conducted.

L. A pending ADH shall not affect the household or an individual's right to be certified and participate in the Food Stamp Program.

M. The hearing officer shall:

1. Identify those present for the record.

2. Advise the person or representative that he may refuse to answer questions during the hearing.

3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the local department or the household to request an administrative review of the hearing officer's decision. The hearing officer shall also explain that only the household may seek a change to the hearing officer's decision through a court of appropriate jurisdiction.

4. Consider all relevant issues. Even if the person or representative is not present, the

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hearing officer must carefully consider the evidence and determine if any IPV was committed based on clear and convincing evidence.

5. Request, receive and make part of the record all evidence determined necessary to render a decision.

6. Regulate the conduct and course of the hearing consistent with the process to ensure an orderly hearing.

N. The person alleged to have committed an IPV and the representative shall be given adequate opportunity to:

1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH.

2. Present the case or have it presented by legal counsel or another person.

3. Bring witnesses.

4. Advance arguments without undue interference.

5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.

6. Submit evidence to establish all pertinent fact and circumstances in the case.

O. The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the hearing record which can be substantiated by supporting evidence and applicable regulations.

P. The hearing officer shall prepare a written report of the substance of the findings, conclusions, decisions, and appropriate recommendations.

Q. The hearing officer shall notify the person of the decision in writing and of the

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household's right to seek an administrative review or court appeal of the decision.

R. If the hearing officer finds that the individual did commit an IPV, the written decision shall advise that household that disqualification shall occur.

S. The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing decision.

T. Upon receipt of the notice of a decision from the hearing officer that the household member is guilty of an IPV, the local department shall inform the household of the reason for the disqualification and the date the disqualification will take effect.

I certify that this regulation is full, true and correctly dated.

Danny L. Brown, Chairman
State Board of Social Services
December 6, 2006