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**FOOD AND NUTRITION SERVICES CERTIFICATION  
HEARINGS  
Administrative Disqualification Hearings**

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**FNS 710 Administrative Disqualification Hearing**  
**Change #1-2008**  
**January 1, 2008**

**710.01            DISQUALIFICATION FOR INTENTIONAL PROGRAM VIOLATION (IPV)**

Initiate an Administrative Disqualification Hearing (ADH) or referral for prosecution for cases in which the county department has clear and convincing evidence to substantiate that an individual has committed one or more acts of Intentional Program Violation (IPV). Assure that all letters and notices are in the primary language of the individual charged with an IPV. Assure that a qualified translator is present for an ADH when requested by an individual with limited English proficiency.

- A.     It is appropriate to conduct ADH's on cases where:
  - 1.     The facts of the case show clear and convincing evidence of an Intentional Program Violation as defined in 710.02,A, but do not warrant criminal prosecution; or,
  - 2.     The case does not conform to local guidelines of the District Attorney's Office concerning criminal prosecution; or,
  - 3.     The case was referred for prosecution, but the proper legal authority declined to prosecute; or
  - 4.     The case was referred for prosecution, but action to prosecute was not taken within a reasonable period of time, and the referral for prosecution was formally withdrawn by the county.
  
- B.     Do not consider current eligibility when deciding between an ADH or prosecution.
  
- C.     A State level hearing is held only when a County level ADH hearing finds a violation was committed and that decision is appealed to the State level by the recipient.
  
- D.     The ADH may be waived. See 710.06 Waiver of Disqualification Hearing for waiver procedures.
  
- E.     More than one violation may be the subject of a single hearing, but only one disqualification penalty may be assigned. Enhanced or extended penalties must be based on prior disqualification(s). Address all violations identified in an investigation through one hearing.

Treat suspected IPV cases as Inadvertent Household Error (IHE) claims when the county does not initiate criminal prosecution or an ADH. See Section 815, Inadvertent Household Error Claims.

**710.02            LIMITATIONS OF ADMINISTRATIVE DISQUALIFICATION HEARINGS**

- A.     The burden of proof that an individual has committed an Intentional Program Violation (IPV) rests with the county department. The proof must be clear and convincing. Clear and convincing proof is more than the greater weight of the evidence, but less than beyond a reasonable doubt. Clear and convincing is defined as the measure or degree of proof which will produce in a reasonable person a firm belief or conviction that the individual committed the alleged act(s).

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- B. Do not conduct an Administrative Disqualification Hearing (ADH) on a case that was referred to the court system for prosecution if the charges were dismissed or the individual was found not guilty by the court.
- C. It is allowable to conduct an ADH if prosecution is declined by the appropriate legal authority, or when no action is taken within a reasonable period of time and the referral is formally withdrawn by the county.

**EXAMPLE:** A person suspected of committing an IPV is referred for prosecution, but because the individual has moved to another state, a warrant can not be served. The county may formally withdraw the warrant, and notify the client of an ADH via Certified Mail, return receipt requested.

- D. An ADH may be held in order to pursue disqualification even if a claim will not be established. This is possible when a front end investigation demonstrates clear and convincing evidence that an IPV occurred, but no benefits were issued. Also a regular investigation reveals an overissuance is less than \$125 for a non-participating household, and no claim will be established because the overissuance is not due to trafficking or discovered by quality control.
- E. Do not schedule an ADH or offer the client a Waiver of ADH if the case is being considered for criminal prosecution. Decide which action is appropriate using locally established procedures with your District Attorney. Consider factors such as: the amount of the claim, and the number of acts of IPV. Do not consider a person's ability to pay on a claim when deciding between an ADH or referral for criminal prosecution. Do not offer a client a Waiver of ADH as a means of avoiding criminal prosecution.
- F. A second party review is required to ensure there is clear and convincing evidence of an IPV before scheduling an ADH, or mailing a notice and waiver.

**710.03           TIMELY ACTION ON ADMINISTRATIVE DISQUALIFICATION HEARINGS**

The hearing officer will conduct the hearing, arrive at a decision, and initiate administrative action to make the decision effective. This must be completed within 90 days of the date the FNS unit member is notified in writing of the hearing, or within 60 days of the date the FNS unit appeals the case to the State level. The FNS unit member or representative is entitled to a postponement of up to 30 days. The request must be made at least ten (10) days before the scheduled hearing. If the hearing is postponed, the 90-day time limit is extended for as many days as the hearing is postponed.

**710.04           HEARING OFFICER FOR ADH**

The Hearing Officer for county level ADH hearings is the County Director. The Director may delegate this function to a specifically designated impartial employee of the county department. 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.

**710.05           ADVANCE NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING**

Mail the DSS-8556, Advance Notice of Your Disqualification Hearing to provide the FNS unit member written notice of the pending hearing. Include DSS-8588, Waiver of Administrative Disqualification Hearing. See Section 710.06. Mail a copy of both the DSS-8556 and DSS-8588 to any known legal representative, legal guardian, or DSS authorized representative of the accused individual if applicable.

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- A. Provide the notice at least 30 days in advance of the county level hearing. Mail the notice via first class mail or certified mail -- return receipt requested. It is recommended that "addressee only" be used. A copy of the advance notice must be retained in the case record even if the client chooses to waive the hearing by signing the DSS-8588, Waiver of Disqualification Hearing.
  
- B. Use one of the following alternatives when the advance notice is returned by the postal service as "unclaimed", "refused", or otherwise not deliverable. Count 90 days for the ADH decision deadline with the mailing of the second notice, if the first notice is returned.
  - 1. Reschedule the hearing, allow 30 days prior notice and attempt another mailing either by first class or certified mail, then hold the hearing and render a decision if the second notice is returned.
  - 2. In place of or concurrent with 1. above, reschedule the hearing, mail a copy of the notice by regular mail, and have a county representative attempt to contact the FNS unit member in person or by telephone. Hold the hearing as rescheduled.
  - 3. A new hearing is scheduled and conducted if the client contacts the hearing officer within 10 days of receipt of a hearing decision, and the hearing officer accepts a "good cause" reason for failure to appear. See Section 710.08.

**710.06 WAIVER OF DISQUALIFICATION HEARING**

- A. If you are contacted by the individual with questions about the waiver, advise the client of his/her rights, including the right to an ADH at which time the IPV must be proven by clear and convincing evidence. Explain the penalty is the same if found guilty at an ADH or signing a waiver.
  
- B. If a waiver is signed and returned, provide notification using DSS-8587, Action Taken On Your Waiver of Administrative Disqualification Hearing within 10 calendar days of receipt of the waiver.
  
- C. Begin the disqualification the month following the month the DSS-8587 is mailed plus three days to allow mail delivery, whether or not the individual is receiving or eligible for benefits. The disqualification period cannot be interrupted once it begins.

The individual accused of committing an IPV may waive his right to an Administrative Disqualification Hearing (ADH) by signing the DSS-8588, Waiver of Disqualification Hearing. Provide notification to the FNS unit that the hearing can be waived when mailing a notice scheduling an ADH. Do not ask the individual to sign a waiver of ADH at any in person meeting or in any telephone contact and do not mail a waiver form prior to scheduling the ADH. Do not take any other action to encourage the individual to waive an ADH. Do not offer a client a Waiver of ADH as a means of avoiding criminal prosecution. The disqualification penalty cannot be changed by a subsequent fair hearing decision.

**710.07 SCHEDULING OF ADMINISTRATIVE DISQUALIFICATION HEARING**

Make reasonable efforts to schedule the hearing at a time and place convenient to the FNS unit member suspected of an IPV. Conduct the ADH without the FNS unit member present if the FNS unit member or his representative cannot be located or fails to appear at the hearing without good cause. The Hearing Officer is required to consider carefully the evidence and determine if an IPV was proven to have been intentionally committed by clear and convincing evidence even when the FNS unit member is not present.

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**710.08 FAILURE OF THE FNS unit MEMBER TO APPEAR**

- A. Conduct a new hearing when the Hearing Officer determines that the FNS unit member or representative failed to appear with good cause. The previous decision is no longer valid. The Hearing Officer who originally ruled on the case may conduct the new hearing.
- B. The FNS unit member has ten calendar days after the date of the hearing decision to present reasons indicating a good cause for failure to appear.
- C. Allow 30 days from the date the hearing decision was received by the FNS unit member to present good cause for failure to appear only if the DSS-8556 Advance Notice of ADH, was not received by the FNS unit member.
- D. If the hearing officer finds the FNS unit member or representative did not have good cause for failure to appear at the hearing, allow fifteen days from the date of that decision for the FNS unit member or representative to request a State Level Hearing.
- E. The Hearing Officer must enter his/her decision regarding good cause into the record.

**710.09 PARTICIPATION WHILE AWAITING A HEARING**

Do not disqualify a FNS unit member before guilt is finally determined by a hearing officer, court, or waiver. An individual may be certified and participate in Food and Nutrition Services while awaiting an ADH. Determine eligibility and benefit level without regard to the pending hearing. Reduce or terminate benefits during the appeal process only if it is verified under normal certification procedures that the FNS unit is currently ineligible, or eligible for fewer benefits.

**710.10 ARRANGEMENTS FOR THE HEARING**

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

- A. Arrange a suitable place for the hearing. The hearing may be held at the County Department of Social Services or another mutually acceptable location. Do not require undue travel expense on the appellant. The room should be physically comfortable, afford as much privacy as possible, and be furnished with such equipment as necessary to ensure the efficiency of the proceedings.

Consider and reasonably accommodate any physical and/or mental limitations when making arrangements for the hearing. Encourage the FNS unit member to have a representative when his physical or mental state would hinder his participation in a hearing, or a hearing could aggravate his condition. Postpone the hearing up to 30 calendar days if necessary to allow the FNS unit member more time to seek representation.

- B. Prepare the following information and make available to the Hearing Officer and the individual accused of the IPV prior to or at the time of the hearing:
  - 1. Copies of a hearing summary which should be a brief summary of allegations about the situation. A verbatim transcript is **not required**. Omit unrelated material. The general format may be the same as used for State level hearings.
  - 2. Copies of all other supportive material, including but not limited to: applications, recertifications, wage verifications, notices, manual sections, etc.
  - 3. Any other pertinent information helpful in establishing the facts.

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4. Do not include or release to the FNS unit any confidential information, such as the names of individuals who have disclosed information about the FNS unit without its knowledge, or the status of other pending criminal prosecutions. Do not include any irrelevant information.

**710.11 ATTENDANCE AT THE HEARING**

The hearing is not open to the public, and should be attended only by persons directly involved with the case unless requested specifically by the individual charged with an IPV. The individual may bring any friends or witnesses, as well as legal counsel at his expense. The hearing is normally attended by a representative of the county department and the FNS unit member suspected of the Intentional Program Violation (IPV) and/or his representative. Conduct the hearing even if the FNS unit member fails to appear.

**710.12 RIGHTS AND DUTIES OF PARTICIPANTS**

The rights and duties of the Hearing Officer, the FNS unit member, and the county department are described in detail below.

**710.13 THE HEARING OFFICER**

The Hearing Officer will:

- A. Administer an oath to all participants of the hearing. Inquire into the individual's understanding of and ability to participate in the proceedings;
- B. Explain the county's burden to prove intent by clear and convincing evidence as defined in Section 710.02;
- C. Ensure that all issues and evidence presented by the county and/or FNS unit member are relevant to the issue(s) of the ADH and are considered;
- D. Request, receive, and make part of the record all evidence determined necessary to decide the issue;
- E. Regulate the conduct and course of the hearing in an orderly manner consistent with the FNS unit member's rights shown in 710.15;
- F. Order, as appropriate, an independent medical assessment or professional evaluation from a source mutually satisfactory to the FNS unit and the county department, particularly if there is an indication of reduced mental capacity affecting the issue of intent and existing medical evidence on this issue is insufficient;
- G. Advise the FNS unit member or representative that they may refuse to answer questions during the hearing;
- H. Advise the FNS unit member or representative that they do not have to produce documents, but have the right to do so;
- I. Advise the FNS unit member or representative of their right to ask questions of all county witnesses, and to call witnesses of their own;
- J. Advise the FS unit member or representative of their right to request a State Level Hearing if they are dissatisfied with the result of the ADH, and of the deadline for doing so;
- K. Consider only evidence presented at the hearing and not discuss the merits of the case with any party outside of the hearing;

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- L. Render hearing decision in the name of the county.

**710.14 THE FOOD AND NUTRITION SERVICES (FNS) UNIT MEMBER**

The FNS unit member may not be familiar with the rules of order, and the hearing officer should make every effort to conduct the hearing in a manner that makes the client feel most comfortable. The FNS unit member or representative must be given an adequate opportunity prior to and during the hearing 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. This includes contents of the case file, provided that confidential information is protected from release. The county department will provide to the client or representative when requested, the right to review and free copies of the relevant portions of the case file. Never release the case summary, store certification information, or photos of the interior of a store USDA, FNS provided on a disqualified store. Do not present this information at the hearing or allow it to affect the hearing decision.
- B. Present the case himself or have it presented by a legal counsel or other person.
- C. Bring witnesses and ask them questions.
- 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.

**710.15 THE COUNTY DEPARTMENT**

The county representative has the same rights as the FNS unit member, such as the right to examine documents, bring witnesses, advance arguments, question evidence, and submit evidence. The county will cooperate with and respond to questions posed by the client or his representative during an ADH, as long as, such questions are relevant to the client and case of the ADH. Notice will be provided in the client primary language, and a translator provided, if requested.

**710.16 CONDUCTING THE HEARING**

The Hearing Officer presides at and conducts the hearing informally. Every effort is made to put the participants at ease and to remove tensions. The recording procedures, if used, should be explained so that each person understands 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. Tentative and final decision provisions including notification to the parties involved.
  - 3. Following an ADH hearing, the FNS unit member's right to request a State Level Hearing and the deadline for doing so.

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4. The FNS unit member's right not to answer questions during the hearing and all other rights in Section 710.15.
- B. A county representative reviews the hearing summary and introduces the summary into the record.
- C. The Hearing Officer makes a statement of the points at issue.
- D. The Hearing Officer gives the participants an opportunity to correct or modify the statement of the situation. The Hearing Officer is responsible for assisting both the FNS unit member and the county department to ensure that all relevant facts are considered. Each person present is given an opportunity to speak. The hearing officer receives and considers any relevant verbal testimony or written documents related to the issue involved. The FNS unit and the county have the opportunity to offer rebuttal.
- E. Technical rules of evidence do not apply at the hearing.

**710.17 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 received after the tentative decision, and the final decision constitutes the hearing record.

- A. This record is retained.
- B. Do not introduce at a hearing, or make part of the hearing record, any information considered confidential or that the client or representative would not be allowed access. For example: photos of the store interior provided by USDA, or information given by an anonymous referral.

**710.18 MEDICAL ISSUES**

A hearing officer may rule that a medical assessment is necessary when the hearing involves medical issues such as a diagnosis or physician's report or reduced mental capacity. The assessment will be completed by a source satisfactory to both the FNS unit and the county, and made a part of the hearing record. This is a county expense. Federal and State reimbursement is available and is included in allowable administrative expenses claimed on the DSS-1571.

**710.19 HEARING DECISION**

The hearing officer will consider all the issues discussed at the hearing, and render a decision based on the evidence admitted at the hearing. The decision may not be contrary to federal law, regulation, or policy.

- A. A determination that the FNS unit member committed an IPV must be based on clear and convincing evidence which demonstrates that the FNS unit member knowingly, willfully, and with deceitful intent committed an IPV as defined in Section 820, Intentional Program Violation Claims. If the county fails to meet the burden of proof, the hearing officer must find that an IPV did not occur.
- B. The decision specifies the reasons for the decision, identifies the supporting evidence, refers to the appropriate Food and Nutrition Services manual section, and responds to reasoned arguments made by the FNS unit member or representative.

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- C. The decision of the County Hearing Officer is rendered in final form; there is no tentative decision.

**710.20 COUNTY LEVEL DECISION**

Elements of a county level decision and county actions that follow are outlined below.

- A. The Hearing Officer provides a written notice to inform the individual of a not guilty decision. A form is not provided for this instance; a short, simple letter will do.
- B. The Hearing Officer provides a written notice to inform the individual of a guilty decision. Use DSS-8558, Action Taken on Your Disqualification Hearing signed by the Hearing Officer as the "County Representative." Also provide the individual with the reasons for the decision, identify the supporting evidence, identify the appropriate Food and Nutrition Services manual section(s), and respond to reasoned arguments made by the individual or representative. No form is provided for this information. A letter written on the county agency's stationery will suffice.
  - 1. The Enterprise Program Integrity Control System (EPICS) issues a repayment agreement as part of the FSIS Overissue Notice, DSS-8554 when the claim is redetermined from a "U", pending an Administrative Disqualification Hearing, to a claim category (A, V, or H). The Letter of Overissuance explains the repayment requirements contained in Sections 810, 815, and 820, Claims.

**NOTE:** Do not send DSS-8554 or enter a disqualification or claim in EPICS until the client's deadline to request a State Level Hearing expires. If the client request a State Level Hearing, do not enter a disqualification or claim in EPICS until a final State Level Hearing decision is issued.
  - 2. The procedures for handling the reserve and income of the disqualified individual are described in Section 250, Resources, and Section 260, Income.
  - 3. Notification of the decision is mailed by certified mail - return receipt requested. The individual 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, etc., the 15-day appeal period starts on the next calendar day after return. If the receipt is not returned within seven days of mailing, the 15-day appeal period starts on the eighth calendar day after mailing. Begin recounting the 15 days if you receive notice the certified letter was accepted after the 8<sup>th</sup> day. If the 15-day appeal period ends on a weekend or holiday, accept requests through the following working day. If a request for good cause for failure to attend an ADH is received, see Section 710.08.

**710.21 APPEAL AFTER ADMINISTRATIVE DISQUALIFICATION HEARING**

A State Level Hearing is held if a FNS unit member appeals the local ADH.

- A. A FNS unit member found to have committed an IPV by a local ADH has 15 calendar days after the individual receives the county hearing decision notice to appeal the decision to a State Level Hearing. Complete and mail a DSS-1473, Request for State Appeal when a client request a State Level Hearing within 15 days of receipt of the ADH decision. Allow 30 days for a client to request a State Level Hearing when the ADH decision notice was returned to the county and not received by the client.
- B. For State level hearings, the Hearing Officer is a State Hearing Officer who represents the State Director, Division of Social Services.

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- C. The State Office of Hearings and Appeals provides written notice to the individual and the county department at least ten days in advance of the State Level Hearing. Certified mail is not required.
- D. A new State Level Hearing is conducted and a final decision rendered within 60 days of the request. A hearing is not conducted when the individual or their representative fails to attend the State level hearing without good cause. The decision of the ADH is automatically upheld. The prior decision is not considered in a new hearing. The State Level Hearing Officer will reschedule a hearing if the client provides "good cause" for not appearing at the hearing.
- E. The county cannot appeal or contest a local ADH decision in favor of the client.

**710.22 STATE LEVEL DECISION**

A tentative decision is prepared and sent by the State Hearing Officer to the individual and the county representative. The decision becomes final unless either party requests (orally or in writing) to present oral or written arguments. The request must be made within ten calendar days of the date of the tentative decision. Arguments must be presented within ten calendar days of the date a request is made. If oral or written arguments are not requested or presented within those time frames, the decision becomes final without further notice being given.

Elements of a State level decision and county actions that follow are outlined below.

- A. The State Hearing Officer provides written notice which informs the individual of the tentative not guilty decision. Evaluate the case for a possible AE or IHE claim and enter in EPICS if appropriate.
- B. The State Hearing Officer provides a written notice which informs the individual of a guilty decision.
  - 1. The notice informs the individual that:
    - a. The disqualification will begin the first month following the month of notification; and
    - b. The participation status of the remaining FNS unit members.
  - 2. Send another repayment agreement letter when a tentative decision becomes final, and the FNS unit member has not responded to the repayment agreement part of the DSS-8554, Notice of Overissuance.
  - 3. Impose the disqualification the month following the month the state level decision becomes final, regardless of the current eligibility of the FNS unit. Refer to Section 820, Intentional Program Violation Claims.
  - 4. The procedures for handling the resources and income of the disqualified individual are described in Section 250, Resources, and Section 260, Income.

**710.23 APPEAL AFTER STATE LEVEL HEARING**

No further administrative appeal procedure exists after an adverse State level hearing. The determination of an IPV made by an Administrative Disqualification Hearing (ADH) official cannot be reversed by a subsequent fair hearing decision. The FNS unit member may appeal the case to a court within 30 days of receipt of the State hearing decision. The disqualification is subject to stay or injunction in an appropriate court of law.

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**710.24 OVERTURNED INTENTIONAL PROGRAM VIOLATION (IPV) DISQUALIFICATION**

Reinstate the individual in the program if the FNS unit is eligible when an IPV disqualification is overturned or reversed by an appropriate court. Restore any benefits that were lost as a result of the disqualification according to Section 900, Restorations and Replacements.

**710.25 DISQUALIFICATION PENALTIES**

The following disqualification penalties apply for offenses which occurred after October 23, 1996. See Section 825.01, B for disqualifications prior to October 23, 1996.

**NOTE:** All disqualifications prior to April 1, 1983 count as one offense regardless of the number of imposed disqualifications.

A. Disqualification penalties imposed following a guilty decision from an Administrative Disqualification Hearing (ADH) effective October 23, 1996:

1. Twelve months for the first offense;
2. 24 months for the second offense;
3. Permanently for the third offense; or
4. Ten years for misrepresenting residence and/or identity in order to receive multiple benefits.

**NOTE:** Refer to Section 825.01, A, Intentional Program Violations, for other disqualification penalties that may be imposed by Federal, State, or Local courts.

B. Provide written notice to the household regarding eligibility of the remaining FNS unit members. Continue a disqualification once imposed regardless of eligibility. Include all FNS unit members who were adults at the time of the overissuance as debtors of the claim. EPICS will send each debtor a separate notice of overissuance.

C. Persons disqualified must be reported to the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS). This is accomplished by entering the disqualification into EPICS. See Section 825.02, Intentional Program Violation Disqualification and the EPICS Manual. Enter disqualified individuals in EPICS only if they have a valid Social Security Number. Manually track disqualifications in your county for individuals without a valid SSN.

D. The IPV disqualification of an individual with a valid SSN will follow the individual to another county or state.

E. Benefits to remaining FNS unit members may not be increased due to the disqualification of any individual member.

F. All of the income and resources of a disqualified individual are counted as available to any remaining FNS unit members.

**NOTE:** Refer to Section 825, Intentional Program Violation Disqualification, for further information on disqualification penalties.