

PART XIX FAIR HEARINGS AND ADMINISTRATIVE DISQUALIFICATION HEARINGS

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A. INTRODUCTION (7 CFR 273.15(c))

The Food and Nutrition Act requires that each state provide a fair hearing to any household aggrieved by any action of the local social services agency that affects the household's receipt of SNAP benefits.

An individual has the right to appeal and receive a fair hearing when:

- a claim for benefits is denied, or is not acted upon with reasonable promptness;
- the individual is aggrieved by any other agency action that affects entitlement to or receipt of benefits; or
- agency policy in its administration of the Program affects the individual's situation.

Within 60 days of receipt of a request for a fair hearing, the State must assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision.

1. Role of the Commissioner of Social Services

§63.2-517 through §63.2-519 of the Code of Virginia give the Commissioner of Social Services ultimate authority and responsibility for the appeal process. The State Board of Social Services, as authorized by §63.2-801 of the Code of Virginia, establishes policies and procedures to implement SNAP, including the appeal process, according to federal regulations.

The Commissioner may delegate authority to make decisions in any appeal case. The Commissioner must appoint a panel to review hearing decisions upon the request of either the household or the local agency. The panel must report periodically to the Commissioner regarding the need for changes in the conduct of future hearings, or to policy and procedures related to the issue of the appeal.

2. Definitions

The following definitions will be applicable to the terms used in this chapter.

- a. State Hearing Authority - A comprehensive term used to designate the State decision-maker in appeal cases; as such, it includes the Commissioner and qualified hearing officers of the Virginia Department of Social Services. Hearing officers have the authority to make binding decisions in appeal cases in the name of the State Hearing Authority.
- b. Hearing Officer - An impartial representative of the State to whom appeals are assigned and by whom they are heard. The hearing officer must not have been involved in any way with the agency action on appeal. The hearing officer has the authority to conduct and control hearings and to decide appeal cases.
- c. Claimant - The SNAP household that files an appeal about an aspect of its entitlement to SNAP benefits.

B. RIGHT OF APPEAL

The agency must inform applicant households of the following:

- the right to a fair hearing;
- how a hearing may be requested;
- the right to be represented by others or for self-representation

In addition to information about the right of appeal, the BPS must advise SNAP households of the right to appeal when:

- there is dissatisfaction with the agency's action or the failure to act in relation to the household's eligibility or level of participation; or
- action is taken to deny or reduce benefits

Households denied expedited service must also be offered an opportunity to request an agency conference. During a conference, households must receive an explanation of why they were denied expedited service processing and must have an opportunity to present any information on which disagreement with such action is based. The Notice of Action and the Advance Notice of Proposed Action forms may be used interchangeably for denial or negative actions, except as required for issuing a joint notice with public assistance programs (See Part XIV.A.3).

Each household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination that a household member is not exempt from work registration and employment services requirements, or a determination of failure to comply with work registration and employment services requirements.

Individuals or households may appeal local agency actions related to work registration and employment services if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. These actions include exemption status, the type of employment and training requirement imposed, or local agency refusal to make a finding of good cause.

C. HEARING REQUEST (7 CFR 273.15 (h))

A household that is aggrieved by any local agency action may request a hearing by any clear expression, oral or written, to the effect that an opportunity to present the case to a higher authority is desired. Such request may be made by a household member, the authorized representative, or some other person acting on the household's behalf, such as a legal representative, relative or friend. The right to make such a request is not to be limited or interfered with in any way. If a household makes an oral request for a hearing, the local agency must complete the procedures necessary to start the hearing process. The Notice of Appeal form must be made available to the household to facilitate appeal requests; however, completion of this form by the household is not required if a clear expression for a hearing has been made by some other method. Local agencies must help the claimant submit and process the request, and prepare the case, if needed. Information and referral services must be provided to help claimants make use of any legal services available in the community that can provide legal representation at the hearing.

Upon request, the local agency must make available, without charge, information from the case file for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. 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, must be protected from release.

D. TIME LIMITS FOR REQUESTING A HEARING (7 CFR 273.15 (g))

A household must be allowed to request a hearing on any adverse action or loss of benefits which occurred in the prior ninety (90) days. Action by the agency will also include a denial of a request for restoration of any benefits lost more than 90 days, but less than a year prior to the request. The household must be allowed to appeal and request a hearing at any time during the certification period if it is dissatisfied with the current level of benefits.

If the amount of a claim was not established by a fair hearing or a court, the household will have 90 days from the date of notification of the claim to appeal the amount or establishment of the claim.

E. LOCAL AGENCY CONFERENCE (7 CFR 273.15 (d))

When a household advises the local agency that it wishes to appeal denial of expedited service processing, the BPS must offer an agency conference. At the conference, the recipient may be represented by an authorized representative, legal counsel, relative or friend. Upon receipt of a request for such a conference, the BPS must schedule the conference within two working days, unless the household requests that the conference be scheduled later. The household's failure to request a BPS conference has no effect upon the right to appeal and have a fair hearing or upon the right to continued participation.

The conference with local agency staff is designed to allow the household to receive, a verbal explanation of the reason expedited service was denied. The conference is to avoid a lack of understanding by the household. The household should be given the opportunity to explain why it is entitled to expedited service processing.

The conference may be attended by the BPS but must be attended by an eligibility supervisor or the director and a household member or its representative.

The local agency conference may or may not result in a change in the agency decision regarding entitlement to expedited service. Regardless of the result of the conference, the household must be provided with a fair hearing unless there is a written withdrawal of the request for a hearing. The agency must provide the results of the conference in writing to the household. The fact that the conference was held will not affect an appeal or the required time limits for filing or implementing a decision.

F. PARTICIPATION DURING APPEAL (7 CFR 273.15 (k))

When a verbal or written hearing request is made during the adverse (advance or adequate) notice

period, the household is entitled to continued participation until the end of the current certification period or until a decision on the fair hearing is reached, unless the household specifically waives continuation of benefits in writing. The household's participation in the Program will be continued on the basis authorized immediately prior to the adverse action notice. Continuation of benefits during the appeal process is only appropriate if the appeal is a result of a change which occurred during the certification period and for which an adverse action notice was issued or required. The agency must explain to the household that continuation of benefits is strictly at the household's option and that should it elect to have benefits continued and the hearing decision upholds the agency action, the household will be required to repay the value of any benefits overissued prior to and during the period such benefits were continued. A Notice of Action must be provided to the household when benefits are continued.

1. Determining Continuation of Benefits During the Appeal Process

The local agency must be aware that an appeal was made during the required time frame prior to authorizing continued participation. This means that the local agency must have

- (1) received the request directly from the household, or
- (2) written or verbal confirmation from the Hearings Manager or a hearing officer that a timely appeal request was received.

If a hearing request is not made within the period provided by the adverse action notice, benefits must be reduced or terminated as provided in the notice. If the household establishes that its failure to make the request within the adverse notice period was for good cause, the hearing officer must require that the local agency reinstate the benefits to the prior basis.

When benefits are reduced or terminated due to a mass change, participation on the prior basis must be reinstated only if the issue being contested is that the SNAP eligibility or benefit amount was improperly computed or that federal law or regulation is being misapplied or misinterpreted by the state. Households requesting an appeal of a mass change are eligible for continuation of benefits as long as they request a hearing within 90 days of the action being appealed and meet the requirements of this paragraph.

2. Exceptions to Continuation of Benefits

Once benefits have been continued or reinstated during the appeal process, they must not be reduced or terminated prior to the receipt of the official hearing decision unless:

- a. the certification period expires;
- b. the appeal issue is one of federal law or regulation and written notice has been received from the hearing officer;
- c. a change in circumstances affecting the household's eligibility or benefit level occurs while the hearing decision is pending and a request for a second hearing has not been received; or,
- d. a mass change occurs.

G. PREPARATION FOR THE HEARING

The appeal request, upon receipt by the Hearings Manager, must be assigned to a hearing officer who will validate the appeal and acknowledge the request by letter to the claimant with a copy to the BPS and other appropriate parties. Appeals staff will arrange with the local appeal coordinator to gather sufficient information to determine the validity of appeal requests. The local department of social services must provide validating information within five business days of the request for information.

The BPS must prepare a Summary of Facts of the case and forward it to the hearing officer within five days prior to the hearing. A general outline of this summary follows, although the content may vary to fit case situations. All statements made should be factual and phrased in a way not objectionable to the claimant.

For appeals that involve work registration or SNAP E&T noncompliance, eligibility staff and E & T staff must prepare the Summary of Facts jointly except when a household member refuses to register.

The Summary of Facts should include the following:

1. Identifying Information:

- Name of local agency
- Name, address and case number of claimant
- Persons included in the SNAP household
- Name, age, relationship to claimant
- Other persons in household
- Name, relationship

2. Date of Request and Reason for Appeal (quote the claimant in requesting the hearing)

3. Statement of Agency Action

- a. Give a brief, factual statement of the reason for agency action, or failure to act, and the nature and date of agency action. Note if there was an agency error, negligence or administrative breakdown.
- b. Under the heading "Agency Policy", cite and quote passages from the Virginia SNAP certification manual on which agency action was based.
- c. If the level of participation is in question, give a detailed breakdown of the claimant's financial circumstances as it appears on the SNAP application with whatever explanation may be necessary.
- d. Note the date and result of an agency conference on the denial of expedited service, if appropriate.

4. State whether participation is continuing during the appeal process on the basis authorized immediately prior to the adverse action notice.

5. The Summary must be signed and dated by the agency director or designee. The BPS must retain a copy of the Summary, which is the official document for presentation of its case at the hearing.

The BPS must provide a copy of the Summary and any other documents and records which are to be used at the hearing to the claimant or representative. The summary or documents must be provided at a reasonable time prior to the date of the hearing.

If documents pertinent to the hearing are received by the local department of social services or there are changes in the situation following transmittal of the Summary, copies of the documents and a written statement of the changes must be mailed in advance of the hearing to the hearing officer. Copies of the additional information must also be made available to the claimant or representative.

During the period between the filing of the appeal and the receipt of the decision from the State Hearing Authority, the local department of social services continues to be administratively responsible for the case on appeal. This responsibility includes appropriate adjustment in eligibility status or level of participation necessitated by changes in the claimant's situation, income, changes in household composition, or changes for any other reason.

If a change in circumstances occurs during the appeal process that results in a reduction or termination of benefits, an advance notice must be sent. If the claimant fails to appeal the proposed additional change, participation will be adjusted with respect to this change in circumstances. The change must be reported to the hearing officer for consideration of possible effect on the decision.

#### H. RESPONSIBILITIES OF HEARING AUTHORITY (7 CFR 273.15 (i))

In preparation of the hearing, the hearing authority must consider and act on the following situations:

1. If the request for a hearing is from a household, such as migrant farm workers, that plans to move from the locality, the hearing must be held as quickly as possible so a decision may be reached before the household leaves the area.
2. If the household requests postponement of the hearing, it must be granted. The postponement may not exceed 30 days. The time limit for action on the decision may be extended for as many days as the hearing is postponed.
3. If there are a series of individual requests for hearings, the appropriateness of conducting a single group hearing must be determined. The hearing officer may consolidate only cases in which the sole issue is one of State and/or federal law, regulation or policy, and with the consent of the appealing parties.

In all group hearings, the policies governing hearings must be followed. Each individual claimant must be permitted to present his own case or be represented by legal counsel or other spokesman. If the claimants request a group hearing on an issue specified in this chapter, the request must be granted.

I. DENIAL OR DISMISSAL OF REQUEST FOR HEARING (7 CFR 273.15(j))

A request for a hearing will not be denied or dismissed unless:

1. The request is not received within 90 days of the date of agency action or failure to act;
2. The request is withdrawn in writing by the household or its representative;
3. The household or its representative fails, without good cause, to appear at the scheduled hearing; or
4. Files an oral request to withdraw without coercion. The hearing officer must send the household a notice to confirm the withdrawal and offers the household an opportunity to reinstate the hearing within ten days. If reinstated, the 60-day process period will begin anew.

J. HEARING PROCEDURE

The hearing must be conducted at a time, date, and place convenient to the claimant(s). Preliminary written notice must be given at least 10 days prior to the hearing. (Allow two days for mailing in addition to the postmark date.) The claimant will be requested to advise the local department of social services immediately if the scheduled date or place is inconvenient, but, without such notification, it is assumed the arrangements are convenient. The hearing may be conducted through a teleconference.

The local department of social services is responsible for assuring that the claimant has transportation to the hearing if the claimant is unable to make arrangements.

When a claimant indicates that the scheduled date is not convenient, the hearing date may be extended. The hearing officer will determine whether the provision of extension is being abused and reserves the right to set a date beyond which the hearing will not be delayed.

The hearing is to be conducted in an informal atmosphere and every effort will be made to arrive at the facts of the case in a way that will put the claimant at ease. It is the hearing officer's responsibility to assure that this is done, and the hearing officer may, within the discretion allowed, designate those persons who may attend the hearing or the particular portion of the hearing they may attend. The hearing officer has full authority to recess the hearing or to continue to another date in the interest of fairness.

When the issue on appeal is of a medical nature, (e.g., concerning a diagnosis, an examining physician's report, or a Disability Determination Services decision), the hearing officer may request a medical assessment by someone other than the person(s) involved in making the original examination. Such an assessment will be obtained at combined State and local expense from a source satisfactory to the claimant and will be made a part of the hearing record.



Any material from the SNAP case record must be made available to the claimant and/or his representative upon request. Additionally, a household must be allowed to examine its employment component case file at a reasonable time before the date of the fair hearing. Confidential or other information, which the head of the household or his representative does not have an opportunity to hear, see, and respond to, must not be introduced at the hearing, nor will it become a part of the hearing record. It is within the discretion of the hearing officer to designate what is pertinent to an issue on appeal and admissible as evidence during the hearing, including the entire case record, if appropriate.

When benefits are continued pending a hearing decision, the hearing officer must rule at the hearing whether the issue being appealed is one of federal law, regulation or policy, or whether the issue relates to a matter of fact or judgement applicable to an individual case. If the hearing officer rules that the issue being appealed is one of federal law, regulation or policy, benefits will be reduced or terminated as proposed by the Advance Notice of Proposed Action or the Notice of Action.

If, during the appeal process, the need for adjustment in eligibility or basis of issuance in favor of the claimant becomes evident, reconsideration or modification of the former decision will be made by the local department of social services. If an adjustment is satisfactory to the claimant, the claimant may withdraw the appeal or of have a formal decision made by the Hearing Authority.

The local department of social services employment services staff or the agency's designee operating the relevant employment and training component must receive sufficient advance notice of the hearing so that representatives may attend the hearing or are available for questioning by telephone during the hearing. If a hearing is scheduled by households appealing a work registration or employment and training issue, the results of the hearing are binding on the local department of social services.

#### K. EVENTS OF THE HEARING

The hearing must be attended by the BPS and the claimant or a representative. The household may also bring relatives or friends along if it so chooses. The hearing officer has the authority to limit the number of persons present if space limitations exist. The hearing officer will coordinate the following activities at the hearing:

1. Identification of those present for the record.
2. Provide an opening statement to explain the hearing purpose, procedure to be followed, how and by whom a decision may be made and to be communicated to claimant and local agency, and the option of either party, if decision is made by the hearing officer, to request review of the decision by the Commissioner.
3. The claimant or his representative must be given the opportunity to:
  - a) examine all documents and records which are used at the hearing;

- b) present the case or have it presented by legal counsel or other person;
  - c) bring witnesses;
  - d) establish pertinent facts and advance arguments; and,
  - e) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
4. The local department of social services will have the opportunity to clarify or modify its statements contained in the Summary of Facts and to question the claimant, his representative, or witnesses on the important issue(s). The local department of social services has the same rights as the claimant to examine documents, bring witnesses, advance arguments, question evidence and submit evidence.
  5. Evidence admissible at the hearing is limited to information that is related to the issue(s) being appealed. Such issues include those given by the claimant at the time of the appeal request and those given by the local department of social services as a basis for its actions or inaction under appeal. The hearing officer must determine whether an issue, other than the one being appealed, may be introduced, but no additional issues are admissible without concurrence of the claimant and local department of social services.

#### L. DUTIES OF THE HEARING OFFICER

The hearing officer must:

1. Ensure that all relevant issues are considered.
2. Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised.
3. Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing.
4. Order an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the local department of social services if it is relevant and useful.
5. Render a decision in the name of the State Hearing Authority. Decisions must comply with regulations as stated in the Virginia SNAP Certification Manual and the Virginia EBT Policies and Procedures Guide and must be based on the hearing record. An official report containing the substance of what transpired at the hearing, the findings and conclusions of the hearing officer, together with all papers and requests filed in the proceeding, will constitute the record for the decision.
6. Provide a copy of the decision that reverses the actions of a local department of social services to the SNAP Regional Consultant.

M. HEARING DECISION (7 CFR 273.15(q))

An official report containing the substance of the hearing, together with the findings and conclusions of the hearing officer, and all papers filed in the proceeding, will constitute the record for the decision. The household and the local department of social services must each be notified of the decision by a copy of the written official report of the decision.

The decision of the hearing officer will be final and binding when presented in writing to the claimant and the local department of social services.

The claimant, the claimant's representative, and the local department of social services must be given written notice of the right to request a review of the hearing officer's decision by the Appeals Review Panel. The decision must be put into effect regardless of whether review by the Appeals Review Panel of the decision has been requested. In addition to the claimant's right to request a review by the Appeals Review Panel, the claimant may seek a judicial review of the decision.

The request for the Appeals Review Panel review by either party must be submitted in writing within 10 days following the date of the hearing officer's written decision with a written statement of the reasons for the objection to the decision. A copy of the review request by the local department of social services must be submitted to the claimant.

The Appeals Review Panel will make recommendations about future policy changes or the conduct of future hearings only. The claimant, the claimant's representative, and local department of social services will not be notified about the panel's recommendations.

When the decision of the hearing officer is adverse to the claimant, all available administrative remedies have been exhausted.

All hearing records and decisions are available for public inspection and copying, subject to the disclosure safeguards, provided identifying names and addresses of household members and other members of the public are kept confidential.

N. IMPLEMENTATION OF DECISIONS

All final hearing decisions must be reflected in the household's benefits within time limits specified in this section. Local departments of social services must provide documentation to the hearing officer of compliance with hearing decisions.

1. Decisions that result in an increase in household benefits must be reflected in the benefit amount within 10 days of the receipt of the hearing decision, even if the local agency must provide a supplementary allotment or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. The local department of social services may take longer than 10 days if it elects to make the decision effective in the household's normal cycle, provided that the issuance will occur within 60 days from the household's request for the hearing.
2. Decisions that result in a decrease in household benefits must be reflected in the next

scheduled issuance following receipt of the hearing decision. No additional notice to the household is needed.

3. When the decision of the hearing officer or Commissioner, as appropriate, determines that a household has been improperly denied program benefits or as been issued a smaller benefit amount than it was due, lost benefits must be provided to the household as allowed by Part XVI.A.
4. When the decision of the hearing officer or Commissioner, as appropriate, upholds the action of local department of social services, a claim against the household must be prepared, as allowed by Part XVII.A for any overissuances.

O. INTRODUCTION TO ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADH) (7 CFR 273.16(e))

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

In order to request an ADH, there must be clear and convincing evidence that demonstrates that a household member committed or intended to commit an IPV as described in the Definitions section. Examples of evidence include, but are not limited to, the following:

1. Written verification of unreported income or resources received by the household;
2. Verification that the household understands its reporting requirements by its signature under the rights and responsibilities section of the application or on some other form;
3. An application or change report form submitted during the period the IPV is alleged to have occurred which omits the information in question; and
4. Documented contacts with the household during the period the IPV is alleged to have occurred in which the household failed to report information in response to agency queries about household circumstances.

Each example noted above does not have to be presented to document intentionality, however, it is likely that such deliberateness can only be shown through the presentation of more than one of these evidence examples.

P. INITIATION OF AN ADH

The local department of social services must ensure that the evidence against the household member alleged to have committed the IPV is reviewed by either an eligibility supervisor or agency director to certify that such evidence warrants a referral for an ADH.

Prior to submitting the Referral for Administrative Disqualification Hearing to the State Hearing Authority, the local department of social services must provide the forms, Notification of Intentional

Program Violation and Waiver of Administrative Disqualification Hearing and may provide the "Administrative Disqualification Hearings" pamphlet to the household member suspected of the IPV. To determine the appropriate disqualification period for the notification form, the agency must access the electronic Disqualified Recipient Subsystem (eDRS) to determine the number of prior disqualifications an individual may have. The eDRS information about prior disqualifications must be verified before deciding on the length of the penalty. See Part XVII.L.2 for additional information about eDRS.

The waiver must be returned to the agency within 10 days from the date notification is sent to the household to avoid submission of the Referral for ADH. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed in accordance with policy at Part XVII.L.1. No further administrative appeal procedure exists after an individual waives his/her right to an ADH and a disqualification penalty has been imposed. The disqualification period cannot be changed by a subsequent fair hearing decision. The household member is entitled to seek relief in a court having appropriate jurisdiction and the period of disqualification may be subject to stay or other injunctive remedy by a court of appropriate jurisdiction. Allegations of coercion by the household member, household head, or legal representative to VDSS or the local department of social services will negate the waiver however and the case must be referred for an ADH.

If no waiver to the ADH is received within 10 days, the local department of social services must submit the Referral for Administrative Disqualification Hearing to the Hearings Manager by the 15<sup>th</sup> day following the date notification was sent to the household. The additional five days allows for possible mail delivery delays. The form must include the following information:

1. Identifying Information as requested at the top of the form;
2. Summary of the Allegation(s);
3. Summary of the Evidence; and
4. Copies of documents supporting the allegation.

The referral must be signed and dated by the supervisor or director.

If a case is referred for an ADH, it must not simultaneously be referred for prosecution. The local department of social services may combine a fair hearing and an ADH into a single hearing if the factual issues arise out of the same or related circumstances and the household receives prior notice that hearings will be combined.

If the ADH and fair hearing are combined, the agency must follow timeframes for conducting an ADH. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether the IPV has occurred, the household will lose its right to a subsequent fair hearing on the amount of the claim. However, the local department of social services must, at the household's request, allow the household to waive the 30-day advance notice period for the scheduling of the ADH when the hearings are combined.

Q. SCHEDULING THE ADH

Upon receipt of the request for the ADH, the Hearings Manager will forward the request to the appropriate hearing officer.

1. Advance Notice of ADH (7 CFR 273.16(e)(3))

The hearing officer must schedule a date for the ADH and provide written notification to the household member suspected of IPV at least 30 days in advance of the date the ADH has been scheduled. The form, "Advance Notice of Administrative Disqualification Hearing" is used for this purpose. The pamphlet that describes the ADH procedures may be sent with the advance notice. The ADH advance notice may be sent by first class mail, certified mail - return receipt requested, or be any other reliable method. If the notice is sent by first class mail and it is subsequently returned as undeliverable, the hearing may still be held.

Once the ADH has been scheduled, the ADH is to be conducted and a decision made within 90 days of the date the household is notified in writing that the ADH has been scheduled. A copy of the decision must be provided to the household and the local agency.

2. Time and Place of the ADH (7 CFR 273.16(e)(4))

The time and place of the ADH must be arranged so that the hearing is accessible to the household member suspected of IPV. The member 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. The ADH will not be postponed for more than 30 days and the State Hearing Authority may limit the number of postponements to one. When a hearing is postponed, the time limit for rendering and notifying the household and agency of the decision is extended for as many days as the hearing is postponed.

3. Failure of Household Member to Appear at the ADH

If proof of nonreceipt of the ADH advance notice has not been received, the requirement to notify the individual alleged to have committed the IPV has been met. The ADH may be held even if the member or representative subsequently cannot be located or fails to appear without good cause.

The individual has 10 days from the date of the scheduled ADH to present reasons other than nonreceipt of the notice to show good cause for failure to appear at the hearing. Good cause reasons based on nonreceipt of the notice must be presented within 30 days of the scheduled hearing.

Even though the household member is not represented, the hearing officer must carefully consider the evidence and determine if an IPV was committed based on clear and convincing evidence. If the household member is found to have committed IPV but a hearing officer later determines there was good cause for not appearing, the previous decision is no longer valid and a new ADH shall be conducted. The hearing officer who originally ruled on the case may conduct the new hearing. The good cause decision must be entered into the hearings record by the hearing officer.

4. Participation While Awaiting a Hearing (7 CFR 273.16(e)(5))

A pending ADH will not affect the household's right to be certified and receive SNAP benefits. The household member alleged to have committed an IPV cannot be disqualified through an ADH until a hearing officer finds the individual guilty of IPV, so the eligibility and benefit level of the household is determined in the same manner as for any other household.

R. CONDUCT OF THE ADH

The hearing officer will preside and conduct the hearing informally. Technical rules of evidence are not required. The hearing may be conducted via a teleconference. The hearing may also be recorded.

1. Attendance at the ADH

The ADH is attended by persons directly concerned with the issue. This normally means a representative of the local department of social services and the household member alleged to have committed an IPV and/or the household's representative. If space is limited, the hearing officer may limit the number of persons in attendance.

2. Responsibilities and Duties of Hearing Officer

The hearing officer must:

- a. Identify those present for the record;
- b. Advise the household member or representative that he/she may refuse to answer questions during the hearing;
- c. 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 of social services or the household to request a review of the hearing officer's decision by the Commissioner;
- d. Consider all relevant issues. Even if the household is not present, the hearing officer must carefully consider the evidence and determine if an IPV was committed based on clear and convincing evidence;
- e. Request, receive and make part of the record all evidence determined necessary to render a decision; and
- f. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing.

3. Rights of the Household

The household member alleged to have committed IPV and/or the representative must be given adequate opportunity to:

- a. 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. The contents of the case file, including the application form and documents of verification used by the BPS to establish the alleged IPV, 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 and status of pending criminal prosecutions, is protected from release.

The local agency must provide a free copy of the portions of the case file that are relevant to the hearing if requested by the household or its representative. 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 may not be introduced at the hearing or affect the hearing officer's decision.

- b. Present its case or have it presented by legal counsel or another person.
- c. Bring witnesses.
- d. Advance arguments without undue interference.
- e. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.
- f. Submit evidence to establish all pertinent facts and circumstances in the case.

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

The household member or representative may refuse to answer questions during the hearing.

#### 4. Responsibilities and Duties of Local Agency

The local agency representative is responsible for presenting the agency's case in the ADH. The agency representative has the same rights as the household as listed in Part XIX.R.3., items a. through f. above.

#### S. NOTIFICATION OF ADH DECISION (7 CFR 273.16(e)(9))

The hearing officer is responsible for rendering a decision. The decision must be based on clear and convincing evidence from the hearing record, which is an official report of the hearing, including all papers and requests filed in the proceeding. The hearing officer must substantiate the decision by identifying supporting evidence and applicable regulations.



Following the ADH, the hearing officer must prepare a written report of the substance of the hearing that must include findings, conclusions, decision and appropriate recommendations. The decision must specify the reasons for the decisions, identify the supporting evidence, identify pertinent SNAP regulations and respond to reasoned arguments made by the household member or representative.

The hearing officer must notify the household member of the decision. The form "Administrative Disqualification Hearing Decision" must accompany the findings. The hearing officer must inform the household of its right to request review of the decision. If the household member is found guilty of IPV, the decision must advise the household that disqualification will occur.

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

The household member is entitled to seek relief in a court of appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

The amount of the overissuance subject to repayment may be appealed by a fair hearing, provided that the household member did not request a fair hearing for that reason that was consolidated with the ADH.

If the household member or representative did not appear at the hearing and the hearing officer determines that an IPV was committed, the hearing officer will delay notification of the decision until 10 days after the date of the hearing to allow the individual time to present good cause for failing to attend.

#### T. IMPLEMENTATION OF THE ADH DECISION

Upon receipt of the notice of a decision from the hearing officer finding the household member guilty of an IPV, the local agency must inform the household of the disqualification by sending a "Notice of Disqualification Due to Intentional Program Violation" or other disqualification notice approved for use. The notice must inform the household of the reason for disqualification and must inform the household that the disqualification will be effective upon receipt of the notice. The household member who committed the IPV must be disqualified in accordance with the length of time specified in Part XVII.M.1. The local agency must also provide written notice to the household of the benefit amount that will be received or advise that a recertification application must be filed if the certification period has expired.

If it is determined that the individual did not commit an IPV, no disqualification will be imposed and any overissuance must be handled as a nonfraud claim.

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