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4200.00.00 APPEALS AND FAIR HEARINGS

This chapter presents information relating to appeals, fair hearings, and Administrative Disqualification Hearings (ADH), and includes:

Appeals (Section 4205);

Fair Hearings (Section 4210);

Administrative Disqualification Hearings (Section 4215); and

Footnotes for Chapter 4200 (Section 4299).

4205.00.00 APPEAL REQUEST

An appeal is a request for a fair hearing before a representative of the Central Office Hearings and Appeals Section for the purpose of deciding whether the action taken or proposed by the DFR is correct. It is any clear, written expression by the applicant/recipient, or individual authorized to act for him, stating that he wants an opportunity to appeal. (f1) For SNAP only, an appeal request may be made verbally as well as in writing. (f2) For all other programs, if a verbal request is made, the request is to be noted and the AG informed that the request must be made in writing.

Appeal requests must be filed with the Division of Family Resources in one of the following ways

Mail or fax to the FSSA document center;

File in person with the DFR.

An Administrative Law Judge (ALJ) of the Central Office, Hearings and Appeals Section, will conduct a fair hearing on the action(s) under appeal and will render a decision on the findings of the hearing. This decision is binding on the DFR.

4205.05.00 RIGHT TO APPEAL

All individuals must be informed in writing at the time of application and when action is taken which affects their benefits, of:

the right to a fair hearing; and
the method for requesting a hearing. (f4)

This information is contained in the Rights and Responsibilities which is given to applicants, and is also on all eligibility notices.

The freedom to make such a request must not be limited or interfered with in any way.

4205.05.05 Assistance In Exercising The Right To Appeal

The DFR is responsible for assisting an unsatisfied individual so that he may fully exercise his right to appeal. (f6) Any time an individual expresses a disagreement with any action taken, he must be verbally reminded of the right to request a fair hearing. Assistance is to be provided to the individual who is having difficulty in preparing the written request for an appeal.

The individual is to be informed that he may represent himself at the hearing or be represented by an attorney, a relative, a friend, or any other spokesman of his choice. Information and referral services should also be provided to help the unsatisfied individual make use of any free legal services that are available in the community. This information is included on the eligibility notices.

4205.10.00 APPEALABLE ACTIONS

Any action with which an applicant/recipient is dissatisfied may be appealed, for example when an application for SNAP or Cash Assistance is denied or not acted upon with reasonable promptness, (f7) when it is believed the DFR has taken erroneous action to reduce, suspend or discontinue assistance, or for TANF, when a determination is made that a protective payee should be assigned or discontinued.

4205.15.00 GROUP APPEALS

The Central Office Hearings and Appeals Section may respond to a series of requests for hearings by providing group hearings on similar questions or changes in federal or state law or regulation.(f12) Similarly, a group of individuals who wish to appeal some aspect of policy may request to be heard as a group. If there is disagreement as to whether the issue is one of federal or state law or regulation or the facts of an appellant's personal situation, Hearings and Appeals will make the decision as to whether the appeal may be included in a group hearing.

The ALJ may limit the discussion in a group hearing to the sole issue under appeal. When an appellant's request for a hearing involves additional issues to the one serving as the basis for the group hearing, the appeal will be handled individually. An appellant scheduled for a group hearing may choose to withdraw and be granted an individual hearing regardless of whether the grievance is limited to the sole issue involved in the group hearing.

Policies governing the conduct of individual hearings are pertinent to group hearings. Each appellant or representative will be given full opportunity to present the case or have the case presented by a representative.

4205.20.00 TIME LIMITS FOR APPEALS

A request for an appeal must be made within a specified period of time. The time periods vary by program and are outlined in the following sections.

If the appeal request is not received within the required time limits, the appeal is invalid, and a hearing will not be scheduled. This determination that an appeal is untimely and therefore invalid is made by Central Office Hearings and Appeals, not the DFR. (f13)

4205.20.05 Time Limits For Requesting Appeals (S)

An AG is allowed to request a hearing on any action by the DFR or loss of benefits which occurred in the prior 90 days. Appeals must be received by close of business within 90 days from date of notice or the end of the current certification period, whichever is later. Close of business is 4:30 P.M., local time on the business day where the appeal is received. The DFR must deny or dismiss a request

for a hearing untimely filed. The DFR must act on the untimely appeal request as a request for a restoration and review the case. (See Section 4205.45.05 and Section 3610.15.15.)

In addition, at any time within an eligibility period an AG may request a fair hearing to dispute its current level of benefits. (f14)

4205.20.10 Time Limits For Requesting Appeals (C)

Appeals must be received by close of business not later than 33 days of the date of the action or issue being appealed. (f15) The 33-day period includes 3 days for mailing. Close of business is 4:30 P.M., local time on the business day that the appeal is received.

For recipients, the 33 day period is measured from the effective date of the action as recorded on the Notice. For actions taken on applications, the 33 day period is measured from the mailing date of the Notice. (f16) Additionally, if the last day of the 33-day time period falls on a non-business day, the appeal request is considered timely if it is received on the next business day.

In cases involving a delay in acting on the application, the time limit for appealing begins as follows:

30 days after the date of application for TANF;

In cases in which action has not been taken on a reported change in circumstances, the time limit for appealing begins with the first day of the second month following the month in which the change in circumstances was reported to the DFR.

4205.25.00 CONTINUATION OF BENEFITS

The recipient is entitled to continued benefits after requesting a hearing only if the request is received within the following time periods and additionally, for SNAP, if the eligibility period has not expired:

For S and C the request must be received within:

- 13 days of the mailing date of the Notice of Action;

For S only, the 13 day limit for filing a hearing request may be extended for good cause. If good cause exists, the SNAP benefits may be continued at the prior level.

- 10 days after a hand delivered Notice of Action is received by the recipient. (f18)

If the last day of the time period falls on a non-business day, the appeal request is considered timely if it is received on the next business day.

Continued benefits are not available in situations regarding the 24-month or 60-month limit of benefits.

Once continued benefits are allowed, benefits are not to be reduced or terminated prior to receipt of the official hearing decision unless one of the following conditions apply: (f19)

A change affecting the AG's eligibility or basis of issuance occurs while the hearing decision is pending and the AG fails to request a hearing after the subsequent notice of adverse action;

For SNAP, the ALJ makes a preliminary determination, in writing and at the hearing, that the sole issue is one of federal law or regulation and that the AG's claim that the Local Office improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

For SNAP only, the eligibility period expires. The AG may reapply and may be determined eligible for a new eligibility period with a benefit amount as determined by the Local Office;

4205.30.00 APPEAL PROCEDURES

All written appeals filed with the DFR are to be immediately forwarded to the Hearings and Appeals Section. All requests must be entered into the system within one day of receipt.

The DFR should inform the Hearings and Appeals Section if a hearing request is received from AGs such as farm workers that plan to move, so that the request can be expedited to enable a decision to be reached before the AG leaves the area.

4205.35.00 THE HEARING NOTICE

The Hearings and Appeals Section sends a notice acknowledging the appeal to the AG and the DFR. (f21) The notice:

- includes a statement of the date, time, place, and nature of the hearing which is always conducted in the appellant's county of residency

- advises the appellant of the name, address, and phone number of the person to notify in the event it is not possible for him to attend;

- specifies that the hearing request will be dismissed if the appellant fails to appear for the hearing without good cause;

- specifies that the appellant may request a continuance of the hearing if good cause is shown;

- includes the appellant's rights, information, and procedures to provide the appellant with an understanding of the hearing process; and

- explains that the appellant may examine the case record prior to the hearing.

This notice is to be sent so that it reaches the appellant at least ten (10) days prior to the hearing.

4205.40.00 REQUEST FOR CONTINUANCE FROM THE APPELLANT

A written request for a continuance is to be directed to the Hearings and Appeals Section. Good cause must exist for a continuance to be granted. Good cause is defined as a valid reason for the appellant's inability to be present at the scheduled hearing such as a death in the family, personal injury or illness, or a sudden and unexpected emergency. If good cause exists and a continuance is granted, the hearing is rescheduled.

4205.40.05 Request for Continuance From the Appellant (C)

A continuance may be requested (in writing) to allow the appellant time to obtain additional medical evidence on his condition. If the ALJ orders the additional medical assessment, it must be made at the expense of the DFR and made part of the record when the issue under appeal is:

> A decision concerning the ability of a TANF participating AG member to accept employment.

The written request for a continuance on a medical related issue must be submitted to the Hearings and Appeals Section within ten (10) days of the mailing of the hearing notice. The additional medical evidence must be submitted to the DFR within thirty (30) days of the mailing of the hearing notice unless a written request for an extension of time is received by the Hearings and Appeals Section within the 30-day period. An extension will be granted only for good cause.

The DFR is to forward the original or most legible copy of the additional medical evidence to the Hearings and Appeals Section and retain a copy for the appellant's case record. The Hearings and Appeals Section will forward said evidence to the appropriate Central Office medical staff.

The granting of a continuance to the appellant extends the time frame by which the hearing decision must be issued.

4205.40.10 Request for Continuance From the DFR

Although the DFR may also request a continuance, one should not be routinely requested. Unlike the continuance given to an appellant, the granting of a continuance to the DFR does not extend the time frame by which the hearing decision must be issued.

4205.45.00 REVIEW OF ACTION BY THE DFR

When an appeal request is received, the proposed action is reviewed to determine whether the action is appropriate. The following sections discuss the review process.

4205.45.05 Review by the DFR

The DFR should carefully review the appellant's situation to determine whether the action on the case was correct or any adjustment is indicated. The appellant and the eligibility worker should meet to discuss the issue under appeal. **Important:** this review must not in any way interfere with a prompt continuation of benefits in accordance with Sections 4205.25.00 if a timely appeal of an adverse action is received by the DFR.

4205.45.05.05 Agency Conferences (S)

The DFR must offer agency conferences to AGs which wish to contest an adverse agency action. AGs should be advised that the agency conference is optional and in no way delays or replaces the fair hearing.

A conference for AGs contesting a denial for expedited service should be scheduled within two (2) working days, unless the AG requests that it be scheduled later or states that he does not wish to have a conference.

An agency conference may be attended by the eligibility worker, the supervisor and/or director, the AG and its representative.

The agency conference may lead to an informal resolution of the dispute. At this point the appellant may make a written withdrawal; however, DFR staff is prohibited from coercion or inappropriate actions which would influence the household or its representative to withdraw the household's fair hearing request. The DFR may also accept an oral request for withdrawal. See Section 4205.50.05.

4205.50.00 DISPOSAL OF APPEAL WITHOUT A FAIR HEARING

An appeal request may be disposed of without holding a fair hearing in the situations discussed in the following sections.

4205.50.05 Adjusting Action by DFR

If, after review of the appellant's situation, the DFR realizes that the adverse action proposed or taken on the

case was incorrect, must take adjusting action to correct the error. The appellant and the Hearings and Appeals Section are to be promptly notified in writing that the incorrect action is being withdrawn or rescinded. For TANF, if after adjusting action, the client may make a written withdrawal of the appeal before the Hearings and Appeals staff can complete the hearings decision. For SNAP, if after adjusting action, the client may make a written or verbal withdrawal of the appeal before the Hearings and appeals staff can complete the hearings decision. If the withdrawal is verbal, Hearings and Appeals will then notify the appellant that no further action will be taken on the appeal unless the appellant contacts them within ten (10) days of receiving this notice, that there is still an issue that must be resolved at a hearing.

4205.50.10 Withdrawal of Appeal by Appellant

For TANF, if the appellant wishes to withdraw his appeal, he may do so in writing, and he is to be assisted by the DFR in promptly notifying the Hearings and Appeals Section of this decision. For SNAP, if the appellant wishes to withdraw his appeal, he may do so verbally or in writing, and he is to be assisted by the DFR in promptly notifying the Hearings and Appeals Section of this decision. No pressure is to be exerted on the applicant/recipient to withdraw the appeal. The withdrawal will be acknowledged in writing by Hearings and Appeals. The appeal is then closed.

4205.50.15 Abandonment

An appeal is abandoned when the appellant or his representative, without good cause, does not appear at a scheduled hearing. The appeal will be closed and the appellant so notified. (f24)

4210.00.00 THE FAIR HEARING

A fair hearing is an administrative review of the action taken or proposed concerning an individual's eligibility and/or amount of assistance. An Administrative Law Judge (ALJ), who is a State employee of FSSA, is designated to hold fair hearings and to issue findings of fact and decision on an appeal request.

A fair hearing allows the unsatisfied applicant/recipient an opportunity to present his grievance and to describe his circumstances and needs in his own words. He may also be

represented by legal counsel, relatives, friends, or any other spokesman of his choice. DFR staff involved in the protested action also attend the hearing and present the facts on which the action was based.

4210.05.00 PREPARATION FOR HEARING BY APPELLANT

As the appellant prepares for the hearing, he or his representative is to be given an opportunity to:

Discuss the issue being appealed with the DFR;

Examine his entire case record and all documents and records that will be used by the DFR at the hearing.

For SNAP, examine his entire case record and all documents, provided that confidential information, such as the names of individuals who have disclosed information about the AG without its knowledge, or the nature and status of pending criminal prosecutions, is protected from release, if requested by the AG or its representative. (f25) and

Obtain free of charge copies of all exhibits that will be used as evidence by the DFR at the hearing.

The appellant is to be advised of any legal services available that can provide representation at the hearing.

4210.10.00 PREPARATION FOR HEARING BY THE DFR

The most important factor behind an ALJ's decision to sustain a DFR action is correct application of federal or state law or regulation to the appellant's situation. It is important that the DFR representative presents thorough support at the hearing for the action of the DFR.

The person testifying for the DFR at the hearing should be the person with the most direct contact with the eligibility study. In his absence, a person familiar with the action and the case record should substitute.

To prepare for the hearing, the DFR representative is to:

Review the case record and check all eligibility factors and all issues that led to the action being appealed;

Discuss the issue being appealed with the appellant or his representative if at all possible, and definitely if a discussion is requested by the appellant. If requested, allow the appellant or his representative to examine the entire case record.

Identify all documents that are pertinent to the issue under appeal and label them (for example, DFR Exhibit A, and so forth). Make one copy for the ALJ and one copy for the appellant (unless already given to the appellant). A duplicate copy of the notice sent to the appellant advising him of the proposed action should be included as part of the documentation.

Prepare a written outline that can be used as a tool in presenting the testimony of the DFR at the hearing. Bear in mind that when preparing the outline, that the ALJ knows nothing about the situation. The outline should focus on:

- identification of the staff representative by name and position;
- the period of time the representative worked directly or indirectly (for example, a caseworker's supervisor) with the appellant;
- a one sentence explanation of the issue under appeal;
- the important information concerning how the DFR determined that the action proposed or taken was appropriate; and
- federal and state laws and regulations that were the basis for the action.

Include the labeled exhibits at the appropriate point in the presentation outline.

EXAMPLE:

Personal Identification:

Name
Position
Months/years as an eligibility worker for appellant

Issue:

Discontinuance of TANF effective April due to earnings from employment

Sources of Information:

Copy of letter from recipient dated February 20 reporting employment beginning February 3 (DFR Exhibit A);

Copies of three check stubs dated February 11, February 18, and February 25 showing gross wages of $225 per week from XYZ Manufacturing Company (DFR Exhibit B);

Screen prints from the eligibility system showing the computation of the budget for April (DFR Exhibit C). Explain the entire budget computation from the number in the TANF AG to the final calculation of ineligibility.

Notice of Action sent on March 8 informing appellant of the proposed action (DFR Exhibit D).

Request for appeal received on March 14 (DFR Exhibit E).

4210.15.00 CONDUCT OF THE HEARING

The ALJ conducts the hearing. Both the appellant and DFR has the opportunity to:

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

Present testimony of witnesses;

Introduce relevant documentary evidence;

Establish all pertinent facts and circumstances;

Present any arguments without interference;

Question or refute any testimony or evidence presented by the other party, including the opportunity to confront and cross-examine any adverse witnesses; and

Examine the appellant's entire case record and all documents and records used by the DFR at the hearing. (f26)

The parties are advised at the close of the hearing that they will be informed in writing of the ALJ's findings and decision on the appeal as soon as possible.

4210.15.05 DFR's Responsibility At Hearing

The DFR representative at the hearing is to:

Present the testimony of the DFR according to the outline prepared prior to the hearing;

Limit his remarks to facts (not speculation or guessing);

Avoid the use of jargon used only by employees;

Offer labeled exhibits into evidence at appropriate points in the testimony and explain what they are and how they relate to the issue; and

Offer the labeled exhibits to the appellant and/or his representative for examination and objections (if any).

The DFR representative should be prepared to question the appellant about any statements made which need further explanation.

4210.20.00 CONTINUANCE OF HEARING

If the ALJ determines that further evidence is needed to reach a decision, the decision is delayed until such further evidence is obtained. The hearing may also be reconvened, if necessary, to obtain additional testimony. The parties will be notified of this and of the time and

method for obtaining this evidence. Any evidence submitted must be copied and given to the appellant, who then has the opportunity for rebuttal.

4210.25.00 THE HEARING RECORD

The hearing record is an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the decision of the ALJ. This record shall be available to the appellant at a place accessible to him or his representative at a reasonable time.

4210.30.00 THE FAIR HEARING DECISION

A written copy of the ALJ's hearing decision is sent to the appellant and the DFR. The decision includes:

The findings of fact and conclusion regarding the issue under appeal; and

Supporting laws and regulations.

In all cases the decision of the ALJ is based solely on the evidence introduced at the hearing and the appropriate federal and state laws and regulations. The finding of fact and decision is signed by the ALJ. The decision is to be explained to the appellant upon request.

4210.30.05 Fair Hearing Decision Time Limit

According to federal law, the final hearing decision for SNAP must be made by the ALJ and communicated to the appellant and the DFR within 60 calendar days of the hearing request unless there is a request for a continuance.

For C, the final hearing decision must be made by the ALJ and communicated to the appellant and the DFR within 90 calendar days of the hearing request.

4210.30.10 Action Required as a Result of the Hearing Decision

The decision of the Hearings and Appeals Section shall be binding upon the DFR and is to be enacted by the DFR even if one of the parties requests an Agency Review. (f29)

Such decisions do not preclude modifying the benefit thereafter to meet changed conditions.

4210.30.10.05 Action Is Sustained

No further action or response is required by the DFR if the hearing decision sustains an adverse action which was not appealed in a timely manner.

If the hearing decision sustains an adverse action and continued benefits were received, the DFR must immediately take appropriate corrective action, establishing a claim for benefits which were received pending the hearing decision. Additionally, action to implement the correct budget should be taken. (f30)

4210.30.10.10 Action Is Modified

DFR actions which are modified by the hearing decision must be immediately corrected as directed by the hearing decision. This may require a claim for incorrectly issued benefits or a restoration if benefits were underissued.

4210.30.10.15 Action Is Reversed

If the hearing decision reverses the DFR's action, and continued benefits were received, no further action is required. However, if the hearing decision reverses the DFR's action, and continued benefits were not received, immediate corrective action must be taken. Please refer to Section 4210.30.00.

4210.35.00 AVAILABILITY OF AGENCY REVIEW

The appellant or the DFR may request an Agency Review of the case by the Family and Social Services Administration if dissatisfied with the decision made by the ALJ. The agency review is explained to the appellant in the decision. (f31) The request must be made in writing to the Hearings and Appeals Section within ten (10) days following receipt of the hearing decision. (f32)

4210.35.05 Agency Review

Once an Agency Review is requested, the Hearings and Appeals Section writes to the DFR and the appellant to acknowledge receipt of the request and to provide information concerning the review.

The parties may choose to submit a written memorandum of law for consideration. The Agency Review's decision will be sent to appropriate parties by certified mail.

Action required by the hearing decision must be enforced while awaiting the Agency Review.

Any party aggrieved by the decision of the Agency Review may file a petition for Judicial Review in the appropriate court by following the procedures required by IC 4-21.5-5-5 et seq.

4210.40.00 LAWSUITS

When an applicant/recipient (plaintiff) sues the DFR and/or the Central Office (defendant) and DFR staff are subsequently contacted by the plaintiff's attorney, the attorney should be advised to contact the defendant's attorney of record. The defendant's attorneys of record would be the Deputy Attorney General who represents the Central Office and the DFR attorney for whichever DFR is a defendant in the case. These attorneys are known to the plaintiff's attorney through the pleadings filed in the case.

4215.00.00 ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADH)

Administrative disqualification hearings (ADH) are requested by the DFR when there is sufficient documentary evidence to prove an individual has committed an intentional program violation (IPV). The request is made on HERQ and Form 2235, Request for Administrative Disqualification Hearing.

After the Form 2235 is prepared but before the ADH request is made on HERQ, the DFR may choose to call the client in and present them with the evidence and ask them to sign a waiver. This signed waiver is treated the same as an ADH/IPV and must be reported as such. See Section 4610.15.40 for more information on this option.

The DFR initiates an ADH when the program violations and/or case facts do not warrant criminal prosecution, according to the guidelines established by the County Prosecutor. The DFR may initiate this type of hearing regardless of the individual's current eligibility. The DFR may initiate an ADH and criminal prosecution against an individual for the

same offense but not at the same time. Therefore, if the criminal prosecution results in a not guilty verdict the DFR may request an ADH. Conversely, if an ADH is not sustained and then new evidence is discovered, the claim may be taken for criminal prosecution.

4215.05.00 REQUESTING AN ADH

In order to request an administrative disqualification hearing, there must be clear and convincing evidence which demonstrates that the individual committed, and intended to commit, an Intentional Program Violation (IPV). (See Section 4610.15.05 for the definition of an IPV.) Hearsay evidence alone is insufficient for the ALJ to render a decision of a finding of IPV. The burden of proof is on the DFR to substantiate the charge. (f33)

The charge (in narrative form) and the evidence (called Exhibits) to be presented at the hearing must be included on the Form 2235, Request for Administrative Disqualification Hearing, and forwarded to the Hearings and Appeals Section. Although an ADH may be requested on HERQ, the hearing will not be scheduled until the Form 2235 is received by the Hearings and Appeals Section. Specific charge(s) and a summary of the evidence to support the request must be recorded on this form. Evidence not included on the form cannot be presented at the hearing. If the DFR receives some further documentation after the ADH is requested, withdraw the Request for ADH and re-submit it, listing the newly received documentation as an exhibit.

The DFR may offer a waiver to the client before submitting the Form 2235 and requesting the ADH. See Section 4610.15.40.

4215.05.05 Examples of Evidence

Evidence of IPV exists when it can be shown that the individual either willfully provided false information, or omitted information in order to receive an overissuance.

In order to prove the individual's actions were intentional, it must be verified that the individual fully understood his responsibilities for reporting the information. This type of verification can come from

documents such as the signed Rights and Responsibilities section of the application.

Sources of evidence include:

Written proof of all information that the individual intentionally failed to report;

An application or Change Report Form submitted during the period of suspected violation;

Documents such as signed SNAP issuance records showing that the individual visited the DFR during the period of suspected violation and failed to report a change and an overpayment resulted;

The Report of Claim Determination which documents the months and amount of overpayment; and

Oral evidence that is either provided under oath or affirmed by another person.

4215.10.00 TIME LIMIT FOR ADH

The final decision for an Administrative Disqualification Hearing (ADH) must be made and communicated within ninety (90) days of the date the individual is notified in writing of the scheduled hearing. Administrative actions necessary to make the decision effective must also begin within this time period. (f34)

The individual can postpone the hearing for up to thirty (30) days as long as the postponement request is made at least ten (10) days before the scheduled hearing. Hearings and Appeals Section may limit the number of postponements to one. The length of any postponement is added to the 90-day time limit for making and communicating the final hearing decision.

4215.15.00 ADVANCE NOTICE OF ADH

Hearings and Appeals Section must provide the individual written notice of the ADH schedule at least thirty (30) days before the hearing date. The notice is to be sent by first class mail to the last known address of the respondent. It is not necessary to acquire proof that the notice was received by the individual accused of an IPV.

4215.15.05 Contents of Notice

The advance notice of the hearing must contain:

The date, time, and place of the hearing;

The charge against the AG member;

A statement that the DFR should be contacted regarding the charges;

A copy of hearing procedures as an attachment;

A warning that the decision will be based solely on information provided by the DFR if the individual fails to appear at the hearing;

A statement that the individual or representative will have ten (10) days after the hearing to present good cause for failing to appear and to schedule a new hearing;

A warning that a proven IPV will result in a disqualification period;

A description of the individual's rights;

A statement that the hearing does not prevent the state or federal government from prosecuting the individual for fraud in a civil or criminal court, or from collecting the overpayment; (f35)

Information regarding a waiver for the hearing; and

The notice must also state that the individual can call the Hearings and Appeals Section office to get the name and phone number of any available source of free legal advice. If free legal advice is not available, DFR Staff must provide, upon request, the phone number of the lawyer referral service of the local bar association. (f36)

4215.20.00 FAILURE TO APPEAR

If the client or his representative fails to appear, the hearing will be held without the client or his representative.

If the client appears but can prove the notice was received less than 30 days in advance, the hearing may be rescheduled, or the client may be allowed additional time to present evidence to the ALJ. If the client or representative fails to appear for the scheduled hearing and they claim the Notice of ADH Hearing was not received, the client or Authorized Representative has thirty (30) days from the date of the release of the hearing decision to claim good cause for not appearing for the hearing. If the client or Authorized Representative fails to appear for the hearing for a reason other than non receipt of the notice of an ADH hearing, the AG has ten (10) days from the scheduled date of the hearing to claim good cause for not appearing. If good cause is provided, Hearings and Appeals will schedule a new hearing date. The ADH must be conducted in the same manner as a fair hearing. The ALJ must advise the AG member or representative that they may refuse to answer questions during the hearing.

4215.25.00 PARTICIPATION OF ASSISTANCE GROUP AWAITING HEARING

A pending disqualification hearing must not affect the individual's right to participate in the program. The DFR cannot disqualify an AG member for IPV until the ALJ finds that the individual has committed the violation. The eligibility and benefit level of the individual must be determined in the same manner it would be determined for any individual. (f37)

4215.30.00 CONSOLIDATION OF ADH WITH FAIR HEARING

Hearings and Appeals staff 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 individual receives prior notice that the hearings will be combined. If the disqualification hearing and fair hearing are combined, the Hearings and Appeals Section will follow the time frames for conducting disqualification hearings.

If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not IPV has occurred, the individual does not have a right to a subsequent fair hearing on the amount of the claim. However, the Hearings and Appeals Section shall, upon AG request, allow the AG to waive the 30-day advance notice period. (f38)

4215.35.00 THE ADH DECISION

The Information contained in Section 4210.30.00 applies to ADH decisions as well as fair hearings. Additionally, if Hearings and Appeals is entering a no show date on HEDE, the Hearings and Appeals staff must enter the decision date ten (10) days subsequent to the release of the hearings decision to allow timeliness for a reschedule request by the recipient and a possible change to the decision.

The determination of IPV made by the ALJ cannot be reversed by a subsequent fair hearing decision. No further administrative appeal to DFR exists after an adverse ADH decision. However, the individual is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay or corrective action by a court having appropriate jurisdiction.

4215.35.05 Notification Of ADH Decision

The AG and the DFR will both receive the full findings and decision of the ALJ. If the decision does not sustain the county's allegation that an IPV occurred, the DFR will collect any related claim(s) as an Inadvertent Error. No other action is required by the DFR.

If the ALJ finds that the AG member committed IPV, the Hearings and Appeals Section provides written notice to the DFR and the AG member via the written hearing decision. The notice informs the individual of the decision and the reason for the decision. The DFR is required to send a manual notice, FI 2246 Notice of Disqualification, to the disqualified individual. (See Section 4630.15.00)

4215.35.10 Waived Hearings

Individuals accused of IPVs have the right to waive an ADH. The written notification which informs the members of the right to waive the hearing is mailed by the Hearings and Appeals Section along with the notice of the scheduled hearing. (f39)

If the member signs the waiver, the DFR will be sent a copy of the signed waiver by the Hearings and Appeals Section.

When the DFR receives a copy of the signed waiver, the individual is considered to have committed an IPV and the

appropriate penalties are then implemented according to Section 4215.40.00.

4215.40.00 IMPLEMENTATION OF ADH DECISION

If the ALJ rules that the AG member has committed an IPV, the individual must be disqualified in accordance with the disqualification periods specified in Section 4215.45.00. For SNAP, the disqualification period begins the first month following the date the AG member received written notification of the hearing decision.

The AG must be notified (form 2246) of the effective date and length of the person's disqualification period as well as the new benefit amount. If recoupment is the repayment method indicated, the recoupment will be calculated and included on the notice.

The SNAP IPV disqualification and the IPV collection should begin the month after the notice of disqualification is sent to the AG. See Manual Section 4630.15.00 regarding time limits for sending the notice of disqualification. An exception exists for court determined IPV's. If the court does not specify the date a disqualification is to begin, the disqualification is to be imposed within forty-five (45) days of the decision date. See Manual Section 4610.25.00 for TANF court determined fraud penalties.

4215.45.00 ADMINISTRATIVE DISQUALIFICATION PERIODS

The length of disqualification for an IPV will be determined as follows: (f40)

For SNAP:

One year for the first violation;

Two years for the second violation;

Permanently for the third violation;

Two years for a first finding by a court for purchasing a controlled substance with SNAP benefits;

Ten years for a finding that a fraudulent statement or representation about identity or place of residence was made in order to receive duplicate benefits (there do not have to be benefits issued in order for this rule to apply). Unsuccessful attempts to commit fraud in this manner will be dealt with in the same manner as successful attempts;

Permanently for a conviction(s) of trafficking offense of $500 or more (this rule applies whether the trafficking of $500 occurred in a single transaction or multiple transactions);

Permanently for the second finding by a court for purchasing a controlled substance with SNAP benefits; or

Permanently for the first finding by a court for purchasing firearms, ammunition or explosives with SNAP benefits.

For TANF:

First occurrence results in a six-month disqualification;

Second occurrence results in a twelve-month disqualification;

Third occurrence results in permanent TANF ineligibility.

Note: A court-imposed disqualification period different from the above listed periods would take precedence and supersede any administratively established disqualification period.

In instances where the court does not determine a period of ineligibility, the following penalties are to be applied for treatment group members: (f40a)

For an individual who is convicted of a misdemeanor;

- The first occurrence will result in a twelve (12) month disqualification;

- the second occurrence will result in a twelve (12) month disqualification;

- the third occurrence will result in a permanent disqualification.

For an individual who is convicted of a felony;

- The first occurrence will result in a ten (10) year disqualification;

- the second occurrence will result in a ten (10) year disqualification;

- the third occurrence will result in a permanent disqualification.

Note: A ten year disqualification is entered in ICES on BVFV or BVPI the appropriate ~~E~~eligibility ~~S~~system screens as 97 (months) and a permanent disqualification is entered as 99 (months).

The period of disqualification begins the first month following the date the assistance group member received the written notice of the hearing decision. If the individual is not currently in TANF eligible status, the penalty will be delayed until the individual has applied and is determined eligible for program benefits.

4215.45.05 Continuation of the Disqualification Period

Once a disqualification penalty has been imposed, it will continue uninterrupted until completed regardless of the eligibility of the disqualified individual's AG. However, the disqualified individual's AG will continue to be responsible for the repayment of any overissuance. (f41)

4215.50.00 COURT IMPOSED DISQUALIFICATIONS (S) (C)

DFR must disqualify an individual found guilty of IPV for the length of time specified by the court. If the court fails to impose a disqualification period, DFR must impose a disqualification period in accordance with the provisions in Section 4215.45.00, unless this contradicts the court order.

If the court imposes a disqualification period for an individual and does not specify the start date, DFR must

initiate the disqualification period within 45 days of the date the disqualification was ordered. Any other court imposed disqualification will begin within forty-five (45) days of the date the court found the individual guilty of civil or criminal misrepresentation or fraud. See Section 4215.45.00 for TANF court determined fraud penalties.

4215.55.00 REVERSED DISQUALIFICATION

In cases where the determination of IPV is reversed by a court of appropriate jurisdiction, the DFR must reinstate the individual if he is eligible. The DFR must restore any benefits that were lost as a result of the disqualification in accordance with Benefit Recovery procedures. See Section 4600.00.00.

4215.55.05 Lost Benefits - IPV

Individuals disqualified for IPV are entitled to restoration of any benefits lost during the months that they were disqualified only if the disqualification decision is subsequently reversed.

The restoration amount is determined by subtracting the amount the individual actually received from the amount for which the individual was eligible.

4299.00.00 FOOTNOTES FOR CHAPTER 4200

Following are the footnotes for Chapter 4200:

(f1) 470 IAC 1-4-3;
(f2) 7 CFR 273.15(h) - SNAP
(f4) 7 CFR 273.15(f) - SNAP
(f6) 470 IAC 1-4-3;
7 CFR 273.15(f) - SNAP;
(f7) Social Security Act, Section 402(9)(4) - TANF
(f11) Social Security Act, Section 1924(a)(3)
(f12) 7 CFR 273.15(e) - SNAP
(f13) 7 CFR 273.15(j) - SNAP;
(f14) 7 CFR 273.15(g) - SNAP
(f15) 470 IAC 1-4-3; IC 4-21.5-5-5
(f16) 405 IAC 1.1-1-3
(f18) 7 CFR 273.15(k) - SNAP
(f19) 7 CFR 273.15(k)(2) - SNAP;
(f19a) 7 CFR 273.15(k)(2)(v) - SNAP

(f21) 470 IAC 1-4-3
405 IAC 1.1-1-3
(f24) 7 CFR 273.15(l)(2) - SNAP;
IC 4-21.5-3-24
(f25) 7 CFR 273.15(l)(4) - SNAP
(f26) 7 CFR 273.15(p) - SNAP
(f29) 7 CFR 273.15(q) - SNAP;
(f30) 7 CFR 273.15(r) - SNAP;
(f31) IC 4-21.5-5-16
(f32) 7 CFR 273.15(q)(3) - SNAP;
470 IAC 1-4-6 - TANF
(f33) 7 CFR 273.16(c) - SNAP
(f34) 7 CFR 273.16(d)(2)(iv) - SNAP
(f35) 7 CFR 273.16(e)(3) - SNAP
(f36) 7 CFR 273.16(e)(3) - SNAP
(f37) 7 CFR 273.16(e)(5) - SNAP
(f38) 7 CFR 273.16(e)(1) - SNAP
(f39) 7 CFR 273.16(f) - SNAP
(f40) 7 CFR 273.16(b; Section 13942 of P.L.103-66 - FS
(f40a) 470 IAC 10.3-7-1 (TANF)(f41) 7 CFR
273.16(g)(2)(ii) - SNAP