



Date: April 17, 2023

DMS Operations Memo 23-11

To: Income Maintenance Supervisors
Income Maintenance Lead Workers
Income Maintenance Staff

Affected Programs:

- | | |
|---|--|
| <input type="checkbox"/> BadgerCare Plus | <input type="checkbox"/> Caretaker Supplement |
| <input checked="" type="checkbox"/> FoodShare | <input type="checkbox"/> FoodShare Employment and Training |
| <input type="checkbox"/> Medicaid | |
| <input type="checkbox"/> SeniorCare | |

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Division of Medicaid Services

Policy Clarifications on Agency Actions for Pursuing FoodShare Intentional Program Violations

CROSS REFERENCE

- FoodShare Wisconsin Policy Handbook, [Section 3.14.1 Intentional Program Violation \(IPV\) Disqualification](#)

EFFECTIVE DATE

April 17, 2023

PURPOSE

The purpose of this memo is to provide policy clarifications on agency actions required for pursuing Intentional Program Violations (IPVs), including how they are determined, implemented, notice requirements, administrative disqualification hearings, waived hearing requirements, and how to report potential retailer fraud.

BACKGROUND

Wisconsin FoodShare policy states an applicant, member, or their representative commits an Intentional Program Violation (IPV) when they intentionally:

- Make a false or misleading statement or misrepresent, conceal, or withhold facts, including but not limited to their identity, who they are living with, or which state they live in, to become eligible or to remain eligible for benefits; or
- Commit any act that constitutes a violation of the Food and Nutrition Act of 2008, the

Supplemental Nutrition Assistance Program (SNAP) Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing, or trafficking of FoodShare benefits or QUEST cards.

An administrative disqualification hearing or a federal, state, or local court must find that an IPV was committed, or an accused individual must sign a disqualification consent agreement for cases of deferred adjudication, in order for an IPV disqualification to be imposed.

POLICY

When an agency suspects an applicant, member, or their representative committed an IPV, they should investigate to determine whether to pursue disqualifying them for intentionally breaking the program rules.

Effective immediately an administrative disqualification hearing can not be waived. Any form signed prior April 17, 2023, that is received by the Division of Hearings and Appeals prior to May 1, 2023, would allow for a waived hearing.

FRAUD INVESTIGATION

Fraud investigations are generally conducted after public assistance benefits have been issued to determine if someone intentionally misrepresented or withheld facts around their financial and non-financial circumstances in order to receive more benefits than they were entitled to receive. The purpose of the investigation is to substantiate whether fraud occurred, and if so, to pursue the imposition of an IPV and recovery of any overpaid or trafficked benefits.

Based on the fraud investigation findings, the referral agency is responsible for initiating the processes to find that an IPV was committed and impose an IPV disqualification. When the investigation has established that sufficient documentary evidence substantiates an applicant, member, or their representative committed an alleged IPV, the agency must decide whether to refer the case to:

1. District Attorney (DA) for prosecution.
2. Administrative Disqualification Hearing (ADH).
3. Or make no referral for IPV/fraud determination.

STATE OR LOCAL COURT PROSECUTION

If the IM or tribal agency has a memorandum of understanding (MOU) with the local district attorney, the established process should be followed when making a referral for prosecution. The MOU should outline necessary documentation to make a successful referral. Otherwise work with your local district attorney to determine whether the investigation results should be shared with the prosecuting authority to pursue through the courts. Counties and municipalities may prioritize the cases they bring for prosecution so it may not be an option.

ADMINISTRATIVE DISQUALIFICATION HEARING (ADH)

An ADH is the administrative process for individuals accused of a FoodShare IPV. The referral agency may request an ADH when there is sufficient documentary evidence that an applicant, member, or their authorized representative, or group has intentionally violated the program requirements. An ADH may be initiated regardless of the applicant or member's current eligibility for the FoodShare program.

When requesting an ADH, there must be sufficient documentary evidence to substantiate that the accused person(s) committed, and intended to commit, an IPV. The burden of proof is on the State, IM or tribal agency that administers FoodShare to prove an IPV was committed based on clear and convincing evidence.

Documentary evidence must be used to show intent to break the program rules. Documentary evidence must have a foundation and be properly authenticated to be admitted. Documentary evidence may include hearsay. Agencies should consult with their legal counsel for questions regarding presenting evidence, including hearsay.

The State or agency's evidence on each and every essential fact must meet the standard of clear and convincing evidence. The burden of proof is placed only on the agency; the accused person(s) has no burden of proof that must be met. If the agency fails to meet the level of clear and convincing evidence on each and every fact, the hearing officer may rule against the agency.

- **ADH Request Requirements:** The referral agency must provide a written notice to the person(s) alleged to have committed the program violation at least 30 days prior to the scheduled date of the disqualification hearing.
- **ADH Decision:** Decisions made by the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony, exhibits, or official reports introduced at the hearing, together with all papers and requests filed in the proceeding, and the decision of the hearing office shall be made available to the accused person(s) and to their representative, if applicable, at a reasonable time and place.

If the ADH hearing officer finds that the accused person(s) committed an IPV, the agency will enter the IPV and any related benefit recovery as soon as possible.

DEFERRED PROSECUTION

PRE-CHARGE DIVERSION AGREEMENT

The Pre-Charge Diversion Agreement is an alternative for anyone referred to the DA for an alleged IPV. It permits recovery of over issued benefits from the group member without the stigma of actual court prosecution. The referral agency should have an agreement with its local DA that provides for at least a 10 day advance written notification to the accused person of the consequences of signing the consent agreement.

The Pre-Charge Diversion Agreement can be used at the point in the legal process prior to the DA filing criminal charges with the court of jurisdiction. The Pre-Charge Diversion Agreement is a contract between the person who admits to committing an IPV and the DA.

The offender makes restitution payments directly to the IM or tribal agency through the normal overpayment claim establishment and repayment process, unless other arrangements are incorporated into the Agreement.

PRE-TRIAL AGREEMENT

The Pre-Trial diversion agreement is similar to the Pre-Charge agreement in that it is a contract between the person who admits to committing an IPV and it includes the same stipulations. It is usually initiated after criminal charges have been filed with the court of jurisdiction. The agreement or contract requires the judge's signature.

The Pre-Trial diversion agreement can be used at any point in the legal process that the DA or court wishes, including after the entry of a guilty or no contest plea by the defendant.

DEFERRED PROSECUTION AGREEMENT

A Deferred Prosecution Agreement does not affect the Wisconsin Department of Health Services (DHS) rights as a creditor to collect overpayments. It merely provides that no further prosecution of the client will occur if the client performs certain community service activities. The local agency must recover the overpayment as it has calculated it and is not limited by the deferred prosecution agreement regarding collections. Like the pre-charge diversion agreement, a 10-day notification also applies to a deferred prosecution agreement.

DISQUALIFICATION CONSENT AGREEMENT

If an accused person's case has been referred to the DA for prosecution for civil or criminal misrepresentation or Fraud, the accused person may defer prosecution by signing a Disqualification Consent Agreement (F-16025). By signing this agreement the person agrees to the penalties listed, even though they have not been found guilty through court proceedings.

If the person signing the Disqualification Consent Agreement is not the head of the household, the head of the household must also sign this form in the line provided.

REPORTING POTENTIAL RETAILER FRAUD

A FoodShare retailer is a store authorized by the USDA's Food and Nutrition Service (FNS) to sell food products in exchange for FoodShare benefits using the Wisconsin QUEST Card and SNAP EBT cards issued by another state or territory. Retailer fraud involves an authorized retailer breaking program rules. Retailer fraud is investigated by the United States Department of Agriculture (USDA). Use the toll-free hotline (800-424-9121) to report fraud, waste, or abuse committed by a FoodShare retailer to receive and redeem FoodShare benefits.

CONTACTS

DHS CARES Problem Resolution Team: DHSCARESProblemResolution@dhs.wisconsin.gov

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