

September 20, 2018

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 18-116

Providing counties with recently updated CDSS forms used when filing a request for an Administrative Disqualification Hearing (ADH). Forms include the Administrative Disqualification Hearing Waiver – CalWORKs/CalFresh (DPA 479), the County Allegation of Intentional Program Violation/Statement of Position (Request for an Administrative Disqualification Hearing) (DPA 435), and the revised Administrative Disqualification Hearing Information Letter (DPA 436B). Additionally, this letter gives guidance regarding address verification procedures used by counties when respondents are no longer receiving benefits, as well as a reminder of first-class mailing procedures when sending ADH forms and documents to respondents.



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

September 20, 2018

ALL COUNTY LETTER (ACL) NO. 18-116

TO: ALL COUNTY WELFARE DIRECTORS
ALL CALFRESH PROGRAM SPECIALISTS
ALL CALWORKS PROGRAM SPECIALISTS
ALL CONSORTIA PROJECT MANAGERS
ALL SPECIAL INVESTIGATIVE UNIT CHIEFS
ALL COUNTY HEARING SPECIALISTS
ALL ADMINISTRATIVE LAW JUDGES

SUBJECT: **UPDATE OF ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADH) NOTICES**

REFERENCE: TITLE 7 CODE OF FEDERAL REGULATIONS (CFR) SECTION 273.16(a)(1), MANUAL OF POLICIES AND PROCEDURES (MPP) SECTION 20-300, MPP SECTION 21-115, MPP DIVISION 22, MPP SECTION 23-400; [WELFARE AND INSTITUTIONS CODE \(WIC\) SECTION 10553](#) AND [WIC SECTION 10554](#); [ACL 17-21](#), [ACL 17-102](#) AND [ACL 17-118](#)

The purpose of this ACL is to provide counties with recently updated CDSS forms [DPA 479](#) Administrative Disqualification Hearing Waiver – CalWORKs/CalFresh, [DPA 435](#) County Allegation of Intentional Program Violation/Statement of Position (Request for an Administrative Disqualification Hearing), and the revised [DPA 436B](#) County Information Letter.

This ACL reminds CWDs of mailing procedures outlined in [ACL 17-118](#), dated November 21, 2017. Any guidance regarding mailing procedures given prior to that ACL is superseded.

Background

In order to maintain program integrity, County Welfare Departments (CWD) are required to investigate cases of alleged Intentional Program Violation (IPV), and act upon appropriate cases either through an ADH or referral to a court of appropriate jurisdiction ([7 CFR Section 273.16\(a\)\(1\)](#)).

For cases referred to the prosecuting authority, when it is determined that the facts do not warrant prosecution, or the prosecuting authority declines to act on the case and returns it to the CWD, the CWD then refers the case to the State Hearings Division (SHD) to request an ADH ([MPP Section 20-300.23](#) and [MPP Section 22-301.3](#)).

Pursuant to [MPP Section 22-202.44](#), the respondent is informed by written notice that a request for a state/local level ADH has been filed by the CWD with the ADH Information Letter (DPA 436B). The respondent is also informed that he/she may waive the right to an ADH by completing and returning the ADH Waiver (DPA 479). The DPA 479 references the County Allegation of Intentional Program Violation/Statement of Position (DPA 435) as an attachment to the document to inform the respondent of the allegations faced.

Implementation of DPA 436B

The DPA 436B (*ADH Information Letter*) is a revised version of the previous DPA 436; which was sent by counties to respondents along with the ADH Waiver. This is still recommended to be completed at the same time or immediately after the DPA 435, County Allegation of Intentional Program Violation/Statement of Position, is sent to the state. The DPA 436B informs the respondent that a request for an ADH has been filed in his or her CalWORKs or CalFresh case, in accordance with [MPP Section 22-202.44](#) and [MPP Section 22-320.3](#). Additionally, the DPA 436B serves as an informational letter to provide clarification about the ADH process to respondents. The letter shall contain an option for the respondent to contact a specified representative of the CWD to discuss the hearing process, whether in person or by telephone, to review the county's evidence and/or waive his or her right to appear at an ADH. The letter also provides telephone numbers for the respondent to request legal aid or ask about their hearing rights. The form specifies that the state will mail a notice containing the date, location, and time of hearing. Furthermore, the respondent is notified that if he or she does not sign the ADH waiver, within 20 days of the date on the notice, a hearing will be scheduled. However, once the State is notified that the respondent has signed a waiver, the hearing will not be held.

Updates to DPA 435

The DPA 435 (*County Allegation of Intentional Program Violation/Statement of Position*) form was updated by CDSS in January 2018. The DPA 435 initiates the ADH hearing process, notifying the respondent of the precise allegations and evidence to support the

contention that an IPV was committed. In the current version of the DPA 435, all references to “Food Stamps” have been changed to “CalFresh”. Also, the CalFresh IPV penalties are further outlined to reflect [MPP Section 20-300.311](#) through [MPP Section 20-300.315](#). Additional formatting changes were also made to the DPA 435.

Updates to Form DPA 479

The DPA 479 (*Administrative Disqualification Hearing Waiver*) form was updated by CDSS in December 2017. The DPA 479 informs the respondent that he or she has a right to an ADH, but may waive the right by signing the form. The DPA 479 clearly states the respondent is “giving up” his or her right to a hearing and that “no hearing will be held” if the respondent signs the form. The DPA 479 also informs the respondent that he or she will be allowed to return the signed ADH waiver to the state or county within 20 days from the date of the ADH notice. The respondent also is further advised that he or she may rescind the waiver within seven working days from signing the DPA 479. The most significant update to the DPA 479 was the removal of the pre-populated penalty periods located at the bottom of page one. Those have been replaced by a text box where the appropriate penalties must now be entered manually. Additionally, all references to “Food Stamps” have been replaced with “CalFresh” and references to “AFDC” have been removed. Other minor aesthetic changes were also made to the form.

Address Verification

If a respondent is no longer receiving aid and the county intends to request an ADH, the county should, as a best practice, provide SHD with the respondent’s best-known mailing address when submitting the request. CDSS recommends, as a best practice, that counties use reliable address verification methods such as a third-party data source (e.g.: LexisNexis®) or a written request to the Postmaster of the U.S. Postal Services.

A written request to the appropriate Postmaster or post office can be used by the county to request the current address of a respondent, using the respondent’s name and last known address. A return name and address on county letterhead should be provided, along with a statement certifying the address and information for the individual is requested in the performance of the county’s official duties.

As stated in [ACL 17-118](#), the minimum requirement for sending the ADH hearing notice is first class mail. Any previous guidance for ADH mailing instructions is superseded by [ACL 17-118](#).

Required Form - Substitute Permitted

Forms in this category are required forms for which modifications or substitutions with prior Department approval are permitted (see [MPP Section 23-400.22](#), Approval Procedure). The CWDs may modify these forms to add or obtain information that does

not (1) conflict with program policy/regulations, or (2) change the legal content of the form. Ordinarily, merely rewording the content of a form in this category will not be approved. However, such suggestions for language improvement will be considered by the Department in future revisions.

The CWDs may email their requests for substitutions by providing a draft along with the request to Joe Denecochea, Staff Services Manager, at Joe.Denecochea@dss.ca.gov or via U.S. Postal mail to:

California Department of Social Services
Welfare Fraud Bureau
ATTN: Joe Denecochea
744 P Street, MS 8-5-26
Sacramento, CA 95814

Camera-ready Copies and Translations

For a camera-ready copy in English, contact the CDSS Forms Management Unit at fmudss@dss.ca.gov. If your office has internet access you may obtain these publications from the [CDSS Forms and Publications](#) webpage.

When all translations are completed per [MPP Section 21-115.2](#), they are posted on an on-going basis on the [CDSS Translated Forms and Publications](#) webpage.

For questions on translated materials, please contact the CDSS Language Services at (916) 651-8876. Until translations are available, recipients who have elected to receive materials in languages other than English should be sent the English version of the form or notice along with the [GEN 1365 – Notice of Language Services](#) and a local contact number.

The CWDs shall ensure that effective bilingual services are provided. This requirement may be met through utilization of paid interpreters, qualified bilingual employees, and qualified employees of other agencies or community resources. These services shall be provided free of charge to the applicant/recipient. In the event that CDSS does not provide translations of a form, it is the responsibility of the CWDs to provide interpreter services if an applicant or recipient requests for one. More information regarding translations can be found in [MPP Section 21-115](#).

Any questions regarding the processes outlined in ACL 17-118 or this ACL, may be sent to the Program Integrity & Automation Branch, Policy Unit at PIBPolicy@dss.ca.gov.

These ADH forms can be accessed through the [CDSS forms site](http://www.cdss.ca.gov/inforesources/Forms-Brochures) at <http://www.cdss.ca.gov/inforesources/Forms-Brochures>

Sincerely,

Original Document Signed By:

TODD R. BLAND
Assistant Director
Automation, Integrity, and Client Initiatives Branch

COUNTY ALLEGATION OF INTENTIONAL PROGRAM VIOLATION /STATEMENT OF POSITION

(Request for an Administrative Disqualification Hearing)

County: _____

PROPOSED PENALTY PERIOD

CalWORKs

- ☐ 6 Months ☐ 12 Months ☐ Two Years
- ☐ Four Years ☐ Permanent
- ☐ Active ☐ Closed

CalFresh

- ☐ 12 Months ☐ 24 Months
- ☐ Ten Years ☐ Permanent
- ☐ Active ☐ Closed

Person	Street Address	
Case No.	City State Zip Code	
SSN	Phone	Language

JURISDICTION:

A. Status of Prosecution

- The case will not be referred to the DA for prosecution because of an agreement with the prosecutor such as monetary limit thresholds for resulting overpayments of overissuances;
- The case was referred to the DA but was rejected for prosecution;
- The case was referred to the DA or the court but the factual issues in that case are different in this case; or
- The case has not yet been referred to the DA for prosecution.

B. Address Determination

The county at the hearing will affirm that the address used by the State at the time the State sent notice of this hearing was appropriate (e.g., as reflected in current county records, last known address with no reports of changed addresses, etc.)

IPV ALLEGATION:

- A. Describe the action(s) the person took and/or the occurrence(s) he/she failed to report which resulted in an Intentional Program Violation (IPV) as generally defined in regulation MPP Sections 20-300.1 and 20-351.i(1).
- B. Describe why you believe the person's actions and/or failure to report the occurrence was intentional (on purpose).
- C. In CalWORKs cases, also explain why the county believes the respondent committed the IPV for the purpose of establishing or maintaining the family's eligibility for CalWORKs or for increasing or preventing a reduction in the amount of the grant.
- D. Describe how and when the person was made aware of his/her responsibility to report the information which caused the IPV.
- E. Describe the exact period of time in which the action and/or occurrence took place and the amounts and period of any resulting CalWORKs overpayment and/or CalFresh overissuance.

APPLICABLE AUTHORITY:

Cite applicable regulations which make this an IPV and those regulations establishing the appropriate penalty period for the case.

All sections cited refer to the Manual of Policies and Procedures (MPP) unless otherwise noted.

Section 22-305.42 defines an Intentional Program Violation (IPV) in the CalWORKs program as an action by an individual for the purpose of establishing or maintaining the family's eligibility for CalWORKs or for increasing or preventing a reduction in the amount of the grant, which is intentionally:

- .421 A false or misleading statement or misrepresented, concealed, or withheld facts; or*
- .422 Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.*

Neither Chapter 20-350 nor 22-300 prescribes a burden of proof for CalWORKs IPV cases decided in the administrative hearing. Absent a specified burden of proof, the California Department of Social Services (CDSS) will apply the preponderance of the evidence standard.

Section 20-300.1 defines a CalFresh IPV as having intentionally:

- .11 Made false or misleading statement, or misrepresented, concealed, or withheld facts, or*
Committed any act which constitutes a violation of the Food Stamp Act, the CalFresh program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of CalFresh benefits.

Section 22-220.3 provides that any determination of a CalFresh IPV which is made in such a decision shall be based upon clear and convincing evidence.

Section 20-353.11 (CalWORKs) provides that individuals found to have committed a CalWORKs IPV shall be ineligible to receive CalWORKs benefits as follows:

- .111 Six months for the first violation*
- .112 Twelve months for the second violation*
- .113 Permanently for the third violation*

Section 20-353.12 provides that individuals found to have committed an IPV based on submitting more than one application for the same period of time and for the purpose of receiving more than one grant of aid;

or

For submitting documentation for nonexistent children, or submitting false documentation for the purpose of showing ineligible children to be eligible for aid, shall be ineligible to receive CalWORKs benefits as follows:

- 121. Two years for the first violation*
- 122. Four years for the second violation*
- 123. Permanently for the third violation.*

Section 20-353.5 (CalWORKs) provides that if the individual is not eligible for the CalWORKs at the time the disqualification period is to begin, the period shall be postponed until the person applies for and is determined eligible for benefits.

Individuals found to have committed an IPV either through an administrative disqualification hearing or by a court of appropriate jurisdiction shall be ineligible to participate in the CalFresh Program as specified in 20-300.3 (63-805.1) Section 20-300.31 provides that individuals found to have committed an IPV, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, shall be ineligible to participate in the CalFresh Program as follows:

- .311 Except as specified in Sections 20-300.312, .313, .314, and .315, twelve months for the first violation, twenty-four months for the second violation, and permanently for the third violation.*
- .312 Twenty-four months for the first violation and permanently for the second violation of trading CalFresh benefits for a controlled substance, as defined in Section 102 of the Controlled Substance Act (21 USC 802).*
- .313 Permanently for the first violation for trading CalFresh benefits for firearms, ammunition, or explosives.*
- .314 For a 10-year period for falsifying the identity or place of residence of the individual in order to receive multiple CalFresh benefits;*
- .315 Permanently for trafficking CalFresh benefits of \$500 or more. For purposes of this subsection, trafficking is defined in 7 USC 2024(b) and (c).*

Section 22-301.2 and .4 in the CalWORKs IPV program and Section 20-300.22 and .23 in the CalFresh IPV program set out the following regulatory provision:

Those cases in which the prosecuting authority has determined (a) that facts do not warrant prosecution, or (b) those cases previously referred for prosecution and declined, shall be returned to the County Welfare Department (CWD) and the CWD shall initiate referral actions for an ADH through the California Department of Social Services (CDSS) in accordance with CDSS MPP, Division 22.

The CWD shall not initiate an ADH against an accused individual whose case is currently

being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same or related circumstances.

Section 22-340.7 (CalWORKs) and 20-300.24 and 63-801.43 (CalFresh), provide that if the decision of the ALJ finds that the respondent committed an IPV, the County Welfare Department shall provide a written notice to the respondent prior to disqualification. The CalWORKs regulation in subsection .71 provides that the notice shall inform the respondent of the following:

- .711 The decision and the reason for the decision;*
- .712 The period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice); and*
- .713 The amount of payment the assistant unit will receive during the disqualification period.*

The CalFresh sections provide that the notice shall advise the remaining household members of the allotment they will receive during the disqualification period. The county shall send the individual a written demand letter which informs the individual of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting due to previous underissuances which reduced the claim, how the household may pay the claim, and the individual's right to request a State Hearing if the individual disagrees with the amount of the claim (unless the household has already had a State Hearing on the amount of the claim). The individual shall be advised of the right to request renegotiation of any agreed- to repayment schedule should the household's economic circumstances change. The household shall be advised that the household's current CalFresh allotment will be reduced if the household fails to make restitution.

COUNTY EVIDENCE & EXHIBITS**Exhibit****Number****Description of Evidence**

I certify that the above information is true and correct and establishes the basis of an Intentional Program Violation.

Signature of Preparer

Name Of Preparer and Title

Date

Signature of Reviewer

Name of Reviewer and Title

Date Reviewed

IPV Hearing Contact Person

Phone

Mail to: California Department of Social Services
State Hearings Division
744 P Street, MS 9-16-36
Sacramento, CA 95814

COUNTY INFORMATION LETTER

County : _____

Date : _____

Case Number: _____

The county has filed a request with the State Hearings Division (SHD) for an Administrative Disqualification Hearing (ADH) for an Intentional Program Violation (IPV) to be held on your California Work Opportunity and Responsibility to Kids (CalWORKs) and/or CalFresh case. This means the county believes you intentionally broke the rules for CalFresh and/or CalWORKs and has asked the state for a hearing. If you are found to have committed an IPV through the ADH process, you will be disqualified from receiving benefits for the period described on the attached forms.

There are two documents enclosed with this letter. The first document is the Hearing Waiver Form (DPA 479), which gives you the choice to give up, or waive, your right to a hearing and accept the disqualification. The other document is the Allegation of IPV (DPA 435) which explains why the County thinks you committed an IPV and lists the evidence the county will present at the hearing. Penalties for an IPV in the CalFresh program are separate from those in the CalWORKs program. (See attached form DPA 435 for more information about all of these penalties.)

Before the state hearing is held, you may discuss this ADH process, review the evidence the county has, and decide whether you want to waive your right to a hearing. **If you would like to discuss this process with a county representative or make arrangements to review the evidence the county has, please call _____.**

You can ask for a legal aid referral or about your hearing rights by calling toll free (800) 952-5253. For hearing or speech impaired who use TDD please call (800) 952-8349.

- **If you wish to give up your right to a hearing without meeting with a county representative:**
 - Review the county's allegation of the IPV (See attached form DPA 435). This allegation tells you what actions you are alleged to have taken in violation of program rules and lists the evidence the county will submit at the hearing. If you want to look at the evidence the county has, call the county at the number above.
 - Review the attached waiver (DPA 479). The ADH waiver tells you how many months you could be disqualified from getting benefits in CalWORKs and/or CalFresh if a judge finds after your hearing that you committed an IPV, or if you sign the attached ADH waiver form.
 - After reviewing the allegation and waiver, if you still choose to waive your right to the hearing, sign the waiver form and mail it back in the enclosed return envelope.

PLEASE NOTE: If you sign and return the enclosed waiver, a hearing will not take place and the disqualification penalty defined on the waiver form will be imposed.

The State will mail you a notice with the date, time and location of your hearing. If you do not sign the waiver within 20 days of the date on the notice of your hearing, the hearing will happen whether or not you appear at the hearing.

These rules apply: MPP 22-202.44; MPP 22-320.3. You may review them online at cdss.ca.gov or at your local county office.

IMPORTANT NOTICE

ADMINISTRATIVE DISQUALIFICATION HEARING WAIVER – CALWORKS/CALFRESH

Read carefully. Signing this waiver may affect your rights.

Date: _____
Hearing Number: _____

_____ believes that you, _____, committed an Intentional Program Violation (IPV). This means that the county is alleging that you intentionally gave the county wrong information or you intentionally did not tell the truth.

By “intentionally” the county means that you did it on purpose. For CalWORKs, this means you also did it for the purpose of establishing or maintaining the family’s eligibility for CalWORKs or for increasing, or preventing a reduction in, the amount of the grant. This resulted in an overpayment of _____ in CalWORKs and/or an overissuance of _____ in the CalFresh Program.

The county may seek a disqualification penalty even if there is no overpayment or overissuance. Disqualification penalties for an IPV can be six months, 12 months, 24 months, 4 years, 10 years, or permanent disqualification depending on whether this was your first, second, or third violation or based on the circumstances of the violation. You may also be disqualified from one or both programs.

You have the right to an Administrative Disqualification Hearing (ADH). However, you may give up your right to a hearing by signing page 2 of this notice. You do not have to admit that you committed an IPV. If you sign the waiver, you will be disqualified from CalWORKs and/or CalFresh for the time period(s) indicated on the bottom of this form. If you sign this form, no hearing will be held.

If you sign this waiver to give up your rights to the ADH, you should know:

- Your income and resources will still be counted when figuring the household’s eligibility and benefits even though you have been disqualified.
- If there are other members in your household, your household’s CalWORKs and CalFresh may be lowered or stopped during your disqualification period.
- You have the right to remain silent concerning the charge(s); but, anything you say or sign may be used against you in a court of law.
- Signing this statement does not stop the County, State, or Federal government from prosecuting you for an IPV in a court of law or from collecting any overpayment or overissuances.
- For CalFresh overissuances the amount you owe will be more because you will not be allowed the earned income deduction.

If you decide NOT to sign this waiver of rights to the ADH hearing:

- Your current eligibility will not change, pending the hearing.
- If you do not sign the waiver, your hearing will be held whether or not you attend. If you do not attend, you may wish to submit a statement to the county representative identified at the bottom of page two of this notice. A decision will be sent to you based on the evidence presented.
- **If the county is sending you this form before your hearing has been scheduled, you will receive the date, time, and place in another notice from CDSS. If you sign this waiver, the penalties will be as follows:**

CALFRESH NOTICE TO OTHER HOUSEHOLD MEMBERS

You and the other adults in the household will be held responsible for paying back extra CalFresh benefits given to your household during the period described under item E of the IPV Allegation in the enclosed DPA 435 (even if you or the disqualified individual move out), unless the amount of extra CalFresh benefits has already been paid back.

IF YOU WANT TO WAIVE YOUR RIGHT TO THE HEARING, sign and return this waiver to the California Department of Social Services within 20 calendar days from the date of the enclosed Notice of CalWORKs and/or CalFresh Administrative Disqualification Hearing. If you do not sign the waiver within those 20 calendar days, the hearing will be scheduled. If you are not the head of household, then the head of household must also sign.

If you sign this waiver, you will be disqualified from the CalWORKs and/or CalFresh Program(s) for the period(s) indicated on page 1, and your household's benefits may be reduced, even if you do not admit to the facts as presented by the county.

ADMINISTRATIVE DISQUALIFICATION HEARING WAIVER

I understand that signing this form is totally voluntary and that failure to sign this form will not affect my eligibility.

Please check one of the boxes below:

- ☐ I admit to the facts as presented, and understand that a disqualification penalty shall be imposed if I sign this waiver.
- ☐ I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty shall result.

I understand and acknowledge that:

1. The county alleges I committed an Intentional Program Violation.
2. I have reviewed the enclosed copy of the County Allegation of Intentional Program Violation (DPA 435) including the list of evidence and exhibits. If I want to see the evidence or discuss this process, I can contact the county representative whose name is shown below.
3. I hereby voluntarily waive my right to a CalWORKs and/or CalFresh Administrative Disqualification Hearing.
4. I understand that if I sign this waiver, I may change my mind and request an ADH by notifying the State Hearings Division at (800) 743-8525 (toll free) within seven (7) working days after the waiver was signed.

DO NOT SIGN THIS FORM IF YOU DO NOT KNOW WHAT IT MEANS!

Signature of Respondent	Date
Signature of Head of Household (HOH) / Caretaker Relative (CR) (these persons must sign if respondent is not HOH/CR)	Date

After signing this Waiver, return it in the enclosed envelope.

If you have any questions or need more information about the ADH or this waiver request, you may call the county collect at _____, and ask for _____. If you want a copy of the hearing procedures, call (800) 743-8525.