

## DEPARTMENT OF SOCIAL SERVICES

714 P Street, Sacramento, CA 95814

April 15, 1992

ALL-COUNTY LETTER NO. 92-40

TO: COUNTY WELFARE DIRECTORS

REASON FOR THIS TRANSMITTAL

- ☒ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☐ Self-Initiated by SDSS
- ☐ Administrative, Operational, or Fiscal Instructions

SUBJECT: AFDC DISQUALIFICATION - Intentional Program Violation (IPV)

HANDBOOK: This letter contains information updating the AFDC Notice of Action Handbook

The purpose of this letter is to complete implementation of the AFDC Intentional Program Violation (IPV) Disqualification Program.

## BACKGROUND

In 1987, Congress passed Public Law 100-203, which among other items, provided for enhanced federal funding for states who elect to establish an AFDC Fraud Control Operating Plan. A state's plan is subject to approval by Department of Health and Human Services (DHHS). The incentive funding consists, in general, of an increase in Federal financial participation (FFP) from 50% to 75% for select Fraud Control activities and provides FFP, at the 75% rate, for AFDC prosecution activities.

In June of 1989, California submitted its Fraud Control Plan to DHHS. It was approved retroactive to January 1, 1989.

The plan requires the state to initiate disqualification for those recipients/applicants found to have committed an IPV against the program. It is similar to the Food Stamp IPV Program.

In July of 1991, the Governor signed SB 724 (Chapter 97, Statutes of 1991) which required the implementation of an AFDC Disqualification Program. Emergency regulations were promulgated, effective January 2, 1992, (RDB letter #0991-47).

## PROGRAM SUMMARY

The program requires the disqualification from AFDC eligibility for an individual who has been found to have committed an IPV against the program. An IPV is defined as an intentional act by an individual for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant. Such actions are:

- o A false or misleading statement or misrepresentation, concealment, or withholding of facts; or
- o Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

An IPV may be found by either a state or federal criminal court, or by a state or federal civil court, or by a state Administrative Disqualification Hearing (ADH) established for this purpose. A decision as to whether or not California will establish administrative disqualification hearings has not been made.

A conviction of welfare fraud, or a guilty, or nolo contendere plea to a charge therein, must be deemed a finding of IPV unless ruled otherwise by the court.

Findings of IPV from another state are valid in California. Those findings must be implemented pursuant to the appropriate regulations, whether they be from the other state's court or ADH, or a federal court finding.

## DISQUALIFICATION PENALTIES

When an individual has been found guilty of an IPV the agency shall not take the individual's needs into account when determining the assistance unit's need and amount of the assistance payment. Any resources and income of the disqualified individual will be considered available to the assistance unit.

An individual must be disqualified for 6 months upon the first occasion of any such offense; for 12 months upon the second occasion; and permanently upon the third or subsequent occasion. The only exception is in accordance with the provisions of a court order.

If the individual is no longer on AFDC, the disqualification period will not begin until after a reapplication for AFDC assistance has been approved.

## NOTICE REQUIREMENTS

Federal law requires that applicants be provided with a written notice of the disqualification penalties at the time of application.

Effective June 1992, the SAWS 2A, Important Information for Applicants and Recipients, coversheet to the JA 2 and SAWS 2, Statement of Facts, will be modified to provide this notice. In the interim, applicants must be provided a written notice of these penalties at the time of application. A recommended form is included as Attachment II (TEMP 1999).

Federal regulations also require that "individuals who are recipients on the date of approval of the state plan amendment implementing this optional program must be provided a written notice no later than the next redetermination for AFDC." To meet this federal mandate, a staffer was included with the March 1, 1992, Medi-Cal card sent to all AFDC/FG and AFDC/U recipients.

#### IMPLEMENTATION OF SANCTIONS

An individual found guilty of an IPV must be notified per EAS 20-352.4. A copy of the notification (DPS 377.7(A)) is attached with this letter (Attachment III). These forms may be ordered from the DSS warehouse following current procedure.

Notice of Action information is included as Attachment I.

Remember that the disqualification only applies if the individual is otherwise eligible. Thus someone not currently aided will begin to serve the disqualification only after they reapply and are found otherwise eligible.

#### STATE HEARINGS AND DURATION OF PENALTY

State hearings may be requested only on the implementation process, such as effective dates, and on the computations of the grant. A recipient does not have a right to a state hearing based on the disqualification penalty. A disqualification penalty can only be reversed by a court of appropriate jurisdiction. However, the duration of the penalty is not subject to review without possibility of an administrative stay, unless and until the finding upon which the penalty was based is reversed by a court of appropriate jurisdiction but in no event shall the duration of the period for which such penalty is imposed be subject to review.

#### DISQUALIFICATION CONSENT AGREEMENTS (DCA)

Unlike DCAs in the Food Stamp Program, federal AFDC regulations require these agreements to be "confirmed by the court." The DCA forms have been modified accordingly and will be available from the DSS warehouse (See Attachment IV).

#### STATISTICAL ACCOUNTINGS

The IPV disqualification must be reported on the DPA 266 (Fraud Activity Report), Part D. In addition, the county must report pertinent IPV data to the Department

via Form DPS 524. (Copy provided as Attachment V.) This form will initially be available at the Fraud Program Branch and later at the DSS Warehouse.

The Fraud Program Branch is in the process of developing a computerized file of disqualified AFDC and Food Stamp individuals. This file will eventually become part of the IEVS Applicant System and will be in place by the fall of 1992.

Until that program is implemented the control file will be maintained by the Fraud Program Branch. Inquiries on any disqualified individual should be addressed to that branch.

Questions concerning Division 20 of the regulations should be addressed to Rick Tibbetts of the Fraud Program Branch at (916) 445-0031. Questions concerning AFDC issues should be addressed to Dennis Ragasa of the AFDC Policy Bureau at (916) 654-1063. If you have any questions, regarding the Notice of Action messages, contact John Bonayott at (916) 654-1077.

Sincerely,

MICHAEL C. GENEST  
Deputy Director

Attachments

bcc: M. Back, 19-26  
M. Genest, 17-08  
Central Files, 14-80  
R. Tibbetts  
K. Lewis, 16-30  
B. Lewis, 17-27  
R. Perryman, 8-600  
R. Mekata, 12-90  
L. Yoshimura, 12-52  
C. Marvin, 17-02

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