

An Overview of Public Assistance Program Rules Useful in Defending Welfare-Related Criminal Cases

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I. Introduction

- a. There are very basic processing requirements for all applications for benefits from the Department of Social Services (DSS) and also much more complicated rules and procedures that must be followed by the DSS. Understanding their failure to follow these processing requirements and rules can be very useful to defending a welfare based criminal case. In some situations, the problem with the case was created through the DSS's bad actions. In other situations, understanding the corners that the DSS workers cut will allow a defender to challenge the credibility of their testimony and their judgment in handling the case.
 - i. For Temporary Assistance, a decision must be made on the application within 30 days from the date of application for Family Assistance and 45 days from the date of application for Safety Net Assistance, 18 NYCRR § 351.8(b).
 - ii. For SNAP¹, the application must be determined in time to allow an eligible applicant to participate in the program by the 30th day. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(a), (g)(1).
- b. What is an intentional program violation (IPV)?
 - i. For Temporary Assistance, an IPV occurs when an individual, for the purpose of establishing or maintaining the eligibility of the individual or of the individual's family for public assistance or of increasing or preventing a reduction in the amount of such public assistance, individually, or as a member of a family, applies for or receives public assistance and is found to have intentionally:
 1. made a false or misleading statement, or misrepresented, concealed or withheld facts concerning the individual's, or the individual's family's eligibility for public assistance;
 2. committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity concerning the individual's, or the individual's family's eligibility for public assistance; or
 3. engaged in any conduct inconsistent with the requirements of Part 350, 351, 352, 369 or 370 of this Title. 18 N.Y.C.R.R. § 359.3(a).

¹ SNAP is the acronym referencing the Supplemental Nutrition Assistance Program, the new name of the federal food stamps program after 2008. SNAP and food stamps can be used interchangeably in conversation, but legal citations and references should identify it as SNAP because this is how it is identified in the regulations and statutes.

- ii. For SNAP, an IPV consists of having intentionally:
 - 1. Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - 2. Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 C.F.R. § 273.16(c).

- c. What is not an IPV? An inadvertent household error—*For SNAP*, any overpayment caused by a misunderstanding of unintended error on the part of a food stamp household; also the initial treatment of a fraud determination or intentional program violation determination by a local social services district. Instances of inadvertent household error include, but are not limited to:
 - i. the household unintentionally failed to provide the local social services district with correct or complete information;
 - ii. the household unintentionally failed to report changes in household circumstances to the local social services district;
 - iii. the household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits;
 - iv. the household committed an act on or after August 1, 1983, which the DSS believes is sufficient to establish an intentional program violation and the district has not received written authorization to forego proceeding on the inadvertent household error prior to referral for either intentional program violation prosecution or an administrative disqualification hearing. 18 N.Y.C.R.R. § 399.1(f)(1)-(5).

- d. Preliminary steps to take in preparing to defend a welfare/DSS related case.
 - i. Request the full DSS file—per 18 N.Y.C.R.R § 357.3(c), an applicant/recipient’s case record “shall be available for examination at any reasonable time by the applicant or recipient or his authorized representative upon reasonable notice to the local district. There is no basis in law to deny access to the routine contents of the welfare files at the DSS office. This will include budgets, notices, case notes by workers, copies of the application or recertification form, and any documents routinely contained in the records of public assistance recipients and used for the processing of applications.
 - 1. [15-LCM-01](#) also contains significant guidance about accessing files and documentation from the general DSS records.

2. Part of the value in requesting all of this information is to see what information clients disclosed to different parts of the agency at different times. Notice to one unit of the agency is considered notice to the entire agency. Matter of MA, fh# 4429057N (5/27/07) (“The Appellant’s attorney correctly asserts that the Agency is a single entity and notice to one unit is properly deemed notice to the agency as a whole”); Matter of MD, fh #3976629P (12/15/03).
- ii. Request the investigative unit packet—the regulation above does NOT authorize access to those materials being maintained separate from regular public assistance files for purposes of criminal prosecution, referral to the district attorney’s office, and the county attorney or welfare attorney’s files. However, [15-INF-07](#) references preparation of the investigative file that would be made available to the applicant/recipient who is accused of misconduct for due process reasons if an administrative disqualification is pursued. There is no harm in requesting this packet to see what you can get.

II. Topical Resources for Temporary Assistance and SNAP

- a. New York Statutes related to public assistance and SNAP are primarily located in the Social Services Law;
- b. Federal SNAP² regulations are in 7 C.F.R. § 273; New York State SNAP and public assistance regulations are at 18 N.Y.C.R.R. § Volume A;
- c. The Online Resource Center (ORC), operated jointly by Empire Justice Center and the Western New York Law Center, includes a number of useful resources. Fair Hearing Decisions are summarized and available in the Fair Hearing Bank. State policy documents such as Administrative Directives (ADMs), Informational Letters (INFs), Local Commissioner’s Letters (LCMs) and General Information System (GIS) messages are also available electronically. The Online Resource Center can be located at:
<http://onlineresources.wnylc.net/welcome.asp?index=Welcome>;
- d. Many ADMs, INFs, LCMs and GIS messages can also be found on the web page of the Office of Temporary and Disability Assistance (OTDA) at <http://www.otda.state.ny.us/main/directives/2016> and <http://otda.ny.gov/policy/gis/2016>;
- e. The comprehensive, but not necessarily entirely up-to-date, overview of the temporary assistance and emergency assistance programs is in the Temporary

Assistance Sourcebook which can be found online at:
<http://otda.ny.gov/programs/temporary-assistance/TASB.pdf>;

- f. The comprehensive, but not necessarily entirely up-to-date, overview of the SNAP program is in the Supplemental Nutrition Assistance Sourcebook which can be found online at: <http://otda.ny.gov/programs/snap/SNAPSB.pdf>
- g. D. Friedman, The Advocates Guide to the Work Rules, available at: <http://www.empirejustice.org/assets/pdf/issue-areas/public-benefits/welfare-work-rules.pdf>;
- h. OTDA Temporary Assistance and Food Stamps Employment Policy Manual. This is also not entirely up-to-date, but a good general resource: <http://otda.ny.gov/resources/employment-manual/employmentmanual.pdf>