

<b>Office of Administrative Hearings (OAH) Procedures Transmittal</b>		<b>Transmittal:</b> 16-06
<b>Distribution:</b>		<b>Date:</b> July 1, 2016 <b>Pages:</b> 3
<b>Albany OAH Staff</b> <input checked="" type="checkbox"/>	<b>Rest of State Hearing Officers</b> <input checked="" type="checkbox"/>	<b>Subject:</b> <b>Review of Disqualification Consent Agreement (DCA) and New Issue codes 170 and 443</b>
	<b>Supervising Hearing Officers</b> <input checked="" type="checkbox"/>	
<b>NYC OAH Staff</b> <input checked="" type="checkbox"/>	<b>NYC Hearing Officers</b> <input checked="" type="checkbox"/>	
	<b>Supervising Hearing Officers</b> <input checked="" type="checkbox"/>	
<b>Rest of State Social Service Districts</b> <input checked="" type="checkbox"/>		
<b>NYC Agencies</b> <input checked="" type="checkbox"/>		

This transmittal addresses a change in policy concerning jurisdiction to review at a Fair Hearing a Disqualification Consent Agreement (DCA) signed by an accused individual. Previously, the Office of Administrative Hearings (OAH) determined that it did not have jurisdiction to review a DCA at a Fair Hearing. However, various advocacy groups have raised concerns that social services districts (SSDs) have not followed the procedural requirements in State regulations (18 NYCRR 359.4), to ensure the due process rights of accused individuals who sign a DCA to settle a Public Assistance, or SNAP Intentional Program Violation (IPV). Therefore, OAH will conduct a limited review of a DCA at a Fair Hearing to ensure that the SSD followed the procedural requirements outlined in 18 NYCRR 359.4(b)(1) and (b)(4).

91-ADM-51 ("Use of Disqualification Consent Agreement (DCA) in the Food Stamp Program") indicates that there is no further administrative appeal available to a client who has entered into a DCA. Additionally, the fair hearing language on the LDSS-4799 Intentional Program Violation (IPV) Disqualification Notice for the Supplemental Nutrition Assistance Program (SNAP) limits the issues that may be reviewed. The Notice indicates that a fair hearing may only be requested to review: (1) the amount of an overpayment or over-issuance, but only if the amount was not determined when the disqualification was determined; (2) the amount of the SNAP allotment to be provided to the remaining members of the individual's family or household during the disqualification period; and (3) the failure to restore the individual to the household at the end of the disqualification period after a request for such restoration. The LDSS-4799 states that the individual or members of the individual's family or household do not have a right to a fair hearing to review the disqualification. Notwithstanding the language in the ADM and on the notice, OAH is accepting jurisdiction to conduct a limited review of DCAs.

18 NYCRR 359.4(b)(2) provides that when a case is referred, in accordance with 18 NYCRR 359.4(a), to the appropriate district attorney, or any other prosecutor authorized to act on the matter, and is accepted for prosecution, the prosecutor may choose to settle the case or a court of appropriate jurisdiction hearing the case may issue a pre-determination disposition order (e.g., order adjourning the case in contemplation of dismissal), provided that full restitution is made. In these cases, the SSD may use a DCA as described in 18 NYCRR 359.4(b)(1).

18 NYCRR 359.4(b)(1) outlines the format a SSD must use for a DCA. A DCA must include the following:

- notification to the accused individual of the consequences of signing the agreement and consenting to a disqualification penalty;
- a statement for the accused individual to sign indicating that he or she understands the consequences of signing the agreement, along with a statement that any caretaker relative or head of household must also sign the agreement if the accused individual is not the caretaker relative or head of household;
- a statement that signing the agreement will result in disqualification of the accused individual and reduction or discontinuance of assistance or SNAP for the disqualification period, even if the accused individual was not found guilty of civil or criminal misrepresentation or fraud;
- a statement describing the disqualification period which will be imposed as a result of the accused individual's signing the agreement; and
- a statement that the remaining members of the household or assistance unit, if any, will be held responsible for repayment of the overpayment or over-issuance, unless the accused individual has already repaid the overpayment or over-issuance as a result of meeting the terms of any agreement with the prosecutor or any court order.

Additionally, 18 NYCRR 359.4(b)(3) requires that a SSD which uses a DCA must enter into written agreements with the appropriate prosecutors which give the SSD opportunity to send advance written notice of the consequences of signing a DCA to the household when deferred adjudication is contemplated.

Finally, 18 NYCRR 359.4(b)(4) requires that the SSD provide to the accused individual a copy of the DCA, together with the notification of the consequences of signing the DCA, at least ten (10) days prior to the execution of the DCA and advise the accused individual that he/she may obtain a legal or other authorized representative for counsel and advise prior to and at the time the DCA is executed by the accused individual.

At the Fair Hearing, the SSD has the burden to show that the DCA signed by the accused individual meets the requirements in 18 NYCRR 359.4(b)(1) and that the accused individual was provided a copy of the DCA, along with the notification of the consequences, at least ten (10) days prior to the signing and that the accused individual was advised that he/she may obtain a legal or other authorized representative prior to and at the time the DCA is signed, as required by 18 NYCRR 359.4(b)(4). The underlying merits of the claim of alleged fraud will not be reviewed at the Fair Hearing. This review is strictly limited to whether the SSD complied with the procedural requirements in 18 NYCRR 359.4(b)(1) and (b)(4) to obtain the DCA from the accused individual.

If the SSD fails to meet its burden of proof, then the DCA cannot be upheld if the SSD did not comply with the procedural requirements of 18 NYCRR 359.4(b)(1) and (b)(4). The SSD should be directed to restore any lost Temporary Assistance (Family Assistance (FA) or Safety Net Assistance (SNA)) or SNAP benefits retroactive to the date of discontinuance. Additionally, the SSD should be advised that if it determines to redo its previous action, it is directed to comply with the requirements of 18 NYCRR 359.4(b).

Effective July 5, 2016, new Fair Hearing Information System (FHIS) issue codes will be available for statewide use. Coding for hearing requests related to this issue is as follows:

AGENCY:

NYC: NBAD

Rest of State: SSD

Category: FA/SNA or SNAP

ISSUE CODE:

FA/SNA: 170 Review of Disqualification Agreement

SNAP: 443 Review of Disqualification Agreement

ACTION: INAD

AID STATUS: NA

Staff should be aware that no other unrelated issues should be included in these requests.

If you have any questions regarding this transmittal, please contact Michael Allen at (518) 473-4969 or via email at [mike.allen@otda.ny.gov](mailto:mike.allen@otda.ny.gov).



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