

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



June 16, 1989

ALL COUNTY LETTER NO.: 89-54

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: FOOD STAMP ADMINISTRATIVE DISQUALIFICATION HEARING
(ADH) WAIVER (FORM DFA 479)

REFERENCES: State Regulations: MPP 22-202.223
All County Letter Nos.: 88-113, 88-43, and 87-104
Federal Regulations: 7 CFR 273.16 et al.

The purpose of this letter is to provide you with an informational copy of the Food Stamp ADH Waiver form and an explanation of the ADH waiver process. The use of this form will permit an accused individual to voluntarily waive his/her right to an ADH hearing and, at the same time, permit the county to impose a disqualification penalty and to take action to recover any resulting overissuance. Our office will begin using the ADH Waiver form for all cases that are scheduled on or after July 3, 1989.

After a request has been accepted by the Department, an ADH waiver form will be sent to the accused individual with the notice scheduling the hearing. The individual shall have twenty days from the date of the notice to submit the signed waiver form to the Department. If the individual signs the waiver, no hearing shall take place and the county will be notified to take appropriate disqualification related actions. If the individual fails to sign and return the waiver within twenty days from the date of the notice, the ADH shall be held as scheduled.

The regulatory provisions regarding the use of the waiver form are set forth in MPP Section 22-202.223. Such regulation is very precise and mandates that the ADH Waiver contain numerous statements. The waiver form includes, in part, the following:

A statement that the accused individual may sign the waiver either admitting or without admitting that the facts presented by the county are correct.

A statement that if the accused individual is not the head of household, then the head of household must also sign the waiver.

An admonition that anything said or signed by the individual concerning the charges could be used against such person in a court of law.

A statement informing the remaining household members that they shall be held responsible for repayment of the resulting claim.

A statement that the signing of the waiver form is entirely voluntary and that failure to sign the form shall not affect eligibility.

A warning of the disqualification penalties which could be imposed and a statement of which penalty shall be imposed as a result of the respondent having consented to disqualification.

Although the counties are not directly involved in the ADH Waiver process, each individual will be advised by the waiver that he/she may contact the county's state hearing appeals unit at a given telephone number. Each county should designate one or more appeals representatives who will respond to inquiries concerning the waiver. The designated appeals worker should be thoroughly familiar with the information contained in the waiver form. It is essential that the following information, which appears on the first page of the waiver itself, be made clear to the individual when the appeals representative is discussing whether an individual should sign or not sign the ADH Waiver form:

The County is alleging that the person INTENTIONALLY PROVIDED FALSE INFORMATION OR INTENTIONALLY FAILED TO REPORT PERTINENT INFORMATION. By "INTENTIONALLY," the county means that you did it ON PURPOSE.

This will prevent any misunderstanding and distinguish this situation from all non-intentional overissuances.

If you have any questions on the ADH waiver process, please contact Laurence H. Geller, Supervising Administrative Law Judge, at (916) 324-4500.



THOMAS S. WILCOCK
Chief Administrative Law Judge
Administrative Adjudications Division

Attachment

ADMINISTRATIVE DISQUALIFICATION HEARING WAIVER

Read carefully. Signing this waiver may affect your rights.

Date:

Case Name:

Case Number:

_____ County has reason to believe that you _____, (as head of household) or (as a household member) committed an Intentional Program Violation. This means that you **intentionally** gave the County wrong information or you **intentionally** did not tell the truth when you were asked certain questions. By "intentionally" we mean that you did it on purpose. This resulted in an overissuance of \$ _____ in food stamps.

You have the right to an Administrative Disqualification Hearing. You may give up your right to the scheduled hearing by signing the Administrative Disqualification Hearing Waiver on page 2. You have the choice to sign or not sign this waiver request. If you do not sign, your current eligibility will not change pending this hearing. Also, if you do not sign, the hearing will take place and you may win even if you do not attend the hearing.

If you decide to give up your rights to the hearing you should know:

- You will be disqualified from the Food Stamp Program, even if you do not admit to the facts presented by the County. See page 2 for the disqualification penalties.
- You cannot ask the State or County for another hearing on this issue. You can file an appeal in an appropriate court of law.
- Your income and resources will continue to be counted when figuring the household's eligibility.
- If there are other members in your household, your household's food stamps may be lowered or stopped during your disqualification period.
- You do not have to say that you committed the Intentional Program Violation. You have the right to remain silent; but anything you say or sign about the charge(s) can be used against you in a court of law.
- Signing this statement does not stop the State or Federal Government from prosecuting you for an Intentional Program Violation in a court of law.
- The food stamps must be repaid by you and/or the other adult household members in your household, unless they have already been paid back.

If you decide **NOT** to sign this waiver of rights to a hearing:

- You do not have to attend the hearing. However, the hearing will be held as scheduled. See the attached Notice of Hearing for the date, time, and place of your hearing; the charges against you; your hearing rights; and a summary of the evidence against you.
- The County will have to establish by clear and convincing evidence that you intentionally withheld information or intentionally gave wrong information.

DISQUALIFICATION PENALTIES

The disqualification penalties mean you will not be eligible to get food stamps for a period of time. **If you sign this waiver, your disqualification penalty will be:**

- ☐ 3 months (if violation occurred prior to April 1, 1984 per MPP 20-300.32 or prior to actual notice of the new penalties stated below)
- ☐ 6 months (first violation)
- ☐ 12 months (second violation)
- ☐ permanent disqualification (third violation)

If you lose the hearing, the penalty will be the same. If you are not eligible for food stamps right now, your disqualification period will begin after you reapply and are found otherwise eligible.

NOTICE TO OTHER HOUSEHOLD MEMBERS

You, the other adults in the household, will be held responsible for paying back the extra food stamps given to your household (even if you or the disqualified individual move out), unless the amount of extra food stamps has already been paid back.

If you need legal assistance in helping you decide whether to sign or not sign the waiver and you cannot afford a lawyer, you may be able to get free legal aid. See the attached Notice of Hearing.

If you have any questions or need more information about the Administrative Disqualification Hearing or this waiver request, you may call the County appeals representative at: _____

ADMINISTRATIVE DISQUALIFICATION HEARING WAIVER

IF YOU WANT TO WAIVE YOUR RIGHT TO THE HEARING, sign and return this waiver to the State Department of Social Services within 20 days from the date of the attached Notice of Hearing. If the person being charged is not the head of household, then the head of household must also sign.

I have read the evidence that indicates I am suspected of committing an Intentional Program Violation(s) of the Food Stamp Program. I have also reviewed the information contained in this letter regarding the Administrative Disqualification Hearing Waiver.

I HEREBY VOLUNTARILY WAIVE MY RIGHT TO AN ADMINISTRATIVE DISQUALIFICATION HEARING.

Please check one of the boxes below:

- ☐ 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 admit to the facts as presented and understand that a disqualification penalty shall be imposed if I sign this waiver.

SIGNATURE OF ACCUSED PERSON

DATE

SIGNATURE OF HEAD OF HOUSEHOLD* (IF DIFFERENT)

DATE

After signing this Waiver, return it in the enclosed envelope to:

State Department of Social Services
Administrative Adjudication Division
744 P Street, Mail Station 19-37
Sacramento, CA 95814

* Head of Household **MUST** also sign if the accused person is not the Head of Household.