

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



January 4, 1995

ALL-COUNTY LETTER 95-01

TO: COUNTY WELFARE DIRECTORS
HEARING/APPEALS REPRESENTATIVES
CHIEF FRAUD INVESTIGATORS

<u>REASON FOR THIS TRANSMITTAL</u>	
<input type="checkbox"/>	State Law Change
<input type="checkbox"/>	Federal Law or Regulation Change
<input type="checkbox"/>	Court Order or Settlement Agreement
<input type="checkbox"/>	Clarification Requested by One or More Counties
<input checked="" type="checkbox"/>	Initiated by CDSS

SUBJECT: ADMINISTRATIVE DISQUALIFICATION HEARING FOR
INTENTIONAL PROGRAM VIOLATIONS IN THE AID TO
FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM

This letter is to provide advance notification of proposed emergency regulations allowing all County Welfare Departments (CWDs) to request an Administrative Disqualification Hearing (ADH) for Intentional Program Violations (IPV) in the AFDC program. The hearings will be held by the California Department of Social Services (CDSS) Administrative Adjudications Division (AAD). CWDs may also seek waivers from recipients through a pre-hearing waiver process.

The proposed regulations are a result of the 1994/95 strategic plan for eliminating fraud and abuse in the welfare system. CDSS proposed to establish an IPV hearing disqualification process in the AFDC program as well as streamlining and refining the Food Stamp IPV hearing disqualification process. AAD obtained funding for five Administrative Law Judges (ALJs) specifically for this process. The ALJs have been hired, are in the training process, and will be ready for hearings in January 1995.

Attached is a draft of the emergency regulations for the ADH process in the AFDC program. The regulations will be filed with the Office of Administrative Law to be effective January 1, 1995. We anticipate forwarding final regulations to CWDs as soon as they are filed.

The CDSS will also be forwarding guidelines for implementing the ADH and pre-hearing waiver process within 30 days from the date of this All-County letter. The guidelines will include the necessary forms, notices, and waivers for CWDs use. During this period, it is our expectation that CWD Special Investigation Units and hearing/appeals representatives would begin a joint process to plan and coordinate for this anticipated workload in determining staffing needs and responsibilities. These include responsibility for the pre-hearing waiver process, requesting ADH hearing representation, and assessing potential caseloads.

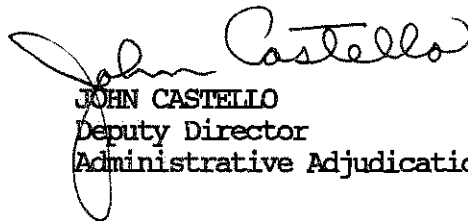
During the 1994/95 budget process, additional funding was set aside to meet the increased staffing needs of CWDs to implement the new AFDC IPV process. Many CWDs did not request additional funding for this increased workload. Although funding is limited, CWDs who need additional staff to implement this process for fiscal year 1994/95 should contact CDSS County Cost Analysis Bureau at (916) 657-3806.

The AFDC and Food Stamp ADH processes both provide for a pre-hearing waiver process by CWDs prior to CDSS scheduling the ADH. This process is described in the draft regulations at MPP section 22-320. The forms, notices and guidelines will be forthcoming. Additionally, to assist CWDs in the implementation of the ADH process, CDSS will conduct regional training by combined AAD and Fraud Bureau staff. The exact locations and dates will be included with the guidelines for implementation. It is anticipated that the training will take place during the latter part of January 1995. Both CWDs Special Investigation Units and Hearing/Appeals staff are encouraged to attend these training sessions. If you anticipate requesting ADHs for February 1995, please notify Presiding Judge Laurence Geller.

If you have any questions regarding the ADH process, please contact Presiding Judge Laurence Geller at (916) 387-4664. If you have questions regarding the pre-hearing waiver process, please contact Rick Tibbetts or Dave Hessler of the Fraud Bureau at (916) 445-0031.



MICHAEL C. GENEST
Deputy Director
Welfare Program Division



JOHN CASTELLO
Deputy Director
Administrative Adjudications Division

Attachments

Amend Section 22-003.11 to read:

22-003 RIGHT TO A STATE HEARING

22-003

.1 (Continued)

- .11 There is no right to a state hearing regarding a Food Stamp or AFDC administrative disqualification, unless the issue is the CWD's method of implementing a Food Stamp or AFDC administrative disqualification hearing decision. (See Division 22, Chapters 22-200 and 22-300, Division 20, Chapter 20-300, and Division 63, Section 63-805.)

Authority Cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

Reference: Sections 10553, 10554, 10613, 11209, and 11511(a), Welfare and Institutions Code; and 45 CFR 235.112(c)(2) and 45 CFR 255.4(j)(1) and 256.4(b).

Amend Section 22-201 to read:

22-201 GENERAL PROVISIONS

22-201

- .1 An administrative disqualification hearing (ADH) at the state level shall be initiated when a CWD informs the ~~Office of the Chief Referee~~ Administrative Adjudications Division (AAD) of the California Department of Social Services (CDSS) that clear and convincing documentary evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
- .11 The Department shall then assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the state level.
- .2 An ADH at the local level shall be initiated when a CWD informs the CWD-designated unit responsible for scheduling and conducting an ADH that clear and convincing documentary evidence in the CWD's possession indicates that an administrative disqualification is appropriate.
- .21 The CWD shall assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the local level.

~~17.3~~ (Continued)

.1731 (Continued)

.1732 (Continued)

.1733 (Continued)

.24 (Continued)

~~17.41~~ (Continued)

17

.411 Administrative Disqualification Decision - Means the written decision issued by the ~~Hearing Officer~~ Administrative Law Judge (ALJ) after an administrative disqualification hearing at the state level and by the CWD-designated hearing official after a local level hearing.

17

.412 Notice of Hearing - Means the written notification sent to the respondent and the CWD by the Department which initiates an administrative disqualification hearing (see Section 22-202.3)/ and is provided as follows:

- (a) At the state level, CDSS shall provide written notification to the respondent and the CWD and

(b) At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.

~~137~~
.413 (Continued)

.75 Procedures Governing State Hearings Also Applicable to Administrative Disqualification Hearings

(a) The following provisions of Chapter 22-000 shall be applicable to administrative disqualification hearings: (Continued)

(7) Section 22-049 relating to general rules and procedures at the hearing, excluding .11; (Continued)

~~111~~ Sections 22-053/13 and 114 relating to postponements

~~121~~ (Continued)

~~122~~ (Continued)

~~143~~ (Continued)

.6 Both the CWD's representative and the claimant's representative shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and in this circumstance, Section 22-049.12 would not apply. This individual may not be present as an adviser until after he/she has testified.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 7 CFR 273.16(e)(10)(i).

Amend Sections 22-202.11, .2 et seq., and .3 et seq. to read:

22-202 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING (Continued) 22-202

.1 (Continued)

.11 Notify the Chief Administrative Law Judge Referee in writing; and,
(Continued)

.2 *Upon receipt of the notification described in section 22-202.11 the Department shall either:*

CDSS shall monitor that the requests sent pursuant to Section 22-201.1 are appropriate for IPV consideration in that they represent cases in which clear and convincing evidence has been identified to warrant the scheduling of such hearing.

.21 *Schedule an Administrative Disqualification Hearing (ADH) or*

Upon receipt of the notification described in Section 22-201.1, the Department shall schedule an administrative disqualification hearing.

122 Review the charges and the evidence submitted by the CWD:

1221 If the Department determines that there is insufficient evidence described to support the charges, the CWD shall be so notified.

1222 If the Department determines that there is sufficient evidence described to support the charges, the CWD shall be so notified, and the Department shall schedule an ADH. Referee Department shall schedule an ADH.

1223

.3 Waiver of Right to an Administrative Disqualification Hearing

.31 A waiver request form shall be sent with the Notice required by Section 22-202.34 to the respondent. This waiver request form shall be a written notification which informs respondent of the possibility of waiving the ADH. This waiver request form shall include:

(a) The information that the respondent has ~~twenty~~ 20 days from the date of the notice to submit the signed waiver form to the Department in the case of a state level hearing or to the CWD in the case of a local level hearing. If the respondent fails to sign and return the waiver request to the Department within ~~twenty~~ 20 days from the date of the notice, the ADH shall be held as scheduled. (Continued)

123 .32 If the respondent voluntarily and knowingly submits a signed waiver of his/her right to an ADH within the ~~twenty~~ 20-day period to the Department in a state level hearing, or to the CWD in a local level hearing, the Department in a state level hearing, or the CWD in a local level hearing, shall submit a signed copy of the waiver to the CWD and shall notify the CWD to initiate the notification of disqualification action and imposition of disqualification penalties in accordance with §CDSS' Manual of Policies and Procedures, Division 20, Sections 20-300.24, .3, and .4.

124 .33 (Continued)

.34 The CWD may inform the respondent by written notice that a request for a state/local level ADH has been filed by the CWD and that he/she may waive the right to an ADH through a pre-hearing waiver process.

.341 The written notice shall be provided in person or by mail pursuant to Section 22-202.411 et seq., except Section 22-202.411(a).

(a) The notice may contain a request for the respondent to contact a specified representative of the CWD to set a meeting date, time, and location.

.342 The waiver shall be as described in Section 22-202.3.

.34 (Continued)

.341 (Continued)

.3411 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 7 CFR 273.16(f).

Adopt Handbook Section 22-210.12 to read:

22-210 HEARING PROCEDURE (Continued)

22-210

.1 (Continued)

HANDBOOK BEGINS HERE

.12 See Section 220339 for instances when a Food Stamp ADH can be combined with an AFDC ADH.

HANDBOOK ENDS HERE

Adopt new Section 22-215 to read:

22-215 LOCAL LEVEL HEARINGS

22-215

- .1 Subject to CDSS approval of a county's ADH plan, counties may choose to provide ADHs at the local level with a right to appeal to a state level de novo hearing.
- .2 If a local level disqualification hearing determines that a household member committed an IPV, the notification of hearing decision specified in Section 22-220.2 shall also inform the household member:
 - .21 Of the right to appeal the local level decision within 15 days after the receipt of the notice (see Section 22-340.6);
 - .22 Of the date the disqualification shall take effect unless a state level hearing is requested; and
 - .23 That benefits shall be continued pending a state level de novo hearing if the household is otherwise eligible.
- .3 If the household member appeals the local level decision, the advance notice of hearing, as specified in Section 22-202 shall be provided at least 10 days in advance of the scheduled state level hearing and shall also inform the household member that the local hearing decision shall be upheld if the household or its representative fails to appear for the hearing without good cause.
- .4 The local level hearing decision shall be made within 90 days from the date of the notice scheduling the hearing.
- .5 When a local level decision is appealed, CDSS shall conduct the state level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case.
 - .51 The local level decision shall not be taken into consideration by the state ALJ in making the final determination.
- .6 In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this chapter for state level hearings.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 7 CFR 273.16(e)(10)(i).

Adopt new Chapter 22-300 and new Section 22-301 to read:

CHAPTER 22-300 AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS - GENERAL

22-301 ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADHs) - GENERAL

22-301

- .1 The regulations in this chapter shall apply to hearings resulting from a county welfare department's (CWD's) determination, supported by documentation, that an individual has allegedly committed an intentional program violation (IPV) in the AFDC program in accordance with the California Department of Social Services (CDSS) Manual of Policies and Procedures, Division 20, Chapter 20-350.
- .2 Administrative disqualification hearings are distinct from the state hearings discussed in Chapter 22-000.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.112(a).

Adopt new Section 22-305 to read:

22-305 GENERAL PROVISIONS

22-305

.1 An ADH at the state level shall be initiated when a CWD informs the Department that sufficient evidence in the CWD's possession indicates that an administrative disqualification is appropriate.

.11 The Department shall then assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the state level.

.2 An ADH at the local level shall be initiated when a CWD informs the CWD-designated unit responsible for scheduling and conducting an ADH that sufficient evidence in the CWD's possession indicates that an administrative disqualification is appropriate.

.21 The CWD shall assume responsibility for the overall administration of the disqualification hearing process and the conduct of each hearing at the local level.

.3 In both state and local level hearings, the CWD shall remain responsible for:

.31 Investigating the case and assisting the respondent prior to the hearing;

.32 Presenting the CWD's position during the hearing; and

.33 Complying with the hearing decision.

.4 Definitions

The definitions in Section 22-001 shall apply unless they are specifically provided for in this chapter. The following additional definitions, in alphabetical order, shall apply wherever the terms are used in this chapter:

.41 Administrative Disqualification Decision - Means the written decision issued by the Administrative Law Judge (ALJ) after an ADH at the state level and by the CWD-designated hearing official after a local level hearing.

.42 Intentional Program Violation (IPV) - Means an action 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, which is intentionally:

.421 A false or misleading statement or misrepresentation, concealment, or withholding of facts, or

.422 Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

HANDBOOK BEGINS HERE

(a) To determine what constitutes an IPV, CDSS recognizes a distinction in the following:

(1) Intentional concealment or willful misrepresentation which may result in an IPV.

EXAMPLE: In completing the Monthly Eligibility Reports (CA 7), respondent checks the box indicating family has no income. Respondent also checks box indicating that no one had started employment that month. County evidence indicates respondent did start work during the month it was reported that no one had started work. Respondent also did receive earnings in each of the months under review.

(2) Incorrect representation, negligence, or omissions because of a mistake or a lack of understanding of eligibility requirements which do not result in an IPV.

EXAMPLE: Respondent reports that he/she began employment the last week of the reporting month, and that he/she will be paid every two weeks. Respondent completes the next CA 7 and checks the "No" box for income received in the month.

(3) The CWD's omission, neglect, or error in explaining requirements for assistance or in processing information, which does not result in an IPV.

EXAMPLE: Respondent completes CA 7 without answering question relating to household's receipt of income during the month. Respondent does this for five months and CWD fails to return the CA 7 as incomplete. Evidence establishes respondent had income in each of these months.

HANDBOOK ENDS HERE

.43 Notice of Hearing - Means the written notification, as specified in Section 22-315.5, which initiates an ADH and is provided as follows:

.431 At the state level, CDSS shall provide written notification to the respondent and the CWD and

.432 At the local level, the CWD shall provide written notification to the respondent and the CWD-designated unit responsible for presenting the case at the local level hearing.

- .44 Respondent - Means the member(s) of the assistance unit (AU) who the CWD has determined may be subject to administrative disqualification. To the extent that the provisions of Chapter 22-000 relating to state hearings apply to administrative disqualification hearings, all references to "claimant" in such regulations shall be deemed to refer to "respondent" for purposes of the ADH.
- .45 Sufficient Evidence - Means the documentary and other evidence in the CWD's possession that the CWD determines may establish that the respondent has committed an IPV based on a preponderance of evidence as the standard of proof.
- .5 The following provisions of Chapter 22-000, State Hearings - General, shall be applicable to ADHs:
- (a) Section 22-002 relating to determination of time limit;
 - (b) Section 22-010 relating to assignment of authorized representatives;
 - (c) Section 22-023.13 relating to assignment of county representatives;
 - (d) Sections 22-023.2 and .3 relating to duties of county representatives prior to and at the hearing;
 - (e) Section 22-027 relating to situations where the hearing is held in a county other than the responsible county;
 - (f) Sections 22-045.1 and .2 relating to the time and place of the hearing;
 - (g) Section 22-049 relating to general rules and procedures at the hearing, excluding .11;
 - (h) Section 22-050 relating to evidence;
 - (i) Section 22-051 relating to the examination of records and issuance of subpoenas;
 - (j) Section 22-052 relating to witness fees and mileage;
 - (k) Section 22-053.2 relating to continuances for additional evidence;
 - (l) Section 22-055 relating to disqualification of ALJs;
 - (m) Section 22-059 relating to communications after the hearing.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.112(b) and 45 CFR 235.113(b)(2).

Adopt new Section 22-310 to read:

22-310 REQUIREMENT FOR NOTICES OF PENALTIES FOR IPVS

22-310

The CWD shall provide all applicants with a written notice of the disqualification penalties for IPVs under this section at the time of the application. Respondents 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 eligibility.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.112(d) and 45 CFR 235.113(b)(3).

Adopt new Section 22-315 to read:

22-315 NOTICE OF ADMINISTRATIVE DISQUALIFICATION HEARING

22-315

- .1 When the CWD determines, based on sufficient evidence, that a respondent is subject to disqualification from the AFDC program because of a suspected IPV and determines the respondent should be disqualified in accordance with Chapter 20-300, the CWD shall send the completed request for hearing to:
 - .11 The Administrative Adjudications Division of CDSS for the scheduling of an ADH at the state level; or
 - .12 The CWD-designated unit for the scheduling of an ADH at the local level.
- .2 The request specified in Section 22-315.1 shall set forth the charges against the respondent, contain a summary of the evidence, and identify the specific disqualification period believed to be appropriate.
- .3 CDSS shall monitor that the requests sent pursuant to Section 22-315.1 are appropriate for IPV consideration in that they represent cases in which sufficient evidence has been identified to warrant the scheduling of such hearings.
- .4 The ALJ in the state level hearing, or the hearing official in the local level hearing, shall base the determination of an IPV on the preponderance of evidence that is in the hearing record.
- .5 CDSS for the state level hearing, or the CWD for the local level hearing, shall provide a written notice to the respondent alleged to have committed the IPV at least 30 days prior to the date of the disqualification hearing which shall include the following:
 - (a) The date, time and location of the hearings;
 - (b) The charge(s) against the respondent;
 - (c) A summary of the evidence, and how and where the evidence can be examined;
 - (d) A warning that the respondent's failure to appear without good cause shall result in a decision by the ALJ or hearing official based solely on the information provided by the CWD at the hearing;
 - (e) A statement that the respondent may request a postponement of the hearing as specified in Section 22-325 provided that such request is made to CDSS, or CWD in the case of a local level hearing, at least 10 days in advance of the scheduled hearing;
 - (f) A statement that the respondent has 10 days from the date of the scheduled hearing to present to CDSS at the state level, or CWD in the case of a local level hearing, good cause for failure to appear in order to receive a new hearing.

- (g) A description of the penalties that can result from a determination that the respondent has committed an IPV and a statement of which penalty is applicable to the respondent.
- (h) A statement that the hearing does not preclude the county or state government from prosecuting the respondent for an IPV in a civil or criminal court action, or from collecting an overpayment;
- (i) A listing of individuals or organizations that provide free legal representation to individuals alleged to have committed IPV's;
- (j) An explanation that the respondent may waive his/her right to appear at an ADH (see Section 22-320); and
- (k) A statement of the respondent's right to remain silent concerning the charge(s) and that anything said or signed by the respondent concerning the charge(s) may be used against him/her in a court of law.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.113(b)(2), (b)(3)(i) and (ii), and (b)(8).

Adopted new Section 22-320 to read:

22-320 WAIVER OF THE ADMINISTRATIVE DISQUALIFICATION HEARING

22-320

- .1 The respondent shall be allowed to waive his/her right to appear at an ADH.
- .2 The respondent shall be informed by the written notice as specified in Section 22-315.5(j) of the opportunity to waive his/her right to a hearing.
 - .21 The statement that the respondent may waive the right to appear at an ADH shall include at a minimum:
 - .211 The information that the respondent has 20 days from the date of the notice to submit the signed waiver form to the Department in the case of a state level hearing, or to the CWD in the case of a local level hearing. If the respondent fails to sign and return the waiver request within such time period, the ADH shall be held as scheduled.
 - .212 A signature block for the respondent's and the head of household's signature.
 - (a) A statement that the head of household must sign if the respondent is not the head of the household.
 - .213 A statement of the respondent's right to remain silent concerning the charge(s) and that anything said or signed by the respondent concerning the charge(s) may be used against him or her in a court of law;
 - .214 A statement of the fact that waiver of the respondent's right to appear at a disqualification hearing will result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the respondent does not admit to the facts as presented by the CWD; and
 - .215 A statement specifying that the respondent has an opportunity to specify whether or not he/she admits to the facts as presented by the CWD.
- .3 The CWD may inform the respondent by written notice that a request for a state/local level ADH has been filed by the CWD and that he/she may waive the right to an ADH through a pre-hearing waiver process.
 - .31 The written notice shall be provided in person or by mail pursuant to Section 22-315.5 et seq., except Section 22-315.5(a).
 - .311 The notice may contain a request for the respondent to contact a specified representative of the CWD to set a meeting date, time, and location.
 - .32 The waiver shall be as described in Section 22-320.21.

.4 When the respondent waives his/her right to appear at a disqualification hearing, the disqualification and appropriate reduction of assistance shall result regardless of whether the respondent admits or denies the charges.

.41 CDSS, or the CWD in the case of a local level hearing, shall send a written notice informing the respondent of the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period.

.42 If a case has been terminated the disqualification period shall be imposed after a reapplication for AFDC assistance is approved.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.113(c)(1), (2), and (3).

Adopt new Section 22-325 to read:

22-325 POSTPONEMENTS

22-325

- .1 An ADH at both the state and local level shall be postponed at the respondent's request provided that the request for postponement is made at least 10 days in advance of the date of the scheduled disqualification hearing.
- .2 The hearing shall not be postponed for more than a total of 30 days.
- .3 The number of postponements shall be limited to one.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.113(b)(4).

Adopt new Section 22-330 to read:

22-330 HEARING PROCEDURES

22-330

- .1 The hearing shall be conducted by an impartial ALJ at the state level, or a hearing official at the local level who has not had previous involvement in the case.
- .2 Medical assessments shall be obtained at the expense of CDSS and made part of the record if the ALJ or hearing official considers it necessary.
- .3 The respondent or his/her representative shall have adequate opportunity to:
 - .31 Examine the contents of the case file, and all documents and records to be used at the hearing by CDSS at the state level, or the CWD at the local level, at a reasonable time before the date of the hearing, and during the hearing;
 - .32 Present the case himself/herself or with the aid of an authorized representative;
 - .33 Bring witnesses;
 - .34 Establish all pertinent facts and circumstances;
 - .35 Advance any arguments without undue influence; and
 - .36 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
- .4 CDSS at the state level, or the CWD at the local level, shall combine an respondent's Food Stamp and AFDC ADHs into a single hearing if:
 - .41 The factual issues arise out of the same or related circumstances; and
 - .42 The AU receives prior written notice that the hearings will be combined.
- .5 CDSS at the state level may consolidate a respondent's state hearing governed by 42 CFR 205.10 with a disqualification hearing based on the same or related circumstances provided that the respondent receives prior written notice of the consolidation.
 - .51 If the hearings are combined, CDSS shall follow the time frames for conducting ADHs.
- .6 Both the CWD and the claimant shall have the right to have a representative present throughout the hearing.

.7 Both the CWD's representative and the claimant's representative as specified in Section 22-330.6 shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and, in this circumstance, Section 22-049.12 would not apply. This individual may not be present as an adviser until after he/she has testified.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.112(a) and 45 CFR 235.113(b) (1), (5), (6), and (7).

Adopt new Section 22-335 to read:

22-335 LOCAL LEVEL HEARINGS

22-335

- .1 Subject to CDSS approval of a county's ADH plan, counties may choose to provide ADHs at the local level with a right to appeal to a state level de novo hearing.
- .2 If a local level disqualification hearing determines that a household member committed an IPV, the notification of hearing decision specified in Section 22-340.7 shall also inform the household member:
 - .21 Of the right to appeal the decision within 15 days after the receipt of the notice (see Section 22-340.6);
 - .22 Of the date the disqualification will take effect unless a state level hearing is requested;
 - .23 That benefits shall be continued pending a state level hearing if the household is otherwise eligible; and
 - .24 That if he/she or his/her authorized representative fails to appear for the hearing without good cause, the request for the state level de novo hearing shall be dismissed. In this situation the local level decision shall remain in effect as it has not been set aside by a later state level hearing.
- .3 If the household member appeals the local level decision, the advance notice of hearing, as specified in Section 22-315 shall be provided at least 10 days in advance of the scheduled state level hearing and shall also inform the household member that the local hearing decision shall be dismissed if the household or its representative fails to appear for the hearing without good cause.
- .4 When a local level decision is appealed, CDSS shall conduct the state level de novo hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case.
 - .41 The local level decision shall not be taken into consideration by the state ALJ in making the final determination.
- .5 In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this chapter for state level hearings.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 7 CFR 273.16(e)(10)(i); 45 CFR 235.113(b), (b)(2), (b)(11), and (b)(12).

Adopt new Section 22-340 to read:

22-340 ADMINISTRATIVE DISQUALIFICATION HEARINGS - DECISIONS

22-340

- .1 Decisions made by the ALJ or hearing official shall be based exclusively on evidence and other material introduced in the hearing record.
 - .11 The transcript or recording of testimony, exhibits, or official reports introduced at the hearing, together with all papers and requests filed in the proceeding, and the decision of the ALJ or hearing official shall be made available to the respondent or to his/her representative at a reasonable time and place.
- .2 After the hearing has been closed, the ALJ or hearing official shall prepare a written decision.
- .3 Decisions by the hearing authority shall:
 - .31 In the event of a local level hearing, consist of a decision memorandum summarizing the facts and identifying the regulations supporting the decision;
 - .32 In the event of any CDSS hearing, specify the reasons for the decision and identify the supporting evidence and regulations; and
 - .33 Be made within 90 days from the date of the notice scheduling the hearing. (Sixty days from the request for a state level de novo hearing after a local level hearing decision.)
- .4 The Director or Chief Administrative Law Judge or his/her designee shall have the authority to reject the proposed decision of the ALJ and prepare a separate decision based upon the record in the case or to order an additional hearing.
- .5 A copy of the hearing decision shall be mailed to the respondent and to the CWD.
- .6 The CWD may not disqualify a respondent unless the decision of the ALJ finds that the respondent has committed an IPV or the respondent fails to request a state level de novo hearing within 15 days of the notice of an adverse local level hearing decision that proposes to disqualify the respondent.
 - .61 The CWD is not precluded from discontinuing, terminating, suspending, or reducing assistance, or changing the manner or form of payment to a protective, vendor, or two-party payment for other reasons.

HANDBOOK BEGINS HERE

- .611 For example, the CWD may have facts which substantiate that the AU failed to report a change in circumstances even though the CWD has not yet demonstrated that the failure to report was an IPV.

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- .7 If the decision of the ALJ, or hearing official at the local level hearing, finds that the respondent committed an IPV, the CWD shall provide a written notice to the respondent prior to disqualification.
- .71 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 AU will receive during the disqualification period.
- .72 In cases of a respondent's disqualification resulting from a prior receipt of assistance, the disqualification shall be postponed until after a reapplication for AFDC assistance is approved.
- .8 If the respondent does not appear at the state level or local level hearing, a reopening of the case may be requested within 10 days of the hearing by the respondent. If good cause is established, a new hearing shall be scheduled.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: 45 CFR 235.113(b)(3)(ii)(F) and (b)(8) through (12).