

Bulletin

May 18, 2006

Minnesota Department of Human Services □ P.O. Box 64941 □ St. Paul, MN 55164-0941

OF INTEREST TO

- County Directors
- County Supervisors and Staff
 - Child Care
 - Child Support
 - Fiscal
 - Fraud
 - Income Maintenance
 - Social Services
- County Child Care Administrative and Client contacts
- Child Care Resource and Referral Agencies
- Employment Service Providers
- Tribal Representatives

ACTION/DUE DATE

Effective Immediately, use the ADH process and forms for child care providers receiving payment from CCAP.

EXPIRATION DATE

The policies in this bulletin are ineffective as of June 2008.

Administrative Disqualification Hearing & Forms Available for Child Care Providers

TOPIC

Administrative Disqualification Hearings (ADH) process and forms can now be used for pursuing disqualifications against Child Care Providers who violate Child Care Assistance Program rules.

PURPOSE

Inform county child care, social services, income maintenance, and fraud investigators of the ADH processes and forms for pursuing disqualifications against Child Care Providers who violated Child Care Assistance Program rules.

CONTACT

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SIGNED

CHARLES E. JOHNSON
Assistant Commissioner
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Background

Minnesota Statutes, section 256.046, states a local agency must initiate an administrative fraud disqualification hearing for individuals, including child care providers caring for children receiving child care assistance under 119B., who are accused of wrongfully obtaining assistance or intentional program violations, in lieu of a criminal action when it has not been pursued.

The Administrative Disqualification Hearing (ADH) is an alternative process for county agencies to use in resolving intentional program violations (IPV) related to wrongfully obtaining public assistance. The ADH process gives the accused care provider the opportunity to waive the disqualification hearing and accept the penalties, or to request a disqualification hearing. Child care providers include licensed centers, licensed family child care providers and legal nonlicensed child care providers.

Counties are required to resolve cases of suspected IPV's through either the criminal or ADH process, not both. In this regard, counties are expected to confer with their county attorney to establish guidelines for adjudicating IPV's through either the criminal or ADH process. Do not make concurrent referrals for prosecution and ADH. The practice of resolving an IPV first through the ADH process and then referring the same IPV for prosecution is precluded by Minnesota Statute, section 256.046. Review DHS /CFL Instructional Bulletin 00-03-03 and DHS 03-68-06 for additional information on ADH procedures and program integrity initiatives in the child care assistance program.

This bulletin gives county staff information about the ADH process and forms applicable to child care providers caring for children receiving child care assistance payments.

If you have questions about the ADH process for child care providers, please contact Jim Myrah at 651-431-3957 or email him at, Jim.Myrah@state.mn.us.

For child care assistance policy questions contact Brenda Clark at 651-431-4047 or email her at, Brenda.Clark@state.mn.us or contact your child care assistance liaison.

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4. Disqualification Consent Agreement (DHS 3429A)
5. Notice of Disqualification for Intentional Program Violation (DHS 3134A)
6. Administrative Disqualification Hearing Presentation Guide

1. Clarification of the Definition of an Intentional Program Violation

An IPV for a child care provider is, any act by the provider for the purpose of being authorized by or receiving payment from the CCAP which is intentionally a false or misleading statement or misrepresentation, concealment of or withholding of facts, or any act intended to mislead, misrepresent, or conceal or withhold facts.

Misrepresentation or inaccurate billing by a child care provider does not necessarily constitute an IPV. The criteria for establishing the IPV requires that the misrepresentation or inaccurate billing is done with intent to commit an IPV. The ADH process requires the finding of intentional concealment or misrepresentation of a material fact by the legal standard of “clear and convincing evidence” to establish an IPV. “Material” means that the facts being misrepresented did impact or were capable of impacting the provider’s authorization or payments.

2. Child Care Providers Rights & Responsibilities and the ADH process

County agencies **must** inform the child care provider of their rights and responsibilities **and of the penalties for intentional program violations. Failure to give a provider this Penalty Warning will lead to the dismissal of any ADH.** The Child Care Provider Responsibilities and Rights Form DHS 4079 includes the Penalty Warning necessary for a county to disqualify a child care provider through the ADH process and is available through eDocs at <http://edocs.dhs.state.mn.us>. The penalty warning language is also included on the Registration & Authorization forms template in the MEC² Resource Pages, <http://mec2home.dhs.state.mn.us/noticetemplates.html>

If your county is not on MEC², and chooses to use a county form for acknowledgement or authorization, you must amend the provider forms to include the penalty warning, and the responsibilities and rights. You must send the new information/forms to DHS for approval as part of your county’s Child Care Fund Plan. Again, failure to include the penalty warning and the provider’s responsibilities and rights will preclude the use of the ADH process for child care providers accused of intentional program violation in your county.

3. ADH Waivers and Request for ADH

Upon identifying a child care provider with an IPV and determining that the IPV will be pursued through the ADH process, the accused child care provider must be offered the opportunity to waive the hearing itself and agree to the prescribed disqualification penalties or to request a hearing. The Child Care Assistance Program (CCAP) Notice of Provider Intentional Program Violation – Waiver of Administrative Disqualification Hearing (ADH Waiver) Form DHS 3131A has been developed to reflect applicable disqualification penalties and relevant advisories for child care providers caring for children receiving child care assistance payments covered under the ADH process. There must be a review of the proof necessary to establish the IPV

before the ADH waiver is offered to the accused provider. The name of the county representative who reviewed the proof must be listed on the form, and must be someone other than the child care/ financial eligibility worker who administers the case. A county contact person must also be listed for the accused child care provider to contact for reviewing the agency's proof. The back page of the ADH waiver form has instructions to child care providers as to how to waive the hearing, or request an ADH hearing.

Completing the ADH Wavier and Request for ADH for Child Care Providers

Some child care providers may have a business name that is different than the provider's name. Other child care providers are operating as partnerships or corporations. The Child Care Assistance Program (CCAP) Notice of Provider Intentional Program Violation – Waiver of Administrative Disqualification Hearing (ADH Waiver) Form DHS 3131A has been developed to capture both the business information and the individual information.

Complete one ADH Waiver for each individual or business that you propose to disqualify from receiving CCAP payments. Only the person or entity named on the ADH Wavier will be disqualified due to the ADH process. If you have questions about whether to bring an ADH against an individual provider, the provider's business or both, consult with your county attorney's office for guidance or contact the PAID staff at DHS listed in this bulletin. Remember, the provider must have received a copy of their Responsibilities & Rights and the Penalty warning before the ADH can be successful.

The ADH process for pursuing IPV's requires that the county agency initiate the hearing through the DHS Appeals & Regulations Division. If the accused provider/s refuses to sign the ADH Waiver, or request a hearing, the county agency must complete The Child Care Assistance Program (CCAP) Request for Administrative Disqualification Hearing Form DHS 3132A for each individual and/or business entity, and send it to the DHS Appeals and Regulations Division. ADH Waivers must not be offered unless the county agency is prepared and intends to request an ADH. Upon reviewing and agreeing with the basis for the proposed IPV, the DHS Appeals and Regulations Division will notify the county and the provider of the scheduled date and time for the ADH.

4. ADH Investigative Subpoena

Subpoena authority is also available to county agencies for gathering information in the investigative stage that is necessary to develop a basis for establishing and proving an IPV that will be pursued through the ADH process. Minnesota Statutes, section 256.045, subd. 6 gives county agencies the right to compel parties to produce information necessary to establish an IPV. County agencies can use The Request for Investigative Subpoena Form DHS 3436 to direct the DHS appeals and regulations office to issue a subpoena for third party records and/or testimony. The Appeal & Regulations Division also has separate subpoena authority to compel witnesses and production of records for the hearing itself. Refer to "Administrative Disqualification Hearing Presentation Guide", included with this bulletin.

5. Disqualification Consent Agreement

County attorneys can also use The Child Care Assistance Program (CCAP) Disqualification Consent Agreement (DCA) Form DHS 3429A as an option for establishing an IPV and allowing an accused child care provider to voluntarily agree to a disqualification and repayment of program benefits. Use of the DCA form is limited to the discretion of and execution by the county attorney's office. The DCA's intended use is for those IPV cases that the county attorney chooses to adjudicate without formal charging and prosecution outcomes.

6. IPV based disqualification provisions for child care Providers receiving payment from CCAP

- A. Disqualify the child care provider from receiving payment from any child care assistance program for the following lengths of time when the provider has committed an IPV:
 - a. 1st offense is for 1 year.
 - b. 2nd offense is for 2 years.
 - c. Any subsequent offense results in permanent disqualification.
- B. The disqualification period for any child care assistance program must extend to all child care assistance programs and must be immediately applied. The effective date of the disqualification period is the date of the IPV determination (if signed DCA or ADH Waiver, court/ADH decision) or the effective date of the CCAP termination notices, whichever is later.
- C. The CCAP termination notice and The Child Care Assistance (CCAP) Notice of Disqualification for Intentional Program Violation Form DHS 3134A must be sent when the child care/eligibility worker receives notification of an IPV determination.
- D. Send the parent a 15-day Notice of Provider Deactivation informing them that the child care provider is no longer authorized to receive CCAP payments.

Special Needs

This information is available in other forms to people with disabilities by contacting us at 651-431-4000, or through the Minnesota Relay Service at 711 or 1-800-627-3529. For the Speech to Speech Relay, call (877) 627-3848.

Legal References

Minnesota Statutes, chapters 119B.

Minnesota Rules, parts 3400.0010 and 3400.0230

Minnesota Statutes, Section 256.046

Administrative Disqualification Hearing Presentation Guide

<i>What the Judge Looks For</i>	<i>What the Agency Does</i>	<i>Notes</i>
Whether hearing notice sent to last known address. After approval of ADH Request, notice of hearing is sent via 1st class mail.	DHS-3132-ENG Request For Administrative Disqualification Hearing –is the form used to initiate the hearing	Verify current residence and provide current address to Appeals office on DHS 3132. Number /identify the pages in request packet for ease of reference at hearing.
Whether penalty warnings were given.	At hearing, you must provide copies of all applications, addendums, and renewal forms that contain penalty or fraud warning provisions and any testimony from case worker or investigator relating to client's acknowledgement of said warnings.	Be sure to specifically cite for the record the penalty provisions contained in each application, addendum, renewal and /or change report form relating to violation time period. The warnings are time sensitive to the violation period.
Whether rights and responsibilities were given.	Same as above, but specifically reference the rights and responsibilities, include testimony from case worker on standard practices for advising clients of their rights and responsibilities and documentation of client's understanding.	Burden of proof is on county to prove all aspects of the program violations and whether all notices and warnings were given to client. Some judges will guide the agency through hearing in addressing these areas; others will not assist in any way.
The specific programs that the agency alleges have been violated.	Specify each program in which a violation occurred, i.e. MFIP, Food Stamps, Child Care Assistance, MSA etc.	ADH available in all programs except federal medical assistance. DWP, GAMC, MNCARE (single adult cases), and Child Care Provider are now authorized.
Details of the violation, program rules violated, whether acts were knowing and willful vs. unintentional, whether agency meets higher standard clear and convincing burden of proof	<p>Detail specific actions, i.e, not informing agency of income; of other parent in the home; children not home, lying about assets, billing for children not in care. As a result of the violation, how was agency harmed, materiality of actions, i.e., indicate amount of overpayments, dates of activity, and include third party documentation.</p> <p>Treat the hearing more like an actual trial. Request that the judge issue subpoenas to compel individuals to provide records and/or testify at the hearing. Have witnesses testify in person about key points. Alternatively, but not as strong, use written statements that the witness acknowledges is true.</p> <p>Keep in mind that intent is only found through indirect evidence and inferences and that some fact patterns produce competing inferences.</p>	<p>It is critical to provide information that demonstrates a knowingly willful act to violate the rules as opposed to a mere failure to do something. It also must be a material representation that will effect or had the effect of receiving benefits or maintaining benefits at a higher level.</p> <p>An investigative report recounting a county employee's assertion that they heard an admission of the accused or they witnessed the accused being present in a residence where continued absence was claimed is admissible, but weaker evidence than would be that employee's testimony as to what they witnessed directly.</p> <p>Statements from neighbors are useful in household composition issues, but are entitled to little weight when a fraud investigator alone testifies that this is what he or she heard.</p>
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Whether the client suffered from any mental disability, language barrier, or cultural issue that prevented them from forming the requisite intent to commit fraud	Contact with client/case worker or other individuals who may know whether there are any mental health issues that would prohibit client from understanding their responsibilities/actions.	
Whether client ever tried to explain away the discrepancy to any agency personnel	Previous contact with client is critical to explore any defenses raised. Often time client will make admissions that can be used in evidence.	Try to get the client's side of the story before hand so that you know what the judge will hear and you can be prepared with a rebuttal.
Miscellaneous issues that arise during proceeding.	This area can be limited if the agency presents an orderly case to the judge.	