

# Chapter 388-446 WAC

## FRAUD

### WAC

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### WAC 388-446-0001 When does the department refer a cash or food assistance case for prosecution for fraud?

(1) We consider it fraud if you misrepresent your circumstances in order to be eligible for or to receive more benefits than you would receive based on your actual circumstances. This includes misrepresenting:

- (a) Who is in the household;
- (b) The income of people in your assistance unit;
- (c) Your living expenses; or
- (d) Other circumstances that impact your eligibility and monthly benefits.

(2) We suspect fraud if it appears that you received more benefits than you should have and it appears that you:

- (a) Made an intentional misstatement about your circumstances that caused the incorrect benefits; or
- (b) Intentionally failed to reveal information that impacts your eligibility.

(3) If we receive a report of fraud, we actively investigate the circumstances to determine if there is substantial evidence to support a finding of fraud. This includes referring the case for investigation by the office of fraud and accountability.

(4) If we have substantial evidence to support a finding of fraud for cash or food assistance, we refer the case for prosecution. The prosecuting attorney's office decides which cases they will pursue for prosecution.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 2011 1st sp.s. c 15. WSR 13-18-007, § 388-446-0001, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.-580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-446-0001, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.-050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-446-0001, filed 7/31/98, effective 9/1/98. Formerly WAC 388-501-0140.]

### WAC 388-446-0005 Disqualification period for cash assistance.

(1) An applicant or recipient who has been convicted of unlawful practices in obtaining cash assistance is disqualified from receiving further cash benefits if:

- (a) For TANF/SFA, the conviction was based on actions which occurred on or after May 1, 1997; or
- (b) For aged, blind, or disabled (ABD) assistance, the conviction was based on actions which occurred on or after July 23, 1995.

(2/18/14)

(2) The disqualification period must be determined by the court and will be:

- (a) For a first conviction, no less than six months; and
- (b) For a second or subsequent conviction, no less than twelve months.

(3) The disqualification applies only to the person convicted and begins on the date of conviction.

(4) A recipient's cash benefits are terminated following advance or adequate notice requirements as specified in WAC 388-458-0030.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335 and 2011 1st sp.s. c 36. WSR 12-06-070, § 388-446-0005, filed 3/6/12, effective 4/6/12. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.055, 74.04.057. WSR 04-13-097, § 388-446-0005, filed 6/21/04, effective 7/22/04; WSR 98-16-044, § 388-446-0005, filed 7/31/98, effective 9/1/98.]

### WAC 388-446-0010 TANF disqualification period for fraud convictions of misrepresenting interstate residence.

(1) An applicant or recipient is disqualified from receiving cash benefits under TANF if convicted of fraud by misrepresentation of residence in order to receive assistance from two or more states at the same time from any assistance program funded by the following:

- (a) TANF and any other benefit authorized by Title IV-A of the Social Security Act; or
- (b) Any benefit authorized by The Food Stamp Act of 1997; or

- (c) Any benefit authorized by Title XIX, medicaid; or
- (d) SSI benefits authorized by Title XVI.

(2) The disqualification penalty is applied as follows:

- (a) Only to convictions based on actions which occurred on or after May 1, 1997; and
- (b) Only to the person convicted of fraud in federal or state court; and

(c) For a disqualification period of ten years or a period determined by the court, whichever is longer.

(3) The disqualification period begins the date the person is convicted of fraud by misrepresentation of residence in order to receive assistance from two or more states at the same time.

(4) The provisions of subsections (1) through (3) of this section do not apply when the President of the United States has granted a pardon for the conduct resulting in the conviction of fraud by misrepresentation of residence. The disregard of the provisions because of a pardon is effective the date the pardon is granted and continues for each month thereafter.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-446-0010, filed 7/31/98, effective 9/1/98.]

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**WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearings (ADH) for food assistance.** (1) An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow. This includes making a false statement regarding household circumstances.

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any state statute relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including:

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via electronic benefit transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), if:

(a) The suspected IPV causes an over issuance of four hundred fifty dollars or more; or

(b) The suspected IPV is due to the trafficking of food benefits; and

(c) The person has not been referred for criminal proceedings.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV can choose to waive their right to an ADH by signing a disqualification consent agreement that waives their right to the hearing and accepts the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPVs and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we suspect someone has committed an IPV, we refer their case for an administrative disqualification hearing (ADH). The office of administrative hearings (OAH) sends them notice of an ADH at least thirty days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has ten days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they can request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative shall have the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within ten days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if this is requested by the person or department representative at least a week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 271.2. WSR 14-05-063, § 388-446-0015, filed 2/18/14, effective 3/21/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.-142, 7.C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-446-0015, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.-057, 74.04.510, 74.08.090, and 9.91.142. WSR 05-23-082, § 388-446-0015, filed 11/15/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-446-0015, filed 7/31/98, effective 9/1/98.]

**WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose?** (1) Breaking a rule on purpose for food assistance is known as an intentional program violation (IPV) under WAC 388-446-0015. These rules apply to all DSHS food assistance programs including:

(a) Washington Basic Food program or Basic Food;

(b) The Washington combined application project (WASHCAP) under chapter 388-492 WAC;

(c) Transitional food assistance (TFA) under chapter 388-489 WAC; and

(d) The state-funded food assistance program (FAP) for legal immigrants.

(2) You will have a disqualification period if we have shown that you have committed an IPV in any of the following three ways:

(a) We establish that you committed an IPV through an administrative disqualification hearing (ADH) under WAC 388-446-0015;

(b) You signed a disqualification consent agreement that waives your right to an administrative disqualification hearing and states you accept the IPV penalty; or

(c) A federal, state or local court found that you committed an IPV or found you guilty of a crime that breaks food assistance rules.

(3) **Special penalties for certain crimes** - If you are convicted in a court of law for crimes that are an intentional program violation, we disqualify you for the period of time set in the court order. If the court order does not state a disqualification period, we set a disqualification period based on the crime you were convicted of committing:

(a) **Drugs** - If you are convicted in a federal, state, or local court of trading or receiving food benefits for a controlled substance, we disqualify you:

(i) For a period of twenty-four months for a first offense; and

(ii) Permanently for a second offense.

(b) **Weapons** - If you are convicted in a federal, state or local court of trading your food assistance benefits for firearms, ammunition, or explosives, we permanently disqualify you from receiving food assistance on the first offense.

(c) **Trafficking** - If you are convicted in a federal, state, or local court of knowingly buying, selling, trading, or presenting for redemption food assistance benefits totaling five hundred dollars or more, we permanently disqualify you from receiving food assistance on the first offense.

(d) **False identification** - If you are found to have provided false identification to receive benefits in more than one assistance unit, we disqualify you from receiving food assistance:

(i) For ten years on the first offense.

(ii) For ten years on the second offense.

(iii) Permanently for the third offense.

(e) **Receiving benefits in more than one state** - If you are found to have provided false residency information to receive benefits in more than one household or state, we disqualify you from receiving food assistance:

(i) For ten years on the first offense.

(ii) For ten years on the second offense.

(iii) Permanently for the third offense.

(4) In addition to penalties for crimes described in subsection (3), if you commit an IPV you will not be eligible for food assistance:

(a) For a period of twelve months for any first intentional program violation;

(b) For a period of twenty-four months for any second intentional program violation; and

(c) Permanently for any third intentional program violation.

(5) We only apply a disqualification penalty to the person or persons who have committed an intentional program violation.

(6) Start date of a disqualification. The date of a disqualification depends on how a person was disqualified. We will send you a letter telling you when your disqualification period will start:

(a) **ADH or consent agreement** - If you were found to have committed an IPV in an administrative disqualification hearing or you signed a consent agreement waiving this hearing and accepting the disqualification, we start the disqualification period by the second month after we sent you a letter informing you of the disqualification.

(b) **Conviction in court** - If you are convicted in court of a crime that is an intentional program violation, your disqualification period in subsection (4) is in addition to any civil or criminal penalties. We disqualify you from food assistance within forty-five days of the court order unless this timing conflicts with the court order.

(7) **Disqualifications apply in all states** - If you have an IPV disqualification this stays with you until the penalty period is over, even if you move to another state:

(a) If we disqualify you from food assistance, you are also disqualified from receiving supplemental nutrition assistance program (SNAP) benefits in another state during the disqualification period.

(b) If you are disqualified from receiving SNAP benefits for an IPV from another state, you can't receive food assistance in Washington during the disqualification period.

(8) Even though we only disqualify the persons who have committed an IPV from receiving food assistance benefits, all adults in the assistance unit are responsible to repay any benefits you were overpaid as described under WAC 388-410-0020 and 388-410-0025.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, and 7 C.F.R. 273.16. WSR 14-03-027, § 388-446-0020, filed 1/8/14, effective 2/8/14; WSR 12-14-012, § 388-446-0020, filed 6/21/12, effective 7/22/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-446-0020, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-446-0020, filed 7/31/98, effective 9/1/98.]