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| <b>DEPARTMENT OF HUMAN RESOURCES<br/>FAMILY INVESTMENT ADMINISTRATION</b> | <b>PUBLIC ASSISTANCE<br/>TO ADULTS MANUAL</b> |                    |
| <b>FRAUD, PAYMENT IRREGULARITIES<br/>AND APPEALS</b>                      | <b>Section 800</b>                            | <b>07.03.07.13</b> |

## **800.1 Fraud**

- A. As a condition of eligibility, applicants must read and sign **DHR/FIA CARES 9707** or the attachment to the 9701, which lists the customer's rights and responsibilities including:
1. A sworn statement that all information on the application and verifications provided are true, correct, and complete
  2. An understanding that changes in address, income, employment, and assets must be reported within 10 days
  3. An understanding that fines, imprisonment, or benefit reductions can result from making false statements, impersonating another person, or not reporting changes that could affect the benefit or are required by the local department
  4. An understanding that statements on the application can be used in a court of law for fraud prosecution
  5. The specific penalties for fraud convictions
- B. The case manager must make sure that the applicant understands what fraud is and the legal responsibility of signing the application
1. Allow the applicant to amend the application without penalty before signing
  2. Read the **9707** to any customer who is not able to read the form
- C. Give the applicant a copy of the **9707**
- D. Review the **9707** with the customer, along with the current application at each recertification, but a new document does not have to be signed
- E. Apply the same rules and procedures to a representative payee or a representative helping with the application.

## **800.2 PAA Customers and Fraud**

- A. It should be kept in mind that a PAA recipient may be confused and because of mental or physical infirmities, incapable of providing accurate information. Therefore, careful consideration is needed regarding the recipient's capacity to knowingly misrepresent facts.

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B. The local department will refer to the States Attorney only those PAA cases where there is reasonable certainty a recipient or person acting on his behalf or a provider willfully obtained, attempted to obtain, or aided in obtaining assistance to which the recipient was not entitled or in an amount greater than to which the recipient was entitled:

1. By knowingly misrepresenting facts or making false statements;
2. By knowingly withholding information regarding changes in household or financial circumstances of the recipient; or
3. By impersonating another individual or resorting to other fraudulent devices.

### **800.3 Payment Irregularities - Overpayments and Underpayments**

The local department will take immediate action to correct PAA payment irregularities (underpayments and overpayments). There are three types of payment errors:

- A. Agency Error (AE) – occurs when the local department’s failure to act upon information provided by the customer. Examples of this kind of error could include:
  1. Failure to take timely action on a change that was reported by the customer.
  2. The local department incorrectly calculates income or deductions.
  3. The local department incorrectly interprets policy.
  4. If an overpayment occurs due to an error made by the local department, the department will:
    - a. Determine the cause and circumstances under which the error was made.
    - b. Take corrective action to prevent future recurrence of similar errors.

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- B. Customer Error (CE) – occurs when the customer fails to provide correct information through either a misunderstanding or an unintended error. Examples of this kind of error could include:
1. The customer or authorized representative unintentionally fails to provide the local department with correct or complete information.
  2. The customer or authorized representative unintentionally fails to report a change in circumstances.
- C. Intentional Program Violation (IPV) – occurs when an official determination of fraud is rendered either through the conviction in a Federal or States court, Administrative Disqualification or a signed Waiver of Administrative Disqualification Hearing. Examples of this kind of error could include:
1. Obtaining or attempting to obtain benefits by willfully making false statements for the purposes of establishing cash assistance, maintaining benefit levels, increasing the PAA amount or preventing a reduction in assistance.
  2. Misrepresenting, concealing or withholding facts in an attempt to receive benefits to which a person is not entitled.
    - Do not attempt to collect an overpayment on a potential IPV if this action might jeopardize the IPV case.
  3. Some PAA recipient errors may be committed because of confusion, misunderstanding or lack of clarity and do not constitute fraud.

#### **800.4 Underpayment Process**

- A. The local department will correct an underpayment promptly.
- B. If appropriate, issue a one-time-only payment equal to the total amount of the underpayment from the date of discovery.
- C. A supervisor must approve all underpayments.
- D. Do not count lump sum payments issued to correct underpayments as countable income or assets for PAA in the month paid or in the subsequent month.
- E. Underpayments may be used to offset an existing overpayment.

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### **800.5 Overpayment Process:**

- A. The local department will establish an overpayment against customers that received more benefits than they were eligible to receive.
  - 1. Review the case for possible referral as an IPV. If IPV is suspected, follow local office referral procedures.
  - 2. Do not establish a claim when an overpayment occurred because the local department failed to ensure that the applicant or representative signed an application form or was determined eligible in the wrong project area.
- B. The case manager's first task is to correct the ongoing month's PAA benefit amount by entering the correct information into CARES as soon as possible after discovering that a payment error has occurred.
- C. Attempts to recoup an overpayment should not be made unless the conditions delineated in COMAR 07.03.14 05C (4) and (5) are met. In summary:
  - 1. The customer must have failed to comply with court ordered payment or restitution.
  - 2. The amount recouped may not reduce the personal needs allowance by more than 50 percent.

### **800.6 Appeals**

- A. Any applicant or customer given or sent an adverse action letter must, in addition to the letter, receive an appeal form (DHR/FIA 334) and a return envelope.
- B. The applicant or customer has the right to appeal any adverse decision made on an application or on an active case.
- C. The request for an appeal can be made:
  - 1. To any employee of the local department whose job assignment requires public contact; or
  - 2. In writing or orally.

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## **800.7 Appeals Procedures**

### A. The local department:

1. Provides the customer with form **DHR/FIA 334, Appeal for Fair Hearings**
2. Assists the applicant, customer or authorized representative with completion of the form
3. Ensures that the form has been properly completed, dated, and signed.
4. Advises the applicant, customer or authorized representative of any legal services available.
5. Advises customers of their right to have benefits continue, through the certification period, pending the appeal decision (This does not apply to an applicant)
6. Forwards the completed form to the Office of Administrative Hearings (OAH) within **5 days of receipt**
7. Submits a summary of the facts about the appeal to OAH and the customer before the scheduled hearing date
8. Attends the hearing to:
  - a. Explain how the PAA grant was calculated, and
  - b. State which program policies were used.

### B. The applicant or customer has the right to a pre-hearing agency conference prior to the scheduled date of the appeal hearing.

1. The purpose of the conference is to resolve the issue before the scheduled hearing by providing the customer with:
  - a. An explanation of and a reason for the intended action;
  - b. An opportunity to speak on his/her own behalf (they may be represented by a friend or legal person), to ask questions, and to present information that shows the local department's action is incorrect; and
  - c. An opportunity to informally resolve the dispute and eliminate the need for the fair hearing.

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2. A pre-hearing conference does not preclude a fair hearing.
  3. Procedures for accepting and resolving an appeal request vary by local jurisdiction.
- C. If the pre-hearing agency conference ends favorably, the applicant or customer is given or receives a copy of the withdrawal statement.
1. The local department retains a copy, and sends an original copy to OAH.
  2. OAH acknowledges receipt of the withdrawal in writing to the local department and to the applicant or customer.
- D. Upon receipt of an appeal request, OAH:
1. Schedules an administrative hearing date;
  2. Sends the parties involved notification of date, time, and hearing location;
  3. Assigns an Administrative Law Judge (ALJ) to hear the appeal;
  4. Has the ALJ hear and record the proceedings, and upon conclusion;
  5. Has the ALJ review all evidence and testimony and make a decision in accordance with applicable law;
  6. Sends the local department a copy of the decision, and
  7. Sends the parties involved a copy of the decision and information on how to file an appeal in the circuit court, if they disagree with the final decision.
- E. If the customer submits additional information at the hearing that the local department did not have when the decision was made, the local department may request the ALJ to remand the case back to the local department for review of the new information.
- F. If the OAH decision is favorable to the local department, the local department:
1. Takes **immediate** actions to implement the decision, reducing or terminating the case, and
  2. Makes a referral for an overpayment as appropriate
- G. If the decision is favorable to the applicant or customer, the local department:
1. Complies with the decision within **10 calendar days** of the decision date

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2. Issues benefits to correct an underpayment, if applicable (restoring benefits for no more than 12 months)
  3. Notifies OAH, **immediately**, that all required actions have been completed.
- H. Once a decision is received from OAH, the local department also has the right to challenge the decision and provide substantiating documentation and program policy information to the Secretary within **10** days of receiving the ALJ's decision.