

Fraud, Repayment and Administrative Hearing Procedures Manual



Maryland Department of Human Services
Family Investment Administration

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I. Background

This manual details the policies and procedures to be implemented by the Office of Home Energy Programs (OHEP) and its local administering agencies (LAAs) as it pertains to fraud investigation, collection of repayments and the administrative hearing process. This document supplements language in the OHEP Operations Manual and the Code of Maryland Regulations (COMAR). Questions related to procedures described across these documents should be referred to the State OHEP Director for further clarification and guidance.

II. Definition of Activities

A. Intentional Program Violation

An Intentional Program Violation (IPV) is defined as an intentional false or misleading statement or misrepresentation, concealment or withholding of facts concerning an application to the Office of Home Energy Programs. An OHEP applicant that is determined to have committed an IPV is subject to penalties as described in this Manual. LAAs may make referrals for a suspected IPV but only an Administrative Law Judge is permitted to declare an IPV has occurred.

B. Overpayment

An overpayment means the amount by which a benefit payment received for an OHEP grant exceeds the amount the applicant was eligible to receive. Overpayments may be the result of agency error, client error or an intentional program violation.

C. Recoupment

Recoupment means the process used by OHEP to recover an overpayment from a household that has received a benefit payment in excess of what they were eligible to receive. Recoupment of funds is initiated by LAAs, collected by State OHEP and referred to the Maryland Central Collections Unit in the case that the customer is non-responsive to LAA efforts to recoup funds. OHEP will not seek recoupment of funds if the amount to be collected is less than \$125.00.

D. Administrative Hearing

An administrative hearing is defined as a hearing by an administrative law judge of the Office of Administrative Hearings (OAH) for the State of Maryland. Administrative hearings may serve the purpose of hearing an appeal of a customer related to a determination made by the program (such as a determination of ineligibility or of recoupment of funds) or may serve the purpose of determining if an intentional program violation has occurred (referred to as an Administrative Disqualification Hearing). The administrative disqualification hearing process will be used for any IPVs resulting in recoupment of funds less than \$2,500.

E. Criminal Prosecution

Criminal prosecution is defined as the act of pursuing criminal action against an OHEP recipient that is suspected of an IPV resulting in the overpayment of \$2,500 or greater. Criminal prosecution is handled by the Maryland Office of Attorney General in concert with the Department of Human Services' Office of Inspector General.

III. Responsibilities of Stakeholders

A. Local Administering Agencies (LAAs)

As it relates to fraud, repayment and administrative hearing procedures, LAAs are responsible for the following functions:

- Investigation of suspected IPV and/or overpayment

LAAs are the primary agents responsible for conducting a thorough investigation of a suspected IPV and/or overpayment. Upon identification of a potential issue, the LAA shall utilize the resources available to establish the facts of the investigation, such as:

- The client application and supporting documentation and forms
- Prior year application records
- OHEP database
- CARES
- Work Number
- MABS
- SVES

The LAA may, at its discretion, request additional documentation from an applicant if the materials furnished to prove eligibility appear to be forged or manipulated. As part of its investigation, the LAA should evaluate whether the suspected issue spans multiple program years and research prior year files if this possibility exists.

- Referral of suspected IPV and/or overpayment to State OHEP

Upon completion of its investigation, if the LAA has determined that there is definitive evidence that an IPV or overpayment has occurred, or that there is reasonable suspicion that merits further investigation, the LAA shall submit a referral to the State OHEP Quality Assurance Analyst using the *Referral for Investigation* form (Attachment D). On the *Referral for Investigation* form the LAA must:

1. Indicate whether they wish the case be evaluated for a suspected IPV, overpayment or both.
2. Identify the amount of OHEP benefit dollars in question (if applicable).
3. Identify the status of the current Program Year application.
4. Establish the type of suspected fraudulent behavior, if applicable.
5. Provide a detailed summary of the facts in the “Basis for Referral” section of the form.

Along with the form, the LAA must also submit a copy of the application and supporting documentation for all program years that are under question for the applicant. Lastly, the LAA must forward any information it found as evidence that an IPV or overpayment has occurred. Materials should be forwarded electronically or by fax to the State OHEP Quality Assurance Analyst.

The Quality Assurance Analyst has two weeks to respond to referrals made by the LAA. The referral may be rejected at his/her discretion, if the form is completed incorrectly or if insufficient evidence is presented to warrant further investigation. The LAA is responsible to make the necessary corrections and resubmit the form.

During the time that the applicant is under investigation for an IPV, the LAA must continue to process the application. If the applicant is approved for OHEP, benefits must be issued to the customer, unless notified to pursue a determination of IPV by the State OHEP Quality Assurance Analyst.

- Notification of Referral for IPV and/or Recoupment of Funds

Upon notification by the State OHEP Quality Assurance Analyst to the LAA to pursue a determination of IPV and/or recoupment of funds, the LAA is responsible to

1. Notify the applicant of the repayment amount and/or alleged IPV.
2. Provide the customer written notice of their appeal rights and assist with completing an appeal, if necessary.
3. Provide the customer evidence of the suspected IPV and/or overpayment.
4. Sign a Promissory Note agreeing to repayment terms, if applicable.
5. Forward the Maryland Central Collections Unit Debt Referral form to the State OHEP Quality Assurance Analyst should the customer refuse to sign the Promissory Note within the allowable timeframe.

Details on the implementation of these steps are outlined in Sections IV and V of this Manual.

- Administrative Hearing Rights and Procedures

The LAA is responsible, as part of the administrative hearing process to:

1. Notify the OHEP applicant of their appeal rights.
2. Assist the applicant with completing a *Request for Fair Hearing* form should they require assistance submitting an appeal.
3. Offer the customer a Pre-Hearing Conference to seek a resolution to the matter prior to the administrative hearing taking place.
4. Issue a Pre-Hearing Packet to the applicant and Office of Administrative Hearings at least six days prior to the hearing.
5. Attend and participate in the administrative hearing.

Details on the implementation of these steps are outlined in Section VI of this Manual.

B. State Office of Home Energy Programs (OHEP)

As it relates to fraud, repayment and administrative hearing procedures, State OHEP is responsible for the following functions:

- Determination of action on LAA Referral for Investigation

Upon submission of a Referral for Investigation, the State OHEP Quality Assurance Analyst is responsible to determine the proper routing of the referral. The Quality Assurance Analyst may take one or more of the following actions:

1. Notify the LAA to pursue recoupment of an overpayment.
 2. Notify the LAA to pursue determination of an IPV.
 3. Refer the case to the Office of Inspector General (OIG) for further investigation.
 4. Refer the case to the Office of Inspector General (OIG) for criminal prosecution in coordination with the local State's Attorney's Office.
 5. Return the referral to the LAA due to insufficient evidence or missing information.
- Tracking of overpayment and IPV cases

The State OHEP Quality Assurance Analyst is responsible to monitor the disposition of open and completed investigations for IPV's and overpayments, including:

1. Cases that are currently under review for routing by State OHEP.
2. Cases that are under open investigation by OIG.
3. Cases that have been forwarded for criminal prosecution.
4. Cases that have been forwarded for recoupment of funds by the LAAs.
5. Cases that have been forwarded for recoupment of funds to the Maryland Central Collections Unit (MCCU).
6. Cases that have been forwarded for an administrative hearing to determine an IPV.
7. The resolution of cases through the administrative hearing, pre-hearing conference and the criminal prosecution process.
8. Cases that are currently under penalty from reapplying due to determination of an IPV by an administrative law judge.

For all these cases, the Quality Assurance Analyst will monitor:

1. The date the referral was submitted by the LAA.
2. The action initiated by the State OHEP Quality Assurance Analyst (e.g. refers to OIG, pursue overpayment, refer for criminal prosecution, etc.).
3. The amount of funds being recouped (if applicable).

4. The amount of funds that have been recouped to date (to be tracked in coordination with the State OHEP Procurement Specialist).
 5. The current status of the overpayment and/or IPV.
 6. The start and end date of a penalty for re-application for assistance due to an IPV.
- Imposition of Penalties for IPVs

Upon determination by an OAH judge that an IPV has occurred, the Quality Assurance Analyst shall use features within the OHEP database to block a customer from reapplying for OHEP assistance for the allotted amount of time consistent with program policy. The Quality Assurance Analyst will lift this block upon completion of the term.

- Administrative Hearing Procedures

The State OHEP Quality Assurance Analyst is responsible to attend, when possible, administrative hearings pertaining to OHEP matters.

C. Office of Inspector General (OIG)

As it relates to fraud, repayment and administrative hearing procedures, the Office of Inspector General is responsible for the following functions:

- Review and Investigation of Referrals from State OHEP

Upon receipt of referral from State OHEP, the OIG will conduct an investigation to gather facts of the case in question. The OIG may take up to 180 days to complete its investigation and will provide monthly reports to the State OHEP Quality Assurance Analyst with updates on the disposition of the cases that have been referred. Upon completion of its investigation, OIG will forward its findings to the State OHEP Quality Assurance Analyst for follow-up.

- Criminal Prosecution of Cases

For a suspected IPV that exceeds \$2,500 in overpayment, the OIG will facilitate the referral of the case to the local State's Attorney's Office for criminal prosecution.

IV. Overpayment and Recoupment Procedures

Upon notification by the State OHEP Quality Assurance Analyst to the LAA to pursue a determination of IPV and/or recoupment of funds, the LAA is responsible to

1. Notify the applicant of the repayment amount and/or alleged IPV.
2. Sign a Promissory Note agreeing to repayment terms, if applicable.

3. Forward the Maryland Central Collections Unit Debt Referral form to the State OHEP Quality Assurance Analyst should the customer refuse to sign the Promissory Note within the allowable timeframe.

The repayment amount pursued should be equal to the amount of the overpayment issued. LAAs may not charge any type of fee or interest on the repayment amount when negotiating repayment terms. If the repayment amount is less than \$125, the LAA does not need to pursue recoupment of funds; however, even if the repayment amount is written off, an IPV may still be pursued. Repayments exceeding \$2,500 that are being pursued due to an alleged IPV will be handled criminally by the Maryland Office of Attorney General. In this instance, the LAA should not discuss any repayment terms with the customer and defer all questions to the local State's Attorney's Office.

A. Notification of Repayment Amount

Upon notification by State OHEP to pursue recoupment of an overpayment, the LAA shall notify the applicant in writing of the need to return funds. The method of notification will depend upon whether the program is pursuing an Intentional Program Violation along with the recoupment of funds.

If the program is pursuing recoupment of funds but is not seeking to impose an IPV against the customer, the LAA shall issue the customer written notice using *Overpayment Letter #1* (Attachment E). The notice will inform the customer of the grant(s) in question, the overpayment amount and the reason for the overpayment. If, within two weeks, the applicant has not responded to the mailing, the LAA should follow-up via a phone call with the customer and log a case note in the OHEP database.

If, after forty-five days from the date of the *Overpayment Letter #1*, the customer has been non-responsive, the LAA shall send out a second written notice using *Overpayment Letter #2* (Attachment F). The notice will reference the original notice sent and warn the customer that failure to respond will result in referral to the Maryland Central Collection Units. The LAA should follow-up again via a phone call to attempt contact with the customer and log a case note in the OHEP database.

If, after ninety-days from the date of the *Overpayment Letter #1*, the customer remains non-responsive, the LAA shall send out *Overpayment Letter #3* (Attachment G), notifying the customer their case is now being referred to the Maryland Central Collections Unit.

In the case of an IPV, the LAA is required to proceed through the administrative hearing process. Additional language about next steps related to the IPV hearing is required in the overpayment notice. If an IPV is not being pursued, the LAA should use *Overpayment Letters #1 -3* to notify the customer as described below. If an IPV is being pursued as part of the overpayment, the LAA must use the *Overpayment Letter with IPV #1* (Attachment H) in lieu of *Overpayment*

Letter #1. With all notifications, the LAA must include the *Request for Fair Hearing* form (Attachment I). A copy of all notifications should be maintained in the client file for record.

B. Customer Request for Administrative Hearing Regarding Overpayment

Should a customer respond to an overpayment letter with a request to appeal the overpayment determination, the LAA shall freeze pursuit of the repayment of funding until the hearing process is completed. Once resolved (and assuming upon resolution a repayment amount still exists), the LAA should continue to proceed with the notification process as described above to collect repayment.

C. Payment Agreement

Upon delivering notification to a customer regarding repayment, the LAA should schedule a time to discuss repayment terms with the customer in person. At this time, the LAA should remind the customer of their appeal rights should they wish to challenge the determination of overpayment.

LAA's may establish a repayment schedule or have the customer repay the amount in full up front, depending on the affordability available to the customer. Should the customer request a repayment schedule, the LAA may approve, at their discretion, a repayment term not to exceed ten (10) months of even payment installments equaling the total overpayment amount due. Should the LAA wish to enter into a repayment term exceeding ten (10) months, the LAA must get approval from the State OHEP Quality Assurance Analyst first.

Should the reason for repayment be a result of error by the LAA, State OHEP or the OHEP database, the LAA may request a waiver to reduce the amount owed by the customer to be less than the overpayment amount. The LAA must submit the waiver request in writing and identify a justification for the request. The State OHEP Director must approve this request in writing. A copy of the LAA's request and decision from State OHEP must be documented in the applicant's file.

Upon agreement on repayment terms, the LAA shall have the customer execute the *Promissory Note and Confessed Judgment* form (Attachment J). The Promissory Note must be signed in person during the meeting and witnessed by the LAA. A copy of the executed agreement should be provided to the customer and to the State OHEP Quality Assurance Analyst, with the original copy being stored in the applicant file.

The applicant for the benefit(s) that resulted in an overpayment should sign the Promissory Note, unless the LAA is provided consent from another person for transfer of responsibility for repayment to them.

For repayments negotiated via a Promissory Note, the payments must be made by the fifteenth (15th) of each month to the Maryland Department of Human Services via check or money order to:

Maryland Department of Human Services
Office of Home Energy Programs
311 W. Saratoga St Room 239
Baltimore MD, 21201

The State OHEP Office is responsible to monitor the status of repayments on a monthly basis. The Procurement Specialist is responsible to log all repayment checks received within a central tracking system, and the Quality Assurance Analyst is responsible to notify the LAA if a customer has missed their payment in the prior month. The LAA will be notified by the end of the ensuing month if a missed payment has occurred.

D. Maryland Central Collections Unit (MCCU)

An applicant will be referred to the Maryland Central Collections Unit in the following circumstances:

1. The applicant failed to respond to *Overpayment Letters #1 – 3* and ninety (90) days have surpassed since the first notification was sent.
2. The applicant responded to an overpayment notification but refused to meet the repayment terms, and has not submitted a request for appeal or responded to requests to assist with submission of an appeal.
3. The applicant executed a Promissory Note but has missed two (2) consecutive payment installments and has been unresponsive or uncooperative to requests to come into compliance to the payment schedule.

Upon one of these circumstances being met, the LAA shall forward to the State OHEP Quality Assurance Analyst a *Maryland Central Collections Unit Debt Referral* form (Attachment K) and notify the customer in writing that their file has been referred to MCCU for collections. In the case of the customer being non-responsive to overpayment notifications #1-2, the LAA should notify the customer of referral to MCCU via *Overpayment Letter #3*. The notification must explicitly state that a 17% fee will be added to the outstanding debt amount as a result of the referral to MCCU.

The State OHEP Quality Assurance Analyst, upon receipt of the MCCU referral, will log the case within a central tracking system and forward the referral to MCCU for enforcement of collections. The referral will cite an account specific for the Office of Home Energy Programs for all collections to be deposited within.

The Quality Assurance Analyst shall obtain quarterly reports from MCCU regarding the disposition of collections. In the case that the program needs to revoke an open collection that

has been referred to MCCU, the State OHEP Quality Assurance Analyst shall notify MCCU of the need to cancel the collection via the *Debt Payment – Debt Adjustment* form (Attachment L).

E. Failure to Pay in Accordance with the Promissory Note Schedule

If a customer has entered into a repayment schedule via the Promissory Note and fails to pay a monthly installment, the Quality Assurance Analyst shall notify the LAA of the missing payment. The LAA is responsible to contact the customer to inquire as to the status of the payment. If the customer misses a second, consecutive installment, the case may be referred to the MCCU for collections. However, if the customer has notified the LAA of a temporary hardship in meeting the repayment schedule and requests additional time to make the payment, the LAA, at their discretion, may opt to not submit a referral to MCCU and update the repayment terms by signing a new Promissory Note. The LAA must forward a copy of the updated agreement to the Quality Assurance Analyst.

F. Issuance of New Benefits during Repayment Period

If a customer is currently in the process of repaying an overpayment, the LAA must continue issuing new OHEP benefits, as applicable, to the customer in the meantime, unless the customer is barred from reapplying due to the penalty terms of an intentional program violation. Failure to repay an overpayment should result in a referral to the Maryland Central Collections Unit, as described in this document. The LAA may not withhold delivery of new benefits to customers except under the terms described in *Section V Intentional Program Violation* of this document.

G. Write-Off of Repayment Amount

The program may write-off a repayment amount in the following circumstances:

1. The program determines an overpayment amount is less than \$125 and opts not to pursue recoupment.
2. The customer signs a Promissory Note and has \$25 or less in payment due, and has stopped payment.
3. The customer is deceased and does not have a surviving spouse to assume the debt.

LAAs should consult with State OHEP prior to writing off a repayment amount.

V. Intentional Program Violation (IPV)

A. Suspected IPV vs. Overpayment

While not all overpayments are the result of a suspected IPV, the LAA is responsible when submitting a *Referral for Investigation* form to denote whether it wishes to pursue an IPV as part

of the referral. An IPV is defined as an intentional false or misleading statement or misrepresentation, concealment or withholding of facts concerning an application to the Office of Home Energy Programs.

Upon initial referral for a suspected IPV, the LAA cannot deny the customer benefits unless there is definitive evidence that an IPV has occurred. If definitive evidence is documented that the client is ineligible for OHEP, the file may be denied. However, if it is only under suspicion of ineligibility and requires further investigation, the application must be processed. If the applicant is approved for OHEP, benefits must be issued to the customer, unless notified to pursue a determination of IPV by the State OHEP Quality Assurance Analyst. Certain scenarios may be unclear in establishing whether an IPV definitively occurred. For example, a customer may list a household member on their application that is currently incarcerated and should have been excluded; however, the customer may not have understood program policy as it pertains to incarceration. It is up to the LAA to determine whether they believe the error on the application was a result of intentional and willful misrepresentation and/or withholding of facts or a result of unintentional human error and/or misunderstanding of program guidelines.

The State OHEP Quality Assurance Analyst, based on the facts presented by the LAA and their own research into the case, will notify the LAA whether to proceed with pursuit of an IPV for the case.

B. Penalties for IPV

Penalties for an IPV may only be imposed under the following circumstances:

1. The individual is found to have committed an IPV in an Administrative Disqualification Hearing.
2. The individual is found guilty of violating a Federal or state law concerning the OHEP application in a court of appropriate jurisdictions.
3. The individual signs an *Administrative Disqualification Hearing Waiver* (Attachment M).
4. The individual signs a *Disqualification Consent Agreement* (Attachment N).

Individuals disqualified for an intentional program violation are ineligible to participate in OHEP for the following periods of time:

1. One program year for the first violation.
2. Two program years for the second violation.
3. Permanently for the third violation.

A program year is defined as the State of Maryland fiscal year, running from July 1st through June 30th. If a customer has already received a benefit in the current program year, the one-year penalty is imposed beginning July 1st and ending June 30th of the ensuing program year, even if the customer is required to repay their current benefit due to the IPV. If the customer has not

received a benefit in the current program year, the one-year penalty is imposed in the current program year and ends on June 30th of the current year.

- ⇒ Example 1: Client is found to have committed an IPV and has received a benefit in the current program year.
 - Client must repay current program year benefit and is suspended from applying for assistance for the following program year.
- ⇒ Example 2: Client is found to have committed an IPV and received a benefit in the prior program year.
 - Client must repay prior year's benefit and is suspended from applying for assistance for the current program year.

During the penalty period for the customer, the residence the customer is currently residing in may not receive a benefit, even if the utility bill is not in the name of the customer determined to have committed the IPV. The household may not apply for assistance and exclude the name of the individual that has been found guilty of an IPV in order to obtain a benefit. A flag is attached in the OHEP system to the household under investigation for the IPV. Only the Head of Household can be flagged. The flag remains attached to the household for the duration of the penalty. If the individual committing the IPV moves to another household, the new household will be flagged for the duration of the penalty. Narration should be added in the notes section of the OHEP database to document why the household has been flagged.

C. Notification of Suspected IPV

Upon notification by the State OHEP Quality Assurance Analyst that an LAA is approved to pursue an IPV, the LAA must notify the client in writing that an administrative hearing is being scheduled via the *Advance Notice of Administrative Disqualification Hearing* form (Attachment O) and provide an *Administrative Disqualification Hearing Pamphlet* (Attachment P). On this form, the LAA must cite the reason the agency believes an IPV has occurred, the evidence supporting the case, the customer's ability to waive their right to an administrative hearing and the penalty to be imposed if the customer is found to have intentionally violated program rules. Along with this form, the LAA must also include an *Administrative Disqualification Hearing Waiver*. If, related to the IPV, the customer has an overpayment amount due as well, the LAA must additionally send out the *Overpayment Letter with IPV #1*, notifying the customer of their repayment requirement. These materials should be sent out in one mailing.

D. Administrative Disqualification Hearing Waiver

A customer that does not wish to go through an administrative hearing may waive their right by signing the *Administrative Disqualification Hearing Waiver*. It is important to inform the customer that the penalty is the same whether the individual chooses to have a hearing and is found guilty, or waives their hearing rights. It is additionally important to be clear that an

administrative hearing is not the same as a court proceeding and cannot in and of itself result in criminal conviction.

The signing of the *Administrative Disqualification Hearing Waiver* terminates the administrative process to establish an intentional program violation and the ensuing imposition of penalties and/or overpayment, as applicable, are put into effect. A copy of the signed waiver should be sent to the State OHEP Quality Assurance Analyst and the original added to the client's file.

E. Disqualification Consent Agreement

If a customer is being prosecuted criminally as the result of an IPV in excess of \$2,500, the local State's Attorney's Office may, at its discretion, offer the customer enter into a *Disqualification Consent Agreement*, which averts formal fraud adjudication. The decision to enter into this agreement is at the discretion of the local State's Attorney's Office and may not be initiated by State OHEP or an LAA.

F. Scheduling of IPV Hearing

If the customer does not provide a signed *Administrative Disqualification Hearing Waiver* within twenty (20) days of the notification, the LAA must refer the individual to the Office of Administrative Hearing (OAH) using the Office of Administrative Hearing's *Transmittal for Office of Home Energy Programs* (Attachment Q). At this time, the LAA must transmit all evidence pertaining to the suspected IPV along with the transmittal to OAH. A copy of the package must be sent to the customer at the same time. Included with the evidence should be a one-page summary of the evidence supporting the suspected IPV. Upon confirmation of a hearing date from OAH, the LAA must notify the State OHEP Quality Assurance Analyst of the hearing date.

If an IPV involves an overpayment, and the customer has appealed the determination of an overpayment, the two separate hearing processes may be merged into a single hearing if the factual issues arise out of the same circumstances. It is at the discretion of the OAH to combine these two hearings, though the LAA may request the OAH merge the hearings.

If an IPV involves an overpayment and the customer has not appealed the determination of an overpayment, the LAA may continue to pursue recoupment of funds while the administrative disqualification hearing process ensues.

G. Notification of IPV Hearing Outcome

Upon issuance of a ruling by an OAH administrative judge, the LAA will notify the customer in writing of the outcome of the ruling using the *Notice of Administrative Disqualification Hearing Decision* (Attachment R). A copy of the notice should be sent to the State OHEP Quality Assurance Analyst and added to the customer's file.

H. Tracking of IPV Penalties within OHEP Database

Upon receipt of a referral from an LAA for a suspected IPV, the State OHEP Quality Assurance Analyst will mark the household in question with a fraud flag in the OHEP database if the case is approved to pursue an IPV or is referred to the OIG for further investigation. Only the Head of Household can be flagged. The fraud flag provides a visual indicator on the file that it is currently under investigation, but presents no restriction from processing future benefits.

Upon receipt of the *Notice of Administrative Disqualification Hearing Decision* and determination of a guilty verdict by the administrative law judge, the State OHEP Quality Assurance Analyst will log the decision for central record-keeping, the length of the penalty based upon program policy and update the client record within the OHEP database to impose the penalty, restricting the individual from reapplying for future benefits. The flag remains attached to the household for the duration of the penalty. If the individual committing the IPV moves to another household, the new household will be flagged for the duration of the penalty. At the end of each program year, the Quality Assurance Analyst will review its record of IPV investigations to make any appropriate changes to lift or impose penalties on OHEP clients.

VI. Administrative Hearings

A. Reasons for Appeal

An applicant may request a hearing when an OHEP agency:

1. Denies in full or in part an application for assistance
2. Fails to act with reasonable promptness on an application for, or a request for adjustment of assistance
3. Suspends, reduces or terminates assistance
4. Makes a decision affecting a plan of service to a recipient
5. Makes a decision affecting the method of providing assistance
6. Imposes sanctions on a recipient
7. Recovers an overpayment or over-issuance in assistance
8. Gives notice of its intention to take any of the aforementioned actions

The LAA shall notify customers of their fair hearing rights when taking action or providing notice of action relating to any appealable action. LAAs must additionally post signage about fair hearing rights visibly in public areas of their office using the *Request for Fair Hearing* form.

B. Timeline to Appeal

Except where otherwise expressed differently, a request for a hearing is effective if the agency receives the request:

1. Within 30 calendar days of the agency mailing or delivering timely and adequate notice, whichever is earlier.
2. Within 30 calendar days of the agency action if the agency failed to give timely and adequate notice.
3. Within 30 calendar days of any date by which the agency was required to act on an application or to make an adjustment in assistance and failed or refused to act.

C. Request for Appeal

A request for appeal is defined by the customer expressing a desire to appeal. Any employee of the agency may receive a request for appeal. The request may be made formally or informally. If the customer requests an appeal verbally, the agency shall ask the customer to put the request in writing, and offer assistance in completing the request. If the customer refuses to put the appeal request in writing, the agency shall document the appeal request in writing to the best of its abilities. If it is unclear from the verbal request what action is being appealed, the agency may ask the customer to clarify the request. When necessary, the agency shall provide an interpreter to assist the customer in filing an appeal request and assure that the hearing procedure is explained in a manner understood by the customer.

D. Submitting the Request for Appeal

Requests for appeals will be documented using the *Request for Fair Hearing*. Within five business days of the filing date of a written appeal request or the date that an oral request is reduced to writing, the LAA shall forward the appeal to the Office of Administrative Hearing (OAH) with a copy to the State OHEP Quality Assurance Analyst. The LAA shall request an administrative hearing using the OAH's *Transmittal for Department of Human Services* form, circling code 38 "Md Energy Assistance Program" as the appeal category for appeal requests from customers. The Office of Administrative Hearings will respond within three business days with notice of a hearing date and will typically schedule an appeal hearing date for 15 – 30 days out.

If a client submits a request for an appeal due to missing documentation, the local agency may attempt to resolve the appeal via an informal, local review prior to forwarding the appeal to the Office of Administrative Hearings. This will allow local agencies to resolve issues related to missing documentation through collection of the required information that will allow for expedited resolution of the dispute, rather than prolonging the provision of benefits until a formal appeal process is conducted. Should the local agency be unable to resolve the situation via an

informal, local process, the agency is required to then forward the Request for Fair Hearing form to the Office of Administrative Hearing.

If the request for appeal is due to incomplete information from the applicant, the LAA may choose to handle the matter internally and waive the hearing with the OAH. The customer must submit the requested information within 30 days of the Denial Notice in order to process the original application. If the requested information is not received within the 30 days, the customer must submit a new application.

E. Pre-Hearing Conference

Prior to the hearing, the local agency shall reach out to the customer to schedule a pre-hearing conference to clarify all aspects of the issue that the customer is appealing and, if possible, seek resolution of the matter prior to conducting a formal OAH hearing. An agency supervisor is required to attend this conference and the case manager and/or the appeals representative may also attend the conference.

If the local agency is unable to reach the customer by telephone, the agency should send the customer a letter stating that they must contact the local department within seven (7) days of the letter if he or she wishes to discuss the appeal. If the customer does not respond to the request for conference, the hearing process goes forward.

When meeting with the applicant, the agency should:

- Ask the customer to explain why he or she disagrees with the agency decision.
- Be courteous and talk to the customer in language that is easily understood.
- Avoid the use of acronyms or business terminology (e.g. MEAP, EUSP, OHEP, etc.)
- Do not discourage the customer from following through on the hearing request. The customer may, after discussing the matter, decide they no longer wish to pursue a hearing but they should in no way be coerced into that decision.

If the customer elects to withdraw the hearing request, they may do so by completing the *Withdrawal of Request for Fair Hearing* form (Attachment S). The original should be sent to OAH via mail or fax and a copy should be added to the file and provided to the customer for their records.

Regardless of the outcome, a thorough detailing of the pre-hearing conference should be documented in the notes section of the OHEP database.

F. Hearing Packet

Should the applicant elect to move forward with an administrative hearing, the local agency is responsible for preparing a hearing packet that must be sent to the customer at least six (6) days in advance of the hearing, or the customer has the right to have the hearing postponed. If the

customer has an attorney or representative and has provided written consent that said person(s) are providing representation, the customer's packet should be mailed to that individual. The packet should include:

- A Hearing Summary with a brief overview of the issue and the evidence supporting the local agency determination
- The client's Request for Fair Hearing form
- The OAH Notice of Hearing
- Every page of the application, including supporting documentation
- Pertinent notices issued by the local agency to the customer (e.g. Eligibility Determination Notice, Request for Additional Information, etc.)
- Pages of COMAR, the Operations Manual, Action Transmittals and any other policy directives or citations that support the local department decision
- Any other correspondences or documents that provide context and support for the decision made by the local agency

G. Administrative Disqualification Hearings

All suspected Intentional Program Violations (IPVs), upon approval from the State OHEP Quality Assurance Analyst, should be forwarded to the OAH for an administrative disqualification hearing. The LAA shall request an administrative hearing using the OAH's *Transmittal for Department of Human Services*. The local agency should write-in the appeal category as "Other: IPV – Md Energy Assistance Program" on the form. When submitting the referral to OAH, the local agency must include all supporting documentation evidencing the suspected IPV, with a copy also sent to the accused applicant. Examples of documents to include are:

- Intentional Program Violation Notice #1
- Referral for Investigation form
- Application and supporting documentation
- Prior year application and supporting documentation (if applicable)
- Results from income verification systems such as Work Number, CARES, SVES, etc.
- Correspondences with the applicant and/or related stakeholders
- Attestations or documents produced from the applicant or other stakeholders relevant to the matter

Upon receipt of the request for an administrative disqualification hearing, the OAH will respond within three business days with notice of a hearing date to both the local agency and the applicant. The hearing will be set at minimum thirty (30) days out from the date the OAH notice is sent out.

H. Administrative Hearing

A local agency representative must attend and present its case at the administrative hearing, bringing the entire hearing packet to the hearing. When available, the State OHEP Quality Assurance Analyst may attend as additional support. Administrative hearings will take place in the County where the appeal originated from, at an OAH office. At the hearing, the local agency will be responsible to present its case first. The agency should identify the hearing packet and request that it be entered into evidence. After presenting the facts of the case, the administrative law judge will ask the applicant or his/her representative to cross-examine the local agency if they wish. The local agency will have the right to testify about any matters raised during the cross-examination. When finished testifying, the local agency may call witnesses or request that additional documents be entered into evidence.

The applicant will then have an opportunity to present their facts of the case. The local agency will have the opportunity to cross-examine the applicant with additional questions if they so wish. At the end of both the applicant and local agency's testimony, the administrative law judge will provide an opportunity to make a closing statement.

Upon conclusion of the hearing, the administrative law judge will send a written decision to the local department, the applicant and the applicant's representative. Decisions may take up to sixty (60) days to make by the judge. However, it may take up to ninety (90) days from the date the household was notified of the hearing to receive the written decision.

Upon receipt of the decision, the local agency shall forward a copy of the decision to the State OHEP Quality Assurance Analyst for recordkeeping and a copy should be placed in the client file.