

## **10A NCAC 71P .0508 FRAUD**

### **(a) Definitions: Fraud and Misrepresentation.**

- (1) For the purposes of this Subchapter, an applicant or recipient engages in fraud when he or she willfully and knowingly with the intent to deceive:
  - (A) makes a false statement or misrepresentation;
  - (B) fails to disclose a material fact; or
  - (C) does not report any Change in Situation that affects the amount of the State/County Special Assistance Program payment; and as a result obtains or continues to receive a payment.
- (2) Misrepresentation:
  - (A) Intentional misrepresentation: An applicant or recipient engages in intentional misrepresentation when he or she gives incorrect or misleading information in response to either oral or written questions which the applicant or recipient knows is incorrect, misleading, or incomplete.
  - (B) Unintentional misrepresentation: An applicant or recipient engages in unintentional misrepresentation when he or she gives incomplete, incorrect, or misleading information because he or she does not understand the eligibility requirements or his or her responsibility to provide the County Department with required information and there is no proof that the applicant or recipient acted willfully and knowingly to obtain more State/County Special Assistance Program payments than those to which he or she was entitled.

### **(b) Fraud Prevention.**

- (1) When interviewing an applicant or recipient as set forth in Rules .0601 and .0602 of this Subchapter, the Caseworker shall:
  - (A) Obtain the correct social security number for the applicant or recipient;
  - (B) explain the obligation of the applicant, recipient, or Authorized Representative to report any Change in Situation within five calendar days after they occur;
  - (C) inform the applicant, recipient, or Authorized Representative of the consequences of failing to report a Change in Situation, stressing the penalties for fraud and misrepresentation;
  - (D) provide the applicant, recipient, or Authorized Representative with a copy of the pamphlet entitled Public Assistance Fraud, available at all County Departments, and explain to the applicant, recipient, or Authorized Representative the meaning of fraud as described in this Rule;
  - (E) inform the applicant, recipient, or Authorized Representative how to report a Change in Situation; and
  - (F) ask the recipient or Authorized Representative about any Change in Situation since the application or last review.
- (2) Documentation and Verification. The Caseworker shall verify and document in detail the information given during the interview.

(c) Detection. The Caseworker shall check online verification systems as designated and made available by the State to verify personal eligibility requirements of the applicant or recipient. If information that could affect an applicant's or recipient's eligibility or payment amount is received from any source, the County Department shall investigate.

### **(d) Investigation. County Department responsibilities.**

- (1) When a County Department discovers evidence that an applicant or recipient obtained State/County Special Assistance Program payments to which he or she was not entitled or received an overpayment, the Caseworker shall assess whether the County Department determined eligibility and documented eligibility information according to the rules set forth in this Subchapter. The County Department shall obtain and document all evidence necessary to determine whether the applicant or recipient intended to defraud and whether the overpayment was due to the applicant's or recipient's intentional or unintentional misrepresentation.
- (2) The County Department director or his or her designee shall review each case after receiving the Caseworker's evaluation. If there is sufficient evidence to suspect fraud, the director shall refer the case for a decision to the County Board or make the decision if the County Board has designated that he or she do so.

- (3) If the director of the County Department determines that the case should go before the County Board, a summary shall be prepared which contains:
    - (A) the name of the applicant or recipient and his or her date of birth and social security number;
    - (B) a description of the suspected fraudulent act;
    - (C) a description of the evidence substantiating the applicant's or recipient's intent to defraud;
    - (D) a description of the evidence substantiating the amount of the overpayment; and
    - (E) background information, such as the applicant's or recipient's current situation, educational background, and competency.
- (e) County Board of Social Services Responsibilities.
- (1) The County Board or its designee shall review the suspected fraud case to determine if there is a basis for suspected fraud and determine the appropriate course of action to take. While fraud may be suspected, the County Board may decide that the applicant's or recipient's circumstances preclude prosecution and/or repayment. The County Board shall determine if the applicant or recipient:
    - (A) willfully and knowingly misstated or provided incorrect or misleading information in response to oral or written questions;
    - (B) willfully and knowingly failed to report a Change in Situation affecting eligibility for the State/County Special Assistance Program or the amount of payment; or
    - (C) willfully and knowingly failed to report the receipt of payments to which the recipient knew he or she was not entitled.
  - (2) If the County Board determines that an applicant or recipient engaged in intentional misrepresentation, it shall direct the County Department to pursue one or more of the following:
    - (A) Administrative action:
      - (i) the recipient's State/County Special Assistance Program payment shall be reduced up to 10 percent of the payment;
      - (ii) the recipient's voluntary agreement that his or her State/County Special Assistance Program payment may be reduced; or
      - (iii) the recipient will voluntarily return the State/County Special Assistance Program overpayment in part or in full;
    - (B) Civil court action;
    - (C) Criminal court action;
    - (D) Take no action for unusual or hardship circumstances, as set forth in 20 C.F.R. 404.508(a) and 20 C.F.R. 416.553(a), in which a payment reduction would deprive the recipient of necessary income for:
      - (i) fixed living expenses, such as paying for food and shelter including payment to the Adult Care Facility;
      - (ii) medical, hospitalization, and other such expenses;
      - (iii) expenses for the support of others for whom the individual is legally responsible; or
      - (iv) other expenses which are reasonable as part of the recipient's standard of living.
- (f) County Department Follow-Up.
- (1) Administration action:
    - (A) Involuntary payment reduction. Payment reduction shall be required only if the recipient has disregarded earned income determined as set forth in 20 C.F.R. 416.1112 or resources greater than the overpayment amount. The amount of the payment reduction shall not exceed the amount available as disregarded earned income or resources greater than the overpayment amount. If the recipient has no resources, the County Board shall direct the County Department to require the recipient to sign a statement that he or she will repay the overpayment if he or she acquires resources in the future, pursuant to Rule .0504(b) of this Subchapter.
    - (B) Voluntary State/County Special Assistance Program payment reduction and voluntary recipient refund. The amount of the voluntary payment reduction shall not exceed the amount available as disregarded earned income or resources greater than the overpayment amount.
  - (2) Criminal court action. The County Department shall assist the prosecutor by:

- (A) providing a clear and concise summary of the suspected fraud case;
  - (B) compiling information gathered during the investigation;
  - (C) explaining the specific eligibility factors involved in the case;
  - (D) explaining in detail how the overpayment amount was computed and the time requirements on the County Department's actions, such as the notice requirement as set forth in Rule .0705 of this Subchapter and the five calendar day Change in Situation reporting requirement as set forth in Rule .0602(5)(c) of this Subchapter; and
  - (E) if necessary, appearing as a witness.
- (3) Regardless what the County Board or its designee decides or what action is taken by the court, the County Department shall continue to provide State/County Special Assistance Program payments. The applicant or recipient shall be notified in writing within one business day of any action taken in the case. If the applicant or recipient remains eligible, the State/County Special Assistance Program payment shall not be terminated solely because fraud is suspected.
- (4) If the County Board or its designee suspects fraud, the County Department's findings and action shall be reported to the Adult Services Section of the Division of Aging and Adult Services.
- (5) The County Department shall retain all State/County Special Assistance Program documentation, evidence, or summaries in accordance with the Medicaid Program retention requirements found in the Record Retention and Disposition Schedule for Grants published by the Controller's Office of the Department of Health and Human Services on the website at <http://www.ncdhhs.gov/control>.

*History Note:* Authority G.S. 108A 25.3; 108A-40; 143B-153;  
Eff. January 1, 1983;  
Amended Eff. June 1, 2016; June 1, 1990;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 20, 2017.