

## **10A NCAC 71B .0606 CLIENT FRAUD AND INTENTIONAL PROGRAM VIOLATIONS**

### **(a) County Responsibilities; Fraud Prevention.**

- (1) The county department of social services shall develop of an operational program for fraud prevention, detection and investigation. Fraud program organizational requirements must be established based on the number of (AFDC or Work First) recipients, the effectiveness of the fraud prevention program, the frequency of suspected fraud cases, and the resources available to the agency.
- (2) The county department must designate staff to be responsible for fraud activities.
- (3) The county shall strive to obtain all Social Security numbers and correctly complete them on computer input forms.
- (4) The recipient shall be notified no less frequently than at each eligibility review of his obligation to report within ten days, all changes in income, resources, or other changes which may effect the amount of payment. Failure to do so within that time may constitute a willful withholding of such information, and permit the county department to recover the overpayment.

### **(b) County Department Responsibilities; Detection and Investigation:**

- (1) The county department shall investigate any information which indicates that a recipient may be receiving AFDC or Work First to which the recipient is not entitled.
- (2) In the investigation the staff designated for fraud shall:
  - (A) verify that all responsibilities have been fulfilled as set forth in the rules governing the AFDC or Work First program;
  - (B) determine whether further investigation should be undertaken to support the belief that fraud is suspected;
  - (C) evaluate the evidence to substantiate fraud and the intent to defraud;
  - (D) determine the amount of the erroneous payment.
- (3) When there is reason to suspect fraud, the county director must ensure that the agency has explained to the client his responsibilities for reporting changes in his circumstances to the agency. The director shall determine whether the agency should investigate further and shall present the case and fraud summary to the county board of social services for action unless the board has delegated this responsibility to him.
- (4) The fraud summary shall include:
  - (A) identifying information;
  - (B) a description of the fraudulent act;
  - (C) evidence to substantiate fraud and the intent to defraud;
  - (D) evidence to substantiate the amount of ineligible assistance received;
  - (E) information concerning the client's competency, educational background, ability to know right from wrong, any statement volunteered by the client in response to the accusation and any other information which may help explain the client's current situation.

### **(c) County Board's Responsibilities.**

- (1) The county board of social services, or its designee, shall determine whether there is a basis for the belief that misrepresentation may have been committed by a person.
- (2) The county board, or its designee, shall determine if the person:
  - (A) willfully and knowingly misstated, provided incorrect or misleading information in response to either oral or written questions; or
  - (B) willfully and knowingly failed to report changes which might have affected the amount of payment; or
  - (C) willfully and knowingly failed to report the receipt of benefits which he knew he was not entitled to receive.
- (3) There must be physical evidence to substantiate a determination that fraud was the reason for the overpayment.
- (4) If the board, or its designee, determines fraud is suspected, it shall instruct the agency to pursue one or more, of the following actions:
  - (A) administrative recoupment which is defined as:
    - (i) involuntary reduction of the AFDC or Work First grant may be collected from all income and assets of the assistance unit. The assistance unit shall retain an amount not less than 90 percent of the assistance payment received by a family of similar composition with no other income; or

- (ii) a voluntary grant reduction. There is no limitation on the amount of the reduction;
- (iii) voluntary recipient refund. There is no limitation on the amount of the refund;
- (B) administrative disqualification:
  - (i) Hearing
    - (I) An administrative disqualification hearing shall be initiated by the county department of social services when there is sufficient evidence to indicate that an individual has intentionally violated a program rule in order to receive cash assistance for which the individual is not eligible. The hearing shall be held and any administrative action initiated within 90 days of the date the individual is notified in writing that the hearing has been scheduled. No hearing shall be held when the amount of the overpayment is less than one hundred dollars (\$100.00).
    - (II) The county board of social services shall designate the county director or their impartial county employee to act as the hearings officer. Duties are to: provide written notification of the hearing date, time, and location to the client at least 30 days in advance of the date of the hearing. Written notification of the hearing shall include the client's right to have legal representation, a witness or witnesses, or waive the hearing; conduct the hearing to collect all evidence and testimony; render a written decision to the client and DSS within 15 days as to whether an intentional program violation has occurred. Written notification that the hearing decision will be mailed by Certified Mail Return Receipt Requested. The notice will inform the client of the right to further appeal to the state (or higher local authority) and the procedures for such appeal. When an intentional program violation is found, the notification will inform the client of the length of the sanction and that client remains a part of the Work First case and subject to all program requirements. When no intentional program violation is found, the notification will inform the client that the overpayment will be collected pursuant to 10A NCAC 71W .0604.
  - (ii) Sanctions:
    - (I) The county department of social services shall apply disqualification sanctions as follows: 12 months of ineligibility for the first offense; 24 months for the second offense; and permanently disqualified for the third offense.
    - (II) The sanction shall be applied by reducing the work first cash assistance payment by the disqualified person's share of the payment for the appropriate period of sanction. The disqualified person remains a part of the work first case and subject to all program requirements.
  - (iii) Repayment:
 

The county department of social services will follow procedures pursuant to Part (c)(4)(A) of this Rule in the collection of overpayments.
- (C) civil court action; or
- (D) criminal court action.

(d) Board Decision; Agency Follow-up:

- (1) If the board, or its designee, suspects fraud, the department's findings and actions shall be reported immediately to the assistance payments section. The county director shall keep the county board and assistance payments section informed on all cases referred for court and repayment action.
- (2) The county department of social services shall support the local prosecutor by accomplishing necessary interviews in accordance with the prosecutor's requirements, recommending possible witnesses, providing necessary investigative reports, and taking other action deemed necessary by legal authorities.
- (3) Regardless of what action is taken by the board or the court, the county shall continue to work with the client and shall promptly notify the client of the action taken in his case.
- (4) The county shall maintain records on the number of cases referred for investigation, the number of suspected fraud referrals, action taken to recover the overpayment and amounts recovered.

(e) In fraud cases, if a county fails to act promptly on indications of ineligibility, federal and state financial participation shall not be available.

*History Note:* Authority S.L. 1997-443, Section 12.17; G.S. 108A-25; 108A-39; 143B-153; 45 C.F.R. 233.20; 45 C.F.R. 235.110;  
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