

## Investigative Unit Operations Plan

**County:** Columbia  
**Contact Person:** Lynn A. Kutski  
**Title:** Director of Income Maintenance  
**Phone #** (518)828-9411 ext. 2105  
**E-mail address** [Lynn.Kutski@dfa.state.ny.us](mailto:Lynn.Kutski@dfa.state.ny.us)

### **1. What unit is responsible for the investigation of client fraud allegations?**

The Resource/Fraud Unit is responsible for the investigation and prosecution of client fraud allegations. The Unit is structured as follows:

- ❖ 1 Principal Social Welfare Examiner
- ❖ 1 Sr. Social Welfare Examiner
- ❖ 1 Investigator from the Sheriff's Office
- ❖ 2 Social Services Investigators
- ❖ 2 Social Welfare Examiners
- ❖ 1 Clerk/Typist
- ❖ 1 Community Services Aide

The Resource/Fraud Unit is overseen by the Director of Income Maintenance

A database is used to track cases of suspected fraud. The information included in the data base is:

Case Name, Others involved, Case Number, Case Type, Type of Investigation Allegation Source, Investigator assigned to the case, Overpayment (s) Calculated, Cost Savings, DA Review Date, Date Case was accepted/dismissed, Arrest Date, ADH, Court Hearing, Disposition Date, Disqualification, and Comments.

### **2. What unit is responsible for the prosecution of client fraud allegations?**

The Resource/Fraud Department is responsible for the prosecution of client fraud allegations. For Unit structure see #1.

The allegations are processed as follows:

- Upon receipt of a suspected fraud allegation, the Resource Department investigates the circumstances and facts surrounding the allegations. A determination is made whether or not fraud exists. The Resource Department determines if the allegation is in fact justified and will recommend what further action is warranted. Once the Intentional Program Violation (IPV) is established a determination is made as to what action should be pursued
- If prosecution is required, the case will be presented to the District Attorney (DA), In accordance with procedures set forth in 93-ADM-8(see attached agreement)

- A packet is presented to the DA for review. The packet includes all evidentiary information and a complete investigative synopsis of the case.
- The DA will either accept or decline the case for prosecution. If the case is denied then a withdrawal is completed and the case is presented to the Office of Administrative Hearings for a hearing.
- Cases that are presented to the Office of Administrative Hearings must be presented in accordance with the instructions in 93 ADM-8 with a completed packet being prepared and submitted. A hearing date will then be set by the Office of Administrative Hearings

**3. What Unit is responsible for determining the overpayment amount, establishing the claim, and collection activities?**

The Social Welfare Examiner assigned to the Resource Department determines the overpayment amount and establishes the claim. The Resource Department is also, responsible for all collection activities.

**4. What are the step by step procedures for the referral of fraud cases for Administrative Disqualification Hearings include the notices provided and the timing of providing such notices?**

Cases that are presented to the Office of Administrative Hearings are done in accordance with the instructions in 93- ADM-8

- If The DA declines to pursue criminal prosecution, or if there are mitigating circumstances making successful prosecution difficult or the DA fails to act on the case within a reasonable time, or if an individual pled guilty to an IPV, in a criminal case, but was not advised on the record of the disqualification penalty (Did not receive Notices of Consequences Pursuant to SSL 145 C), the investigator initiates procedures for an ADH.
- The investigator formally withdraws the referral in writing to the District Attorney.
- Provided that not more than six years have elapsed between the months an individual committed an IPV and the date on which the Agency discovered the IPV. A staff member of the Resource Department assembles a packet with documentary evidence, sufficient to support the determination of an IPV. This is forwarded in the form of an evidentiary packet to the Office of Administrative Hearings; NYS D of SS. Included is a request that an ADH be scheduled.
- The evidentiary packet must contain Transmittal Form DSS3921 have consecutively numbered pages and be submitted in three copies.
- Once the packet is reviewed and it is determined to be in compliance, the NYSD of SS sends the notice of the scheduled hearing, along with a waiver form, time, date, and place of the ADH.

- A written notice of the ADH) is provided by the Office, to an individual alleged to have committed an IPV at least 30 days prior to the date of the ADH.
- The notice includes a waiver statement and an explanation of the waiver.
- In accordance with Title 18 section 359.8 of CRR-NY, the accused individual can use the waiver form to waive the scheduled hearing
- Once the Agency is notified of the decision, that the individual had committed an IPV, the Agency will send the individual a notice of disqualification (DSS4827-TA, DSS4799-SNAP). The period of disqualification is included.
- The disqualification period, starts no later than the first day of the second month, following the date of the notice of disqualification- resulting from an ADH or waiver signed, or 45 days from a court determination, or the signing and confirmation of a Disqualification Consent Agreement (DCA).

**5. What are the step by step procedures for the referral of fraud cases to your District Attorney, including the notices provided and the timing of providing such notices?**

- The Investigator reviews the elements of the fraud to determine what action is needed. When it is believed that the facts warrant civil or criminal prosecution, the case is prepared and presented to the DA, or the prosecutor authorized by the DA to act on the matter.
- The prosecutor may choose to settle the case or a court of appropriate jurisdiction, hearing the case may issue a pre-determination disposition order, such as an order adjourning the case in contemplation of dismissal, provided that full restitution is made.
- In such cases, the Social Services District may use a DCA.

**6. What are your procedures for offering a Disqualification Consent Agreement (DCA)?**

A case can also be resolved at a local level, but it must be confirmed by the Court. If a DCA is signed the following procedures are implemented per guidelines set forth in 93-ADM-8.

- An evidence Packet is provided to the DA. The packet contains sufficient documentation to support the findings of an IPV.
- The DA will either send the Notification of the Consequences of signing the DCA, together with a copy of the DCA, consenting to the penalty (LDSS4904); to the accused or notify the Agency Investigator prior to such settlement, for the purpose of permitting the Agency Investigator to send advance written notice to the accused defendant in conformity with regulations.

The DA has authorized this Agency to assist in obtaining a DCA, in all cases that are referred to the DA, where an IPV is alleged and where the

case is to be settled upon a basis of a deferred adjudication and where a DCA is part of such settlement or order.

- The Disqualification Consent Agreement includes:
- A statement that signing the agreement will result in disqualification and reduction of benefits or discontinuance of assistance for the disqualification period, even if the accused is not found guilty of civil or criminal misrepresentation or welfare fraud.
- A statement of which disqualification period will be imposed.
- A statement that the remaining members of the appropriate assistance unit, if any, will be held responsible for repayment of the overpayment and/or over-issuance, unless the amount has already been repaid.
- The advance Notice Appointment Letter contains information that the client is entitled to have a legal or authorized representative present when executing the DCA. The accused individual is advised again at the time the DCA is executed, of same.
- If the accused has not called to schedule an appointment, the Investigator will contact the individual. In all cases an interview, if desired by the accused, is scheduled no earlier than 13 days from the date of mailing, or no sooner than 10 days from receipt of the mailing, as confirmed by the applicant recipient (as directed in 93-ADM -8).
- At the interview, no individual will be asked to waive their right to the 10 days' Notice of Consequences, prior to signing the DCA.
- At the interview the attached "Interview Acknowledgement form will be discussed with the defendant. If the interview is conducted by telephone, the Investigator may record the call and document the defendant's replies. At the conclusion of the in-person or telephone interview, the investigator will distribute a copy of the completed form to the individual.
- The accused client's understanding of the consequences of entering into a DCA (LDSS-4903) is evidenced by signing the Consequences Statement.
- If the accused client who signs the Consequences Statement is not the head of household, the Consequences Statement will also be signed by the head of household.
- If the Agency receives a signed DCA dated at least 10 days after the date of the Advance Notification, this Agency will send a copy of the Interview Acknowledgement Form to the last known address, along with a cover letter, acknowledging receipt of the signed DCA, but notifying them that we wanted to ensure they understood their rights and to contact the Agency to go over the attached form. Included in the mailing will be a self-addressed stamped envelope for return of the completed form to the Agency.
- If the defendant desires to submit a statement or evidence in support of finding that the allegation was a result of an error rather than fraud, the form will be noted, dated, and initialed by the investigator. The investigator will review the information prior to accepting the DCA and imposing the disqualification status.

- The period of disqualification will begin within 45 days of the date the individual signed the DCA, unless the DCA is incorporated into a court determination, issued at a later date or a court determination has specified the date initiating the disqualification period, in which event the Agency will disqualify the individual in accordance with the court order.
- Once a case is concluded and the IPV has been established, action is taken as outlined in 93- ADM-8 regarding implementing and executing the IPV.

The required notices, will be completed by the Resource Unit using the notices provided in 97-ADM-23

**7. How is it proven that an individual has been advised on the court record of the Temporary Assistance disqualification penalties?**

- The DA agrees to have the statement for the record read during any court appearance.
- The prosecutor is provided with the forms in Attachment VII-A and VII-B from 93-ADM-8 for advising the client on the record.
  - Statement for the record (LDSS-4906)-VII-A
  - Signed order entering statement into record –VII-B

**Attach a copy of the agreement between your county and the District Attorneys Office for the prosecution of welfare fraud.**