

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

FINAL

DSSM 7000, Cash Assistance Overpayments
DSSM 9095, Establishing Claims Against FSP Households

ORDER

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance and Food Supplement Programs. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance and Food Supplement programs. The Division of Social Services (DSS) proposes placement of the food benefit overpayment and claims rules in its own dedicated section. The proposal primarily renumbers existing rules and makes corresponding adjustments to the rule text, as appropriate.

Statutory Authority

7 CFR §273.18, *Claims against households*

Summary of Proposed Changes

DSSM 7000, Cash Assistance Overpayments and **DSSM 9095, Establishing Claims Against FSP Households**: The purpose and effect of the proposed changes is to remove the Food Supplement Program (FSP) language from the current 7000 section. The intent of the proposal is to separate Cash Assistance and Food Benefit overpayment and claims policies, and place FSP claim policy in its own dedicated section 9095 (new section number). Additional changes are proposed to reformat and reorganize original text; remove/update obsolete text, and, to simplify language, correct spelling, grammar and typographical errors to improve readability.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Division of Social Services (DSS) proposal to adopt separate regulatory standards in the cash assistance program in the "7000" section and the Food Supplement Program (FSP) in a new "9095" section. We would like to share the following observations.

First, in Section 7003.1, the word "claim" should be deleted.

Second, in other contexts, it is common to waive recovery of overpayments if relatively small in amount or collection is not cost effective. For example, the Social Security Administration will waive an overpayment up to \$1,000. The FSP authorizes non-collection if the overpayment is \$125 or less [§9095.5] or a claim balance is less

than \$25 [§9095.11C]. This concept is absent from Part 7000. Therefore, DSS staff would have no discretion but to process small overpayments of even \$1.00. DSS should consider incorporating an authorization to disregard overpayments if the amount is small and/or collection would not be cost effective.

Third, §7003.1 is confusing. It may be interpreted in two ways based on the use of bullets and co-equal references to "and" and "or":

A. One interpretation is that there are three independent bases for referral to the Department of Justice (DOJ):

1. intentional violation and net overpayment exceeds \$1000; or
2. interstate fraud; or
3. repeat offender of \$500 or more.

B. Another interpretation is that there is one basis for referral with three subparts. Referral would occur only if there is intentional violation characterized by one of the following:

1. net overpayment exceeds \$1,000;
2. interstate fraud; or
3. repeat offender.

A repeat non-intentional offender over \$500 would be referred to the DOJ under the first interpretation but not the second interpretation.

Fourth, the FSP regulation (§9095.10) includes an authorization to "compromise a claim" to facilitate DSS collection within a reasonable period of time. This concept is absent from the Part 7000 regulation for cash assistance overpayments. DSS should consider incorporating an authorization in Section 7004.1 (which covers restitution and reimbursement) to consider "compromise of claim".

Fifth, the Councils believe the reference to "7004.2 Case Changes" should be deleted. Moreover, there are duplicate references to "7004.1 Methods of Collecting Cash Assistance Overpayments".

Agency Response: Thank you for your observations and recommendations on the proposed regulation. The purpose for the household claims proposal was to separate the food benefit claim policy from the cash assistance overpayment policy. Food and Nutrition Service (FNS) recommended separating the two policies during an audit of the Food Supplement Program (FSP) claims policy. DSS decided to re-write the food benefit portion while making the policy separation. The cash assistance portion will be re-written at a later time. Your five comments regarding Section 7000 will be considered when that section is re-written. No change to regulation was made as a result of these comments.

Sixth, §9095.1C) recites that each adult member of a household is responsible for paying an "overpayment" claim. This is based on 7 C.F.R. 273.18(a)(4). See also §9095.6D.2. Section 9095.6C recites that notice of the claim is effected by providing "the household with a one-time notice of adverse action...". This is based on 7 C.F.R. 273(e). Our concern is that a single notice to a "household" may not reach an 18 year old adult living with parents or relatives. The 18 year old would not be notified of the time period to request a hearing which then lapses. The 18 year old would then be subject to wage attachment, state tax intercept, etc. based on §9095.13G without effective notice and opportunity to challenge the underlying "claim". Recognizing that DSS is adopting the federal regulation verbatim, it still may be the better practice to send separate notices to each adult member of a household. Otherwise, there may be a lack of due process.

Agency Response: Your sixth comment regarding §9095.1C does have merit. DSS discussed your suggestions with the Audit and Recovery Management Services (ARMS) unit whose system sends client notices. The noticing process is automated and would be a workload requiring major system changes. Also, during the recent audit, FNS was fine with ARMS noticing just the case head and all liable parties are listed on the client notice that goes with the demand letter packet. As such, no change to regulation was made as a result of these comments. However, DHSS will look for opportunities to make the necessary changes to the ARMS noticing process and when feasible, will separately notice all adult members of the household.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, Cash Assistance Overpayments and Establishing Claims Against FSP Households to separate Cash Assistance and Food Benefit overpayment and

claims policies, and place FSP claim policy in its own section 9095 (new section number) is adopted and shall be final effective May 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #10-23 REVISIONS:

7000 Cash Assistance Overpayments and ~~Food Stamp Claims~~

7001 Audit and Recovery Management Services (ARMS) and the Overpayment Process

ARMS has the responsibility for five functional areas as part of Fraud/Overpayment process:

- 1) Identification - Responsible for the identification of acts of welfare fraud/overpayments from information obtained through IEVS, agency referrals, citizen complaints and other sources.
- 2) Audit/Investigation - Responsible for the Audit/Investigation of alleged acts of welfare fraud.
- 3) Referral for Prosecution/Overpayments - Responsible for the preparation of Referral for Prosecution for felony indictment to the Office of the Attorney General; referral of a case directly to a court of competent jurisdiction; or, preparation of an administrative overpayment.
- 4) Accounting - ARMS is the fiscal agent for the Department, with full responsibility for functional activity such as: establishing repayment agreements with indebted individuals, tracking overpayments and notifying DSS when overpayments are paid in full.
- 5) Collection Enforcement - Enforce recovery methods of debts through a variety of collection methods.

7002 Determining the Amount of Overpayments/~~Claims~~

An overpayment is a Cash Assistance payment made in excess of the amount a recipient is entitled to receive. ~~A claim is a Food Stamp benefit paid in excess of the amount a household was entitled to receive.~~ Overpayments and ~~claims~~ may be caused by client or agency error. In either situation, the recipient is expected to repay to DHSS the amount of benefits received in error. Repayment is based on the legal principle that when a person is paid benefits to which (s)he is not entitled, the payer has a right to recovery of those benefits.

All applicants for financial assistance will be informed of their responsibility to repay overpayments at application. They will be asked to sign the application which explains recipients' responsibilities to repay overpayments and outlines the methods by which overpayment debts can be recovered.

7002.1 Cash Assistance Overpayments

- 1) Technical Ineligibility (Non-financial reasons)

When an overpayment occurs because a recipient is technically ineligible for assistance, the overpayment equals the amount of the assistance grant paid.

For Example: Mrs. Jones receives assistance for herself and two children. Mrs. Jones goes on strike from her job and does not report this change to the Division. When the situation is discovered, the entire TANF payment is an overpayment.

If only some members of an assistance unit are technically ineligible, the amount of the overpayment is the difference between the actual grant the unit received and the grant that would have been issued to the remaining eligible unit members.

For overpayments based on technical ineligibility, the overpayment period begins the month following the month of the change. In the above example, if the parent went on strike in May and it was discovered in August, the overpayment would include TANF payments made to the unit from June until the month the grant amount correctly reflected the circumstances.

- 2) Financial Ineligibility

When an overpayment occurs because countable income or resources were not included in determining the assistance grant, the overpayment is the difference between the grant the unit received and the grant that would have been issued if the income had been budgeted.

A. Reported Income

- 1) Determine the unit's prospective eligibility at the time income began. Use all income that should

have been included in the budget calculations. Income that was not counted (or counted incorrectly) due to agency error, is to have income disregards applied to determine the overpayment amount. See DSSM 4004.2, 4004.3, and 8028.

2) If the unit is determined prospectively ineligible, calculate the overpayment for each month using prospective budgeting. Include in the overpayment the month that the income began if the income received in that month exceeded the applicable Standard of Need.

3) If the unit would have remained eligible, calculate the overpayment for each month using retrospective budgeting, unless actual income recovered in a subsequent month makes the unit ineligible. In that case, budget the remaining months prospectively. **This is for overpayments occurring prior to November 1, 1995.**

4) Overpayments occurring after November 1, 1995 will be processed prospectively. The overpayment is to be processed prospectively regardless of whether the unit is totally ineligible for a benefit or if the unit is eligible for a partial benefit.

B. Unreported Income

1) Determine the unit's prospective eligibility at the time income began. Include all income that should be counted in the budget calculation. Do not allow income disregards on that income which was not reported. See DSSM 4004.2, 4004.3, and 8028.

2) If the unit is determined prospectively ineligible, calculate the overpayment for each month using prospective budgeting. Include in the overpayment the month the income began if the income received in that month exceeded the applicable Standard of Need.

3) If the unit would have remained eligible, calculate the overpayment for each month using retrospective budgeting, unless actual income recovered in a subsequent month makes the unit ineligible. In that case, budget the remaining months prospectively. **This is for overpayments occurring prior to November 1, 1995.**

4) Overpayments occurring after November 1, 1995 will be processed prospectively. The overpayment is to be processed prospectively regardless of whether the unit is totally ineligible for a benefit or if the unit is eligible for a partial benefit.

C. Calculating Overpayments Resulting From Unreported Income

1) Determine the unit's prospective eligibility at the time the income began. Include all income that was actually counted in the budget calculation and any income that was not included in the calculation, but should have been.

NOTE: If income was not counted because of agency error, allow income disregards applicable to the client's assistance. If income was unreported, do not allow any disregards. See DSSM 4004.2, 4004.3, and 8028.

2) If the unit is determined prospectively ineligible, calculate the overpayment for each month using prospective budgeting. Include in the overpayment the month that the income began if the income received in that month exceeded the applicable Standard of Need.

3) If the unit would have remained eligible, calculate the overpayment for each month using retrospective budgeting, unless actual income received in a subsequent month makes the unit ineligible. In that case, budget the remaining months prospectively. **This is for overpayments occurring prior to November 1, 1995.**

4) Overpayments occurring after November 1, 1995 will be processed prospectively. The overpayment is to be processed prospectively regardless of whether the unit is totally ineligible for a benefit or if the unit is eligible for a partial benefit.

To illustrate, suppose a TANF recipient begins receiving income in January, and DSS is informed of the income in May. A budget is computed to determine prospective eligibility for February, and the unit is found ineligible for February benefits. February is the first month of the overpayment period, and the overpayment amount for each month is determined using prospective budgeting. January could also be included in the overpayment period if the income actually received in January exceeded the applicable Standard of Need.

D. Offsetting Overpayments

When DSS discovers that a cash assistance client has been underpaid, the underpayment must be offset by any existing overpayment debt that was incurred in the same category of assistance. Once the offset has been made, any remaining underpayment is restored to the recipient. To calculate the offset, ARMS will determine if any prior overpayments exist and subtract the outstanding overpayment amount from the underpayment amount.

For example, Mrs. Jones has an outstanding TANF overpayment debt of \$200. Later, DSS discovers

that Mrs. Jones was underpaid \$250 in TANF benefits. The underpayment amount (\$250) is offset with the outstanding debt (\$200) and a restoration of \$50 is issued to Mrs. Jones by ARMS.

In these situations, the new overpayment balance must be entered in DCIS by ARMS to ensure that recoupment continues properly, if applicable.

E. Procedure For Benefit Restoration ~~(for cash assistance and food stamp benefits)~~

To restore benefits, prepare a Form 106, Benefit Restoration/Underissuance Form. Form 106 should contain signatures of the worker completing the document, the Pool Supervisor, and the respective Operations Administrator. Forward Form 106 to ARMS/Accounting Section.

Do not include any current month's benefits in the restoration, as the current month's benefits can be issued by the DSS local office. Local offices, however, are not to issue any benefits for a previous month(s). ~~(This does not include retroactive benefits for a Food Stamp initial certification.)~~

Benefit restorations, like all other overpayments ~~or claims~~, are then submitted to ARMS. ARMS researches their overpayment ~~and claims~~ records for outstanding overpayments ~~or claims~~ and makes any necessary adjustments to the recoupment balance as a result of the offsetting process.

The Form 106 is then post-audited by the DMS/Client Payments Section.

F. Exceptions To Repayment To DSS

For cases where TANF recipients retain child support payments assigned to the State and DCSE has established a support order, the DCSE will file a claim, obtain a debt acknowledgment, and establish a repayment agreement with the indebted recipient.

7002.2 Food Stamp Claims

~~A recipient food stamp claim is an amount owed because benefits were overpaid or benefits were trafficked. Trafficking is the buying or selling of food stamp benefits or EBT cards for cash, or the exchange of firearms, ammunition, explosives, or controlled substances for food stamp benefits.~~

~~The following persons are responsible for paying claims:~~

- ~~• Each individual who was an adult member of the household when the overpayment or trafficking occurred;~~
- ~~• A sponsor of an alien household member if the sponsor is at fault;~~
- ~~• A person connected to the household, such as an authorized representative, who actually trafficks or causes an overpayment or trafficking.~~

~~There are three types of claims:~~

~~1) Inadvertent Household Error (IHE) Claims— Any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.~~

~~2) Agency Error (AE) Claims— Any claim for an overpayment caused by an action or failure to take action by DSS.~~

~~3) Intentional Program Violation (IPV) Claims— Any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in DSSM2023. Before we determine that a claim is the result of an Intentional Program Violation, we will handle the claim against the household as an inadvertent household error claim.~~

7002.3 Criteria for Establishing Inadvertent Household and Administrative Error Claims

~~Time Frames:~~

~~For IHE and AE claims, calculate a claim back to at least twelve (12) months prior to when you became aware of the overpayment.~~

~~For IPV claims, calculate the claim back to the month the act of IPV first occurred.~~

~~For all claims, do not include any amounts that occurred more than six years before you became aware of the overpayments.~~

~~The agency must establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.~~

~~90% of all claim referrals must be established or disposed of according to the above time frame.~~

Circumstances that may result in a claim may include the following:

A) Inadvertent Household Errors

- 1) The household unintentionally failed to provide DSS with the correct complete information;
- 2) The household unintentionally failed to report to DSS changes in its household circumstances;

3) The household unintentionally received more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits;

4) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for cash assistance and/or SSI at the time they received it; or

5) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

B) Agency Errors

1) DSS failed to take prompt action on a change reported by the household;

2) DSS incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

3) DSS incorrectly issued to a household duplicate benefits;

4) DSS continued to provide a household a food stamp allotment after its certification period had expired without benefit of a reapplication determination;

5) DSS failed to provide a household a reduced level of food stamp benefits because its cash assistance grant changed; or

6) DSS took an action or failed to take an appropriate action, which resulted in the household improperly receiving cash assistance.

We will not establish either an agency error claim or an inadvertent household error claim in an overissuance occurred due to DSS failing to ensure that a household met the following procedural requirements.

a) Signed the application form;

b) Completed the current work registration form; or

c) Was certified in the correct project area.

C) Intentional Program Violation Errors

We will handle a claim as an Intentional Program Violation claim only if an administrative hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional program violation as defined in Section 2023. Prior to the determination of intentional Program violation, the claim against the household will be handled as an inadvertent household error claim.

7002.4 Calculating Food Stamp Claims

For each month that a household received an overissuance due to an inadvertent household or agency error, we will determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or agency error claim is based on the amount of overissuance which occurred during the twelve (12) months preceding the date the overissuance was discovered. In cases involving reported changes, determine the month the overissuance initially occurred as follows:

A. Claims not related to trafficking

Inadvertent Household and Agency Error Claims

1) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report is the first month in which the change would have been effective had it been timely reported. However, in no event will DSS determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

2) If the household timely reported a change, but DSS did not act within the required timeframes, the first month affected by the Division's failure is the first month DSS would have made the change effective had it timely acted. However, in no event will the Division determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred. If a notice of adverse action was required, but was not provided, assume for the purpose of calculating the claim, that the maximum advance notice period as provided in DSSM 9006 would have expired without the household requesting a fair hearing.

3) If the household received a larger allotment than it was entitled to receive, establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. For categorically eligible households, determine a claim only when it can be computed on the basis of changed household net income and/or household size. Do not establish a claim if there was not a change in net income and/or household size.

4) When determining the amount of benefits the household should have received, do not apply the 20% earned income disregard for any income not reported in a timely manner after August 22, 1996. For agency error claims, apply the earned income deduction.

5) With Electronic Benefit Transfer (EBT) systems, reduce the overpayment amount by any EBT benefits expunged from the household's benefit account. The difference is the amount of the claim.

B. Intentional Program Violation Claims

1) For each month that a household received an overissuance due to an act of intentional Program violation, determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of intentional Program violation claim is calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, do not include in the calculation any amount of overissuance which occurred in a month more than six (6) years from the date the overissuance was discovered.

2) If the household member is determined to have committed Program violation by intentionally failing to report a change in its household circumstances, the first month affected by the household's failure to report is the month in which the change would have been effective had it been reported. However, in no event will the Division determine as the first month in which the change would have been effective, any month later than two (2) months from the month in which the changes in household circumstances occurred.

3) If the household received a larger allotment than it was entitled to receive, establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

4) When determining the amount of benefits the household should have received, do not apply the 20% earned income disregard for any income not reported in a timely manner after August 22, 1996.

5) With Electronic Benefit Transfer (EBT) systems, reduce the overpayment amount by any EBT benefits expunged from the household's benefit account. The difference is the amount of the claim.

C. Claims related to trafficking

Claims due to trafficking related offenses will be the amount of the trafficked benefits. The amount of the trafficked benefit is determined by:

- 1) The individual's own admission;
- 2) Adjudication; or
- 3) The documentation that forms the basis for the trafficking determination.

7003 Processing Overpayments and Claims

7003.1 Routing

Information regarding each claim/overpayment is to be transmitted from the DSS local office network to the ARMS Regional Area Office Supervisor as follows:

Suspected Intentional Violations

Suspected intentional violations meeting criteria for DOJ referral specified below are to be transmitted using a "Referral for Prosecution and Overpayment Form." If the criteria is met, ARMS will prepare the overpayment ~~and/or claim~~ for forwarding to DOJ for legal action.

Overpayments/~~claims~~ should be referred to DOJ for prosecution when the following conditions exist:

- Evidence of intentional violation (e.g., information intentionally omitted from application form), and
- Net overpayment/~~claim~~ is estimated to exceed \$1,000 (overpayment/~~claim~~ may involve one or more programs, including Medicaid, as long as grand total is at least estimated to be \$1,000), or
- Interstate fraud, or
- Case involves a repeat offender with previous documented offenses of \$500 or more.

After the overpayment is prepared, it is forwarded to the DOJ. When the overpayment has been processed through the Court system, it is returned by the Attorney General to ARMS. Here the results are logged and the Criminal Justice report is forwarded to DSS. If the client has been found guilty of an intentional Program violation, initiate action to disqualify the individual from the Program and notify ARMS of the disqualification so ARMS can complete the FCS-524 form. ARMS will initiate collection action by mailing a Repayment of Debt agreement and initiating recoupment or allotment reduction when appropriate.

When a DSS case has been referred to the DOJ for prosecution, the casefile is to be intact even though the contents may be more than three years old and otherwise subject to purging, per DSSM 1005.

To alert DSS that a record has been sent to the DOJ and should not be purged, ARMS will forward a copy of the Criminal Justice Report for insertion in the casefile. The presence of these forms will indicate that the case has been referred for prosecution and is to remain intact regardless of case activity status.

Suspected Intentional Violations Under \$1,000 and all Non-fraud Violations

Recoupment is automatically initiated when overpayment information is entered into DCIS. The system automatically calculates all case changes that result from recoupment and sends a notice to the recipient informing them him/her of the changes. The notice is to be mailed at least ten (10) days before the changes will occur. As payments are withheld through recoupment, the system also tracks the overpayment balance. When the balance is zero (0), the system discontinues recoupment. When a regular monthly grant is not issued, the DSS worker is to deduct the monthly recoupment amount and notify ARMS of the amount deducted from the grant. If the recoupment balance is incorrect or a case has not been placed on recoupment, ARMS will enter the correct balance into DCIS. ~~**Allotment Reduction for food stamp claims is handled by ARMS (See DSSM 7004).**~~

~~Food Stamp claims are forwarded within ARMS to the Accounting Section for establishment of an Accounts Receivable and collection action. The Accounting Section is responsible for issuing demand letters and negotiation of a Repayment of Debt agreement stipulating the amount of the debt, the methods available for repayment and the terms of the agreement schedule. A copy of the agreement will be forwarded to the client.~~

~~Claims involving suspected intentional Food Stamp Program violations (in amounts less than \$1,000) are forwarded to the DSS Administrative Hearing Officer by ARMS. Cases which are declined for a hearing due to lack of evidence will be returned to ARMS for forwarding to the DSS worker for recalculation.~~

~~Following an Administrative Hearing, the Hearing Officer will notify ARMS of the outcome of the hearing by providing a copy of the hearing decision.~~

~~Food Stamp Administrative disqualification hearings are further discussed in DSSM 2023.~~

CASH ASSISTANCE OVERPAYMENTS

1. Calculate the overpayment as per DSSM 7002.1 .
2. Complete Part A of form 920. Then send the overpayment package with form 920 to the Operations Administrator via the supervisor for approval and signature.
3. Open Cash Assistance Cases
 - a) Date the notice and copy it. Mail one overpayment package to the client, send one overpayment package to ARMS with form 920, and file one overpayment package on the record.
 - b) Prior to taking further action, wait thirteen days from the date the notice is mailed to the client to see if the client requests a fair hearing.
 - c) If the client doesn't request a fair hearing, initiate recoupment as appropriate using reason code 757 in Section 2.
 - * Check with ARMS to determine the balance amount if a prior overpayment is being recouped. Once the amount is determined, enter the amount in Section 12.
4. Closed Cash Assistance Cases
Date the notice and copy it. Mail one overpayment package to the client. Send one overpayment package (with Form 920) to ARMS with a note indicating that the case is closed and that the client was noticed. File one overpayment package in the case record.

FOOD STAMP CLAIMS

1. Calculate the amount of the overpayment as per 7002.2.
2. Complete Form 920, Part A and send it to the Operations Administrator via the supervisor for approval and signature.
3. Date the notice and copy it. Send two (2) overpayment packages to ARMS and file one overpayment package in the case record.
4. ARMS will send out overpayment package to the client with a repayment demand letter.

COMBINED CASH ASSISTANCE OVERPAYMENTS AND FOOD STAMP CLAIMS

1. Handle Cash Assistance overpayments as instructed above.
2. Handle Food Stamp claims as instructed above.

7004 Collections

7004.1 Methods of Collecting Cash Assistance Overpayments

7004.2 Case Changes
~~7004.3 Methods of Collecting Food Stamp Claims~~
~~7004.4 Methods of Collection Chart~~

7004.1 Methods of Collecting Cash Assistance Overpayments

Recoupment - Recoupment is the withholding of a portion of an assistance payment to an individual who is eligible for and in receipt of assistance under TANF or GA programs in order to recover an overpayment.

The amount recouped from an assistance grant from an agency caused overpayment will be 7% of the maximum payment standard for the family size or \$15.00, whichever is greater. The amount recouped from an assistance grant from a client caused overpayment will be 10% of the maximum payment standard for the family size or \$15.00, whichever is greater.

FAMILY SIZE	TANF RECOUPMENT RATE		GA RECOUPMENT RATE	
	CLIENT CAUSED	AGENCY CAUSED	CLIENT CAUSED	AGENCY CAUSED
1	\$20	\$15	\$15	\$15
2	\$27	\$19	\$17	\$15
3	\$34	\$24	\$22	\$16
4	\$41	\$28	\$26	\$18
5	\$48	\$33	\$32	\$23
6	\$54	\$38	\$37	\$26
7	\$61	\$43	\$42	\$29

Over seven (7) in TANF:

Add \$5.00 per person to the amount collected for a family of seven (7) for agency caused overpayments.

Add \$7.00 per person to the amount collected for a family of seven (7) for client caused overpayments.

Over seven (7) in GA:

Add \$3.00 per person to the amount collected for a family of seven (7) for agency caused overpayments.

Add \$4.50 per person to the amount collected for a family of seven (7) for client caused overpayments.

All current cash assistance recipients who have outstanding overpayment debts are subject to recoupment if the overpayment occurred after 07/10/80, and was caused by the recipient. Agency caused overpayments are automatically recouped if they occurred after 10/01/81. Client caused overpayments that occurred before 07/10/80 and agency caused overpayments that occurred before 10/01/81 can be recouped only if the recipient agrees to this type of collection.

Only TANF overpayments can be recouped from a TANF grant, and only GA overpayments can be recouped from a GA grant. ~~Food Stamps benefits~~, Medicaid, Child Support, Day Care, or other debts cannot be repaid by recouping funds from a Cash Assistance grant.

PLEASE NOTE: When completing an overpayment, the gross amount of the grant should be used.

For example, Ms. Jones received a TANF check for \$235 but was recouped \$15 for a previous overpayment. In calculating the new overpayment, \$250 would be used for the actual grant that was issued.

Restitution - Restitution is the repayment of assistance to which a recipient was not entitled. Individuals who are not subject to recoupment must make repayment directly to the Accounting Section of ARMS.

Reimbursement - Reimbursement is the repayment by the recipient of assistance benefits for which the recipient was eligible but is required to repay. An example is the repayment of assistance received during the six-month period in which a second real estate holding is excluded as a resource in order to allow the TANF recipient an opportunity to sell the property.

Notification to Recipients of Overpayments - When a cash assistance overpayment has been processed and collection will be initiated either through recoupment, restitution or reimbursement, the indebted individual must be notified of the overpayment debt. The DSS worker is to send the notice of TANF or GA overpayment to the individual, stating the amount of the overpayment, the circumstances that caused it, the amount that will be

withheld from the assistance grant if they are active, and that they will be contacted at a later date regarding repayment of the overpayment debt. The notice must also inform the individual of his/her right to request a hearing on the overpayment issue. If the overpayment is not subject to recoupment, the amount of the overpayment should still be entered into DCIS.

7004.2 Case Changes

When a case that is subject to recoupment is closed and there is an outstanding overpayment balance, it is the responsibility of ARMS to contact the individual, establish a repayment agreement, and collect payments on the obligation. ARMS is notified of such closing via a report from DCIS.

If a prior recipient reapplies for Cash Assistance and has an outstanding overpayment balance, recoupment must be initiated when the application is approved. To ensure that the overpayment is recouped correctly, the intake worker is to contact the Accounting Section of ARMS for the current overpayment balance and determine if proper notification was sent to the client previously. If proper notice was not sent previously, the DSS worker must recalculate the overpayment and notify the prior recipient of the overpayment. The overpayment balance should be data entered into the DCIS system by DSS. Any corrections to recoupment balances will be corrected by ARMS.

7004.3 Collection and Management of Food Stamp Claims

DSS shall collect any overissuances of food stamps issued to a household by:

- a) reducing the allotment of the household;
- b) withholding amounts from unemployment compensation from a member of the household;
- c) recovering from Federal pay or a Federal income tax refund;
- d) any other means;

unless DSS determines that all of the means listed above are not cost effective.

Cost effective determination

We will not establish any claim if the claim referral is \$125 or less unless:

1. the household is currently participating;
2. the claim has already been established;
3. there is already an existing FS claim;
4. there are other program claims;
5. the claim referral is for multiple programs, or
6. the claim was discovered in a Quality Control review.

Criteria for initiating collection action on inadvertent household and agency error claims

1) ARMS will initiate collection action (proper notice should have been sent prior to submittal to ARMS, except for food stamps) against the household on all inadvertent household or agency error claims unless the claim is collected through offset or one of the following conditions apply:

2 The total amount of the claim is less than \$125, and the claim cannot be recovered by reducing the household's allotment;

2 Documentation can be provided which shows that the household cannot be located.

2) ARMS will postpone collection action on inadvertent household error claims where an overissuance is being referred for possible criminal prosecution, or an administrative disqualification hearing, and it is determined collection action will prejudice the case.

Criteria for Initiating Collection Action of Intentional Program Violation Claims

If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing officer or a Court of appropriate jurisdiction), ARMS will initiate collection action against the individual's household. In addition, a personal contact will be made, if possible.

A claim will be handled as intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in DSSM 2023. Prior to the determination of intentional Program violation, the claim against the household will be handled as an inadvertent household error claim.

ARMS will initiate such collection action unless:

2 The household has repaid the overissuance already;

2 DSS or ARMS has documentation that the household cannot be located; or

2 It has been determined that collection action will prejudice the case against a household member

referred for prosecution.

ARMS will initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. ARMS will issue any benefit restorations when the amount of the claim is lower than the amount repaid.

In cases where a household member was found guilty of misrepresentation or fraud by a Court, the Deputy Attorney General handling the case will request that the matter of restitution and length of disqualification be brought before the Court.

Initiating Collection on Claims

The Accounting Section of ARMS will initiate collection action by providing the household a written, dated demand letter. The demand letters, including the demand letter sent following a fair hearing decision which upheld the claim, must include the following:

- 1) The amount of the claim;
- 2) The intent to collect from all adults in the household when the overpayment occurred;
- 3) The type, (IPV, IHE, or AE) and reason for the claim;
- 4) The time period of the claim;
- 5) How the claim was calculated;
- 6) The phone number to call for more information about the claim;
- 7) That, if the claim is not paid, it will be sent to other collections agencies, who will use various collection methods to collect the claim;
- 8) The opportunity to inspect and copy records related to the claim;
- 9) Unless the amount of the claim was established at a fair hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.
- 10) That if not paid, the claim will be referred to the Federal government for federal collection action;
- 11) That the household can make a written agreement to repay the amount prior to it being referred for Federal collection action; that is the claim becomes delinquent, the household may be subject to additional processing charges;
- 12) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim;
- 13) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction;
- 14) If allotment reduction is to be imposed, the percentages to be used and the effective date; and
- 15) The due date or time frame for repayment must not be later than 30 days after the date of the initial written notification or demand letter.

Repayment Agreements:

Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.

The agreement must specify that the household will be subject to involuntary collection action(s) if the payment is not received by the due date and the claim becomes delinquent.

Determining Delinquency:

A claim must be considered delinquent if:

- A) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made;
- or
- B) A payment arrangement has been established and a scheduled payment has not been made by the due date. The date of delinquency for a claim is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or the agency determines to either resume or re-negotiate repayment schedule.

A claim will not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction, and the agency expects to begin collection on the claim once the prior claim is settled.

A claim is not subject to the requirements for delinquent debts if the agency is unable to determine delinquency status because collection is coordinated through the court system.

Fair Hearings and Claims:

A claim awaiting a fair hearing must not be considered delinquent.

If the fair hearing official determines a claim does exist, the agency will re-notify the client of the claim and

establish a new due date.

If the fair hearing official determines a claim does not exist, the claim is terminated and written off.

Methods of Collecting Food Stamp Payments

ARMS will collect payments for claims against households as follows:

1) **Lump Sum**— If the household is financially able to repay the claim at one time, ARMS will collect a lump sum cash payment. However, the household will not be required to liquidate all of its resources to make this one lump sum payment. If the household is financially unable to repay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, ARMS will accept this method of repayment. If the household chooses to make a lump sum payment of food stamp benefits as full or partial repayment of the claim, ARMS will accept this method of repayment.

2) **Installments**— ARMS may negotiate a repayment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments will be accepted by ARMS in regular installments. The household may use food stamp benefits as full or partial repayment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in three (3) years, ARMS may compromise the claim by reducing it to an amount that will allow the household to repay the claim in three (3) years. ARMS may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with DSSM 9011.

If the household fails to make a payment in accordance with the established repayment schedule (either in a lesser amount or no payment), ARMS will send the household a notice explaining that no payment or an insufficient payment was received. The notice will inform the household that it may contact ARMS to discuss renegotiation of the repayment schedule. The notice will also inform the household unless the overdue payments are made, or ARMS is contacted to discuss renegotiation of the repayment reschedule, the allotment of a currently participating household against which an administrative error, inadvertent household error, or intentional Program violation claim has been established may be reduced without a notice of adverse action.

If the household responds to the notice, ARMS will take one of the following actions as appropriate:

a) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

b) If the household requests renegotiation, and if ARMS concurs with the request, negotiate a new repayment schedule;

c) If the household requests renegotiation of the amount of its repayment schedule, but ARMS believes that the household's economic circumstances have not changed enough to warrant the requested settlement, ARMS may continue renegotiation until a settlement can be reached. ARMS may invoke allotment reduction against a currently participating household for repayment of an agency error, inadvertent household error, or intentional Program violation claim if a settlement cannot be reached.

ARMS may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but ARMS believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If the allotment reduction is invoked, no notice of adverse action is required.

In cases where the household is currently participating in the Program and a repayment schedule is negotiated for repayment of an administrative error, inadvertent household error, or intentional Program violation claim, ARMS will ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments will remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both ARMS and the household have the option to initiate renegotiation of the repayment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

3) **Allotment Reduction**— ARMS will collect payments for agency error claims, inadvertent household error claims and intentional Program violation claims from households currently participating in the Program by reducing the household's food stamp allotment, unless the claim is being regularly collected at a higher amount or another household is already having its allotment reduced for the same claim. The amount of food stamps to be recovered each month through allotment reduction will be determined as follows:

a) **Agency Error and Inadvertent Household Error Claims**— The amount of food stamps will be the greater of ten (10) percent of the household's monthly allotment, or \$10 per month, unless the household agrees to a higher amount. Round all figures with amounts to the next highest dollar.

b) **Intentional Program Violation Claims**— The amount of food stamps will be the greater of twenty (20)

percent of the household's monthly entitlement, or \$20 per month, unless the household agrees to a higher amount. Round all figures with the next highest dollar.

c) The provision for a \$10 minimum benefit level for households with one and two members only, as described in DSSM 9066 applies to the allotment prior to reduction.

d) Do not reduce the initial allotment when the household is first certified unless the household agrees to this reduction.

e) Do not use additional involuntary collection methods against individuals in a household that is already having its allotment reduced unless the additional payment is irregular and unexpected such as having a State tax refund or lottery winnings offset.

ARMS may collect using allotment reduction from two separate households for the same claim. ARMS must make sure that the recouped amounts do not exceed the total amount of the claim.

Arms may continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction as long as the amounts collected do not exceed the total amount of the claim.

The procedure for effecting an allotment reduction is as follows:

1) ARMS Accounting Section will establish the claim in DCIS II. Mass changes then runs before the pull down of recoupment, to re-determine the benefit and recoupment amounts.

2) DCIS II automatically issues a notice to the client stating that their benefits have been reduced by a certain amount (a percentage or a flat amount) to repay their Food Stamp debt.

3) As a result of the date entry performed by ARMS and the mass change run, allotment reduction will take place. This debt will remain in DCIS II until paid in full, even through periods of inactivity. Any cash payments made by the household will be entered by ARMS, using the DCIS II Benefit Recovery Repayment options.

4) This action will be reflected in the balance figure shown in Benefit Recovery, Query Claims by Individual.

5) During the time that a household's allotment is reduced to recover an overissuance, DSS will be required to handle any case maintenance required. Changes to financial data performed by DCIS will be governed by the allotment reduction indicator. The system will apply the appropriate percentage reduction to the calculated allotment whenever a change is made. When the recoupment balance falls below the monthly withholding amount, the DCIS system will withhold the remaining balance. When the balance is reduced to zero, the system will automatically search for any other food stamp claims that are outstanding. If there are none, the system will automatically cancel the recoupment. If there are outstanding food stamp claims, the recoupment will continue until all outstanding food stamp claims are satisfied.

4 Benefits from EBT Accounts

ARMS must allow a household to pay its claim using benefits from its EBT benefit account as follows:

Collecting from active (or reactivated) EBT benefits—the agency needs written permission or oral permission for one-time reductions with the agency sending the household a receipt of the transaction within ten (10) days.

The written permission must include:

A statement that this collection activity is strictly voluntary;

The amount of the payment;

The frequency of the payments;

The length (if any) of the agreement;

A statement that the household may revoke this agreement at any time.

b) Collecting from stale EBT benefits—the agency must mail or otherwise deliver to the household written notification that the agency intends to apply the benefits to the outstanding claim and give the household at least ten (10) days to notify the agency that it doesn't want to use these benefits to pay the claim.

Making an adjustment with expunged EBT benefits—the agency must adjust the amount of any claim by subtracting any expunged amount from the EBT benefit account and this can be done anytime.

d) A collection from an EBT account must be non-settling against the benefit drawdown account.

5) Offsetting

After calculating the amount of the inadvertent household or administrative error claim, ARMS will offset the amount of the claim against any amount which has not yet been restored to the household in accordance with DSSM 9011 and DSSM 7002.1. ARMS will then initiate collection action for the remaining balance, if any.

Once the amount of the intentional Program violation claim is established, ARMS will offset the claim against any amount of lost benefits that have not yet been restored to the household per DSSM 9011.

6) Intercept of unemployment compensation benefits

The agency may intercept unemployment compensation benefits for the collection of any claim as part of a repayment agreement or by obtaining a court order.

7) Public Service

The value of a claim may be paid by the household performing public service when authorized by a court.

8) Other collection actions

The agency may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection agencies, state tax refund, lottery offsets, wage garnishments, property liens, and small claims court.

9) Unspecified joint collections

When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program must receive its pro rata share of the amount collected. An unspecified joint collection is when funds are received by a household where there is both a cash assistance overpayment and a food stamp claim and the household does not specify to which claim/overpayment to apply the funds.

7004.4 Methods of Collection — Chart

Type of Claim	Calculating Amount of the Claim	Demand Letter	Lump Sum	Repayment Agreement	Allotment Reduction
I. Non-Fraud Overissuance					
A. Agency error (over-issuance caused by agency error)	Can go back 12 months from date of discovery	Yes	Yes	Yes	Automatic. Allotment reduction equal to the greater of 10% of the monthly allotment or \$10 per month.
B. Inadvertent Household error (over-issuance caused by misunderstanding or unintended error by the household)	Same as for agency errors	Yes	Yes	Yes	Automatic. Allotment reduction equal to the greater of 10% of the monthly allotment or \$10 per month.
II. Fraudulent Overissuance					
A. Intentional Program (must be a finding of "fraud" at an administrative hearing, by a court)	Can go back six years from date of discovery	Yes	Yes	Yes	Automatic. Allotment reduction equals 20% of the monthly allotment or \$20 per month.

NOTE: None of these collection procedures apply to any claim occurring before March 1, 1979. Those are all dead claims and are uncollectible under federal rules.

7004.5 Acceptable Forms Of Payment — Food Stamps

ARMS may collect a claim by:

- A. Reducing benefits prior to issuance. This includes allotment reductions and offsets to restored benefits.
- B. Reducing benefits after issuance. These are benefits from electronic benefit transfer accounts.
- C. Accepting cash or any of its generally accepted equivalents. These equivalents include check, money

order, and credit or debit cards.

- D. Accepting food stamp benefits.
- E. Conducting other offsets and intercepts like wage garnishments and intercepts of various State payments.
- F. Requiring the household to perform public service when ordered by a court
- G. Participating in the Treasury Offset Program.

7005 Terminating and Writing off Claims – Food Stamps Only

A terminated claim is a claim in which all collection action has ceased.

A written off claim is no longer considered a receivable subject to continued Federal and State agency reporting requirements.

Claim termination policy is as follows:

A. If the agency finds that the claim is invalid, the agency must discharge the claim and reflect the event as a balance adjustment rather than a termination unless it is appropriate to pursue the overpayment as a different type of claim, like as an IHE rather than an IPV claim.

If all household members die, the agency must terminate and write off the claim unless the agency plans to pursue the claim against the estate.

If the claim balance is \$25 or less and the claim has been delinquent for 90 days or more, the agency must terminate and write off the claim unless other claims exist against the household resulting in an aggregate claim total greater than \$25.

If the agency determines it is not cost effective to pursue the claim any further, the agency must terminate and write off the claim.

If the claim is delinquent for three years or more, the agency must terminate and write off the claim unless the agency plans to continue to pursue the claim through Treasury's Offset Program.

If the household cannot be located, the agency may terminate and write off the claim.

If a new collection method or a specific event such as winning the lottery substantially increases the likelihood of further collections, the agency may reinstate a terminated and written off claim.

70065 Changes in Unit/Household Composition

ARMS can recover Cash Assistance overpayments from any assistance unit of which a member of the overpaid assistance unit has subsequently become a member.

ARMS will initiate collection action against any or all of the adult members of a food stamp household at the time an overissuance occurred. Therefore, if a change in household composition occurs, ARMS can pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. ARMS can also offset the amount of the claim against restored benefits owed to any household containing a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances may ARMS collect more than the amount of the claim.

7007 Submission of Food Stamp Payments

ARMS will retain the value of funds collected for inadvertent household errors, intentional Program violation, or administrative error claims. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The State's letter of credit will be amended on a quarterly basis to reflect the State's retention of 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

ARMS will submit quarterly a Form FNS-209, Status of Claims Against Households, no later than 30 days after the end of each calendar year quarter, even if no payments have been collected. In accounting for inadvertent household error and intentional Program violation claims, collection, cash, or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits will be included. However, the value of benefits not issued during the period of disqualification will not be considered recovered allotments and will not be used to offset an intentional Program violation claim.

ARMS may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing official or a Court of appropriate jurisdiction that intentional Program violation was committed at the rate applicable to intentional Program violation

claims, once the determination or signed document is obtained. In such cases, ARMS must include a note in an attachment to the FNS-209 showing the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

If a household has overpaid a claim, ARMS is to pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household will be paid by whatever method ARMS deems appropriate considering the household's circumstances. A refund is prohibited when a balance adjustment using expunged EBT benefits is responsible for the over-collection. Overpaid amounts of a claim which have previously been reported as collected via the FNS-209 and which have been repaid to the household will be reported in the appropriate column on the FNS-209 for the quarter in which the repayment occurred. The amount of the repayment will be subtracted from the total amount collected. The appropriate retention rate will be applied to the reduced collection total.

In cases where the State has been billed by FNS for negligence, any amounts collected from households which were caused by the State's negligence will be credited by FNS. When submitting these payments, ARMS must include a note as an attachment to the FNS-209 showing the amount that should be credited against the State's bill.

7008—Returned Food Stamp Benefits

If coupon books collected from households as payment for claims are returned intact and in usable form, ARMS may return them to coupon inventory. ARMS will destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in this Section.

After verification of the reports from the claims collections point, ARMS will destroy the coupons or coupon book if the value of the coupons does not exceed \$500 per month. If the value of the coupons exceeds \$500 per month, FNS approval must be requested prior to any destruction of the coupons.

ARMS will destroy the coupons and coupon books by burning, shredding, tearing, or cutting so that they are not negotiable. Two State agency officials will witness and certify the destruction and forward Form FNS-471, Coupon Account and Destruction Report, with the Form FNS-209.

7009—Food Stamp Claims Discharged Through Bankruptcy

ARMS should act on behalf of and as FNS in any bankruptcy proceeding against bankruptcy households owing food stamp claims. ARMS will possess any rights, priorities, interests, liens, or privileges, and should participate in any distribution of assets, to the same extent as FNS. Acting as FNS, ARMS has the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions, or objections which FNS might have filed. Any amounts collected under this authority must be transmitted to FNS as provided in DSSM 7007.

7010—Interstate Claims Collection

In cases where a household moves out of the area under a State agency's jurisdiction, ARMS should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household will have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into which the household moves will contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims will be retained by the State agency which collects the overissuance.

(Break in Continuity of Sections)

9095 Establishing Claims Against FSP Households

[7 CFR 273.18]

9095.1 General Information

A) A recipient claim is an amount owed due to:

1. Overpaid benefits or
2. Trafficked benefits.

Trafficking means the buying or selling of FSP EBT benefits for cash, other consideration other than eligible food, or the exchange of FSP EBT benefits for firearms, ammunition, explosives or controlled substances.

B) A claim is a Federal debt subject to this and other regulations governing Federal debts. Delaware Health and Social Services (DHSS) will establish and collect any claim by following these regulations.

C) The following individuals are responsible for paying a claim:

1. Each person who was an adult member of a household when the overpayment or trafficking occurred;
2. A sponsor of an alien household member if the sponsor is at fault; or
3. A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overpayment or trafficking.

9095.2 Types of Claims

There are three types of claims:

<u>An . . .</u>	<u>is . . .</u>
<u>(1) Intentional Program violation (IPV) claim</u>	<u>any claim for an overpayment or trafficking resulting from an individual committing an IPV, which is when an individual breaks a FSP rule and is found guilty by a court or an administrative disqualification hearing, or signs a waiver to be disqualified to avoid prosecution.</u>
<u>(2) Inadvertent household error (IHE) claim</u>	<u>any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.</u>
<u>(3) Agency error (AE) claim</u>	<u>any claim for an overpayment caused by an action or failure to take action by the Division of Social Services (DSS).</u>

9095.3 Calculating the Claim Amount

A. Claims not related to trafficking:

<u>(i) DHSS/DSS</u>		
<u>must calculate a claim . . .</u>	<u>and . . .</u>	<u>and . . .</u>
<u>back to at least twelve months prior to when DHSS/DSS becomes aware of the overpayment</u>	<u>for an IPV claim, the claim must be calculated back to the month the act of IPV first occurred</u>	<u>for all claims, DHSS/DSS will not include any amounts that occurred more than six years before DHSS/DSS became aware of the overpayment.</u>
<u>(ii) The actual steps for calculating a claim are</u>		
<u>DHSS/DSS will . . .</u>	<u>unless . . .</u>	<u>then . . .</u>
<u>(1) determine the correct amount of benefits for each month that a household received an overpayment</u>		
<u>(2) not apply the earned income deduction to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim</u>	<u>the claim is an AE claim</u>	<u>DHSS/DSS will apply the earned income deduction.</u>
<u>(3) subtract the correct amount of benefits from the benefits actually received. The answer is the amount of the overpayment</u>	<u>this answer is zero or negative</u>	<u>DHSS/DSS will dispose of the claim referral.</u>

<u>(4) reduce the overpayment amount by any EBT benefits expunged from the household's EBT benefit account according to DSSM 9093. The difference is the amount of the claim</u>	<u>there were no expunged benefits</u>	<u>the amount of the overpayment calculated in #3 of this section is the amount of the claim.</u>
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B) Trafficking-related claims:

Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:

1. The individual's admission;
2. Adjudication; or
3. The documentation used for the trafficking determination.

9095.4 Claim Referral Management

<u>DHSS/DSS</u>	
<u>must . . .</u>	<u>and . . .</u>
<u>establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered</u>	<u>ensure that no less than 90 percent of all claim referrals are either established or disposed of according to this time frame.</u>

9095.5 Initiating Collection Action and Managing Claims

- A. Initiate collection action on all claims unless the condition under "B" of this section applies.
- B. Do not establish and subsequently collect an overpayment that is not cost effective.

Follow the FNS threshold as follows:

<u>DHSS/DSS will</u>		
<u>opt not to establish any claim if . . .</u>	<u>unless . . .</u>	<u>or . . .</u>
<u>DHSS/DSS determines that the claim referral is \$125 or less</u>	<u>the household is currently participating in the FSP</u>	<u>DHSS/DSS already established the claim or discovered the overpayment in a Quality Control review.</u>

9095.6 Notification of Claim

- A. Mail written notification to begin collection action on any claim.
- B. Consider the claim established for tracking purposes as of the date of the initial demand letter or written notification.
- C. Provide the household with a one-time notice of adverse action when claims or the amounts of claims are not established at a hearing.
- D. The demand letter/claim packet includes language stating:
 1. The amount of the claim.
 2. The intent to collect from all adults in the household when the overpayment occurred.
 3. The type (IPV, IHE, AE) and reason for the claim.
 4. The time period associated with the claim.
 5. How the claim was calculated.
 6. The phone number to call for more information about the claim.
 7. Delinquent claims are sent to other collection agencies, who will use various collection methods to collect the claim.
 8. The opportunity to inspect and copy records related to the claim.
 9. The opportunity to request a fair hearing within 90 days on the decision related to the claim unless the amount of the claim was established at a hearing.
 10. Refer delinquent claims to the Federal government for federal collection action.

11. The household can make a written agreement to repay the amount of the claim prior to it being referred for federal collection action.

12. The household may be subject to additional processing charges if the claim becomes delinquent.

13. The State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.

14. A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency imposes an allotment reduction, and

15. The percentage used and the effective date when DHSS imposes an allotment reduction.

E. The due date or period for repayment will be no later than 30 days after the date of the initial demand letter.

F. Sending subsequent demand letters or notices is optional.

9095.7 Repayment Agreements

A. Repayment agreements will contain due dates or periods for the periodic submission of payments.

B. The agreement will specify that the household is subject to involuntary collection action(s) if DHSS does not receive the payment by the due date and the claim becomes delinquent.

9095.8 Determining Delinquency

A. Consider a claim delinquent if:

1. The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

2. The household established a payment arrangement and fails to make a scheduled payment by the due date.

B. The date of delinquency for a claim under #1 above is the due date on the initial written notification/demand letter. The claim will remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.

C. The date of delinquency for a claim under #2 above is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or DHSS determines to either resume or re-negotiate the repayment schedule.

D. A claim is not considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction or DHSS expects to begin collection on the claim once the prior claim(s) is settled.

E. A claim is not subject to the requirements for delinquent debts if DHSS is unable to determine delinquency status because collection is coordinated through the court system.

9095.9 Fair Hearings and Claims

A. A claim awaiting a fair hearing decision is not considered delinquent.

B. Re-notify the household of the claim if the hearing official determines that a claim does exist against the household.

Base delinquency on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.

C. Dispose of the claim in accordance with DSSM 9095.11 if the hearing official determines that a claim does not exist.

9095.10 Compromising Claims

A. Compromise a claim or any portion of a claim if it can be reasonably determined that a household cannot pay the claim in 36 months. DHSS will compromise the claim by reducing it to an amount that allows the household to make restitution within three years.

B. Use the full amount of the claim (including any amount compromised) to offset benefits in accordance with DSSM 9011.

C. Reinstate any compromised portion of a claim if the claim becomes delinquent.

9095.11 Terminating and Writing-off Claims

- A. Terminate a claim when all collection action has ceased.
- B. Write off a claim when DHSS determines that continued Federal and State agency collection and reporting requirements will not pay off the claim.
- C. Terminate claims as follows:

<u>If . . .</u>	<u>Then DHSS . . .</u>	<u>Unless . . .</u>
<u>(1) the claim is found invalid</u>	<u>must discharge the claim and reflect the event as a balance adjustment rather than a termination</u>	<u>it is appropriate to pursue the overpayment as a different type of claim (e.g., as an IHE rather than an IPV claim).</u>
<u>(2) all adult household members have died</u>	<u>must terminate and write-off the claim</u>	<u>DHSS plans to pursue the claim against the estate.</u>
<u>(3) the claim balance is \$25 or less and the claim has been delinquent for 90 days or more</u>	<u>must terminate and write-off the claim</u>	<u>other claims exist against this household resulting in an aggregate claim total of greater than \$25.</u>
<u>(4) it is determined not cost effective to pursue the claim any further</u>	<u>must terminate and write-off the claim</u>	<u>FNS has not approved DHSS cost-effectiveness criteria.</u>
<u>(5) the claim is delinquent for three years or more</u>	<u>must terminate and write-off the claim</u>	<u>DHSS plans to continue to pursue the claim through Treasury's Offset Program.</u>
<u>(6) DHSS cannot locate the household</u>	<u>may terminate and write-off the claim</u>	
<u>(7) a new collection method or specific event (such as a lottery win) substantially increases the likelihood of further collections</u>	<u>DHSS may reinstate a terminated and written-off claim</u>	<u>DHSS decides not to pursue this option.</u>

9095.12 Acceptable Forms of Payment

- A. Reducing benefits prior to issuance that includes allotment reduction and offsets to restored benefits.
- B. Reducing benefits after issuance from electronic benefit transfer (EBT) accounts.
- C. Accepting cash or any of its generally accepted equivalents, which include checks, money orders, and credit/debit cards.
- D. Conducting offsets and intercepts, which include, but are not limited to, wage garnishments and intercepts of various State payments. (Consider these collections as "cash" for FNS claim accounting and reporting purposes.)
- E. Requiring the household to perform public service that is ordered by a court and specifically in lieu of paying any claim.
- F. Participating in the Treasury collection programs.

9095.13 Collection Methods

- A. Allotment reduction as follows:

<u>DHSS must . . .</u>	<u>Unless . . .</u>
<u>(1) Automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives</u>	<u>the claim is being collected at regular intervals at a higher amount.</u>
<u>(2) For an IPV claim, limit the amount reduced to the greater of \$20 per month or 20 percent of the household's monthly allotment or entitlement</u>	<u>the household agrees to a higher amount.</u>

(3) For an IHE or AE claim, limit the amount reduced to the greater of \$10 per month or 10 percent of the household's monthly allotment	the household agrees to a higher amount.
(4) Not reduce the initial allotment when the household is first certified	the household agrees to this reduction.
(5) Not use additional involuntary collection methods against individuals in a household that is already having its benefit reduced	the additional payment is voluntary, or the source of the payment is irregular and unexpected such as a State tax refund or lottery winnings offset.
DHSS may . . .	
(6) Collect using allotment reduction from two separate households for the same claim. However, DHSS is not required to perform this simultaneous reduction.	
(7) Continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction.	

B. Benefits from EBT accounts.

Allow a household to pay its claim using benefits from its EBT benefit account.

(1) For collecting from active (or reactivated) EBT benefits . . .		
DHSS	or . . .	and . . .
needs written permission which may be obtained in advance and done according to the written agreement requirements below	oral permission for one time reductions with DHSS sending the household a receipt of the transaction within 10 days	the retention rules do apply to this collection.
(2) For collecting from stale EBT benefits . . .		
DHSS . . .	and . . .	and . . .
must mail or otherwise deliver to the household written notification that DHSS intends to apply the benefits to the outstanding claim	give the household at least 10 days to notify DHSS that it doesn't want to use these benefits to pay the claim	the retention rules apply to this collection.
(3) For making an adjustment with expunged EBT benefits . . .		
DHSS . . .	and . . .	and . . .
must adjust the amount of any claim by subtracting any amount expunged from the EBT benefit account	this can be done anytime	the retention rules do not apply to this adjustment.

WRITTEN (PERMISSION) AGREEMENT

The written agreement with the household to collect a claim using active EBT benefits must include:

- (1) A statement that this is voluntary;
- (2) The amount of the payment;
- (3) The frequency of the payments (i.e., monthly or one time only);
- (4) The length (if any) of the agreement; and
- (5) A statement that the household may revoke the agreement at any time.

C. Offsets to restored benefits

Reduce any restored benefits owed to a household by the amount of any outstanding claim. This can be done at any time during the claim establishment and collection process.

D. Lump sum payments

Accept a full or partial payment for a claim by any of the acceptable forms of payment.

E. Installment payments

Accept installment payments made for a claim as part of a negotiated repayment agreement as long as the amount is not less than the amount that would be recovered through allotment reduction.

If a household fails to submit a payment in accordance with the terms of the negotiated repayment schedule, the claim becomes delinquent and is subject to additional collection actions.

F. Public service

The value of a claim may be paid by the household performing public service.

G. Other collection actions

Use any other collection actions to collect claims, such as but not limited to, referrals to collection agencies, state tax refund, lottery offsets, wage garnishments, property liens and small claims court.

H. Unspecified joint collections

When a household sends in a payment based on a notification of a food benefit and cash assistance claim/overpayment and does not specify what program the payment is for, each program must receive its pro rata share of the amount collected.

9095.14 Refunds for Overpaid Claims

A. Refund a household for any overpaid amounts on a claim as soon as possible after DHSS finds out about the overpayment.

B. Households are not entitled to a refund if DHSS attributes the overpaid amount to an expunged EBT benefit.

9095.15 Interstate Claims Collection

A. When a household moves out of the state of Delaware, DHSS is still responsible for initiating or continuing collection action for any overpayments, unless DHSS transfers the claim to the other state.

B. DHSS may accept a claim from another state if the household with the claim moves to Delaware. Once DHSS accepts this responsibility, the claim belongs to DHSS for future collection and reporting.

C. Report interstate transfers to FNS.

9095.16 Bankruptcy

Act on behalf of FNS in any bankruptcy proceeding against a bankrupt household with outstanding recipient FSP claims.

9095.17 Retention Rates

A. The retention rates for DHSS are as follows:

<u>If DHSS collects an . . .</u>	<u>then the retention rate is . . .</u>
<u>(1) IPV claim</u>	<u>35 percent.</u>
<u>(2) IHE claim</u>	<u>20 percent.</u>
<u>(3) IHE claim by reducing a person's unemployment compensation benefit</u>	<u>35 percent.</u>
<u>(4) AE claim</u>	<u>Zero percent</u>

B. These rates do not apply to any reduction in benefits when DHSS disqualifies someone for an IPV.

9095.18 Treasury Offset Program (TOP)

A. Add debts to TOP when they are 180 days delinquent if the debt is within the ten-year statute of limitation (unless covered by a judgment) and at least \$25.00.

Do not refer debts to TOP if:

1. under an automatic stay due to bankruptcy,
2. under litigation,
3. being collected through allotment reduction, or
4. under an approved repayment plan.

B. Non-judgment debts will remain in TOP until they reach the ten-year statute of limitations, except when DHSS can document it is not cost-effective.

Judgment debts can remain in TOP until it is no longer cost effective to retain the debt in TOP.

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