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Informational Letter

Section 1

Transmittal:	07-INF-03
To:	Local District Commissioners
Issuing Division/Office:	Division of Employment and Transitional Supports
Date:	March 2, 2007
Subject:	Recovery/Recoupment Due to Fleeing Felon and Probation/Parole Violator Status
Suggested Distribution:	Temporary Assistance Directors Food Stamp Directors Staff Development Coordinators WMS Coordinators Fair Hearing Staff FEDS Coordinators Fraud Directors CAP/TOP Coordinators
Contact Person(s):	1-800-343-8859: Temporary Assistance Bureau at extension 4-9344; Food Stamp Bureau at extension 3-1469; HEAP Bureau at extension 3-0332; and Metro Field Support Bureau at (212) 961-8207 For Medicaid: Upstate Regional Representative at (518) 474-8887; New York City Representative at (212) 417-4500
Attachments:	None
Attachment Available On – Line:	<input type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
05 ADM 15 97 ADM 23 06 INF 10 06 INF 16 04 INF 20 03 LCM 8 06 OMM/INF-4		18 NYCRR § 357.3(e) § 351.2(k)(3) § 387.2(j)(1)	SSL § 136	TASB Chapter 5, Section B	Dear Commissioner Letter 11-5-1997

Section 2

I. Purpose

The purpose of this informational letter is to provide guidance to local social services districts on the identification of an overpayment and the processing of subsequent recovery/recoupment when a fleeing felon or probation/parole violator is included in an application for temporary assistance (TA), or when he/she is an active member of a TA case. TA includes Family Assistance and both federal and non-federal categories of Safety Net Assistance.

II. Background

Informational Letter 04-INF 20 advised local social services districts to take action on certain types of information provided through computer matches when the information coming from a primary source is current (within 60 days of the case action) and the district has reason to believe the match is valid. Included in the list of computer matches considered verified upon receipt (primary source) is the Felon Match that includes fleeing felons and violators of probation or parole.

Individuals fleeing to avoid prosecution of, custody for, or conviction for a felony, are ineligible for TA. In addition, any individual who is violating a condition of probation or parole imposed under federal or State law is not eligible for TA. The remainder of the household, if otherwise eligible, may receive TA.

A person is violating a condition of probation or parole only if:

- the person is currently an absconder from probation or parole supervision and a warrant alleging such a violation is outstanding,
- the person has been found by judicial determination to have violated probation or by administrative adjudication by the division of parole to have violated parole, or
- the person is violating a condition of probation or parole imposed under federal law.

An individual who is identified, and knows so or is notified thereof, as being a probation/parole violator is not eligible for TA until he/she verifies that he/she has been restored to probation or parole supervision, released from custody, or until the person's maximum period of imprisonment or supervision has expired.

Note: Probation or parole includes conditional release.

Once a local district becomes aware that a TA applicant or recipient is an identified fleeing felon or probation/parole violator, the local district must take action to deny the application or close the recipient's case, or delete the fleeing felon or probation/parole violator from a multiple person case. For multiple person TA cases, the other members of the case may continue to receive TA if otherwise eligible.

OTDA received federal clarification of a 2005 decision by the United States Court of Appeals for the Second Circuit (Fowlkes v. Adamec, Thomas and Gibbons). This decision concluded that an individual who receives Supplemental Security Income (SSI) must know that he/she is fleeing prosecution as a felon with the intent to evade arrest or prosecution before the period of suspension of benefits or recoupment can be imposed. Although this ruling did not address TA programs, local districts must have evidence that clients had knowledge of their status as a fleeing felon or probation/parole violation status in order to establish a retroactive recoupment. Social Services Law (SSL) §136(5) requires local

districts to disclose the address of a recipient of TA identified as a fleeing felon or probation/parole violator to a federal, state or local law enforcement officer upon the request of such officer if the duties of the officer include the location or apprehension of the TA recipient. Local districts must endeavor to assure that officer provides enough identifying demographics on the recipient in question to avoid the disclosure of address information for individuals with similar names. To assist law enforcement officials in the capture of fleeing felons when such a request is made, and to guard the safety of workers, guidance from the Government Accounting Office (GAO) recommends that state and local agencies develop procedures for coordinating notification of reported fleeing felons of their status with law enforcement officials.

III. Program Implications

Temporary Assistance (TA)

For such TA recipients, a local district must take immediate action to provide them with timely and adequate notice to discontinue TA benefits, or adequate notice to deny benefits to an individual applying for TA. For a TA recipient, the period subject to recovery/recoupment does not begin until the effective date of the notice notifying the recipient that he/she is ineligible for TA because of his/her fleeing felon or probation/parole violator status. In these cases, the assistance received prior to the effective date of the notice is not subject to recovery/recoupment because of the individual's status as a fleeing felon or probation/parole violator because there is no evidence that the person had actual knowledge of his/her status. Other reasons for recovery/recoupment may apply.

For an individual who advises the local district of his/her status at application or recertification, but the local district fails to take action to deny or close a TA case, the period of overpayment begins on the date the applicant/recipient notified the local district of his/her status. The LDSS-2921, "Common Application", and the LDSS-3174, "Recertification Form", specifically asks the applicant/recipient to identify himself/herself and other members of his/her household if fleeing prosecution, confinement or conviction for a felony, or if violating probation or parole.

Once notified of this action, the applicant or recipient, as applicable, must provide verification of the vacated warrant or restoration to probation or parole supervision, release from custody or proof that his/her maximum period of imprisonment or supervision has expired in order to be eligible for benefits. For example, a local district worker outside of New York City on January 2nd discovers that a recipient is subject to a felony warrant from Massachusetts. The worker sends a notice to discontinue benefits with an effective date of January 13th. For TA, an overpayment is calculated for the period beginning January 2nd through January 12th if the recipient does not respond to the notice denying knowledge of his/her status as a fleeing felon or probation/parole violator. In this example, the recipient responds prior to January 13th with verification that the warrant was vacated. The worker takes action to cancel the closing action, and no overpayment is calculated. For food stamps, the local district takes no adverse action until February.

If local law enforcement officials have previously requested address information on an individual identified as a fleeing felon or probation/parole violator, local district procedures may require contact with those same law enforcement officials prior to notification of the individual by the local district, to coordinate the release of the notice. This locally developed procedure is based on the guidance suggested by the GAO described in Section II above and the requirements of SSL §136(5).

As with all other documentation/verification requirements, if the client has difficulty obtaining the information, the local district is obligated to assist in obtaining the information.

Food Stamps (FS)

A local district must consider the appropriate reporting and notification requirements when determining overpayments and establishing claims for FS. Even in reacting to a primary source such as a fleeing-felon match, local districts must provide the appropriate notice to the client to inform him/her of the existence of a condition that would result in his/her ineligibility. Local districts must not consider the fleeing felon match as proof of either a client error or Intentional Program Violation (IPV) because we cannot assume from the match that the client was aware of the warrant or other condition causing ineligibility at the time of application. Likewise, an Agency Error (AE) overpayment would occur only if the local district failed to take timely action on the reported information. A client error or IPV can occur only if the local district demonstrates that the household had knowledge of a member's fleeing-felon status prior to notification by the local district of that status. Normal claim establishment, calculation and recoupment procedures, as described in 05 ADM-15, would apply in either situation.

A local district may collect a claim in an active case by recoupment from benefits received by remaining household members, if there was another adult present. A local district may collect claims on closed cases by either referring the claim for collection by ordinary means or at the discretion of the district, compromise or termination of the claim. Local districts may forgo establishing claims of less than \$500 on closed FS cases.

As with all other documentation/verification requirements, if the client has difficulty obtaining the information, the local district is obligated to assist in obtaining the information.

Medicaid

As stated in 06 OMM/INF-4, "Computer Matching Clarification for Medicaid," the Fleeing Felon match does not apply to Medicaid. Medicaid does not honor TA sanctions for this reason. An applicant/recipient of Medicaid is not required to identify him/herself as a fleeing felon or a violator of probation or parole. When a person applies for TA and Medicaid and is denied TA because the applicant is a fleeing felon or violator of probation or parole (PA Individual Reason Code-"F35-Fleeing Felon/Probation-Parole Violator"), a separate Medicaid determination must be completed. When TA is discontinued for a TA/Medicaid recipient (PA Individual Reason Code-"F35-Fleeing Felon/Probation-Parole Violator"), his/her Medicaid continues unchanged.

Issued By

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