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TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) GUIDANCE MANUAL

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100.1 LEGAL BASE - Virginia's Temporary Assistance for Needy Families (TANF) Program is based on Title IV-A of the Social Security Act as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, the TANF State Plan, and on the Code of Virginia, Sections 63.2-600 through 63.2-618. PRWORA allows states to establish program requirements in any manner which will reasonably accomplish the purpose of TANF.* The purpose of TANF is to:**

- provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- prevent and reduce the incidence of out-of-wedlock pregnancies; and
- encourage the formation and maintenance of two-parent families.

State and federal law establishes the right of any individual:

- to apply for financial assistance;
- to have his eligibility for such assistance determined promptly and in conformity with law and established policy;
- if found eligible, to receive assistance promptly and in the amount determined according to established policy; and
- to appeal to the Commissioner of Social Services, if he is dissatisfied with the decision of the local department on his case.

100.2 ADMINISTRATION - Title 63.2 of the Code of Virginia mandates a local department of social services in every political subdivision of the State, or combination thereof, and specifies the duties and responsibilities of the local social services board and superintendent/director, as well as the methods of discharging these responsibilities.

The law also defines the general and specific duties and responsibilities of the **Virginia** Department of Social Services in relation to supervision of the local social services programs.

Within the framework of the statutes and the regulations of the State Board of Social Services, local boards of social services carry responsibility for the administration of social services programs in their respective localities. The **Virginia** Department of Social Services carries responsibility for supervision of local programs, consultative assistance to localities in the implementation of programs, and monitoring and evaluation to assure that the intent of the law and regulations is fulfilled on a statewide basis.

* Social Security Act, Sec. 404(a)(1)

** Social Security Act, Sec. 401(a)

In addition, the **Virginia** Department of Social Services carries direct responsibility for locating and securing support from responsible persons for children receiving TANF and, on application, providing this same service to non-**public assistance** clients.

100.3 FUNDING - The TANF Program is funded through a federal block grant and from State funds authorized by the General Assembly of Virginia.

100.4 RECORD RETENTION - The Virginia Public Records Act, §42.1-76, et seq. of the Code of Virginia places authority to issue regulations concerning retention and destruction of records with the Library of Virginia (LVA). The LVA General Schedule No. 15 governs records maintained by local social service agencies, including client case records. LVA General Schedule No. 02 governs locality fiscal records including purchase orders. While many records can be destroyed three years after case closure there are exceptions to that general rule. These exceptions include situations involving audits, investigations, court cases, and fraud or overpayments related to supportive services and emergency assistance among others.

Each local agency must designate a Records Officer who will be in charge of seeing that LVA regulations for record retention and destruction are followed. See <http://lva.virginia.gov/agencies/records/retention.asp> for information about establishing a Records Officer and for access to the specific schedules for record retention and disposition. The Library encourages agencies to contact the Records Analysis Services section at 804-692-3600 with questions about records management.

101.1 NONDISCRIMINATION - Federal law and the Virginia Human Rights Act, Virginia Code §2.2-3900 et seq., bar discrimination on the basis of age, race, sex, disability, religious creed, national origin, and political belief. The following civil rights laws apply in TANF:

1. The Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq.
2. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794
3. The Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.
4. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.

Virginia has established procedures for ensuring fair and equitable treatment of applicants and recipients of public assistance. The local department of social services must assure that no person shall, on the grounds of age, race, color, sex, disability, religious creed, national origin, or political belief be subjected to discrimination.

- A. Key Principles - Compliance with these laws assures that equal opportunity exists for persons with disabilities to benefit from all aspects of public assistance programs, including access to the proper support services to enable such individuals to work and to keep their families healthy, safe and intact. There are two key principles underlying the bar on discrimination against people with disabilities:
1. Individualized treatment. “Individualized treatment” requires that individuals with disabilities be treated on a case-by-case basis consistent with facts and objective evidence. Individuals with disabilities may not be treated on the basis of generalizations and stereotypes.
 2. Effective And Meaningful Opportunity. “Effective and meaningful opportunity” means that individuals must be afforded meaningful access to the TANF program so that individuals with disabilities benefit from and have meaningful access to TANF to the same extent as individuals who do not have disabilities.
- B. Legal Requirements - In order to implement these two principles, the following legal requirements must be met:
- Ensure equal access through the provision of appropriate services to people with disabilities.
 - Modify policies, practices and procedures to provide such equal access.
 - Adopt non-discriminatory methods of administration in the program.
- C. Applicability To All Staff, Contractors, Vendors At The State And Local Levels - In compliance with the federal laws, Virginia does not discriminate against people with disabilities in its TANF program. This applies to all Department of Social Services staff at both the state and local levels. It also applies to those agencies and entities with which we contract for services. State and county agencies must ensure that contractors and vendors do not subject recipients to discrimination.

- D. Definition Of A Person With A Disability - The Americans with Disabilities Act of 1990 as amended protects individuals with a “disability” and defines that term to mean a person who has a physical or mental impairment that substantially limits one or more of the major life activities of that individual, a person who has a record of such an impairment, or a person who is being regarded as having such an impairment. “Life activities” include, but are not limited to: the operation of a major bodily function, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Chronic health problems such as asthma, diabetes, and hypertension may also be considered disabilities if these conditions limit the individual’s ability to function.
- E. Complaint Procedures - Individuals who believe that they have been discriminated against on the basis of disability have the right to file a grievance under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act with the state TANF Manager. The grievance must be resolved promptly.

Individuals who believe they have been discriminated against on the basis of disability (including failure to provide reasonable accommodations), race, national origin (including the failure to provide access to services to people with limited English proficiency) can also file a complaint with the Office of Civil Rights at the U.S. Department of Health and Human Services. Complaints must be filed within 180 days of the date the alleged discrimination occurred. The complaint should include the information listed in **Section 101.2.A**. **A written complaint may be filed by mail, fax or email to:**

Office for Civil Rights
U.S. Department of Health & Human Services
150 S. Independence Mall West, Suite 372
Philadelphia, PA 19106-3499
Hotline: 1-800-368-1019
TDD: 215-861-4440
Fax: 215-861-4431
Email: OCRComplaint@hhs.gov

- F. Responsibility To Share Information Between Staff And Contractors - If one section of DSS determines that a person has a disability, then the staff must share that information with the other staff, as appropriate.

The case record must include a copy of the form “Do You Have a Disability?” along with a description of any reasonable modifications that agency staff have determined are needed to address the person’s disability and services and supports the agency will provide to assist the individual and family.

- G. Staff Authority To Make Reasonable Modifications - It is the responsibility of the worker to consider whether a person may have a disability, and how a person’s disability may affect the person’s ability to comply with rules, fill out forms, attend appointments, etc. If it is determined that a person has a disability that affects her ability to comply with program rules or procedures, the worker has the authority to make reasonable modifications to program rules, requirements and

procedures to ensure that the person with a disability receives full and meaningful access to TANF programs and services.

Evidence of disability of a recipient or a household member in need of the recipient's care, including any indications that the person may have a disability, and all requests for reasonable accommodations shall be documented in the case file.

H. Examples Of Accommodations

Ms. A comes in to apply for TANF. She has a learning disability and is unable to complete the application. As a reasonable accommodation, staff assists her to complete the application.

Ms. B is not able to come to the office due to the nature of her disability. Staff arranges to obtain the information by phone.

Ms. C missed repeated appointments. It is determined that she has a mental illness preventing her from organizing information and keeping track of appointments. The staff phones her on the morning of an appointment to help her to remember to keep the appointment.

101.2 COMPLAINT PROCEDURES - Any person who believes that he has been subjected to discrimination on the basis of race, color, national origin, sex, age, religion, political affiliation, or disability has a right to file a complaint. Such a complaint may be filed also by a representative of the person allegedly discriminated against. Procedures below are to be followed:

- A. When the alleged discriminatory practice is on the part of the local department or its staff, the complaint is to be made in writing to the local **social services** board not later than 180 days from the date of the alleged discrimination. A complaint may also be filed with the Commissioner of the Virginia Department of Social Services, or with the Region III Office of Civil Rights. The written complaint must include:
1. The name of the person or persons felt to have been treated unfairly.
 2. The date and nature of the treatment received.
 3. The names of other persons, if any, who were present when this action allegedly occurred.
 4. Any other pertinent facts related to the complaint.
 5. The date the complaint is made.
 6. The signature of the person making the complaint.
- B. Each complaint received is to be investigated and corrective action taken if appropriate.
- C. If the person making the complaint requests a hearing before the local board, the request is to be granted and reasonable notice of the hearing given by the agency to those persons whose participation is necessary in a review of the questions raised in the complaint.

- D. Following the hearing, the local board will give the complainant a statement of the findings, and if the complaint is justified, a statement as to what corrective action will be taken.
- E. If the complainant is not satisfied with the findings of the local board, he may write within 30 days of the date of receipt of the board findings to the **Virginia** Department of Social Services.
- F. The **Virginia** Department of Social Services will make an investigation of the circumstances and advise the complainant in writing of its findings and of any action to be taken by the local department.

State staff in the regional offices have responsibility for reviewing and supervising local methods of handling complaints.

101.3 RECORDS, REPORTS AND REVIEWS - The local department is to maintain in its administrative file a record of each complaint, including the complainant's statement and a file of the investigations, findings and action taken. If there has been a hearing before the local board, the record should include a copy of the board's statement to the complainant.

From time to time, other reports may be required by the **Virginia** Department of Social Services to assure compliance with the Civil Rights laws.

The practices of a local department with respect to compliance are subject to review by a representative of both the State and federal agencies.

102.1 INTENTIONAL PROGRAM VIOLATION (IPV) means any action by an individual for the purpose of: 1) establishing or maintaining the family's eligibility for Temporary Assistance for Needy Families (TANF)* (diversionary and ongoing assistance) or Virginia Initiative for **Education and Work** (VIEW); or 2) increasing or preventing a reduction in the amount of the payment; or 3) establishing eligibility for VIEW supportive or transitional services.** For an IPV to exist, the action by the individual must be: 1) an intentionally false or misleading statement or misrepresentation; 2) a concealment or withholding of facts; or 3) an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.*** Whoever obtains or attempts to obtain, or aids or abets any person in obtaining, by means of a willful statement or representation, or by impersonation, or other fraudulent device, assistance or benefits from TANF and other programs designated under rules and regulations of the State Board of Social Services is committing an IPV.

In determining whether an IPV exists, the worker must determine if the individual's actions were the result of a disability such that the person did not have the intent to make a false or misleading statement or misrepresentation. In such cases, an IPV cannot be found. Instead, the local agency will work with the individual to ensure that a similar problem does not arise in the future. This may require that the agency put in place steps to assist the individual to provide the worker with the needed information on a timely basis.

102.2 RESPONSIBILITIES OF LOCAL DEPARTMENTS - The local agency has the following responsibilities in relation to IPV:

- A. During the TANF application and VIEW assessment, the agency must ensure and document that a clear and full explanation is given to the applicant/ recipient of the eligibility requirements for the type of assistance and services being requested or received; of his responsibility to give complete and accurate information related to his eligibility and to report promptly and fully any changes in his circumstances; and of the provisions of the law with respect to knowingly giving false information or deliberately withholding information which would affect his eligibility for assistance or the amount thereof. The worker must explain fully to the recipient what types of changes in his circumstances would have an effect on the payment and services provided. At TANF application, the agency must explain IPV to the applicant/recipient and explain the Notice of Intentional Program Violations and Penalties (Form 032-03-0646). A copy is to be given to the applicant/recipient and a copy is filed in the eligibility record. The assistance unit must report all required changes within 10 calendar days from the date the unit knows of the change but is reported timely if reported by the tenth of the following month.
- B. The local agency must conduct an investigation of an allegation that an individual committed an intentional program violation, regardless of the TANF payment or VIEW Program status. A determination as to whether an IPV has occurred must be based on careful consideration of the

* 45 CFR 235.112

** 2002 Acts of Assembly, Item 362

*** Code of Virginia 63.2-522

circumstances. A determination must be made that there has been a deliberate misrepresentation on the part of the applicant/recipient. Consideration should be given to: (1) whether the incorrect or unreported information was, in fact, known to the applicant/recipient and (2) whether the applicant/recipient understood the eligibility and reporting requirements.

- C. The local agency is required to proceed against any individual alleged to have committed an intentional program violation by referring the matter to the appropriate authorities for criminal action in a federal or state court or through an administrative disqualification hearing (ADH).

An individual may be charged with an IPV even if the application was denied. An overpayment does not have to exist for there to be a determination of an IPV. Individuals may be charged with an IPV for VIEW even if supportive or transitional services have not yet been received. For a VIEW IPV the agency is not to terminate future supportive or transitional services if those services are needed to assist the client to maintain employment.

The local agency may refer a case for prosecution or initiate an ADH regardless of the current eligibility of the individual.

- D. The local agency must coordinate its actions with any corresponding actions being taken against the individual under the Supplemental Nutrition and Assistance Program if the factual issues involved arise out of the same or related circumstances.

- E. The forms listed below must be used in the IPV process. The forms and instructions for their use may be accessed from the Local Agency DSS Intranet site (www.localagency.dss.state.va.us/).

1. Notice of Intentional Program Violation (032-03-0721)
2. Waiver of Administrative Disqualification Hearing (032-03-0722)
3. Referral for Administrative Disqualification Hearing (032-03-0725)
4. Advance Notice of Administrative Disqualification Hearing (032-03-0724)
5. Administrative Disqualification Hearing Decision (032-03-0723)
6. Notice of Disqualification for Intentional Program Violation (032-03-0052)

- F. Cases in which an IPV is alleged will be referred for prosecution in accordance with the agreement established between the local Commonwealth's Attorney or other legal authority and the local agency. **This agreement shall include information on how and under what circumstances cases will be accepted for possible prosecution. Additionally, it will contain any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum for the overpayment which resulted from the IPV. The local agency will refer for prosecution all individuals meeting the criteria established by the Agreement.**

102.3 IPV DISQUALIFICATION PENALTIES - An individual found to have committed an IPV by a court of appropriate jurisdiction, or pursuant to an administrative disqualification hearing (ADH), or by waiving his right to an administrative disqualification hearing is subject to IPV penalty periods of six months for the first offense, twelve months for the second offense, or permanently for the third offense. Notice of the disqualification penalties for IPV is included in the Application for Benefits (**032-03-0824**) and the Notice of Intentional Program Violations and Penalties (032-03-0646).

If found to have committed an IPV pursuant to an ADH, and at some later point it is determined that the individual had a disability that interfered with his or her ability to file accurate and timely information, or with his or her capacity to have the intent to defraud or otherwise provide improper information to the state, or has limited English proficiency that impaired his or her ability to provide accurate and timely information, the worker must delete the IPV and prospectively reinstate benefits.

NOTE: The ADH process may not be used to disqualify an individual who committed a TANF IPV prior to December 1, 1992, or a VIEW IPV prior to April 1, 2003. However, IPV's committed prior to these dates can be referred for prosecution. If the individual is found guilty, no disqualification period can be imposed.

- A. Only the individual found guilty of committing an IPV shall be disqualified. The local agency shall not take the individual's needs into account when determining the assistance unit's need and the amount of assistance. However, if the individual is a parent, any income of the disqualified parent must be considered available to the assistance unit. (See [Section 305.4](#)) NOTE: When an IPV occurs and the Waiver of Administration Disqualification Hearing (032-03-722) is signed while the application is pending, the disqualified individual's needs are excluded when determining a diversionary assistance payment.
- B. The period of disqualification must begin no later than the second month following the month of the court's decision of guilty, the date the waiver notice is received by the local agency, or the date the Administrative Disqualification Hearings Decision Notice is issued by the hearing officer. If the individual is not eligible for TANF at the time the disqualification is to begin, the period must be postponed until the individual applies for and is determined eligible for benefits. The disqualification period must run uninterrupted until it expires. VTP months will not count as months of disqualification.

The disqualification penalty must be in addition to, and cannot be substituted for, any other sanctions or penalties which may be imposed by the TANF program or by the court for the same offense.

Any period for which a disqualification is imposed will remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction. If the disqualification period was imposed by an ADH and it is determined that the individual had a disability that prevented the filing of accurate and timely information or affected his or her capacity to have the intent to defraud or otherwise provide improper information to the state, or has limited English proficiency that prevented providing accurate and timely information, then the local agency will delete the IPV and reinstate benefits prospectively. In no event shall the duration of the period for which such penalty is imposed be subject to review in a fair hearing.

- C. An individual convicted in state or federal court of fraudulently misrepresenting his address to receive benefits in two or more states is ineligible to receive TANF for 10 years. Benefits refer to TANF, Medicaid, and the Supplemental Nutrition Assistance Program (SNAP). The 10 year period begins on the date the individual is convicted.*

102.4 ADMINISTRATIVE DISQUALIFICATION HEARINGS (ADH) - An administrative disqualification hearing is an impartial review by a hearing officer of an individual's actions involving an alleged IPV for the purpose of rendering a decision of guilty or not guilty of committing an IPV.**

In order to request an ADH, the local agency shall ensure that a pre-hearing investigation has occurred and that the evidence supports the charge of **intentional program violation**. **There must be clear and convincing evidence which demonstrates the individual committed or intended to commit a TANF or VIEW IPV.**

* Code of Virginia 63.2-522

** 45 CFR 235.113

Examples of evidence include but are not limited to:

- A. Written verification of unreported income received by the individual; or
- B. Verification that the individual understood the reporting responsibility by his signature on the application **or renewal application; or**
- C. An application, **renewal application** or change form submitted during the period the IPV is alleged to have occurred which omits the information in question; or
- D. Documented contacts with the individual during the period the IPV is alleged to have occurred in which the individual failed to report the information in question.
- E. Verification that information on a voucher or check for gas or check to a vendor was altered. Example: changing money amounts, purpose, date or signature; or
- F. Verification that the client received other services provided by the agency and sold them to another individual; or
- G. Verification that items were obtained under false pretenses. Example: obtaining supportive services to purchase a vehicle in order to participate in VIEW and then giving the vehicle to another person.

If a case is referred for an ADH, it shall not be simultaneously referred for prosecution. Cases dismissed in court or individuals acquitted by the court cannot be referred for an ADH.

102.5 NOTIFICATION OF IPV - Prior to requesting an ADH by the State Hearing authority, the local agency shall provide the form, Notice of Intentional Program Violation, to the individual alleged to have committed the program violation advising the individual of the alleged IPV. In addition, the individual must be informed he can waive his right to an administrative disqualification hearing by signing the Waiver of Administrative Disqualification Hearing form and returning this form to the local agency within 10 days.

The notice must advise the person that reasonable accommodations are available in order to participate in the hearing. It must also inform the person that if the person has a disability or limited English proficiency that could have impaired the person's ability to provide accurate and timely information, the person should provide this information to the eligibility worker and the hearing officer, as this information could have an impact on the decision about whether there is an IPV.

If there is an indication of a disability or that the person has limited English proficiency that prevented providing accurate and timely information or the capacity to have the intent to defraud or otherwise provide improper information, but the staff has determined to proceed with the IPV because there is compelling

evidence of intent to violate the requirements, then it will not be appropriate to accept a waiver of hearing from the individual and the request for a hearing must be forwarded to the State Hearing authority.

If a signed waiver is received, an ADH is not scheduled and the disqualification period is imposed in accordance with Section 102.3.

102.6 REFERRAL FOR AN ADH - If a signed waiver is not received within 10 days, the local agency shall request an ADH be scheduled by submitting the form, Referral for Administrative Disqualification Hearing, to the State Hearing Manager. The form must include the following information:

- A. Identifying information
- B. Summary of the allegation(s)
- C. Summary of the evidence
- D. Copies of documents supporting the allegation(s)

The referral is to be signed and dated by the supervisor or local agency director.

A fair hearing and an ADH may be combined into a single hearing if the factual issues arise out of the same or related circumstances provided that the individual receives prior notice of the consolidation.

If the ADH and fair hearing are combined, the agency must follow ADH time frames for conducting an ADH. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not the IPV has occurred, the household will lose its right to a subsequent fair hearing on the amount of the claim. However, the local agency must, at the household's request, allow the household to waive the 30 day advance notice period for the scheduling of the ADH when the hearings are combined.

102.7 SCHEDULING THE ADH - Upon receipt of the request for an ADH, the State Hearing authority will forward the request to the appropriate Regional Hearing Officer.

102.8 ADVANCE NOTICE OF ADH - The hearing officer will schedule a date for the ADH and provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date the ADH has been scheduled. The form, Advance Notification of Administrative Disqualification Hearing, is used for this purpose.

The advance notice of ADH may be sent by first class mail, certified mail – return receipt requested, or by any other reliable method. If the notice is sent by first class mail and it is subsequently returned as undeliverable, the hearing may still be held.

Once the ADH has been scheduled, the ADH is to be conducted and a decision made within 90 days of the date the household is notified in writing that the ADH has been scheduled. A copy of the decision must be provided to the household and the local agency.

102.9 TIME AND PLACE OF THE ADH - The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing an IPV. The individual may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH shall not be postponed for more than a total of 30 days and the State Hearing authority may limit the postponement to one.

102.10 FAILURE OF INDIVIDUAL TO APPEAR AT THE ADH - Unless the agency has **received proof that the ADH advance notice has not been received, the requirement to notify the individual** alleged to have committed the IPV has been met. The ADH may be held even if the member or representative subsequently cannot be located or fails to appear without good cause.

The individual has 10 days from the date of the scheduled ADH to present reasons other than nonreceipt of the notice to show good cause for failure to appear at the hearing. Good cause reasons based on nonreceipt of the notice must be presented within 30 days of the scheduled hearing.

Even though the individual is not represented, the hearing officer must carefully consider the evidence and determine if an IPV was committed based on clear and convincing evidence. If the individual is found to have committed an IPV but a hearing officer later determines there was good cause for not appearing, the previous decision is no longer valid and a new ADH must be conducted. The hearing officer who conducted the original hearing may conduct the new hearing. The good cause decision must be entered into the hearing record by the hearing officer.

102.11 PARTICIPATION WHILE AWAITING A HEARING - A pending ADH shall not affect the individual's right to participate in the TANF/VIEW program. The local agency may not disqualify an individual until the hearing officer finds that the individual has committed an IPV. This does not preclude, however, the local agency from reducing, suspending or terminating assistance for other reasons.

102.12 CONDUCT OF THE ADH - The hearing officer presides and conducts the hearing informally. Technical rules of evidence are not required. The hearing may be conducted via a teleconference.

A. Attendance at the ADH

The ADH is attended by persons directly concerned with the issue. This normally means a representative of the local agency and the individual alleged to have committed the IPV. If space is limited, the hearing officer has the right to limit the number of persons in attendance.

B. Responsibilities and Duties of the Hearing Officer

The hearing officer shall:

1. Identify those present for the record.
2. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charge(s) may be used against him in a court of law. If the person is not represented and has been determined to have a disability or limited English proficiency that could affect his or her ability to represent him or herself, then the hearing officer must direct the local agency to assist the person in identifying a representative.
3. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the individual or the local agency to request review of the hearing officer's decision by the Commissioner's review panel.
4. Consider all relevant issues. Even if the household is not present, the hearing officer is to carefully consider the evidence and determine if an IPV was committed.
5. Request, receive and make part of the record all evidence determined necessary to render a decision.
6. **Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing.**
7. **Advise the local agency to obtain medical assessment at local expense if the hearing officer considers it necessary.**

C. Rights of Individual

The individual alleged to have committed an IPV must be given adequate opportunity to:

1. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local agency to establish the alleged IPV, shall be made available provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge, or the nature and status of pending criminal prosecutions, is protected from release.

If requested by the household or its representative, the local agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release, and other documents or records which the household will not otherwise have an opportunity to contest or challenge, shall not be introduced at the hearing or affect the hearing officer's decision.

2. Present his own case or with the aid of an authorized representative.
3. Bring witnesses.
4. Establish all pertinent facts and circumstances.
5. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.
6. Advance arguments without any undue influence.

As the individual may not be familiar with the rules of order, it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the individual feel most at ease.

The individual may refuse to answer questions during the hearing.

D. Responsibilities and Duties of Local Agency

The local agency representative is responsible for presenting the agency's case at the ADH. The agency representative has the same rights as the individual as listed in Section 102.12.C.

102.13 NOTIFICATION OF ADH DECISION - The hearing officer is responsible for rendering a decision based on clear and convincing evidence. The decision shall be based on evidence and other material presented at the hearing. The hearing officer must substantiate his decision by identifying supporting evidence and applicable regulations.

Following the ADH, the hearing officer shall prepare a written report of the hearing which shall include findings, conclusions, decisions and appropriate recommendations. The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent TANF regulations and respond to reasoned arguments made by the individual or representative.

The hearing officer must notify the individual of the decision within 90 days of the date of the Advance Notice of ADH. The Administrative Disqualification Hearing Decision Form shall accompany the findings. The individual shall be informed of his right to request the Commissioner's appeals review panel review of the decision within 10 days of the date of the notice. If the individual is found guilty of an IPV, the decision shall advise the individual that disqualification will occur.

If the individual did not appear at the hearing and the hearing officer determines that an IPV was committed, the hearing officer will delay notification of the decision until 10 days after the date of the hearing to allow the individual time to present good cause for failing to appear. No notice to the individual is required when failure to appear occurs.

The determination of an IPV by the hearing officer cannot be reversed by a subsequent fair hearing.

The individual is entitled to seek relief in a court of appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

The amount of the overpayment subject to repayment may be appealed by a fair hearing, provided that the individual did not request a fair hearing for that reason which was consolidated with the ADH.

102.14 IMPLEMENTATION OF THE HEARING DECISION - Upon receipt of the notice of a decision from the hearing officer finding the individual guilty of an IPV, the local agency must inform the individual of the disqualification by sending the Notice of Disqualification for Intentional Program Violation Form. A copy of the decision will be placed in the TANF and VIEW case records. A copy shall also be sent to the agency's TANF Field Consultant. The notice shall inform the individual of the reason for the disqualification and the date the disqualification shall take effect or that the disqualification will be postponed until the individual reapplies and is determined eligible for benefits if the TANF case has been terminated or closed. Additionally, this notice must advise the individual of the amount of benefits the assistance unit will receive. The individual must be disqualified in accordance with **guidance** located at Section 102.3. The Advance Notice of Proposed Action must also be sent to serve notice of the reduction or termination of benefits.

If the individual is found not guilty of committing an IPV, no disqualification is imposed and any overpayment is handled as a nonfraud recovery. If a VIEW participant is found not guilty of committing an IPV for VIEW supportive or transitional services, no overpayment is considered to exist.

103.1 PURPOSE OF SAFEGUARDING OF INFORMATION AND SCOPE OF REGULATIONS - Mutual trust and confidence between client and worker are basic to an effective program of assistance and services. The client has a responsibility to provide the information which the agency needs to determine eligibility for assistance or to provide services. At the same time, the client has a right to expect that information given to the agency will be kept confidential and made use of only as needed in the administration of the public **assistance** program.

103.2 CONFIDENTIALITY

Federal law requires that client information be kept confidential. The local department may not release information about the client without the client's written consent except for purposes directly connected with the administration of public assistance programs, or by court order, except as outlined at 103.3, 103.4, 103.5, and 103.6.

A. Legal Basis for Confidentiality

1. Federal Privacy Act

Information from all federal agencies must be kept confidential. Local departments may not release information to any outside source, except as required for purposes of program administration.

2. Virginia Statutes and Regulations

The legal basis for this guidance includes state laws relating to privacy protection (Code of Virginia § 2.2-3803), data collection and dissemination (Code of Virginia § 2.2-3800), access to public assistance records (Code of Virginia § 63.2-102), access to health records (Code of Virginia 32.1-127.1:03), and regulations promulgated by the State Board of Social Services.

B. Release of Information

1. Release of Information Not Requiring Additional Written Permission

Based on the client's signature on the Request for Assistance or the Application for Benefits, information related to the TANF case, including information related to VIEW, may be given out or obtained in order to carry out the administration of the program without additional written permission from the client.

2. Release of Information Requiring Additional Written Permission

Except as provided for in 103.2B(1) above, the client must give additional written permission before case information is released to or obtained from an outside agency other than an agency of federal, state, or local government. The Confidentiality Form (032-01-0040) or the Consent to Exchange Information form (032-01-0005), also known as the Authorization to Use and Exchange Information form, should be used to secure written permission.

C. Client Access to Records

Clients, or their representatives, may read information about themselves contained in their own case records except for medical or mental health reports when the physician who wrote the report recommends against it. Other individuals who are or were part of the assistance unit can also read information about themselves contained in the TANF case record under the same terms and conditions. In the case of an individual who was on the TANF case as a dependent child, access to the record will be available only after the individual reaches age 18.

The agency shall not release the name or other identifying information about an individual who has made a complaint alleging child abuse/neglect, fraud, participation in illegal activities, or other questionable behaviors on the part of the client.

The local agency is advised to seek guidance from the agency's legal counsel if there are questions about the propriety of releasing specific information, or if the agency has reason to be concerned that the safety of a client or former client might be threatened by the release of such information.

D. Penalty for the Unauthorized Release of Confidential Information

The disclosure, directly or indirectly, of confidential information contained in a case record by any officer, agency or employee of the local department shall be considered a Class 1 misdemeanor.

E. Ownership of Records

All client information contained in the local department's records is the property of the local department. Employees of the local department shall protect and preserve such information from dissemination except as necessary for the administration of the case.

Original client records may be removed from the premises only by auditors, individuals monitoring case records, other authorized staff of the state or the local department, or by court order.

The local department may destroy records pursuant to record retention schedules referenced at 100.4.

F. Correcting Inaccurate information

Local departments must provide means for inaccurate information to be corrected.

103.3 DISCLOSURE OF INFORMATION FROM THE INCOME ELIGIBILITY VERIFICATION SYSTEM (IEVS)

Retention requirements and requirements regarding disclosure of information regarding all match reports received through the Income Eligibility Verification System (IEVS), including Internal Revenue Service (IRS) data, can be found in the IEVS User Guide.

103.4 EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES

- A. **The agency must provide the address of a current or former recipient when requested to do so by a Federal, State, or local law enforcement officer who furnishes the name of the recipient: ***
1. who is fleeing to avoid prosecution, or custody, or confinement for a felony, or who is in violation of a condition of Federal, State or local probation or parole; or
 2. who has information that is necessary for the officer in the conduct of official duties; and
 3. when locating or apprehending the recipient is within the officer's official duties.
- B. The record must be documented carefully regarding the release of the address. Documentation must include:
1. the name, badge number and law enforcement affiliation of the officer; and
 2. a written request for the address. The form "Request for the Address of a TANF Recipient" (**032-03-0560**) located in the forms drawer may be used for this purpose.

103.5 RELEASE OF INFORMATION REGARDING PAST RECEIPT OF BENEFITS BY ALIENS*

Section 212(a)(4) of the Immigration and Nationality Act allows the denial of entry into the U.S. of any alien determined likely to become a public charge. If the U.S. Citizenship and Immigration Services (USCIS), the Department of State, or an immigration judge requests information regarding past receipt of AFDC or TANF benefits for the purpose of evaluating public charge risk, the local agency must deny the request unless the agency has the written consent of the alien.

103.6 RELEASE OF INFORMATION TO THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES

(USCIS) REGARDING ILLEGAL ALIENS** - If a representative of the USCIS requests information regarding an individual who the local agency knows is unlawfully in the U.S., the local agency must furnish the USCIS with identifying information. This information is limited to the name, address, and Social Security Number of the individual. This information will be reported to USCIS by a local department of social services only upon request by a USCIS representative.

For the local agency to know an individual is unlawfully in the U.S., the individual must have presented as part of the application or renewal process a Final Order of Deportation issued by USCIS or the Executive Office of Immigration Review. For purposes of informing USCIS of an illegal alien, only a Final Order of Deportation is sufficient proof of illegal status.

* 45 CFR 205.50(a)(1)(v)

** Public Law 104-193, Section 404

104.1 PURPOSE AND SCOPE OF APPEAL PROCESS - The Temporary Assistance for Needy Families State Plan and the Code of Virginia, Sections 63.2-517 - 63.2-519, as amended, provide the opportunity for a "fair hearing" to individuals affected by the administration of the public assistance programs.

The statute establishes the right of any individual to appeal and receive a fair hearing before the State agency (a) because his claim for assistance is denied, or is not acted upon with reasonable promptness; or (b) because he is aggrieved by any other agency action affecting his entitlement to or receipt of assistance, or by agency **guidance** as it affects his situation.

The regulations contained herein are applicable to appeals in the TANF Program. These provisions do not apply to appeals related to the Medical Assistance Program, which is administered by the Department of Medical Assistance Services, except that, when an appeal in relation to Medicaid is requested on the basis of eligibility, the local agency responsible for the determination of eligibility for medical assistance shall participate in the hearing before the Department of Medical Assistance Services.

104.2 ROLE OF THE COMMISSIONER OF SOCIAL SERVICES - Sections 63.2-517 through 63.2-519 of the Code of Virginia vest the Commissioner of Social Services with ultimate authority and responsibility for fulfillment of the provisions of the appeal process. The State Board, as authorized by Section 63.2-217 of the Code of Virginia, establishes policies and procedures to implement the appeal process in accordance with applicable laws and regulations.

The Commissioner may delegate to duly qualified hearing officers the authority to make decisions in any appeal case. The Commissioner shall establish an appeals review panel to review hearing decisions upon the request of either the applicant or the local board. The panel's responsibilities are to determine if any changes are needed in the conduct of future hearings, or to **guidance** and procedures related to the issue of the appeal, and periodically report its findings to the Commissioner.

104.3 PRELIMINARY DEFINITIONS

- A. Assistance - This term, for purposes of this Section, refers to financial assistance in the TANF program.
- B. Claimant - A person who files an appeal of some aspect of his entitlement to assistance.

- C. State Hearing Authority - A comprehensive term used to designate the State Agency decision-maker in appeal cases; as such, it includes the Commissioner and duly qualified hearing officers of the **Virginia** Department of Social Services, in whom the Commissioner has reposed full authority to make binding decisions in appeal cases in the name of the State Hearing Authority.
- D. Hearing Officer - An impartial representative of the State Agency to whom appeals are duly assigned and by whom they are heard. He must not have been involved in any way with the agency action on appeal. The hearing officer is empowered with the authority specified herein to conduct and control hearings and to decide appeal cases.
- E. Hearings Manager - An individual who determines, promulgates and assures compliance with internal procedures, including processes for maintaining the Commissioner's review of fair hearings, necessary for an effective State fair hearing system. This individual also provides supervision and training to hearing officers and can hold hearings and render decisions for the Commissioner of Social Services.
- F. State Agency - This term, for purposes of this Chapter, refers to the Home Office and to the Regional Offices of the Virginia Department of Social Services. It is the responsibility of the State Agency to assure that appeal provisions are correctly administered, that decisions in appeal cases are consistent with established public assistance policies, and that such decisions are given prompt effect.
- G. Date of Hearing Decision - The date of the letter conveying the hearing officer's decision. This date should be the same as the postmark. If it is not and the recipients of the letter can verify that it is different, applicable time frames will be extended.

105.1 NOTIFICATION OF RIGHT TO APPEAL

- A. Every applicant for and recipient of assistance shall be informed in writing, at the time of application and at the time of any action, proposed or taken, affecting his claim, of the circumstances under which he has a right to a fair hearing of the method by which he may obtain a hearing, and of the right to be represented by others or to represent himself.* At the time assistance is first requested, the worker will provide the applicant with information about the assistance program(s) for which he is applying and fair hearing procedures. For recipients, this is accomplished when the recipient receives a written notice at the time of any action, proposed or taken, affecting his claim.

In addition to the use of written material, the local agency worker has the responsibility of informing the client orally of the right to appeal to the State agency if he is dissatisfied with any actions of the local board or Superintendent or failure to act in relation to his eligibility or the amount of assistance. The local agency must inform clients orally that if they have a disability that limits their ability to file an appeal, they are entitled to help from the local agency in filing the appeal.

- B. Local agencies have an affirmative duty to provide information and referral services to help claimants make use of any legal services available in the community for representation in appeal hearings.
- C. In addition to advising applicants and recipients about the right of appeal and the hearing procedures, other interested persons and organizations are to be advised verbally and by use of the leaflets as indicated.
- D. All applicants and recipients must be informed of their right to request an appeal either orally or in writing.**

105.2 FAIR HEARINGS

- A. Special Provisions with Respect to Termination or Decrease in Amount of Assistance
1. Advance Notice of Proposed Action - The Goldberg v. Kelly decision of the United States Supreme Court requires that in cases of any proposed reduction, termination, or suspension of assistance payments, written advance notice of the proposed action must be mailed to the recipient at least 10 days before the action is taken. In this context, "action" refers to the date of issuance of the reduced assistance payment, or in cases of termination or suspension, failure to issue the payment on the regular issuance date. In the computation of the 10 days the date the advance notice is postmarked shall not be included.

* 45 CFR 205.10(a)(3)

** 22 VAC 40-295-110

2. Provisions Regarding Continuation of Assistance - If a hearing request is received prior to the effective date of any proposed reduction in benefits or discontinuance of benefits, assistance will be continued in the original amount without interruption until a hearing decision is rendered, unless the client requests in writing that benefits not be continued. If the client does not want benefits to continue in the original amount she must submit in writing to the local agency or the Appeals Office, a statement indicating her desire to refuse such assistance.

Once the Appeals and Fair Hearings Office receives an appeal request, a Local Agency Validation Form is sent to the local agency. This begins the validation process. The local agency completes the bottom portion of the form indicating whether or not the appeal was filed within 30 days of the mailing date of the Notice of Action. Appeals filed within this time frame are considered valid. (The 30 day period ends on the 31st day following the date of the agency's Notice of Action.) The agency also completes the section on the form indicating whether or not the appeal was filed within the applicable time frame for continuation of benefits. (The agency also indicates on the form if action has been taken to continue benefits). The local agency does not have to wait for the validation form to continue benefits. Once the form is received the local agency has five days to send it back to the Appeals Office. If the worker receives the request for an appeal timely, she must continue the benefits.

Upon notification by the hearing officer, the agency shall inform the claimant in writing that assistance is being continued in the same amount pending the hearing decision unless there are subsequent changes in the claimant's situation. (Refer to 106.1 E)

If continuation of assistance in the original amount is declined by the recipient in writing and the hearing decision is in the recipient's favor, the agency will correct the underpayment(s). If the decision of the hearing officer is in favor of the agency and the client did not continue to receive benefits no action will be taken. If the client did continue to receive benefits during the appeal process benefits are subject to recovery by the agency. (Refer to 106.1 E).

The agency is not required to provide additional notice before taking action based on the appeal decision. See **401.4.E**. The difference between the original amount continued during the appeal and the correct benefit as supported by the hearing decision is an overpayment and must be recouped. The method of collection is that prescribed for recoupment and recovery of overpayments set forth at Section 503.8. Exception: TANF assistance granted during the appeal of a VIEW sanction for a client who has not yet received 24 months of assistance is not considered an overpayment when the hearing decision is adverse to the recipient. The unsuccessful appeal simply delays the imposition of the VIEW sanction and the consequent loss of benefits to the household. Any benefits issued beyond the 24th month are an overpayment and must be recouped.

The requirement for filing an appeal is met if the request for a fair hearing is received by the State or local agency, or postmarked, by the effective date of the change. The same time frame for filing an appeal applies in situations where the assistance unit is homeless and it is agreed that all notices will be available to the client at the local agency.

The following procedures are established to assure that assistance is continued without interruption in every case where a recipient has filed a valid appeal prior to the effective date of the proposed change:

- a. If the proposed action is to terminate or suspend assistance, the benefits must be available for same day issuance in the event an appeal is filed.
- b. In cases of proposed action to reduce assistance, benefits in the reduced amount should be issued, but the difference between the reduced amount and the prior amount must be available for same day issuance in the event a timely appeal is filed.

Note: If the recipient, because of agency error, did not receive advance written notice of the proposed action, or the notice received was not adequate, and an appeal is filed within 30 days of the action, financial assistance must be reinstated retroactively to the date of agency action and continued during the appeal process.

105.3 REQUEST PROCEDURES

- A. A fair hearing may be requested by an expressed indication by a claimant or by a person acting as his authorized representative (such as a relative, friend or attorney), to the effect that he wishes the opportunity to present his case to a higher authority because of dissatisfaction with its treatment by a local agency. An appeal may be requested orally or in writing.*

The right to make such a request is not to be limited or interfered with in any way. If a household makes an oral request for a hearing, the local agency must complete the procedures necessary to start the hearing process. The Notice of Appeal form must be made available to the household to facilitate appeal requests; however, completion of this form by the household is not required if a clear expression for a hearing has been made by some other method. Local agencies must help the claimant submit and process the request, and prepare the case, if needed. Information and referral services must be provided to help claimants make sure of any legal services available in the community that can provide legal representation at the hearing.

The freedom to appeal must not be prejudiced or limited in any way; local agency emphasis must be on helping the claimant to submit his request and on assisting in preparing his case, if necessary.

Although appeals to the State agency will normally be by use of the Appeal to the **Virginia** Department of Social Services form, a written request to the State agency by a claimant or his authorized representative, clearly indicating the wish to present his case to a higher authority will be considered a fair hearing request.

- B. An opportunity for a hearing shall be granted, upon such request made within the time limitation specified in Section [105.4](#) (below), to:

1. Any applicant whose claim for assistance is denied or not acted upon within the time standard specified for processing an application; or
2. Any recipient who is aggrieved by any agency action affecting his entitlement to or receipt of assistance or by agency denial of, or delay over 30 days in responding to, a request for adjustment in payment.

The applicant or recipient may also appeal the local agency's interpretation of law or policy as well as the equity and reasonableness of policies promulgated under the law, when the claimant is aggrieved by their application in his situation.

A hearing will not be granted, however, when either State or federal law requires automatic payment adjustments for classes of recipients unless the reason for an individual appeal is incorrect payment computation.*

* 22 VAC 40-295-110

105.4 TIME LIMITS FOR REQUESTING HEARING

- A. An appeal from any local agency action must be made within the 30 days following receipt by claimant of a Notice of Action informing him of the action on his case or of an Advance Notice of Proposed Action informing him of the agency's intention to take such action.
- B. An appeal based on the failure of a local agency to accept an application or to act within the specified time limit on the application or written request for a change in the amount, kind, or conditions of assistance must be made within 30 days following such failure to accept the application or to take timely action thereon.
- C. The requirement of filing within the time limit is met if the request for appeal is received in the state or local agency, or postmarked, by the end of the 31st day following the date of the agency's notice unless the claimant can provide proof that he/she was given fewer than 30 days to make a request for hearing. Acceptability of the proof rests with the state hearing authority.
- D. If more than 30 days have elapsed in filing the appeal, the State authority may, in the interests of justice, grant an extension of the time period.

* 45 CFR 205.10(a)(5)

106.1 PROCESSING OF APPEAL

- A. The appeal request, upon receipt by the Hearings Manager, is assigned to a hearing officer for validation. The hearing officer will acknowledge the request by letter to the claimant with a copy to his representative, if known, and to the local agency against which the appeal is lodged.
- B. The local agency shall prepare an Appeal Summary of Facts (032-03-0444-00) in the case to be forwarded to the hearing officer no fewer than 7 days prior to the hearing. A general outline of this summary follows, although the content may vary to fit the particular case situation. All statements made should be factual and phrased in a way not objectionable to claimant.

The Appeal Summary of Facts includes the following:

1. Identifying Information

Name of local agency
Name, address, and case number of claimant
Persons included in the assistance unit - Name, birth date, relationship to claimant
Other persons in the household - names, relationship to claimant

2. Date of Request and Reason for Appeal - (Quoting claimant's own words in requesting hearing)

3. Statement of Agency Action

- a. Give a brief, factual statement of the reason for agency action, or failure to act, nature and date of agency action. If agency error, negligence, or administrative breakdown was involved, say so.
- b. Under the heading "agency guidance," give citation and quotation from the TANF Manual of the guidance statement on which agency action was based.
- c. If the amount of assistance is in question, give a detailed breakdown of the claimant's financial circumstances as shown in **VaCMS** and on the **application** with whatever explanation may be necessary.
- d. If the issue appealed is noncooperation with DCSE, give a detailed explanation of the events, dates, and the reason for the noncooperation finding.

4. State whether assistance is continuing during the appeal process in the amount authorized immediately prior to the adverse action.

5. The Summary is to be signed and dated by the supervisor and agency director or designee. The local agency will retain a copy of the Summary which is the official document for presentation of its case at the hearing.
- C. If upon receipt of the Summary, the hearing officer decides the information which has been submitted is unclear or inadequate, additional information will be requested of the local agency.
- D. The local agency shall mail to the claimant or his representative, at a reasonable time prior to the date of the hearing, a copy of the Summary and any other documents and records which are to be used at the hearing.

If other evidence pertinent to the hearing **is** received by the local agency or there are changes in the situation following transmittal of the Summary, copies of the new evidence and a written statement of the changes shall be mailed in advance of the hearing to the hearing officer, the claimant and the claimant's representative, if any. **If** the agency mails (i.e., postmarks) any other such evidence within fewer than seven (7) calendar days before the scheduled hearing, the hearing officer shall reschedule the hearing upon request.

- E. During the period from the filing of an appeal to receipt of decision by the State Hearing Authority, the local agency continues to be administratively responsible for the case on appeal. This responsibility includes appropriate adjustment in eligibility status or payment necessitated by change in claimant's situation, his income, change in composition of assistance unit, or change for any other reason.

In the case where assistance is being continued during the appeal process, however, assistance must not be reduced below the amount being received at the time of receipt of advance notice of proposed action. Exception: If a change in circumstances occurs during the appeal process, advance notice is sent. If the claimant fails to appeal such proposed additional change, assistance may be adjusted with respect to this change in circumstances.* Any such change shall be reported to the hearing officer for consideration of possible effect on the decision.

106.2 FAIR HEARING PROCEDURES

- A. A single group hearing may be held by the State Agency in response to several individual requests, provided there is only one common issue involved. In TANF, the common issue must be one of State or federal law or policy or changes in State or federal law.** If the claimants request a group hearing on an issue specified in this section, the request shall be granted.

In all group hearings, all policies and procedures governing hearings must be followed. Thus, each individual claimant shall be permitted to present his own case or be represented by his authorized representative.

* 45 CFR 205.10(a)(6)(i)(B)

** 45 CFR 205.10(a)(5)(iv)

- B. The hearing will be conducted at a time, date, and place convenient to the claimant(s) and adequate preliminary written notice will be given. The hearing may be conducted via a telephone hearing or a teleconference if the applicant or recipient agrees.* The claimant will be requested to advise the local agency **or the hearing officer** immediately if the scheduled date or place is inconvenient for him but, without such notification it is assumed the arrangements are convenient.

The local agency is responsible for assuring that the claimant has transportation to the hearing if he is unable to make his own arrangements.

When a claimant, for good cause, indicates that the scheduled date is not convenient, the hearing date may be extended. The **hearing officer** will determine whether the provision of extension is being abused and reserves the right to set a date beyond which the hearing will not be delayed. Reasons for extending the hearing date shall include, but not be limited to, illness or a disability of the claimant or of a child or other member of the claimant's household for which the individual is responsible for care which prevents the individual from participating on the scheduled date, temporary absence from the locality, **or** unavailability of claimant's legal counsel or witnesses.

- C. The hearing is to be conducted in an informal atmosphere, and every effort will be made to arrive at the facts of the case in a way most conducive to putting the claimant at ease. It is the hearing officer's responsibility to assure that this is done, and he may, within his discretion, designate those persons who may attend the hearing or the particular portion of the hearing they may attend. He has full authority to recess the hearing or to continue it to another date in the interest of fairness.

D. Specific Hearing Procedures

1. Identification of those present for the record.
2. Opening statement by the hearing officer explaining the hearing's purpose, procedure to be followed, how and by whom a decision may be made and communicated to claimant and local agency, and the option of either party, if decision is made by the hearing officer, to request review of said decision by the Commissioner's appeals review panel.
3. The claimant and/or his representative shall have the opportunity to:
 - a. examine all documents and records which are used at the hearing;

*45 CFR 205.10(a)(2)

- b. present the case or have it presented by legal counsel or other person;
 - c. bring witnesses;
 - d. establish pertinent facts and advance arguments;
 - e. question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses;
 - f. introduce evidence regardless of whether such evidence was available to the agency worker at the time of the agency's decision.
4. The local agency will have the opportunity to clarify or modify its statements contained in the Summary and to question claimant, his representative or witnesses on the salient issue(s).
 5. Evidence admissible at the hearing shall be limited to data having a bearing on the issue(s) on appeal. Such issues include those given by claimant at the time of his appeal and those given by the local agency as a basis for its action or inaction under appeal. The hearing officer determines whether an issue other than the one being appealed may be introduced, but no additional issues are admissible without concurrence of the claimant and the local agency.
 6. If the claimant was required by guidance to produce documentation or verification of eligibility criteria and does not do so, and the agency acts upon the question of eligibility for which the claimant has failed to produce such documentation or verification, the agency shall not be reversed upon the basis of such documentation or verification being produced by the claimant at the hearing. The claimant must reapply to have the evidence considered unless the agency:
 - a. Was responsible for securing the evidence or information, but did not.
 - b. Should not have acted without the evidence or information, or
 - c. Placed a demand on the claimant for evidence or information that was beyond the capacity of the claimant to provide.

Approval of a reapplication shall not be retroactive to the prior reduction, denial or termination of assistance.

- E. When the issue on appeal is of a medical nature, the hearing officer may request a medical assessment by someone other than the person(s) involved in making the original examination. Such an assessment will be obtained at local agency **expense from a source satisfactory to claimant and will be made a part of the hearing record.**

- F. Prior to the hearing, any material from the eligibility case record must be made available, upon written request, to claimant and/or his representative. The service case record shall not be introduced at the hearing; except that any material pertinent to the issue on appeal shall also be available, upon request, to claimant and/or his representative prior to the hearing. It is within the discretion of the hearing officer to designate what is pertinent to an issue on appeal and admissible as evidence during the hearing, including the entire case record if appropriate. However, where an appellant claims that his disability, or that of a household member for whom the claimant is responsible for care was the reason the individual was unable to comply with a program rule, information concerning the individual or family member's disability in the appellant's case must be considered pertinent to the hearing, and must be considered by the hearing officer

Where an individual raises his disability, or that of a household member for whom the claimant is responsible for care, as the reason for non-compliance with a program rule, and the individual did not bring documentation to the hearing in support of this position, the hearing officer should offer the individual a reasonable amount of time to obtain documentation supporting this claim. If the individual is unrepresented at the hearing or represented by a lay person and the individual is unable to obtain verification, the hearing officer must direct the local agency to assist the individual in getting such documentation.

- G. If, during the hearing process, **the** need for **an** adjustment in eligibility or payment status in favor of **the** claimant becomes evident, reconsideration or modification of the former decision will be made by the local agency.

For instance, new information may be presented, guidance may be clarified, or mathematical corrections may be needed. If such an adjustment is satisfactory to the claimant, he has the choice of withdrawing his appeal or of having a formal decision by the State Hearing Authority.

With respect to financial assistance, if such reconsideration or modification requires corrective action for prior months, payments are to be made by the local agency retroactively to the date the incorrect action on appeal became effective.

106.3 DECISION ON APPEAL

- A. The hearing officer, following the hearing, prepares a written report of the substance of the hearing embodying his findings, conclusions, decision, and appropriate recommendations.
- B. The decision on appeal will be made by the hearing officer by whom the case was heard.
- C. Except when medical information is requested or other essential information is needed, the decision of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing, and the official report of the substance of the hearing, together with all papers filed in the proceeding, and the findings and conclusions of the hearing officer. This constitutes the exclusive record for decision and such record shall be available to claimant or his representative at any reasonable time at the State Regional Office serving the local agency.
- D. The decision of the hearing officer, by virtue of the Commissioner of Social Services' delegation, shall be final and binding when tendered in writing to claimant and local agency, and shall be given positive effect regardless of whether review by the Commissioner has been requested.

If the claimant is found eligible for corrective payments, these will be made retroactively to the date the incorrect agency action on appeal became effective. The local agency will assure that administrative action to implement the fair hearing decision is taken no later than the 10th working day following the date on the hearing officer's letter conveying the decision, which is the date the decision is mailed.

If the decision of the hearing officer upholds the agency's action and results in a decrease in the TANF benefit, that decrease must be reflected in the month following the decision, or as soon as administratively possible. Since the assistance unit was notified of the agency's intention to decrease benefits at the time of the original action, no additional notice is needed when the decision of the hearing officer is implemented.

- E. The decision of the hearing officer shall be rendered within 60 days following the date the appeal is received by the local agency or the **Virginia** Department of Social Services. An exception to this is when the hearing officer grants the claimant or his/her representative an extension, or otherwise occasions a delay, not to exceed 30 days. This constitutes prompt and definitive administrative action and, for these purposes, the date of decision of the hearing officer is considered in relation to meeting the time requirement, and is unaffected by any subsequent request for review by claimant, his representative, or local agency to the Commissioner of Social Services.

- F. Any applicant or recipient aggrieved by a final agency action shall have the right to judicial review of such action pursuant to the provisions of the Administrative Process Act (Section 2.2-4000 et seq.). The hearing decision will include information on filing for a judicial review.
- G. If the action of the local agency is overturned as a result of a judicial review, the local agency must take action immediately as specified in the court decision.

106.4 REVIEW OF HEARING OFFICER'S DECISION - APPEALS REVIEW PANEL

The Commissioner has established an Appeals Review Panel to review administrative hearing decisions upon request of either the claimant or the local agency. The purpose of the panel is to make recommendations to the Commissioner regarding whether changes are needed to **guidance** or in the conduct of future hearings.

The Appeals Review Panel cannot change the decision of the Hearing Officer. It may only make recommendations to the Commissioner about future changes in **guidance** or procedures.

A request for review by the Appeals Review Panel by either party must be submitted in writing and postmarked within 10 days following the date of the hearing officer's written decision. A request for review from a local agency must be submitted by the director or by his/her designee whose name is on file with the Hearings Manager.

Submit requests for review by the Appeals Review Panel to:

Commissioner
Virginia Department of Social Services
801 E. Main Street
Richmond, VA 23219-2901

106.5 DISPOSITION OF APPEALS OTHER THAN BY HEARING DECISION

Every valid appeal shall be disposed of by written decision except in the following instances:

- A. An appeal may be withdrawn in writing by the claimant or his representative acting in his behalf.
- B. An appeal may be abandoned by the claimant. An appeal is considered abandoned if neither the claimant nor his representative appears at the time and place scheduled for the hearing without good cause. When **the** claimant or his representative fails to appear, the hearing officer will **issue a 10-day show cause letter to the** claimant giving him an opportunity to explain why he did not appear. If there was a reasonable basis for the failure to appear, the hearing officer will arrange another bearing date.
- C. Death of claimant in a one-member assistance unit constitutes abandonment of an appeal.

Such disposition of an appeal must be entered in the case record.

106.6 AVAILABILITY OF HEARING DECISIONS

Appeal decisions shall be available for inspection and copying, provided identifying names, addresses of individuals in the specific case, and other members of the public, are kept confidential.