

**OFFICE OF INVESTIGATIVE SERVICES
POLICY AND PROCEDURE #750**

CONSENT AGREEMENT AND COURT ORDER

OVERVIEW OF PROGRAM:

By a written contractual agreement, the Department of Human Resources/Office of Investigative Services and the Prosecuting Attorneys' Council of Georgia (PAC) administer this program. This program provides monetary reimbursement to Georgia Prosecutors' offices for settling both misdemeanor and felony Food Stamp and TANF fraud cases.

General procedures involve a Consent Agreement and Court Order, but the Court Order is the essential element for reimbursement to occur. Once a prosecutor has signed a Memorandum of Understanding with OIS and is authorized by PAC, the prosecutor may participate in the program.

In general, this method of disposition will be used for suspected IPV claims with a combined dollar loss from \$200 to \$4,999. A consent agreement may also be pursued for larger dollar losses if the prosecutor declines criminal prosecution after the Agent makes a referral for prosecution. Claims involving clients with **known** disabilities – evidenced by the receipt of SSI, RSDI (disability), or other disability payments – will not be referred for disposition through the PAC Process.

The following operating procedures were designed to improve due process by giving an opportunity for the recipient to provide additional information and explain reasons for the overpayment during the initial investigative phase and to insure that only suspected IPV cases are pursued in the Consent Agreement process.

ADVANCE WRITTEN NOTICE TO RECIPIENT OF INVESTIGATION:

When the Agent determines that the referral/claim is being pursued as a suspected IPV overpayment, the Agent will notify the recipient of the investigation by a **Notice of Investigation** sent at least ten days prior to the meeting date.

The **Notice of Investigation** informs the recipient of the opportunity to present an explanation for the overpayment and provide any exculpatory evidence. The recipient has the option of providing information by phone or mail. Additionally, the **Notice of Investigation** letter has been written to clarify for the recipient the possible outcome of the meeting with the Agent.

The Agent should carefully check the recipient's address prior to sending the **Notice of Investigation**. If the letter is returned as undelivered, the Agent cannot establish a claim until the recipient has been afforded the opportunities to receive the notice and respond to the allegations. If the letter is returned as "Undeliverable" by the Post Office after the expiration of the 10 days and claim establishment, the claim must be coded as "Unlocatable" until a valid address has been located for the client. Claims referred to the prosecutor (Code 20/30) prior to receipt of returned mail must be withdrawn immediately unless a valid address is established.

SCHEDULED MEETING WITH THE RECIPIENT:

During the meeting between the Agent and the recipient, the Agent will explain the purpose of the meeting; discuss procedures for the investigation; review the information obtained during the course of the investigation; provide the recipient with an opportunity to review case record information; and afford the recipient the opportunity to respond to the allegations.

The Agent will consider the recipient's profile to include elements such as health, mental ability, handicaps, and bilingual requirements for the non-English speaking, and document the profile on the **Case Review Checklist**.

CONSENT AGREEMENT AND COURT ORDER (continued)

The Agent may have sufficient information after meeting with the recipient to determine whether the overpayment was caused by Inadvertent Household Error (IHE), Agency Error (AE), or suspected IPV. If the Agent determines that the overpayment was caused by IHE, the Agent will obtain and process a Repayment Agreement.

During the meeting, if the Agent determines that the overpayment was caused by suspected IPV, the Agent will advise the recipient that the matter will be referred to the prosecutor for further evaluation and action. The Agent will discuss the difference between negotiating a settlement as opposed to criminal prosecution and the importance of keeping the appointment with the prosecutor. The Agent will also review the disqualification penalties, how the penalty will affect the recipient's benefits, and the methods of repayment. The Agent will document the date, whether by phone or in person, the contents of the discussion, and the recipient's response on the **Case Review Checklist**.

CRITERIA FOR REFERRAL FOR CONSENT AGREEMENT:

- The Consent Agreement will be negotiated in the county within the judicial circuit in which the overpayment occurred. If the overpayment occurred in more than one county, a Consent Agreement for each county and the amount over paid in each county must be negotiated. In some cases, the portion of the claim that occurred outside the county will be settled by a WDH or disqualification hearing. Supervisory approval is required prior to the disposition of a claim where overpayments occur in more than one county.
- The case must be within the statute of limitations. It is generally the accepted rule that the statute of limitations for welfare fraud begins to run at the "date of discovery". The statute of limitations is four years from the date of indictment for a felony and two years for a misdemeanor. Federal food stamp policy requires that overpayments be calculated for the six-year period prior to discovery, if applicable. In situations involving the six-year period, the two years exceeding the statute of limitations would be dispositioned administratively.
- The local prosecutor determines the minimum and maximum claim amounts that will be accepted. However, the regional supervisor is expected to discuss OIS guidelines regarding claim referral amounts with the prosecutor and seek cooperation in an effort to maintain OIS uniformity statewide. If the prosecutor refuses to cooperate with the OIS prescribed claim referral guidelines, the regional supervisor should notify the OIS Regional Manager and Chief of Investigations in writing specifying the prosecutor's criteria and reasons for determining differing referral criteria.
- WDH Agreements should not be negotiated in counties participating in the PAC Process except for claims that are under \$200 or beyond the statute of limitations. In some instances, mitigating circumstances may also permit settlement of the claims through the WDH or Administrative Disqualification Hearing.

PROCEDURES FOR REPORTING CLAIM AND SCHEDULING PAC APPOINTMENTS:

After meeting with the recipient and evaluating the evidence and/or additional information provided by the recipient, the Agent will complete a **PAC Referral Summary** and claim establishment by reporting a TR code 3 and a TR code 20/30 to the OIS database. The PAC referral date must match the date of the TR code 20/30. It is the Agent's responsibility to assure all information on the **PAC Referral Summary** is accurate.

If the recipient contacts the Agent prior to the appointment date and offers no evidence to dispute the facts of the investigation, the claim may be established on the date of contact. If there is no response from the recipient and the notice was not returned as undelivered, the claim should be established on or after the date of the scheduled appointment. The Agent will document the recipient's lack of response on the **Case Review Checklist**.

CONSENT AGREEMENT AND COURT ORDER (continued)

The Agent will promptly contact the prosecutor's office to schedule dates and appointment times. Regional supervisors should work with the Prosecutor's office to establish a calendar of pre-scheduled PAC appointment dates for a six or twelve month period. The Agent will submit a **PAC Referral Summary** for each case referred to the prosecutor. Prosecutors will use the data on the referral to complete the required appointment letter and court file materials. Preferably the prosecutor will provide the typed consent agreements prior to the scheduled PAC appointment date for the Agent to review for accuracy. In any event, the Agent is responsible for proofing the consent agreement prior to negotiation for accuracy of all data.

PROCESSING THE CONSENT AGREEMENT AND COURT ORDER:

A typical cycle begins when the local prosecutor's office receives a referral from the OIS Agent.

- At the appointment, the prosecutor meets with offenders and, as a matter of due process of the law, explains the alleged offense and presents the legal and procedural matter of the Consent Agreement.
- The Agent meets privately with the offender to explain the basis for the claim and to negotiate the Consent Agreement.
- When negotiating the Consent Agreement, the Agent will assure all of the case data elements were correctly transferred from the **PAC Referral Summary** to the Consent Agreement. The Agent and Respondent must initial any changes made to the typed portions of the agreement. The Respondent must also initial the section headed by "Respondent Agrees to Mandatory Repayment of Overpayment" as this includes the statements that the Respondent understand the evidence, admits to the overpayment, voluntarily executes the agreement, and agrees to repay the amount entered. The Respondent must also initial the length of disqualification and the selected method of repayment for each of the programs on the Consent Agreement.
- It should be noted that only one name may be placed on the Consent Agreement and Court Order. This is the name of the Respondent, even if the Respondent is not the Head of the Household. However, the Social Security Number of the Head of the Household on the corresponding TR must be included on the Consent Agreement. In the event that disqualification is not appropriate, the Agent must attach a **Certificate That Disqualification Is Not Appropriate** to the signed Consent Agreement.
- After the Consent Agreement is signed by the defendant, the prosecutor, the Agent, and the Court Order is signed by the judge, copies are distributed to the defendant, the county DFCS office, and the Agent.
- Although the Court Order may not be signed by the judge on the same day as the Consent Agreement, the Agent will notify the county DFCS within five working days of negotiating the agreement to initiate disqualification. The Agent will assure the following information is enclosed with the **Disposition Letter** provided to the county DFCS:
 - ✓ Copy of the signed Consent Agreement
 - ✓ Copies of all appointment letters, to include the **Notice of Investigation** and all appointment letters sent by the prosecutor's office
 - ✓ Copy of the **PAC Referral Summary**
 - ✓ Copy of the **Reports of Claim Determination** that includes all overpayment budgets
 - ✓ Original verification and evidence
 - ✓ Copy of the **Case Review Checklist** with documentation of the findings of the investigation
 - ✓ Original Form 5667, **Request for Investigation**

CONSENT AGREEMENT AND COURT ORDER (continued)

- Within five working days of negotiating the Consent Agreement, the Agent will perform the following updates in SUCCESS:
 - ✓ Change the claim type,
 - ✓ Activate the claim status,
 - ✓ Update the terms of the repayment schedule, and
 - ✓ Document the disposition on the narrative.
- If a period of time will elapse between the signing of the Consent Agreement and the signing of the Court Order, the Agent will update the OIS database with a TR code 22 or TR code 32 as appropriate indicating the date the agreement was signed. Within fifteen days of receipt of the signed Court Order, the Agent will provide a copy of the Consent Agreement and Order attached to a **Disposition Letter** to the county DFCS office. The Agent will also update the OIS database with a TR code 23 or TR code 33 as appropriate indicating the date of the Court Order.
- The signed Court Order should be received within 60 days of negotiating the Consent Agreement. The Agent should contact the prosecutor if the order is not received timely and continue with follow-up contacts until the order is received. Court orders received in June should be processed immediately in order to insure the adjudication is counted in the fiscal year reports.

SUBSEQUENT APPOINTMENTS:

Respondents who fail to keep the appointment with the prosecutor should be pursued within five working days of the scheduled appointment. The Agent should review SUCCESS, Clearinghouse, and other available sources for accurate addresses in the case of appointment letters returned as undelivered, and promptly notify the prosecutor of the new address. The Agent will reference all location attempts on the **Case Review Checklist**. The Agent should assure no Second Notice is sent by the prosecutor to the Respondent until the First Notice has been received.

The Agent will promptly notify the prosecutor of requests for a second appointment, new address information, and withdrawals. Cases should not remain at a TR code 20/30 for more than 6 months. Based on this timeframe, the Agent should monitor the status of all cases pending adjudication on a monthly basis and take the necessary steps to expedite the process.

Respondents who fail to keep a minimum of two appointments with the prosecutor should be evaluated for further action. Subsequent actions within the 6-month timeframe include a prosecution referral, referral for an Administrative Disqualification Hearing (after first sending an **Administration Disqualification Hearing (ADH) Letter**), or Unlocatable disposition. Since all cases initially selected for adjudication through the PAC process were determined by the Agent to meet the criteria as suspected IPV, use of a non-fraud disposition should be clearly documented on the **Case Review Checklist** including an explanation why other adjudication choices are not appropriate.

REIMBURSEMENT TO PROSECUTOR:

The correct information must be transferred from the court documents onto the TR. Reimbursement to prosecutors through the PAC Process will not occur if the OIS database differs from the PAC billing invoice for any of the following data elements: County, Head/Household SSN, Program Type, DTIOV, Overpayment Amount, or Court Order Date.

AMENDED COURT ORDERS:

The Agent will pursue an amended Court Order if any of the following elements were incorrectly entered on the Consent Agreement: County, Program Type, Period of Overpayment, Period of Disqualification (if detrimental to the client), or Overpayment Amount.