



SUBJECT: FSP - Head of Household as Individual Responsible for Intentional Program Violations (IPV)

TO: Ollice Holden
Director
Midwest Region

In response to an exchange of messages between Tim English of your staff and Greg Fortine of mine, the following represents our position on the question of whether the head of household may be held responsible for an IPV when the household member that committed the IPV cannot be determined.

Based on our interpretation of the regulations and on a call to the Office of the General Counsel, we find no support for holding the head of household responsible for an IPV unless there is direct evidence of his/her involvement in an IPV. Nowhere in Section 273.16 is it implied that any individual other than the one(s) who committed the IPV may be disqualified. As stated in 273.16 (e)(6), "The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence that the household member(s) committed, and intended to commit, intentional Program violation..." In the given circumstance, since the "guilty" household member is not known, there can be no clear and convincing evidence directly linking the head of household, or any other household member, to the IPV. Indeed, without direct evidence that any one household member is guilty, it is difficult to understand how it can be affirmed that the "household" is guilty of an IPV.

Your staff cited the preamble to the July 6, 2000, Claims Rule which explains our reasoning for holding all household members "...jointly and severally liable..." for trafficking claims as possibly providing some justification for holding the head of household responsible with respect to IPV disqualifications. However, that language applies to claims, not disqualifications. An individual may share in the benefits of a crime and be held responsible for any repayment without being held criminally liable if not actually a participant in that crime. If one member of the household trafficks benefits, even if the other household members were not active participants in the offense, they may be held liable for any resulting claim but not for the IPV.

Tim O'Connor
Acting Director
Program Accountability Division