



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Department of Transitional Assistance**  
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**Field Operations Memo 96-16**  
**June 1, 1996**

Gerald Whitburn  
Secretary  
Joseph Gallant  
Commissioner

**TO:** Local Office Staff

**FROM:** Joyce Sampson  
Assistant Commissioner for Field Operations

**RE:** Reasonable Possibility of Fraud Occurring in an Overpayment of Benefits, and Referrals to the Bureau of Special Investigations

### **Background**

State Letter 1096 issued regulations regarding referrals to the Bureau of Special Investigations (BSI). This memo clarifies the procedures for deciding whether to refer questions of possible fraud for investigation by BSI. BSI is the agency responsible for *investigating* cases of possible fraud. Department staff are legally prohibited from conducting fraud investigations. However, a worker must follow up on conflicting information about a recipient's circumstances to determine current eligibility and benefit level, and to determine whether a fraud referral is appropriate.

The overall standard for these fraud referral decisions is whether there exists some reasonable possibility that fraud occurred in an overpayment of benefits. If, after taking into consideration all known circumstances, the worker concludes that such a possibility does not exist, no fraud referral should be made. To make this determination, a worker must use common sense, fairness and be reasonable. A worker must also consider the source of the information. The worker shall review each instance of possible fraud on a case-by-case basis in accordance with these guidelines before making a decision whether to refer a matter to BSI.

### **Intent**

In reviewing these guidelines, the worker should keep in mind that the crucial element of welfare fraud is *intent* - that is, that a recipient either *intentionally* made a false statement or *intentionally* failed to disclose a significant piece of information. Fraud occurs when there is an intent to deceive. It does not occur when there has been an innocent mistake or when there has been no overpayment for the reason(s) described in section C.(7).

This memo includes guidelines and examples which will help clarify the appropriate decisions to be made on fraud referrals, and some changes in the procedures for making those decisions.

## Overpayments Which Do Not Require BSI Referral

The following are examples of types of cases in which fraud referrals should not be made. Instead, such cases should be treated as a potential overpayment of benefits, subject to the Department's regulations and procedures that apply to collecting these overpayments. (See AFDC Reference Guide pages 11-3 through 11-6 and EAEDC Reference Guide pages 11-3 through 11-6 regarding the procedures and forms to be used to collect overpayments.)

- A. **Aid Paid Pending** - Any overpayment disbursed while a fair hearing and its results are pending.
- B. **Department Error** - Overpayments caused by errors committed by the Department. Department error occurs whenever an overpayment was caused by a mistake by the Department, rather than an error or fraud on the part of the recipient. Examples of Department error include, but are not limited to:

- (1) a Department employee, whether caseworker, food stamp worker or supervisor, or anyone else responsible for establishing the amount of the recipient's benefits, fails to act in a timely and accurate manner on information affecting eligibility that is furnished by a recipient or the recipient's representative.

For example: Recipient leaves message on voice mail for worker informing her that one of her children has moved to California to live with her father. Worker forgets to remove child from grant. One month later California welfare calls to verify closing date of dependent. Worker should not make fraud referral, but take action to recoup the overpayment, if any.

- (2) the Department makes a mistake determining an eligibility factor in favor of the recipient.

For example: A TAFDC applicant reports ownership of two vehicles. The DTA worker incorrectly determines the fair market value of the vehicles and approves TAFDC benefits when the applicant, in fact, is over the TAFDC vehicle and asset limit. The case should not be referred to BSI, but the worker should take action to close the case and complete a notice of overpayment and repayment agreement, if appropriate.

- (3) the Department makes a mistake in the calculation of the amount of assistance or its duration.

- C. **Any other case in which the information then known to the worker shows that there is no reasonable possibility that fraud has occurred.** The following are some examples of situations in which the worker may conclude that a referral to BSI is not appropriate. (There may be other circumstances in which the worker may conclude not to make a referral.)
- (1) The recipient failed to report a change within the applicable time limit because of the recipient's incapacity, such as serious illness, injury, or an emergency in the recipient's family or household that seriously interfered with the recipient's ability to report. (Failure to report is acceptable for only as long as the incapacity caused by illness, injury or emergency exists;) or
  - (2) The recipient provides *credible* information to the worker that she attempted to report the change within the applicable time limit, but her message was not returned by Department staff in time for the recipient to report appropriate changes; or
  - (3) The recipient provides *credible* information that written documentation of a change or verification documentation was lost or delayed in the mail; or
  - (4) The recipient made a timely oral report of a change, but was unable, due to reasonable circumstances, such as those listed in (1) above, to furnish documentation of the change within the applicable time limit; or
  - (5) The recipient provides *credible* information that she timely reported the change directly or through voice mail to some other employee of the Department responsible for establishing the amount of the recipient's benefits, such as a caseworker, food stamp worker, or supervisor, or that she had reason to believe that such an employee of the Department would be informed of a change from another source, such as receipt by the Department of a retroactive SSI payment and the recipient thought there was no need to report such a change because she had signed an APSSI-1 form and believed the Department had the information about her SSI eligibility; or
  - (6) The recipient provides *credible* information to the worker that she failed to timely report a change because of her reasonable fear of serious harm to herself or her child(ren) if she had reported the change. Failure to report is acceptable for only as long as the threat of serious harm exists. A restraining order or other action taken against the alleged abuser, or evidence of good cause sufficient to satisfy good cause under 106 CMR 203.740-203.750 or 106 CMR 303.730-303.732 can suffice as verification of reasonable fear; or

- (7) No change in Program Eligibility - Recipients have an obligation to report changes which may affect eligibility or benefit level. However, if, after reviewing the available information, the worker determines that no overpayment exists because the information would not have made any difference in the program eligibility determination, a fraud referral should not be made. Examples are:
- (a) The child is temporarily out of the home and the parent satisfies the living arrangement rule for continuing to receive benefits;
  - (b) Income received is exempt (such as work study or higher education subsidies or loans);
  - (c) Cases in which a household received a countable asset (i.e., a car) that does not put the household above the program asset limit; or
  - (d) Income which falls within a lump sum exemption; or
- (8) Recipient had no fraudulent intent - *Credible* information available to the worker indicates there is no reasonable possibility that the recipient had fraudulent intent in causing an overpayment, such as mental incapacity, understandable confusion or reporting error.

### Procedures for Making and Documenting Fraud Referral Decisions

- (A) **Supervisor Approval** - No Department worker shall refer any instance of suspected fraud to BSI without the written approval of the worker's supervisor, as indicated by the supervisor's signature on the referral form.

Supervisors are responsible for ensuring that the RFI-1 is clearly written and complete with all pertinent information. The RFI-1 must be signed by the supervisor and sent to:

Department of Transitional Assistance  
BSI Fraud Unit  
600 Washington Street  
Boston, MA 02111

- (B) **Postponement of Fraud Referral Decisions When Further Fact-Gathering Appears to be Needed to Clarify Information Received By the Department** - There may be instances when information received by the Department indicating a possible overpayment, affect both current eligibility and past eligibility. The worker may only review current eligibility. However, when the worker is reviewing current eligibility and present and past eligibility factors appear to be essentially the same and program rules are the same, the worker should defer making a fraud

referral until he or she has established current eligibility. If, in this situation, the current eligibility review indicates there is no overpayment and, accordingly, there would be no overpayment for past circumstances, no fraud referral should be made.

In situations where information received by the Department appears to be contradictory and inconsistent with other information on file or presently being received, workers should attempt to clarify these inconsistencies or contradictions before making a fraud referral. The recipient is primarily responsible for obtaining verification. However, the worker must assist the recipient in obtaining any verification when it is apparent that the recipient is unable to obtain them. Discrepancies, inconsistencies or contradictory information not clarified may indicate fraud. However, a case-by-case determination should always be made based on actual inconsistencies and contradictory information, the recipient's circumstances, abilities, and the recipient's explanation. In situations where the worker is having difficulty in determining whether a fraud referral is appropriate, the worker should always consult his or her supervisor or local office management for assistance.

- (C) **Reporting of Information Received by the Department After a Fraud Referral Has Been Made to BSI** - If a referral has been made to BSI and subsequently the Department receives information that affects the existence of fraud or the amount of an overpayment, the Department should promptly send such information to BSI and, if applicable, to Centralized Recoupment. Examples of such information are: a fair hearing or court decision indicating the existence or nonexistence of fraud or the amount of an overpayment.
- (D) **Keeping Complete and Accurate Records of All Contacts Related to a Case** - There are instances when overpayments are caused by caseworkers or other office employees not receiving information that the recipient claims to have provided. These instances may be avoided or greatly reduced by better record-keeping of client contact. Both managers and supervisors must be aware and emphasize the importance of keeping written records of such client contact, which may be transposed from voice mail or taken from persons with whom contact was made by recipients or their agents. A permanent written record for caseworkers will eliminate erroneous overpayments and clarify disputes in the future.

## QUESTIONS

If you have any questions, have your Hotline designee call the Policy Hotline at (617) 348-8478.