

Par.1. **Material Transmitted and Purpose** – Transmitted with this Manual Letter are changes to Service Chapter 400-28 – Child Care Assistance Program (CCAP). This manual letter also incorporates changes made with:

- IM 5229 Cooperative Distributions (Patronage Dividends)
- IM 5254 Definition of Spouse/Marriage

Par. 2. **Effective Date** – Changes included in this manual letter are effective 10/1/2015 unless otherwise indicated. For ongoing cases the changes must be made at the next certification review.

Household Composition 400-28-35

1. **400-28-35-05** – Child Care Assistance Unit. This supersedes IM 5254 which was effective July 20, 2015.

Child Care Assistance Unit 400-28-35-05

The household must include the child(ren) for whom assistance is being requested and the following individuals residing in the home:

- The natural, adoptive or stepparent(s)
- All siblings, (including half and step-siblings) who are under age 19
- All natural or adoptive children of the caretaker and caretaker's spouse who are under the age 19.
 - **Note:** The Child Care Assistance Program (CCAP), considers a child under the age of 19 through the month of the child's 19th birthday.
- Child under the Subsidized Guardianship Program

When two unmarried adults reside together, in order for a child to be considered a child in common, paternity of the child in common must be verbally acknowledged or legally adjudicated, or the parents must have signed a voluntary acknowledgment of paternity:

- If child care is being requested for a child in common of unmarried parents, both parents and the children of both parents must be included in the unit.
- If child care is NOT being requested for a child in common of unmarried parents, the child in common must be included in the unit(s) of siblings who child care is being requested.
 - **Example #1:** Unmarried non-TANF household includes mom, her child, Dad, his child and a child in common. Mom is requesting child care for her child and Dad is requesting child care for his child. Child care is not being requested for the child in common. Since assistance is not being requested for the child in common, Mom and Dad must each complete an application for CCAP. The child in common would be included as a household member in both Mom and Dad's household. Both Mom and Dad would have a 3 person household.
 - **Example #2:** Unmarried non-TANF household that includes Mom, her child, Dad, and Mom and Dad's child in common. Mom is requesting child care for her child. Child care is not being requested for the child in common. Mom must complete an application for CCAP. Mom would have a have a 3 person household which includes herself, her child and the child in common.

See Section 400-28-45-25, Unmarried TANF Households – Child in Common for an exception for TANF Households.

If the child(ren) for whom assistance is being requested resides with a loco parentis, the household must include the following individuals residing in the home:

- The sibling(s) (including half and step-siblings) of the child for whom assistance is being requested
- The loco parentis and spouse of the loco parentis
- The loco parentis' and spouse's children under age 19

A minor parent who needs child care for their child(ren) and who is residing in his/her parents' home is considered a separate household and must apply on their own behalf.

- If the minor parent is in receipt of TANF, the case is considered TANF for CCAP.
- If the minor parent is in receipt of Crossroads, the case is considered Crossroads for CCAP.
- If the minor parent is in receipt of Diversion, the case is considered Diversion for CCAP.
- All other minor parents are subject to Co-pay.

If a minor parent is residing with their parent(s) and the parent(s) have a child(ren) for whom child care is requested, the minor parent and the minor parent's child(ren) are not considered members of their parents' case.

The following individuals are excluded from the household count:

- Children 19 years of age or older (a child is considered under the age of 19 through the month of the child's 19th birthday).
- Any child for whom the household receives Foster Care payments.
- An individual in the household who is not the caretaker or sibling of the child and not acting as loco parentis.
- Parent(s) and other family members of a minor parent when the minor parent is requesting CCAP.
- Minor parents and their child(ren) if the parent(s) of the minor child are requesting CCAP.
- A child under 19 years of age who resides away from home may come home on weekends or vacations breaks. The child is not counted as part of the household if their visit is less than a full calendar month.

- **Note:** A child under age 19 who has a child care need can be included in the household of the caretaker with whom the child care costs were incurred (refer to 400-28-35-25, Parents Not Residing Together).

Persons Entering the Home:

- New Applications:
 - Individuals required to be included in the child care assistance unit who enter the home in the month prior to the application month must be included in the prior month determination.
 - Individuals required to be included in the child care assistance unit who enter the home prior to an application being approved must be included in the application month determination.
- Ongoing Cases:
 - When an individual enters the home and child care is not needed for the individual for the month of entry, the individual is not included in the child care assistance unit if their addition results in a decreased benefit or ineligibility for the month of entry. If required, the individual must be included in the child care assistance unit the month following the month of entry.
 - When an individual enters the home and child care is needed for the individual, the individual must be added to the case for the month of entry regardless of the effect on the benefit, based on whether or not the information was timely reported and verified.
- Persons Leaving the Home
- New Applications:
 - Individuals who are required to be included in the child care assistance unit leave the household in the month

prior to the application month are included in the prior month determination but are not included in the application month determination.

- Individuals who are required to be included in the child care assistance unit leave the home in the month of application prior to the application being approved or denied are not included in the child care assistance unit, unless the individual who left is a child and the child had a need for child care.
- Ongoing Cases:
 - Once a case is approved, individuals who leave the home are included in the child care assistance unit through the month in which they left. Effective the month following the month the individual left, the individual must be removed from the unit.

In order for a marriage performed in North Dakota to be recognized or considered valid in North Dakota, couples are required to obtain a marriage license through the County Recorder's Office. ~~North Dakota law specifically states that marriages are considered recognized and valid if they are between one man and one woman as husband and wife. Therefore, North Dakota does not recognize same sex marriages regardless of where the marriage occurred.~~

Marriages that occur outside of North Dakota are considered valid in North Dakota if:

1. The marriage was legally performed in another state;
2. The marriage is a common law marriage that occurred in another state and was considered a valid marriage in that state (the couple would be required to provide documentation verifying that the common-law marriage was considered valid by the state in which it took place); or
3. The marriage occurred in another country and the marriage was considered valid according to the law of the country where the

marriage was contracted, unless the marriage violates the strong public policy of North Dakota.

Note: Polygamous marriages violate the strong public policy of North Dakota.

Financial Eligibility Requirements 400-28-65

2. **400-28-65-10-35** – Self-Employment. Change in policy regarding cooperative distributions. This supersedes IM 5229 which was effective January 1, 2015.

Treatment of Self-Employment Income

When an individual is actively engaged in a self-employment business, the income they receive is considered earned income. The following types of income are always considered earned income:

- Capital or Ordinary Gains/Losses
- Farm Income
- Business Income
- Partnership – Ordinary income, guaranteed payments to partners, depreciation and depletion

However, there are some types of income included on the self-employment income tax forms that are considered unearned income. The following types of income are always considered unearned income:

- Royalty income
- ~~Cooperative distributions (patronage dividends)~~
- Partnership – rental, interest and dividend income
- Income from S-Corporations
- Estate or trust income

The following types are considered earned or unearned depending on whether the individual is actively engaged in earning the income and the self-employment tax forms filed.

- Cooperative distributions from the sale of goods
- Farm rental income
- Other rental income

The earned income must be separated from the unearned income and will be when using the self-employment calculation worksheet.

Determining Self-Employment Income

2. Farm Income – Income earned through the operation of a farm or ranch including farm rental income and CPR.
 - a. Farm Rental Income – Income received by a landowner from the sale of crops or livestock produced by the tenant.

This does not include cash rent of pasture or farmland.

- b. Conservation Reserve Program Payments (CRP) – Cost share and payment program under the USDA that encourages farmers to convert highly erodible crop land or other environmentally sensitive acreage to vegetative cover.

Farm income, including farm rental income and CRP:

- Is considered **EARNED** income when the individual is actively engaged in farming. The total farm income or loss is determined by taking the taxable amount of cooperative distributions (patronage dividends) from the net farm income and adding in the depreciation.

The amount of cooperative distributions is deducted from farm income as it is ~~considered unearned income~~ **excluded**. Depreciation is added back in as this is not an allowable expense.

Note: Cooperative distributions (patronage dividends) may include income for the sale of goods (grain, milk, cattle, etc.). Any portion of cooperative distributions that is income from the sale of goods must not be deducted from farm income.

This income is generally included on the Schedule F.

- Is considered **UNEARNED** income as a result of self-employment when the individual is NOT actively engaged in farming. The total farm rental income or loss is determined by taking the taxable amount of cooperative distributions (patronage dividends) from the net farm rental income and adding in the depreciation.

The amount of cooperative distributions is deducted from farm rental income as it is ~~considered unearned income on a separate line in the calculation~~ **excluded**. Depreciation is added back in as this is not an allowable expense.

This income is generally included on the Form 4835.

7. Cooperative distributions - From the sale of goods is countable income and must not be deducted from farm income. (~~patronage dividends) are paid by cooperatives in cash or shares of stock. These dividends are similar to rebates paid based on the amount of goods bought or services used for the self-employment enterprise.~~

~~Income individuals receive from cooperative distributions or patronage dividends is considered **UNEARNED** income as a result of self-employment. Cooperative distributions or patronage dividends are generally included on Schedule F and Form 4835.~~

~~**Note: Cooperative distributions (patronage dividends) may include income for the sale of**~~

~~goods (grain, milk, cattle, etc.). The portion of cooperative distributions that is income from the sale of goods is considered as part of the farm income or farm rental income.~~

3. **400-28-65-15** – Disregard of Certain Income. Change in policy regarding cooperative distributions. This supersedes IM 5229 which was effective January 1, 2015.

Disregard of Certain Income 400-28-65-15

55. Cooperative Distributions (Patronage Dividends)

Exception: Any portion of cooperative distributions (patronage dividends) that is income from the sale of goods in countable income.

Intentional Program Violation (IPV) 400-28-160

4. The following sections have been repealed:
- 400-28-160-05 Overview
 - 400-28-160-15 Types of Intentional Program Violation
 - 400-28-160-25 Initiating Administrative Disqualification Hearing Process
 - 400-28-160-30 Appeals Supervisor Action
 - 400-28-160-40 Penalty for Intentional Program Violation (IPV)

The following sections have been renumbered:

- 400-28-160-10 Intentional Program Violation is now 400-28-162-05
- 400-28-160-20 Evidence Evaluation is now 400-28-162-10
- 400-28-160-35 Disqualification Time Frames is now 400-28-162-35

- 400-28-160-45 Disqualification in Another State is now 400-28-162-45
5. **400-28-162** – Intentional Program Violation. This new section incorporates the standardized EAP Intentional Program Violation policy.

400-28-162-05 – Intentional Program Violation (IPV).

Intentional Program Violation 400-28-162-05

An Intentional Program Violation (IPV) is defined as "an action by an individual, for the purpose of:

- Improperly establishing or maintaining eligibility for assistance Child Care Assistance Program (CCAP); or
- for i-Increasing or preventing a reduction in the amount of assistance."

Any individual who is suspected of an IPV must be referred to:

1. The Appeals Supervisor in the Legal Advisory Unit (LAU) for a determination of an IPV; or
2. The court system for a determination of fraud.

In order to determine if a provider or adult member of the Child Care Assistance unit has committed an IPV, that individual must have intentionally committed one of the following:

1.a Any act or false statement intended to mislead, misrepresent, conceal, or withhold facts that constitutes a violation of CCAP or any State statute.

Examples:

- A source of income
- ~~Allowable deductions~~
- A household member
- Receiving or attempting to receive assistance in multiple states at the same time
- Falsified billing report form documents
- An asset

- Trafficking of the Electronic Payment Card or PIN
- ~~Not being in an allowable activity~~
- ~~Receiving assistance in two states at the same time~~
- ~~Not being a resident of North Dakota~~

2. Committed any act that constitutes a violation of the Child Care Assistance Program (CCAP).

3. The signature of any provider or caretaker on the Application, Review form, Change Report form, Child Care Billing Report form or any other appropriate materials attest to providing factual information that is required to determine eligibility.

~~The use of the term "intentionally" does not mean the eligibility worker has the burden of proving that an individual intended to commit a fraudulent act. The signature of any provider or caretaker on the Application, 6 Month Review form, Change Report form, Child Care Billing Report form or any other appropriate materials attests to providing factual information that is required to determine eligibility.~~

It is the act and not the amount of improper benefit received that must be considered. There is no requirement that an overpayment exist when pursuing IPV.

6. **400-28-162-10** – Evidence Evaluation.

Evidence Evaluation 400-28-162-10

~~The following procedure is suggested to evaluate the evidence to determine if a violation has been committed:~~

- ~~Review the case and all evidence with the eligibility supervisor, director, or the regional representative of Economic Assistance.~~
- ~~If the evidence is sufficient for referral to the hearings officer, the referral shall be made regardless of any legal action planned against the provider or adult member of the Child Care Assistance unit.~~

The county has the burden to establish an Intentional Program Violation (IPV) by clear and convincing evidence. Clear and

convincing evidence means evidence that leads to a firm belief that the allegations are true.

Examples:

- Application, review, and monthly report forms. An individual's signature on these forms is attesting to providing full information and to understanding the reporting requirements.
- Statements made during application or review interviews
- Notice of benefits
- A past IPV for failure to report
- Reporting/billings forms
- Narratives
- Documented phone calls
- IEVS verification
- Involvement of an interpreter

When there is evidence a possible IPV has been committed, it is suggested the county review the case and all evidence with the supervisor, director, or a regional representative.

This review will result in a decision to:

- Proceed with the IPV process, or
- Proceed with a client error.

When reviewing the evidence for a possible IPV, the individual must be allowed an opportunity to respond to any unresolved questions.

7. **400-28-162-15. Initiating an Intentional Program Violation.**

Initiating an Intentional Program Violation 400-28-162-15

In instances when there is sufficient evidence to substantiate that an individual has committed one or more acts of intentional program violation (IPV), the county must complete the SFN 1940, TANF/SNAP/CCAP Notice of Suspected Intentional Program Violation.

The SFN 1940 is intended to:

1. Notify an individual in writing when that individual is suspected of having committed an IPV;
2. Inform the individual of their hearing rights and hearing procedures;
3. Allow the individual the right to waive the hearing;
4. Allow an individual to request a hearing officer be present at the hearing rather than a telephone hearing.

When completing the form:

- a. List the name and current address of the individual suspected of IPV.

There may be occasions when more than one individual gave a false report or were interviewed together and in those cases, prepare a **separate** SFN 1940 for each individual.

- b. Describe the violation of program rules including:
 - Information provided that is deemed incorrect;
 - Facts that were not revealed;
 - How and when information and verifications were submitted by the individual.
- c. The evidence disputing the accuracy of the individual's statements, when and where it came from;
- d. When and with whom discussions were conducted, the outcomes of which contradict the individual's statements;
- e. What documents were provided that should have included information not revealed, and when were they submitted;

- f. Document how the individual was aware of the reporting requirement;
- g. The form must be **signed** by the county (an electronic signature is acceptable).

The individual will continue to participate as a household member while awaiting a disqualification decision. Recoupment of any overpayment continues to be collected at the rate of 10%. Full repayment of the overpayment does not stop the disqualification procedure from taking place.

An IPV can be pursued if a client is permanently disqualified. Pursuing the IPV will allow for recoupment of a claim at 20% rather than 10% if recoupment is possible.

8. **400-28-162-20** – Scheduled Intentional Program Violation Meeting.

Scheduled Intentional Program Violation Meeting 400-28-162-20

After completing the SFN 1940, TANF/SNAP/CCAP Notice of Suspected Intentional Program Violation, the county must schedule a meeting with the individual to discuss the suspected Intentional Program Violation (IPV) within two weeks using a system generated correspondence notice.

If the correspondence notice is returned as undeliverable or with no forwarding address, the IPV information must be placed in the casefile until an address is known. The suspected IPV cannot be pursued until the individual is made aware of the suspected violation.

If the worker had conversation with the individual regarding the suspected IPV, even if the correspondence notice is returned as undeliverable, the IPV can continue to be pursued. The worker must

document the conversation that was held with the individual.

If the individual fails to attend the scheduled meeting without satisfactory explanation within three days after the meeting, the county must mail the original SFN 1940 along with a letter detailing the violation and copies of all evidence of the suspected IPV to:

Appeals Supervisor
North Dakota Department of Human Services,
Judicial Wing
600 East Boulevard Avenue Dept. 325
Bismarck, ND 58505-0250

If the individual attends the scheduled meeting the county must:

1. Provide the individual with a copy of the SFN 1940;
2. Provide the individual with a DN 1087 - Legal Service Organizations;
3. Discuss the suspected IPV.

If it is determined that no violation has occurred, SFN 1940 must be placed in the file with a notation that it was not forwarded for further action and a summary of the explanation given by the individual.

If the county believes the violation did occur and the individual does not have a satisfactory explanation the county must explain the following options to the individual:

- Sign Waiver A – Which allows an individual to admit to the facts and accept the disqualification period;
- Sign Waiver B – Which allows an individual to accept the disqualification without admitting to the facts;
- Request an administrative disqualification hearing.

The county must explain signing Part A or B of the Waiver of Hearing will result in specific program disqualification time periods and penalties.

A signed waiver is a statement that the individual has been informed a disqualification penalty will result.

If the individual suspected of an IPV:

1. Chooses to sign the Waiver of Hearing:

- Provide the individual a **signed** copy of SFN 1940.

- Mail the SFN 1940, detailing the violation to:

Appeals Supervisor
North Dakota Department of Human Services,
Judicial Wing
600 East Boulevard Avenue Dept. 325
Bismarck, ND 58505-0250.

- If Part B is signed, a cover letter detailing why the individual signed Part B rather than Part A must also be sent to the Appeals Supervisor.

2. Chooses not to sign the Waiver of Hearing:

- Give the individual a copy of the SFN 1940.

- Explain that a hearing will be held by telephone unless the individual requests an administrative law judge will be present.

- Mail the original SFN 1940 along with a letter detailing the violation and copies of all evidence of the potential IPV to:

Appeals Supervisor
North Dakota Department of Human Services,
Judicial Wing

600 East Boulevard Avenue Dept. 325
Bismarck, ND 58505-0250

9. **400-28-162-25** – Administrative Disqualification Hearing (ADH).

Administrative Disqualification Hearing (ADH) 400-28-162-25

For specific information on Intentional Program Violation (IPV) Hearing Procedures, refer to Administrative Procedures Policy 448-01-35.

10. **400-28-162-30** – Court Conviction.

Court Conviction 400-28-162-30

Counties may refer individuals suspected of committing an Intentional Program Violation (IPV) to their states attorney for prosecution. The county must confer with its legal representative to determine the types of cases that will be accepted for possible prosecution.

Suspected fraud violations occurring on Indian reservations should be referred to the state's attorney. If the state's attorney's office does not have jurisdiction over the matter, the case will be referred to the U.S. Attorney's office that has jurisdiction on that reservation. If the state's attorney does not refer the matter to the U.S. Attorney's office, the county social service office should do so.

The county must not initiate an IPV against an individual for the same or related circumstances that have already been referred for prosecution.

If an individual is convicted through this procedure the county will receive a judgment.

Upon receipt of a judgment:

If the judgment includes a disqualification period, impose the disqualification following the CCAP disqualification timeframes.

Example:

If a court conviction is received with a disqualification period included, the disqualification period imposed is:

- 6 months if it is a first disqualification;
- 12 months if it is a second disqualification; and
- Permanently if it is a third disqualification.

Example:

If a court conviction is received and does not include a disqualification period, the disqualification period imposed is:

- 6 months if it is a first disqualification;
- 12 months if it is a second disqualification; and
- Permanently if it is a third disqualification.

- If the judgment does not include a disqualification period, the county must forward the following information to the Appeals Supervisor to process the judgment under the IPV provisions:
 - o Criminal Complaint;
 - o Judgment or Order; and
 - o A cover letter detailing the violation including the name, address, case number, client ID, and any prior disqualifications.

The Appeals Supervisor must then process the Findings and Order for the disqualification which is sent to the Executive Director for signature. Upon receipt of the signed Findings and Order, the county must impose the specific program disqualification time periods.

11. **400-28-162-35** – Disqualification Timeframes for Intentional Program Violation. Renumbered from 400-28-160-35 to 400-28-162-35. The title of this chapter has been changed to Disqualification Time Frames.

Disqualification Time Frames for Intentional Program Violation

400-28-162-35

~~Individuals Providers or adult members of the Child Care Assistance unit~~ who have committed an Intentional Program Violation (IPV) will be disqualified from receiving benefits for the following time periods:

- 6 months for the 1st offense
- 12 months for the 2nd offense
- Permanently for the 3rd or subsequent offense

12. 400-28-162-40 – Action Upon Receipt of Signed Findings and Order.**Action Upon Receipt of Signed Findings and Order 400-28-162-40**

Upon receipt of the hearing decision, review the decision **signed by the Executive Director** to determine if an Intentional Program Violation (IPV) was committed.

If an IPV was not committed the household remains responsible for any overpayment and the claim continues as a client error regardless of eligibility for benefits.

If an IPV was committed, the disqualification begins with the first month following the date the individual receives the signed IPV findings and order. When a disqualification has been imposed against an individual, the disqualification must continue uninterrupted until completed. The disqualification is imposed whether the case is currently open or closed.

An individual who is disqualified due to an IPV is not allowed to participate in the Child Care Assistance Program (CCAP) during the IPV disqualification:

- If a disqualified individual applies for CCAP as a caretaker, the application is denied and the entire CCAP household is ineligible.

- If a disqualified individual is a household member at time of application or in an ongoing case, the entire CCAP household is ineligible.

Exception:

Individuals who apply for or are receiving assistance through a federal or state funded program such as TANF, Transition, Diversion, or Crossroads requiring child care for participation are eligible to receive CCAP during a disqualification time period provided all other factors of eligibility are met.

The appropriate Notice of Disqualification must be sent to the household notifying the household that an individual is disqualified and/or assistance will be reduced or ended. The conviction and disqualification information and copies of supporting documents (including conviction information) must be recorded in the casefile. If a disqualified person moves from one county to another, include the disqualification information in the case transfer information.

Overpayments are recovered through a reduction of the CCAP payment. The rate of recovery for IPV is 20%.

Contact the state office for processing of overpayments for a provider IPV.

The provider or adult member of the CCAP household shall continue to be responsible for repayment of the overpayment which resulted from the IPV regardless of the provider or adult members of the CCAP household's eligibility for benefits.

Imposing the disqualification is required even if it means that some individuals may not be affected by the disqualification (e.g. SSI recipient).

An IPV can be pursued if a client is permanently disqualified. Pursuing the IPV will allow for recoupment of a claim at 20% rather than 10%.

After a disqualification hearing or the individual waives the right to an administrative hearing, there are no further appeal procedures

available through the Administrative Hearing Process. The determination of IPV cannot be reversed by a subsequent hearing. The individual however is entitled to seek relief in a court of appropriate jurisdiction. The period of disqualification may be subject to stay or other action which would delay the imposition of the disqualification.

13. **400-28-162-45** – Disqualification in Another State. Renumbered from 400-28-160-45 to 400-28-162-45.

Disqualification in Another State 400-28-162-45

Disqualifications from other states are not imposed or counted in North Dakota. If an individual has another IPV currently in place from another state, they are eligible to receive Child Care Assistance in North Dakota.

14. **400-28-162-50** – Subsequent IPV Action.

Subsequent IPV Action 400-28-162-50

A subsequent Intentional Program Violation (IPV) cannot be brought against an individual unless the violation took place after the date of the Executive Director's Findings and Order in the previous action.

Example:

If a decision for a first violation is dated May 17, but the second violation concerns unreported income for the month of December in the prior year, a second violation cannot be imposed because it took place prior to the decision in the first violation.

An IPV can be pursued if it involves two separate individuals and two separate violations, no matter when the violations occurred.

Example:

A decision for a violation is dated May 17 for the husband who is a household member. A second violation occurs due to unreported income for the month of December in the prior year for the wife. IPV can be pursued against the wife.