

20.6 REFERRALS TO THE CRIMINAL INVESTIGATIONS UNIT

NOTE: Workers must never accuse the client or insinuate to him that he is guilty of fraud or any criminal activity and must never imply a threat of criminal action to obtain repayment.

NOTE: When an agency employee believes that an overissuance/overpayment of benefits is \$500 or greater due to an alleged fraudulent act, i.e., intentional false statement or deliberate client misrepresentation, the case is referred to the Criminal Investigations Unit for evaluation, investigation, and referral for prosecution if warranted. Employees in this unit are known as Criminal Investigators (CI's). The overissuance/overpayment can be in one program of assistance or programs may be combined to reach the \$500 threshold. Programs of assistance investigated are cash assistance including Emergency Assistance and School Clothing Allowance, Food Stamps, Medicaid, LIEAP and Day Care.

A. DEFINITION OF WELFARE FRAUD

The principle statute dealing with obtaining welfare assistance through misrepresentation is Section 4, Article 5, Chapter 9, of the Code of West Virginia, 1936 as amended:

"Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by impersonation or any other fraudulent device:

- Any class of welfare assistance to which the applicant or recipient is not entitled; or
- Any class of welfare assistance in excess of that to which the applicant or recipient is justly entitled shall upon conviction be punished as follows:
 - If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall be less than five hundred dollars, the person so convicted shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars or confined to jail not exceeding one year; or

- If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall exceed five hundred dollars, the person so convicted shall be guilty of a felony and shall be fined not more than five thousand dollars or confined in the penitentiary not less than one year nor more than five years."

The important elements constituting an offense under this statute are that any false representation was willfully made or that any other device to obtain assistance was a misrepresentation.

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, and with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client knew his statement was false.

The misrepresentation must be of an existing fact and cannot be said to be willfully false if it is merely an expression of opinion.

Likewise, it is not essential that an affirmative representation be made. Misrepresentation may also be the suppression of what is true, as well as in the representation of what is false.

B. REFERRAL CRITERIA

The following guidelines assist the Worker in determining whether or not a referral is made to the Criminal Investigations Unit.

No referral is made in the following situations:

- The misrepresentation period ended more than 2 years ago.

EXAMPLE: A case was last certified in December, 1994. An overpayment occurred due to a false statement but was not discovered until November, 1998. The case is not referred for fraud investigation but is referred for repayment as detailed in Sections 20.2 and 20.3.

- Pertinent sections of the application form, i.e., income, assets, potential resources,

employment were not properly completed by the Worker.

- The Rights and Responsibilities form was not signed.
- The application form was not signed.
- Correct information affecting eligibility was reported, but the agency did not take appropriate action.
- The total amount is less than \$500. Repayment procedures should be followed instead. See Sections 20.2 and 20.3.
- The Worker believes the client is not mentally capable of understanding his responsibilities to report changes.
- When client is seriously ill, blind or is suffering from a terminal illness.
- When the client is over age 70.

EXCEPTION: In certain cases, misrepresentation may be so blatant and repetitive that referral may be indicated even though the amount is under \$500. If there are any questions concerning a referral, the Worker may discuss the case with the Criminal Investigator assigned to his county.

C. REFERRAL PROCESS

When it is determined that an overpayment meets the requirements for referral to the Criminal Investigations Unit, the Worker completes Form IFM-1 and forwards it to the Director, Investigations and Fraud Management, Building 6, using interdepartmental mail. The form requires the Worker to indicate the case name, RFA or case number, county of overissuance/overpayment, program(s) or assistance involved and a summary of the questionable eligibility factors. A sample of a completed form is Appendix B of this chapter. The forms are available in the county offices.

NOTE: A referral to the Criminal Investigations Unit for possible criminal action has no bearing on

current eligibility. The Worker must adhere to the eligibility requirements, require the client to verify all questionable information and take the appropriate action.

A Desk Guide to assist Workers in determining when and where to refer cases is found in Appendix C of this Chapter.

D. DISPOSITION

Upon completion of the investigation, the Criminal Investigative Unit notifies the Worker of the disposition of the referral.