

## **921 KAR 3:050. Claims and additional administrative provisions.**

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.18 requires the agency administering SNAP to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP.

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

- (1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;
- (2) A sponsor of an alien household member if the sponsor is at fault; or
- (3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

Section 2. Claim Category.

- (1) As specified in 921 KAR 3:010, a recipient claim shall be classified as an:
  - (a) Inadvertent household error (IHE);
  - (b) Agency error (AE); or
  - (c) Intentional program violation (IPV).
- (2) A suspected intentional program violation (SIPV) shall be:
  - (a) Established if fraud is suspected, but the client does not admit to committing fraud;
  - (b) Referred to court or an administrative hearing for a fraud determination; and
  - (c) Changed to an:
    1. IHE category without decreasing the claim period or recalculating the claim if fraud is not substantiated; or
    2. IPV category if fraud is substantiated.

Section 3. Acting on a Change.

- (1) A claim shall be established if a household:
  - (a) Fails to report a change in circumstance in accordance with the timeframes specified in 921 KAR 3:035; or
  - (b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.
- (2) The first month of overissuance, as defined in 921 KAR 3:010, shall:
  - (a) Be the first month that the change would have been effective had it been timely:
    1. Reported by the household; or
    2. Acted upon by the cabinet; and
  - (b) Not exceed two (2) months from the month the change in circumstance occurred.

Section 4. Calculating the Amount of a Recipient Claim.

- (1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:
  - (a) Calculate:

1. An AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance; and
  2. An IHE claim back to the month the overissuance first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance; and
  3. An IPV or an SIPV claim back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;
- (b) Determine the correct amount of SNAP benefits for each month that a household received an overissuance;
- (c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:
1. The claim is classified as an IPV, SIPV, or IHE; and
  2. The IHE, SIPV, or IPV is the basis for the recipient claim;
- (d) Subtract the correct amount of SNAP benefits from the benefits actually received and the difference shall be the amount of the overissuance; and
- (e) Deduct any SNAP benefits that are designated to be expunged from a household's EBT account from the amount of overissuance:
1. When the recipient claim is initially calculated; and
  2. At each subsequent expungement until the balance of the claim is paid in full.
- (2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked SNAP benefits as determined by:
- (a) An individual's admission;
  - (b) Adjudication; or
  - (c) The documentation that forms the basis for the trafficking determination.
- (3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:
- (a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or
  - (b) A court.
- (4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is seventy-five (75) dollars or less, unless the:
- (a) Household is currently participating in SNAP;
  - (b) Recipient claim was established or discovered through a quality control review; or
  - (c) The basis of the claim is trafficking SNAP benefits.

#### Section 5. KCD-1.

- (1) A KCD-1, General Claims Notice shall serve many purposes in the administration of claims collections, including the use as:
- (a) An appointment notice;
  - (b) A demand letter;
  - (c) Notification of benefit reduction;
  - (d) A past due notice;
  - (e) A repayment agreement;
  - (f) A claim adjustment notice;
  - (g) A claim termination notice;
  - (h) A payment receipt;
  - (i) Notice of a suspended claim;
  - (j) Notice of a claim being paid in full; or
  - (k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.

- (2) The language on the KCD-1 shall differ according to the purpose of the notice as described in subsection (1) of this section.

#### Section 6. Notification of a Claim.

- (1) A household with a suspected claim shall be mailed a KCD-1 notifying the household of an appointment to:
  - (a) Discuss the potential claim;
  - (b) Determine the classification of the claim, as specified in Section 2 of this administrative regulation; and
  - (c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.
- (2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.
- (3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:
  - (a) Fails to attend the appointment to discuss the potential claim; and
  - (b) Does not contact the cabinet to reschedule the appointment.
- (4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:
  - (a) Amount;
  - (b) Time period;
  - (c) Reason; and
  - (d) Category, as specified in Section 2 of this administrative regulation.
- (5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:
  - (a) Initiate a repayment agreement; or
  - (b) Request a hearing on the claim.

#### Section 7. Collection Methods.

- (1) Benefit reduction.
  - (a) A household that is participating in SNAP shall have payments on the claim made by reducing its monthly SNAP benefits through benefit reduction by the following amount:
    1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or
    2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.
  - (b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:
    1. Additional payment is voluntary; or
    2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.
- (2) A household may pay its claim using SNAP benefits from its EBT account if the household gives the cabinet permission:
  - (a) By completing and returning a KCD-1 or other written statement requesting this option; or
  - (b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.
- (3) If the cabinet becomes aware of expunged SNAP EBT benefits, the claim balance shall be reduced by an amount equal to the expunged benefits.

- (4) During the claim establishment and collection process, the cabinet shall:
  - (a) Deduct the amount of an outstanding recipient claim from SNAP benefits that may be owed to a household; and
  - (b) Send the household a KCD-1 as notification of the adjustment.
- (5) A lump sum payment on a recipient claim:
  - (a) Shall be accepted by the cabinet; and
  - (b) May be a full or partial payment.
- (6) If a household is not participating in SNAP, the cabinet shall:
  - (a) Negotiate a repayment agreement, either orally or in writing, which includes a repayment schedule; and
  - (b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.
- (7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:
  - (a) Referral to a public or private sector collection agency;
  - (b) Lottery offsets;
  - (c) Wage garnishment;
  - (d) The intercept of unemployment compensation benefits;
  - (e) State income tax refund intercept; or
  - (f) The intercept of any eligible federal payment owed the debtor through the Treasury Offset Program (TOP).
- (8) The cabinet shall:
  - (a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and
  - (b) Remove a recipient claim from TOP if the:
    - 1. FNS or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;
    - 2. Cabinet discovers that the debtor:
      - a. Is a member of a SNAP household undergoing benefit reduction; or
      - b. Has made an arrangement to resume payments; or
    - 3. Claim:
      - a. Has been paid off;
      - b. Was disposed of through a hearing, termination, or compromise; or
      - c. Was referred to TOP in error.

#### Section 8. Delinquent Recipient Claims.

- (1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:
  - (a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or
  - (b) A payment arrangement has been established and a scheduled payment has not been made by the due date.
- (2) The date of delinquency for a claim shall be the due date on the:
  - (a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or
  - (b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.
- (3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:
  - (a) Payment is received in full;

- (b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or
- (c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.
- (4) A claim shall not be considered delinquent if:
  - (a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and
  - (b) The cabinet expects to begin collection on the claim once the prior claim is settled.
- (5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a claim shall not be subject to the requirements for delinquent debts.
- (6) A claim awaiting a fair hearing decision shall not be considered delinquent.
- (7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:
  - (a) Renotify the household of the claim; and
  - (b) Base delinquency on the due date of the subsequent notice.
- (8) If a hearing official determines that a claim does not exist, the cabinet shall:
  - (a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and
  - (b) Send a KCD-1 to notify the household of the terminated claim.

#### Section 9. Compromising, Terminating, and Writing-off Claims.

- (1) Except for a recipient claim that is established by a court of the appropriate jurisdiction, the cabinet may compromise a claim in accordance with 7 C.F.R. 273.18(e)(7).
- (2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:
  - (a) The claim:
    - 1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;
    - 2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or
    - 3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;
  - (b) All adult household members, as specified in Section 1(1) of this administrative regulation, die; or
  - (c) The cabinet is unable to locate the household.

#### Section 10. Restoration of Benefits.

- (1) Benefits shall be restored to a household if the household has lost benefits:
  - (a) Due to an administrative error; or
  - (b) By an administrative disqualification for an IPV that is subsequently reversed.
- (2) Benefits shall be restored for a period of not more than twelve (12) months from the date:
  - (a) The agency receives a request for restoration; or
  - (b) A final order is implemented, if no request for restoration is received.
- (3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.
- (4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding SNAP participants shall be restricted to an individual who meets the criteria specified in 7 C.F.R. 272.1(c).

Section 12. Retention of Records.

- (1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:
  - (a) In an orderly fashion, for audit and review purposes; and
  - (b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:
    1. Month of origin of each record; or
    2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.
- (2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13. Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14. Incorporation by Reference.

- (1) "KCD-1, General Claims Notice", 1/17, is incorporated by reference.
  - (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
- (3 Ky.R. 680; eff. 5-4-1977; Am. 6 Ky.R. 161; eff. 10-3-1979; 8 Ky.R. 541; eff. 2-1-1982; 9 Ky.R. 507; eff. 11-3-1982; 1257; eff. 6-1-1983; 11 Ky.R. 1342; eff. 4-9-1985; 18 Ky.R. 900; eff. 10-16-1991; 19 Ky.R. 1228; 1569; eff. 12-16-1992; 22 Ky.R. 399; eff. 9-20-1995; Recodified from 904 KAR 3:050, 10-30-1998; 26 Ky.R. 245; 780; eff. 10-20-1999; 27 Ky.R. 2920; 28 Ky.R. 102; eff. 7-16-2001; 2279; 2595; eff. 6-14-2002; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 32 Ky.R. 1943; 33 Ky.R. 425; eff. 9-1-2006; 2220; 2973; 4-6-2007; 35 Ky.R. 1941; eff. 3-11-2009; 39 Ky.R. 1334; eff. 3-8-2012; 40 Ky.R. 2917; eff. 9-5-2014; 42 Ky.R. 620; eff. 11-18-2015; 43 Ky.R. 819; eff. 2-3-2017; 45 Ky.R. 1838; eff. 3-19-2019.)