

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
January 22, 2013**

IM 5159

TO: County Social Service Directors
Economic Assistance Policy Regional Representatives
Economic Assistance Policy Quality Control Reviewers

FROM: Carol Cartledge, Director, Economic Assistance Policy

SUBJECT: Drug Related Felony Review

PROGRAMS: SNAP and TANF

EFFECTIVE: Immediately

RETENTION: Until Manualized

SECTIONS
AFFECTED: 430-05-75-25 –Other Disqualifications
400-19-45-95-10 – Convicted Drug Felon

Changes are being made to SNAP and TANF Policy as individuals who were disqualified from the SNAP and TANF programs due to a drug related felony may regain eligibility.

North Dakota State Law specifies if an individual was convicted and sentenced to imprisonment for not more than one year on or after August 1, 2009, it is deemed a felony until the term of probation and incarceration is completed, then deemed a misdemeanor (unless convicted for a violation of N.D.C.C. § 19-03.1-23(1)(a), (b), or (c) in which case it is always considered a felony conviction if occurred on or after August 1, 2001, or N.D.C.C. § 19-03.1-1-23(1)(b)(c) prior to August 1, 2001).

However, if a conviction occurred between August 1, 2001 and August 1, 2009, and an order is entered revoking probation as part of the sentence, the individual is deemed to have been convicted of a felony even if he or she is resentenced to one year or less of imprisonment. Refer to N.D.C.C. § 12.1-32-02(9).

If the individual was sentenced to less than one year of prison (365 days) for possession of a controlled substance after August 1, 2009 and they haven't violated any probation term they may have received, they can regain eligibility for SNAP and TANF once the term of imprisonment and/or the term of probation has been satisfied since the felony has been reduced to a misdemeanor.

Note: This rule generally applies to possession of a controlled substance charge.

The criminal complaint and/or judgment will contain orders indicating if the charge can be reduced to a misdemeanor after an individual's prison term and probation sentence have been served.

Individuals do not have to provide verification from the court that the felony has been reduced to a misdemeanor.

After the review is completed by the state, eligibility workers will receive a formal notification indicating if the individual is disqualified. This notification will include wording indicating if the disqualification can be reduced to a misdemeanor in bold lettering. **It is not up to the eligibility worker to monitor if an individual can regain eligibility.**

For on-going cases, if an individual reports their felony has been reduced to a misdemeanor, the eligibility worker will complete the SFN 376 and resubmit the Criminal Complaint and Judgment documents to the state office. Individuals may regain eligibility following the month of report.

As a reminder, Drug Related Felony convictions should always be explored at application and review.

SNAP

Section 430-05-75-25, Other Disqualifications will be updated as indicated below, with the next SNAP manual letter.

Drug Related Felony

An individual convicted of a felony for possession, use, or distribution of illegal drugs is ~~permanently~~ ineligible to participate in SNAP when the act occurred after August 22, 1996.

If an individual is convicted of a drug related felony, the following information must be sent to the State SNAP Office for review on the SFN 376 - Drug Related Felony Review form:

- Eligibility Worker Full Name and County
- ~~Individual's Social Security Number~~
- Individual's Date of Birth
- Individual's Full Name and Middle Initial
- Case Number Individual is Participating In
- Individual's Client ID Number
- Sex of Individual
- Copies of the Criminal Complaint and Judgment or Order which substantiates the individual's drug-related felony

In order to determine whether an individual's conviction is disqualifying, the court documents ~~that you send~~ sent to the State Office must include the date of the offense(s), the sentence or judgment of the court and the nature of the offenses. This information is usually contained in the Criminal Complaint and Judgment document. However, the offense date is not always listed on the Criminal Complaint and Judgment.

If the Criminal Complaint and Judgment document does not contain the offense date(s) please request a copy of the "Information" or "Criminal Information" document and forward it to the State Office. The "Information" or "Criminal Information" document will include the offense date(s).

If an individual is convicted in a federal court, the court documents may not indicate whether an offense was a misdemeanor or a felony. In that case, the court documents should be forwarded to the State Office even without that information being provided.

The State SNAP Office will review the information to determine if the conviction disqualified the individual from SNAP and notify the worker. If appropriate, the State SNAP Office will enter the disqualification on the sanction screen in TECS and change the individual's participation code to DD.

If an individual reports their felony has been reduced to a misdemeanor, the eligibility worker will complete the SFN 376 with the required information and resubmit the Criminal Complaint and Judgment documents to the State SNAP Office. If the client regains eligibility, the eligibility worker will receive notification and an end date will be added to the IPSA screen in TECS. Clients will regain eligibility following the month of report or at the next SNAP review.

The F439 and the F219 have also been updated by removing the word permanently and now indicate if the individual's felony conviction is reduced to a misdemeanor they may reapply.

TANF

Section 400-19-45-95-10, Convicted Drug Felon will be updated as indicated below, with the next TANF manual letter.

Convicted Drug Felon 400-19-45-95-10

An individual convicted of a federal or state felony which occurred after August 22, 1996, involving the possession, use, or distribution of an illegal drug (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))) may be permanently ineligible to participate in the TANF Program. The individual will be permanently ineligible if in addition to the conviction, there is a sentence consistent with felony conviction. Action to deny or terminate TANF for the individual can be taken only if verification is obtained concerning such conviction. Only convictions overturned in a court of law may be removed.

Note: This does not apply to alcohol-related convictions.

If an individual is convicted of a drug related felony in a local, state, or federal court, the following information must be sent to the Economic Assistance Policy Division for review on the SFN 376 - Drug Related Felony Review form:

- Indicate TANF Program
- Eligibility Worker's Full Name and County Name
- ~~Individual's Social Security Number~~
- Individual's Date of Birth
- Individual's Full Name, Including Middle Name
- Individual's Case Number

- Individual's Client ID Number
- Individual's Gender
- Application Date
- Date Case Must be Processed
- Copies of the Criminal Complaint and Judgment or Order which substantiates the individual's drug-related felony.

In order to determine whether an individual's conviction is disqualifying the court documents sent to the state office must include:

1. The date of the offense(s);
2. The sentence or judgment of the court; and
3. The nature of the offense(s).

This information is usually contained in the Criminal Complaint and Judgment document. However, the offense date is not always listed on the Criminal Complaint and Judgment.

If the Criminal Complaint and Judgment document does not contain the offense date(s), please request a copy of the "Information" or "Criminal Information" document from the arresting authority and forward it to the state office. The "Information" or "Criminal Information" document will include the offense date(s).

The State TANF Office will review the information to determine if the conviction disqualifies the individual from the TANF Program and notify the worker.

Convicted drug felons who are disqualified from receiving TANF assistance continue to have their income and assets considered when determining eligibility for remaining household member(s). Disqualified individuals are permitted applicable income disregards (i.e., standard employment expense allowance, employment incentive disregard and work-related child/adult dependent care). Individuals participating in the JOBS program are eligible for Supportive Services.

If an individual reports their felony has been reduced to a misdemeanor, the eligibility worker will complete the SFN 376 with

the required information and resubmit the Criminal Complaint and Judgment documents to the Economic Assistance Policy Division. The earliest date an individual may regain eligibility is the benefit month following the month the client reports the change. If the client regains eligibility, the eligibility worker will receive notification from the State office indicating the month the client has regained eligibility. The eligibility worker will need to uncheck the 'Felony Drug Conviction: Offense committed after 8-22-96' checkbox on the Felony Information Window in the Benefit Month equal to the month indicated on the notice from State Office.

If you have any questions, please contact your Regional Representative.