

<b>INTENTIONAL PROGRAM VIOLATION FAIR HEARING ISSUES</b>	<b>FH # and Date</b>
<b>JURISDICTION:</b>	-----
<ul style="list-style-type: none"> <li>OTDA lacks jurisdiction to review voluntariness where Appellant, who claimed mental illness, had signed a disqualification consent agreement that had been confirmed by a city court Judge.</li> </ul>	3811937P (12/11/2002)
<b>INTENT: APPELLANT LACKED INTENT. NO IPV WHERE:</b>	-----
<ul style="list-style-type: none"> <li>Appellant credibly testified that she faxed statement of employment income and Appellant's counsel found documents belonging to other people in Appellant's case file showing that Appellant's case file was not complete.</li> </ul>	5679126J (5/6/11)
<ul style="list-style-type: none"> <li>Appellant's only income was as a child care provider for her sister and Appellant had provided the Agency with an enrollment form and W-9 in connection with that employment. Agency's awareness of the income rebuts any inference that failure to report income was done with intentional and deceitful purpose.</li> </ul>	5841417R (11/23/11)
<ul style="list-style-type: none"> <li>Psychiatric disability</li> </ul>	4889613K – (4/21/2008)
<ul style="list-style-type: none"> <li>Limited English proficiency</li> </ul>	3714754R – (7-14-2003)
<ul style="list-style-type: none"> <li>Low reading level</li> </ul>	3339057Y – (2-6-2001)
<ul style="list-style-type: none"> <li>Memory loss from strokes</li> </ul>	3251583M – (4-13-2000)
<ul style="list-style-type: none"> <li>Appellant required assistance in filling out application</li> </ul>	3782706L – (3-27-2003)
<ul style="list-style-type: none"> <li>Appellant mistakenly thought her son's income did not count (he was previously a student)</li> </ul>	3580373M – (12-10-2001)
<ul style="list-style-type: none"> <li>Appellant, believing benefits from former state of residence were retroactive, cashed in benefits from former state and New York State</li> </ul>	5164425J – (6-2-2009)
<ul style="list-style-type: none"> <li>After moving to New York from Florida, Appellant did not realize he had to notify NY DSS that he received FS from FL</li> </ul>	4626082R – (5-16-2007)
<ul style="list-style-type: none"> <li>Appellant indicated "no changes" on her recertification application and notified Agency of her receipt of UIB when her case was opened and termination of her UIB after 5 months. Agency failed to attach a budget to the opening notice. Therefore, Appellant had no way to know that her UIB was not budgeted.</li> </ul>	4093011R – (11-16-2004)

<ul style="list-style-type: none"> <li>Appellant notified Agency of her employment but never redeemed her benefits after that date and was unaware that there were benefits on her card</li> </ul>	2906333Z – (2-18-1999)
<ul style="list-style-type: none"> <li>Appellant failed to notify agency of her marital status on her recertification application. ALJ held that Appellant lacked intent because she was not asked about her marital status during her interview and the caseworker filled out her application for her.</li> </ul>	4833745L – (5-27-2009)
<ul style="list-style-type: none"> <li>Only proof of IPV (man in the house) was Appellant’s voluntary statement which she recanted.</li> </ul>	4962228Y – (4-6-2010)
<ul style="list-style-type: none"> <li>At recertification, worker entered Appellant’s answers into a computer and the recertification form was signed using a credit card type screen and Appellant was not provided a copy of the Recertification form. Appellant had been accused of not reporting babysitting income.</li> </ul>	5074166Q – (7-20-2011)
<b>DEFENSE OF LACK OF INTENT REJECTED</b>	-----
<b>WHERE:</b>	
<ul style="list-style-type: none"> <li>Appellant suffered from drug addiction</li> </ul>	5242650N – (9-25-2009)
<b>AGENCY FAILED TO MEET ITS BURDEN OF PROOF WHERE:</b>	-----
<ul style="list-style-type: none"> <li></li> </ul>	
<ul style="list-style-type: none"> <li><b>Agency Record is missing pages and Appellant notified child care unit of her employment.</b></li> </ul>	5669283L (7/11/11)
<ul style="list-style-type: none"> <li>Agency failed to provide copy of application covering the alleged fraud period at the hearing</li> </ul>	4997680N 4889402Z (4-6-2010)
<ul style="list-style-type: none"> <li>In PA and FS IPV case, Agency Record was missing pages and evidence established that the Appellant notified the Child Care Unit of her employment</li> </ul>	5669283L – (7-11-2011)
<ul style="list-style-type: none"> <li>Agency testimony is not corroborated in the case notes. Alleged altered document (falsified rent) was faxed from landlord’s employer, where Appellant did not work</li> </ul>	5029588K – (5-5-2009)
<ul style="list-style-type: none"> <li>Sole evidence was a voluntary statement which Appellant recanted</li> </ul>	4962228Y – (4-6-2010)

<ul style="list-style-type: none"> <li>Agency's evidence that a third person received mail at Appellant's residence was not enough to show that Appellant committed an IPV by misreporting her household composition. Hearing officer found that Agency did not perform any formal surveillance to show that the third person was actually residing in the household during the period in question.</li> </ul>	4956218K – (7-10-2008)
<b>Agency Failed to follow 18 NYCRR 359.4. No IPV where:</b>	-----
<ul style="list-style-type: none"> <li>Agency referred the matter to the District Attorney, and then Agency instructed Appellant to sign a confession of judgment and repayment agreement and then sanctioned Appellant. The ALJ held that without a court conviction, a signed Disqualification Consent Agreement (DCA), a decision after a fair hearing or a waiver of a hearing, no sanction can be imposed.</li> </ul>	3444058J – (4-13-2001)
<b>Defense that Agency failed to follow correct procedure rejected where:</b>	-----
<ul style="list-style-type: none"> <li>No evidence that Agency formally withdrew, in writing, the referral to the District Attorney before referring to OTDA to proceed with IPV hearing, as required by 18 NYCRR 359.5(c). ALJ holds that although regulations say that the Social Services district "must formally withdraw in writing," failure to do so "may" result in a "decision adverse to the Social Services District.</li> </ul>	5089099L – (1-13-2009)
<b>Amount of IPV Overpayment:</b>	-----
<ul style="list-style-type: none"> <li>Must be reduced by child support payments assigned to the social services district</li> </ul>	5089099L – (1-13-2009)
<b>Penalty:</b>	-----
<ul style="list-style-type: none"> <li>IPV penalty which leads to discontinuance of "Public Assistance" includes Safety Net Assistance but not Medicaid.</li> </ul>	3669592K (9-23-2003)
<b>Double Jeopardy:</b>	-----
<ul style="list-style-type: none"> <li><u>Disqualification hearing prohibited where, on the same set of facts offered at the hearing, the Appellant has been charged and convicted in criminal court.</u></li> </ul>	5203562Z – (6-10-2009)