

DISQUALIFICATION PERIOD INSTRUCTIONS

When conducting background studies, the look-back period is the length of time that we can “look-back” for a particular disqualifying crime or incident. Follow these guidelines in determining if a disqualifying factor exists:

 **First** - You **must** obtain the initial applicable information in written documentation:

-  statute number of the crime/incident
-  conviction level
-  date of discharge of the sentence and level of crime at discharge
-  maltreatment determination that is serious or recurring

The disqualification and reconsideration process cannot be completed without the above information.

 **Second** - determine which of the following ways the individual may be disqualified (it is best if the dq can be based on a conviction or admission whenever possible):

-  conviction
-  preponderance of evidence
-  admission of a crime
-  maltreatment of a minor (serious or recurring)
-  maltreatment of a vulnerable adult (serious or recurring)
-  Alford Plea

 **Third** - Consult the Disqualification Look-back Guidelines to determine if the individual is disqualified, and under which of the following options you are basing the disqualification.

A. Conviction/ Adjudication or Admission - If the disqualification is based on a conviction/adjudication, verify the following:

-  the conviction level matches the appropriate conviction level in the look-back guidelines
-  the statute number matches the appropriate crime in the look-back guidelines
-  the disqualification and conviction level fall within the appropriate look-back period

Example: A family day care provider has a misdemeanor conviction of Minnesota Statutes 609.52 (Theft). The date of discharge of the sentence was June 25, 1988. Use the steps above to determine the existence of a disqualifier. In this scenario, the theft is a misdemeanor level, so you would consult the Disqualification Period Guidelines for misdemeanors and verify that theft was on the list. You find that a misdemeanor theft conviction is a disqualification for a seven year period, however, the individual was discharged from probation on June 25, 1988. Therefore, the individual is not disqualified because it has been more than seven years since the discharge of the sentence.

B. Preponderance of evidence of a crime - If a disqualification is based on a **preponderance** of evidence (poe) of a crime, you must determine the following:

-  the offense is a disqualifying factor that meets the definition of the crime and the level of conviction for the appropriate look-back period

☞ the date in which the incident occurred corresponds with the appropriate look-back period

Example: Upon completing a background study, you discover that an adult foster care applicant was charged with a **gross misdemeanor 5th** degree assault (MS Stat. 609.224) on October 31, 2000. Upon further review, you determine that the charge was dismissed on January 3, 2001. Your agency decides that even though the individual wasn't convicted, there is a preponderance of the evidence to meet the definition of a **gross misdemeanor 5th** degree assault. Based on this, you would then disqualify the individual based on a preponderance of the evidence providing the agency has sufficient documentation to support a preponderance of evidence of a gross misdemeanor offense and 10 years has not passed.

C. Maltreatment of Minors - If a disqualification is based on a **maltreatment of minors determination**, you must determine if the maltreatment meets all of the following criteria:

- ☞ The act that occurred meets the definition of maltreatment (as defined in Minnesota Statutes 626.557)
- ☞ The subject was responsible for the maltreatment, and
- ☞ The maltreatment was serious or recurring (as defined in Minnesota Statutes 245C.02, subd. 16 and subd. 18)

If all three criteria are met, and the maltreatment determination is within the previous seven year period, then a disqualification exists.

If the maltreatment resulted in substantial bodily harm, and the maltreatment occurred within seven year period preceding the study, there is a seven year bar on the Commissioner's discretion to set aside the disqualification.

D. Maltreatment of a Vulnerable Adult - If a disqualification is based on **maltreatment of a vulnerable adult determination**, you must determine if the maltreatment meets all of the following criteria:

- ☞ The act that occurred meets the definition of maltreatment (as defined in Minnesota Statutes 626.556)
- ☞ The subject was responsible for the maltreatment, and
- ☞ The maltreatment was serious or recurring (as defined in Minnesota Statutes 245C.02, subd. 16 and subd. 18)

If all three criteria are met, and the maltreatment determination is within the previous seven year period, then a disqualification exists.

If the maltreatment resulted in "substantial bodily harm" or "substantial mental or emotional harm", and the maltreatment occurred within seven year period preceding the study, there is a seven year bar on the Commissioner's discretion to set aside the disqualification.

"Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member, OR

"Substantial mental or emotional harm" as supported by competent psychological or psychiatric evidence.

