



Legal Aid
Society
of Hawai`i

Overpayments for AFDC, GA, AABD, FOODSTAMPS, & QUEST

Use this brochure if you have received an overpayment notice from the Department of Human Services for your AFDC, GA, AABD, food stamps, or Quest.

This brochure does not apply to you if you received an overpayment notice from the Social Security Administration for your SSI or SSDI benefits. See Legal Aid's brochure "SSI/SSDI: Overpayments."

What is an Overpayment?

- An overpayment happens when an agency, such as the Department of Human Services (DHS), gives you more than the benefit amount you are supposed to get. For example, if the agency gives you benefits for four (4) people when there are only three (3) people in your household, then this is considered an overpayment.
- If the agency decides that an overpayment has occurred, **you will have to pay it back no matter whose fault it is.**
- It is important to determine who caused the overpayment (you or the agency) because you may be charged with an intentional program violation (IPV) if they find that you tried to get extra benefits on purpose.

You can have an overpayment because...

1) AGENCY ERROR: They Made A Mistake And Sent You Too Much

This usually occurs when the agency worker who calculated your benefits made a mistake and gave you more than you were entitled to. This is a common mistake. Even if the agency made the error, you are still responsible for the overpayment and must pay back the extra money given to you.

2) HOUSEHOLD ERROR: You Made The Mistake

Some common causes for household errors:

- Failure to report income or asset information on your Monthly Eligibility Report Form (MERF)
- Lump sum inheritance/settlements: Lump-sum settlements are when you receive a large amount of money/assets. The lump-sum settlement may make you ineligible for benefits or affect the amount of assistance you are entitled to receive.
For more information on lump sum situations, see pages 5-6.

3) INTENTIONAL PROGRAM VIOLATION: You Purposely Received Extra Benefits And Hid It From DHS

If the overpayment occurs as a result of something you did and the agency thinks that you purposely tried to violate their rules, DHS may consider the overpayment an IPV. In this situation, DHS can try to one and/or more of the following:

- Collect the overpayment
- Disqualify you from benefits
- Start a criminal investigation for fraud.

For more information on IPVs, see brochure entitled "Intentional Program Violations."

4) AID PAID PENDING (APP): You Asked for Aid Paid Pending and Lost Your Hearing

When you get a notice from DHS about a reduction or termination of your benefits, you can get APP if you turn in your appeal within ten (10) calendar days of the date on the notice. APP means that you will still get your current benefit amount until the time of your hearing. If you lose your hearing, you will owe the APP you got while you were waiting for your hearing. This amount you owe will become an overpayment. You must repay the benefits you received that were more than the amount you were entitled to.

Process of an overpayment

Basically, the overpayment process is the same for all DHS programs (AFDC, GA, AABD, Food Stamps, & Quest). This process is different from Social Security programs (SSI/SSDI).

1. You receive written notice.

(Called “Notice of Overpayment” or “Notice of Action”)

Once you get this notice, you can appeal and request a fair hearing.

2. You appeal.

Deadline: within 90 calendar days after the date on notice; within 10 calendar days for Aid Paid Pending (APP). *See box on the right for more information on APP.*

When you appeal, this means that you are requesting a fair hearing to talk about your case and prove that you did not receive an overpayment. On the back of the overpayment notice, there is a section that says you have a right to this fair hearing.

Foodstamps appeal:

For a food stamps overpayment, you can either call or write to the office and request the fair hearing, but make sure you write down the date and time of call and the name of the person you talked to. It is best to write your request so you have proof of your request.

PLEASE NOTE: If your food stamps overpayment says that it is for a household error and your household does not appeal within twenty (20) days, DHS will automatically reduce your food stamp amount. Even though the reduction will start, you will still have ninety (90) days to file your appeal and request a fair hearing.

Cash benefits appeal:

For an AFDC, GA, AABD overpayment, you need to mail or deliver a written request for a fair hearing. In your request, all you need to say is that you received an overpayment notice and would like to request your fair hearing. Hand-delivering the request is best, but make sure you take an extra copy and get it date-stamped. If you need to mail it, send it certified mail with return receipt requested.

Aid Paid Pending

If you turn in your request within ten (10) calendar days of the date on the notice, you can also ask for and get Aid Paid Pending (APP). This means that you will continue to get your current benefit amount until the hearing.

If you lose the hearing, however, you will need to repay the APP you got. The amount of excess APP you got before the hearing will be added to your original overpayment.

If you miss the ten (10)-day deadline for APP, you still need to turn in the hearing request forms before the 90-day deadline in order to get a fair hearing.

3. Prepare for your hearing.

● Look at the hearing notice

Your notice will tell you when your hearing is. Make sure that you are able to go to this hearing. If you cannot make the hearing as scheduled, request another date and time by contacting the Hearing Officer assigned to your case (listed on the notice) or the Administrative Appeals Office at 586-5290. If you do not call or show up, you will automatically lose by default.

● Collect proof

In order to win your appeal, you need to plan out what you want to prove.

First of all, you want to prove that you did not get an overpayment so that you do not need to repay the overpayment.

Show that the calculations the agency did were wrong and that you did not receive an overpayment or prove that the amount of the overpayment is less than what the agency said. To do this, check in your case file at the agency office. Double check the calculations. You have the right to look over your case file at the agency office. Agency errors are common and workers easily make mistakes. You are entitled to free copies of information/documents that are in your file that you may use at

the hearing.

If you cannot prove that you did not get an overpayment, try to prove that the overpayment was an agency error.

In this case, you will still need to repay the overpayment, but at least the agency will know that it was not your fault. Check your case file at the agency office. If you find something in your file that proves you reported correctly, get a copy of the report and take it to your fair hearing. You are entitled to free copies of information/documents in your file that you want to use at the hearing. If you know that you reported a change and it is not in your file, be prepared to prove that you did report it. Use documentation to prove your side of the story: get copies of your MERF, notes you wrote to DHS, document any phone calls you made to your worker, etc.

If your overpayment was a household error, try to prove that you did not do it on purpose.

It is important to show that the overpayment was not on purpose because you want to avoid any future IPVs.

Some possible claims/defenses you can use for household errors:

- didn't know you had to report
- don't understand English well
- have problems reading
- you have "good cause"—especially for failing to report on time. Examples: severe illness, death in the family, necessary absence from the state.

If you know you have an overpayment and cannot prove that you did not receive an overpayment, you should make sure that the amount is correct.

Whether you had a household error or if there was an agency error, double check the agency's calculations to make sure they calculated the overpayment right. Workers sometimes make mistakes because the calculations are so complicated. Make sure that you are not being required to pay back more than you need to.

See box on the right for information on how to check the calculations your worker did.

How Do I Check the Calculations?

Checking the calculations can be very complicated. What you should do is ask your case worker to show you how the calculations were done. Ask him/her to explain what deductions were made.

Specifically, you want to make sure that your shelter and utility deductions were made. Your worker will know which deductions you are talking about if you mention these.

Check your file at DHS if you know you reported a change but think that the change might not be included in your benefits. What you want to look for in your file is anything that indicates you reported the change in your income or situation.

4. Go to Your Hearing

- Your case worker and a hearing officer will be there to listen to your case.
- Bring all your evidence to prove your case. This includes documents, witnesses, any letters you may have written to DHS.
- Anyone can represent you. You can represent yourself, have an attorney, or have a friend speak for you if you want.
- **REMEMBER:** The only time you won't be required to repay the overpayment is if you can **PROVE** that an overpayment was not made. In all other situations, if an overpayment was made, you need to pay it back.

Collection of Overpayments

Whether it is for a household or agency error, the collection process is the same.

To collect an overpayment, an agency can do one or more of the following:

If you are still on benefits:

Cash Benefits:

DHS can take back 10% of your monthly financial benefits or ask that you make a voluntary payment from your monthly benefits.

Food Stamps:

DHS can take back 10% or \$10.00 from your monthly benefits. DHS will continue taking from your benefits until the total overpayment is paid off.

If you are no longer on benefits:

DHS will bill you monthly or start you on a payment plan. This amount is usually between \$25 to \$30, but can be negotiated to a smaller amount. Keep current on your payments or DHS will start a tax-intercept. *See below for more information on tax intercept.*

If you don't pay:

If you do not cooperate with one of the above ways to pay back your overpayment, DHS will intercept your state income tax refunds. You will receive a notice saying that the agency will be intercepting your tax refunds and you will have a chance to appeal and ask for a hearing. At the hearing, you will have a chance to explain why they should not take your tax refunds. This hearing will not cover whether or not there was an overpayment.

Common defenses to prevent the agency from taking your tax refunds:

- you have been following a payment plan, (show check statements, receipts from DHS)
- you filed a joint tax refund with your spouse and a portion of the refund belongs to your spouse,
- you already repaid the debt (show the repayment schedule you followed and receipts), OR
- the debt was discharged in bankruptcy (show paperwork from your bankruptcy).

Future Strategies

1. Report all changes in your income to DHS.

Example: If you get a raise at work or you get a new job.

Let the agency know as soon as possible. If you do not report it, you will get an overpayment notice when the agency finds out about the raise.

If you write a letter notifying DHS of any changes, make sure you keep copies of any letters you write. If you call DHS, make sure to write down the date and time of calls you make and the name of the person you talk to.

2. Keep records when you report a change in your situation.

Example: You reported a change in your situation on your MERF, but the agency didn't change your benefit amount. This will probably show up as an overpayment later.

Keep any paperwork or write down any phone calls you made to the agency. If you call, note who you talked to and the date/time of the call. Keep dated copies of any letters that you send to DHS.

3. Keep track of your assets.

Example: Your relative gives you some money and you put it in your bank account.

Every so often, check how much assets you have. You will get an overpayment notice anytime you are overasseted. Being overasseted means that you have more assets than the agency allows. Agency rules on assets are VERY STRICT. Even if you are only one cent over the asset limit, you are still overasseted and will be ineligible for benefits in that MERF period. You will receive an overpayment notice for that period.

4. If you think that you will be receiving a lump-sum inheritance/settlement.

Example: You were named as a beneficiary in a will and will be getting a large amount of money OR You were awarded an insurance settlement that includes a large amount of money.

In these situations, you will usually be over-asseted and will be cut off of financial assistance. The best thing to do if you know you will get a large amount of money or property is to get off benefits the month before you receive the lump-sum amount. To avoid the lump sum rule, you cannot receive financial assistance from DHS and the lump sum in the same month.

If you do not get off of benefits, the agency will look at the lump sum you received and divide it by your monthly benefit amount. The number they get is the number of months you will not be able to get your benefits.

For example: You receive \$5,000 in an insurance settlement. If your benefits amount is \$500 per month, you will not receive benefits for ten (10) months. ($\$5000 \div \$500 = 10$ months)

What To Do If You Are Going To Be Overasseted

Step 1: GET OFF BENEFITS

Notify the agency a month before you receive the lump-sum amount. Tell DHS that you want to get off benefits. Follow up with your case worker orally and in writing.

Step 2: SPEND DOWN

While you are off benefits, spend the money down—buy things you need at fair market value—and keep receipts to prove that you spent the money.

- For the financial assistance programs (AFDC, GA, AABD), you can own:
1 car, 1 burial plot, and use up to \$1,500.00 for funeral expenses.
- For food stamps, you can own:
1 car, 1 burial plot, and use up to \$1,500.00 for funeral expenses, household goods, appliances, furniture and personal effects (i.e. clothes or shoes), .

If you purchase things that are not exempt, you may have a problem when or if you reapply for benefits later. The purchased items may put you over the asset limit and make you ineligible.

Step 3: GET BACK ON BENEFITS

Reapply for benefits after you spend the money down. You do not need to spend it all. Just make sure that you are below the asset guidelines below:

AFDC:	\$5,000
GA:	\$2,000 if single; \$3,000 couples
AABD:	\$2,000 if single; \$3,000 couples
Foodstamps:	\$2,000; \$3,000 if over 60
Quest:	\$2,000 if single; \$3,000 couples; plus \$250 for each additional family member

Legal Terms

agency error when an overpayment is caused by the agency, in these cases--DHS APP aid paid pending; getting benefits while you are waiting for the results of your appeal hearing.

appeal when you ask the court to re-think a decision

assets things that you own (example: jewelry, cars, etc.) or money that you have
DHS Department of Human Services; this is the agency that is in charge of AFDC, GA, AABD, Foodstamps, and Quest.

financial assistance cash assistance that you receive from a welfare program; includes AFDC, TANF, PONO, GA, and AABD.

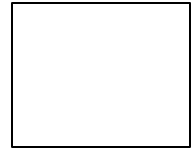
household error when an overpayment is caused by a mistake you made
IPV intentional program violation; when you try to get more benefits than you are supposed to get

lump sum settlement a large amount of money or assets you receive usually as part of an insurance settlement or through an inheritance

MERF Monthly Eligibility Report Form
recouping taking back the benefits that you were not supposed to get



Legal Aid Society of Hawai'i
 924 Bethel Street
 Honolulu, HI 96813



Useful Names and Numbers to Know

Legal Aid Society of Hawai'i

<http://www.legalaidhawaii.org>

Legal Hotline Hours: Monday to Friday 9:00 - 11:30am & 1:00 - 3:30pm

OAHU: 536-4302 MAUI: 242-0724 LANAI: 565-6089

HILO: 934-0678 KONA: 329-8331

KAUAI: 245-7580 MOLOKAI: 553-3251

Department of Human Services
 (DHS)

Oahu

Honolulu 586-8047
 333 N. King Street., Rm 201
 East Honolulu 586-8055
 333 N. King Street., Rm 201
 Leeward 697-7147
 86-088 Farrington Hwy, Suite 106
 Waipahu 692-7171
 601 Kamokila Blvd, Rm 468
 Kapolei
 Windward 233-3621
 45-260 Waikalua Road

Maui

East Maui 984-8300
 54 High St., Rm. 125
 West Maui 243-5110
 35 Lunalilo St. Rm. 300

Kauai

Lihue..... 274-3371
 3060 Ewa Street, Rm. 103
 Kapaa..... 822-3475
 4-1579 Kuhio Hwy. Rm. 101
 Hanapepe..... 335-2110
 1-3491 Kaumualii Hwy

Big Island

Hilo Office 933-8857
 13 Keakaulike St.
 Kona Offices
 North Unit: 327-4980
 South Unit:..... 323-7573
 Kamuela-Hamakua Office 775-8854
 Kau Unit 939-2421
 Kohala Unit 889-7141

****Call for the DHS office nearest to you****