

# How to Fight an Overpayment of Cash Assistance, Medical Assistance or Food Stamps

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## Introduction

An overpayment occurs when you receive benefits you are not eligible for according to Department of Social & Health Services (DSHS) rules. These rules are found in Chapter 388 of the Washington Administrative Code (WAC) in your local DSHS office or the public library or online at [www.leg.wa.gov/WAC](http://www.leg.wa.gov/WAC). DSHS gets the benefits back by charging you with an overpayment. There are three different kinds of overpayments.

1. The overpayment is intentional if it happened because you intentionally did not give DSHS information that you knew you should have or gave DSHS wrong information about your circumstances.
2. The overpayment is unintentional if it happened because of a mistake.
3. The overpayment is an "administrative error" if it happened because DSHS made a mistake.

If DSHS says the overpayment is intentional, your case may be referred to the county prosecuting attorney for charges of welfare fraud. If you are charged with a crime, you should ask for a public defender. Be careful not to make any statements to DSHS until you have talked with a lawyer.

## May I appeal the overpayment?

You may fight the overpayment by asking for a fair hearing. You may want to argue any or all of the following:

- whether there was an overpayment at all;
- the amount of the overpayment;
- whether you should have to pay back an unintentional overpayment; or
- whether the overpayment was intentional.
- *For food stamps only:* Whether the DSHS has acted timely (see section following #4 below for further information about this).

You may do any of these by asking for a fair hearing and arguing any of the following:

1. There may be no overpayment at all. For example, if DSHS says that you were overpaid because they think that your car is worth more than it is, you may provide proof that its value is within the amount allowed by the rules. Or, for example, DSHS may say that you own a bank account with too much money in it when really it is your grandmother's account and your name is on it only for your grandmother's convenience. You can prove it by having your grandmother make a statement to the administrative law judge.
2. The amount of overpayment may not be as much as DSHS says it is. If it's a financial assistance overpayment, you should ask if DSHS collected any child support during the

period of time that the overpayment occurred. If so, the overpayment should be reduced by the amount paid. Or, you may have been eligible for another category of assistance. Any amount that you should have been paid and were not is an underpayment. (Examples: If you asked for emergency assistance and were eligible but did not get it; or, you reported an additional person in your family and you should have gotten more benefits but you didn't.) Underpayments may be used to offset against the overpayment. It does not matter how long ago the underpayment happened.

3. If the overpayment was DSHS' mistake it is called an **administrative error**. You may ask the administrative law judge for a *waiver of repayment under "equitable estoppel."* A waiver means you will not have to pay DSHS back for the overpayment. See our publication [How to Present an Equitable Estoppel Defense](#) if you told DSHS everything that you should have and they made a mistake and paid you too much.
4. If DSHS claims that the overpayment was **intentional** and you do not agree, you may tell the administrative law judge why. An intentional overpayment occurs when you did not tell DSHS about something that you knew you should have or you told them a lie in order to get assistance. If you agree that it was intentional, you should not discuss it with DSHS. If you are charged with a crime, discuss the matter **only** with your lawyer. If you are charged with a crime and cannot afford a lawyer, ask the court to appoint a lawyer for you.

*For Food Stamps Only: The food stamp law provides that DSHS must discover the overpayment within certain time limits. Also, within certain time limits from discovering the overpayment DSHS must send you a notice that tells you the amount of overpayment and the reason it happened.*

The time limits are different depending on the type of overpayment. Here are the time limits:

- For “administrative error” overpayments: 12 months to discover the overpayment; no more than 24 months from discovery to notify you.
- For “inadvertent household error” overpayments: 24 months to discover the overpayment; 24 months from discovery to notify you.
- For “intentional” overpayments: 72 months to discover the overpayment; 24 months from discovery to notify you.

If the time limits above are not met, the DSHS should not be charging you with an overpayment. You should ask DSHS to dismiss the overpayment against you. If the DSHS will not do that, you should ask for a fair hearing and at the hearing ask the Administrative Law Judge to dismiss the overpayment notice because it is not timely.

***For Example: DSHS notifies you on November 1, 2002, that you were overpaid, due to administrative error, for the months of July and August 1999. You should ask that the case be dismissed because DSHS did not act timely.***

To ask for a fair hearing, fill out a Fair Hearing Request form at your local DSHS office or write to the **Office of Administrative Hearings, P.O. Box 42489, Olympia, WA 98504** and say you **want a fair hearing**. If it is an emergency, you may ask to have your hearing held as soon as possible by calling the Office of Administrative Hearings at (360) 664-8717 or 1-800-583-8271.

You must ask for the hearing no later than 90 days from the date that the overpayment notice was mailed. If you are currently on assistance and the DSHS has said they will reduce your welfare check, you may continue to get your full amount until a hearing decision is made if you request the hearing within 10 days of the date the notice was mailed. You will get a notice of the time and date of the hearing in the mail.

See our publication Representing Yourself at a Fair Hearing to find out how to get information about your case, prepare for and go to a fair hearing.

## **How Does DSHS Recover Overpayments?**

Cash – liable persons: DSHS can collect from the grants of any and all members of an overpaid assistance unit, regardless of whether they are still on the same grant.

Cash & Medical - intentional overpayments: If DSHS determines that a cash assistance overpayment was intentional, it will deduct 10% from your current grant. DSHS will collect until the full amount of the overpayment has been recovered.

Cash & Medical - unintentional overpayments: DSHS will deduct 5% of your cash grant, unless you request a larger deduction in writing, until the full amount of the overpayment has been recovered.

Food assistance – liable persons: Only the adult members of an overpaid food assistance household are liable for the overpayment.

- **Intentional:** If an overpayment was due to an intentional program violation, the mandatory reduction is the greater of 20% of the monthly benefit amount or \$20/month.
- **Unintentional:** If an overpayment was unintentional, the mandatory reduction is the greater of 10% of the monthly benefit amount or \$10/month. You may also agree in writing to a payment plan with a larger reduction in benefits to pay off the overpayment more quickly.
- **Administrative error:** If your request for a waiver of this type of overpayment is granted, based on equitable estoppel, then the overpayment is forgiven and will never be collected. Otherwise, the reduction is the same as for unintentional overpayments, the greater of 10% of the monthly benefit amount or \$10/month.

Continuing Benefits: If you request a fair hearing within ten days before a proposed termination of public assistance benefits, DSHS must continue your benefits through the month in which the administrative law judge makes a decision in your hearing. The only exception to this is that your food assistance will continue only through the end of your current food assistance certification period. If you lose your hearing, DSHS can collect up to 60 days worth of the continued cash and medical benefits. For food assistance there is no 60-day limit; DSHS can collect all overpaid food assistance benefits.

Overpayment recovery for people no longer on public assistance: If an overpayment debt is more than 180 days past due, you are not meeting the terms of a scheduled repayment agreement, and you no longer receive public assistance, DSHS may refer your overpayment(s) for federal collection. Federal collection allows for garnishment of your tax refund and Social Security benefits (if your benefit amount is greater than \$750/month), in addition to collection

methods available to all creditors such as garnishment of your wages and bank accounts, and filing of liens against your property. You may avoid a potential garnishment by negotiating a repayment agreement with DSHS based on your monthly expenses and what you can afford to pay.

See WAC 388-410 (Benefit Error)

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