



DSHS and HCA overpayments: What is “Equitable Estoppel”?

❖ Read this *only* if you live in Washington State.

❖ You can find all the fact sheets we link to here at [WashingtonLawHelp.org](https://www.washingtonlawhelp.org).

Should I read this?

Yes, if all these are true:

1. DSHS or HCA (for the rest of this guide, we say “the agency”) sends you a notice saying you owe them money (an **overpayment**) because they gave you benefits they should not have.
2. The overpayment was not your fault.
3. You cannot afford to repay it.

You should ask for an administrative hearing. You have a legal defense against the overpayment. We explain here what this defense is and how you can present this defense at your hearing.

My overpayment was for food stamps. Should I use this?

No. You should read [How to Fight an Overpayment of Cash Assistance, Medical Assistance or Food Stamps](#) instead.

What if I disagree with how much the agency says it overpaid me?

If you think the agency is wrong about how much they overpaid you, or that they overpaid you at all, your hearing request should say so.

You should also:

- Ask the agency to re-determine or recalculate the overpayment.

- Make sure the information the agency has is correct.

Examples: How many people were in your household, and how much income and resources the agency thinks you had during that time.

How do I ask for a hearing?

There are different ways you can do this.

In writing: Write the Office of Administrative Hearings (OAH), P.O. Box 42488, Olympia, WA 98504.

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- ❖ If it is an emergency, call OAH at (360) 664-8717 or 1-800-583-8271 to ask them to hold the hearing as soon as possible (an “expedited” hearing).
 - ❖ You have the right to ask for an **interpreter**, at no cost.
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Verbally: You can call OAH or tell the agency representative that you want a hearing. The agency may have you follow up with a written request.

How much time do I have to ask for an administrative hearing?

OAH must **get** your request in writing within **90 days** of the date on the overpayment notice. You can hand-deliver, fax, or mail your request. If you fax it, you must also mail it. Allow extra time for mailing so OAH gets it on time.

The notice says the agency will take money out of my benefits to repay the overpayment. What can I do?

Within ten days of the date on the notice, you must appeal **and** ask the agency not to collect what it says you owe.

How will I find out my hearing date?

After you ask for a hearing, OAH will mail you a "Notice of Hearing" saying the hearing time, date, and place.

The notice says the overpayment was the agency's fault ("agency error") or unintentional. What is the 'equitable estoppel' defense?

Even if you got more benefits than you should have, you might have an "equitable estoppel" defense. **Equitable estoppel means a judge can stop someone from doing something because it is not fair.**

The agency should **not** collect the overpayment if both these are true:

1. The overpayment was not your fault.
2. Having to repay it will cause you financial harm.

To use this defense, you must prove five things. See next section.

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- ❖ The law describing this defense is [WAC 388-02-0495](#) (DSHS overpayments) and [WAC 182.526.0495](#) (medical overpayments).
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If you are facing an overpayment of DSHS benefits, and you believe you meet all five elements after reading this, you can make an appointment to meet with an agency representative (called a **pre-hearing conference**).

Tell the agency representative you will ask the judge at your administrative hearing to apply equitable estoppel to your case. If the agency representative agrees, they can fill out a "Stipulation and Agreed Order of Dismissal" form to give the judge at your hearing.

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- ❖ If the agency representative does not agree with you, go to the administrative hearing. Tell the judge you are presenting an equitable estoppel defense. You must show the judge you meet all five elements of this defense by clear and convincing evidence (explained below).
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What are the five elements of the equitable estoppel defense?

1. One party (in this case, the agency) says or does one thing, then later says or does something inconsistent.
2. Another party (in this case, you) acts in reliance on the first party's act.
3. It would harm you if the agency gets to contradict or take back what they said or did before.

4. The judge **must** apply estoppel to stop a clear injustice.
5. Applying estoppel in your situation does not harm DSHS' exercise of its functions.

Element 1: The agency does or says something inconsistent with what it later claims.

This is probably easy to prove. The agency sent you a letter saying you were eligible for benefits. The agency paid you benefits. The agency then sent you a letter (a later claim) stating you were not eligible *or* you got too much.

Show the agency representative or judge the agency's letter saying you were eligible for benefits. If you no longer have it, ask the agency representative for a copy.

If the agency did not send you a letter, you should say that the agency giving you benefits is the "act" showing you were eligible for benefits. The letter saying you were not eligible and asking you to repay them is the inconsistent act.

Element 2: You relied, to your detriment, on the agency's act or statement.

You relied on the agency's act or statement. You believed you were eligible for the benefits the agency sent you. You acted accordingly by using the benefits for things you or your family needed.

You must tell the agency rep or judge:

- You gave the agency all the information they asked for.
- You did not know the agency made a mistake.
- You thought you were eligible for the benefits the agency gave you. You spent them.
- It was reasonable for you to rely on the agency.

Your reliance must have been reasonable. This will usually be true. Eligibility rules and benefits computations are complicated. They are often confusing. The rules sometimes change. They may not make sense, especially if no one explains them.

It is usually reasonable to expect the agency to do its job right and give you the right amount of benefits.

Element 3: It will harm you if the judge allows the agency to reject its prior action.

You must show:

- It would harm you if the agency can now claim you owe the benefits.
- You cannot afford to pay back the money or have the agency reduce your benefits.
- You planned your finances believing you were eligible for the extra benefits, **or** you used them to buy something you would not have otherwise.

Some **examples** of harm:

- You bought your children new shoes instead of used ones **or** you bought a household member a birthday gift or took the family to a special event. You would not have done this if you had known you were not eligible for the extra benefits you got.
- If the agency gave you medical care it now says you were not eligible for, you may have gotten medical help you would not otherwise.

Example: Instead of going to the doctor, you might have gone to a free clinic or not gotten care.

Give the agency representative or judge as many examples as possible of ways you used the benefits *that you would not have* if the agency had not mistakenly issued them to you.

Element 4: Applying estoppel is necessary to stop a clear injustice.

You must show two things to meet this element:

- 1. You cannot afford to repay the overpayment.** Tell the judge your income and expenses.

Make a list of all your expenses to show you need all your income to keep up a very basic level of living. The list should show you spend all your income on necessities such as shelter, food, clothing, toiletries, household maintenance and operations, and transportation. If your reasonable expenses use up all your income, you cannot afford to repay the overpayment.

2. The overpayment was not your fault. You did not know you were overpaid.

Point out to the judge that you gave the agency the correct information. You had no reason to know you were not eligible for the extra benefits.

Element 5: Applying estoppel will not harm the agency's exercise of its functions.

You do not have to do much to meet this. Judges have found it can improve the agency's function if it does not get to collect an overpayment. In fact, it encourages the agency to be more careful in awarding benefits.

Point out that you reported everything to the agency when you were supposed to, and accurately, and the agency should do its job when it is supposed to, and accurately.

Tell the judge it is the agency's responsibility, not yours, to determine eligibility and make sure mistakes do not happen. You did your part in reporting information, changes, and so on. The agency should do its part.

Where can I get more information?

Read [Representing Yourself at an Administrative Hearing](#) for more tips.

Get Legal Help

- **Apply online** with [CLEAR*Online -nwjustice.org/apply-online](https://www.nwjustice.org/apply-online)
- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 2-1-1 (or toll-free 1-877-211-9274) weekdays 8:00 am - 6:00 pm. They will refer you to a legal aid provider.
- **Facing a legal issue outside of King County** (other than Eviction or Foreclosure)? Call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am - 12:15 pm or apply online at [nwjustice.org/apply-online](https://www.nwjustice.org/apply-online).
- **Facing Eviction?** Call 1-855-657-8387.
- **Facing Foreclosure?** Call 1-800-606-4819.
- **Seniors (age 60 and over)** with a legal issue outside of King County can also call CLEAR*Sr at 1-888-387-7111.
- **Deaf, hard of hearing or speech impaired callers** can call any of these numbers using the relay service of your choice.

CLEAR and 2-1-1 will provide interpreters.

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