

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

Should I read this?

Yes, if **all** these are true:

- DSHS sends a notice saying you owe them money (an overpayment) because they gave you benefits they should not have.
- The overpayment was not your fault.
- You cannot afford to repay it.

You should ask for an administrative hearing. You have a legal defense against the overpayment.

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

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

What if I disagree with the amount DSHS says it overpaid me?

If you think DSHS is wrong about how much they overpaid you, or that they did at all, your hearing request should say so. You should also

- Ask DSHS to re-determine or recalculate the overpayment.
- Make sure the info DSHS has is correct. Examples: how many people were in your household, and how much income and resources DSHS thinks you had during that time.

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

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

What if the notice says DSHS will take money out of my benefits to repay it?

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

The notice says the overpayment was DSHS’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. **This means a judge can stop someone from doing something because it is not fair.**

DSHS should NOT collect the overpayment if both these are true:

- The overpayment was not your fault.
- Repaying 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 believe you meet all five elements after reading this, ask for a **pre-hearing conference** with the Administrative Hearing Coordinator (AHC) in your local DSHS office. Call the AHC coordinator at 360-725-4620 to find out who your local AHC is.

Tell the AHC you will ask the judge at your administrative hearing to apply equitable estoppel to your case. If the AHC 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 AHC 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. (We explain below.)
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What are the five elements of the equitable estoppel defense?

1. One party (DSHS) says or does one thing, then later says or does something inconsistent.
2. Another party (you) acts in reliance on the first party’s act.
3. It would harm you if DSHS 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: DSHS does or says something inconsistent with what it later claims.

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

Show the AHC or judge DSHS’ letter saying you were eligible for benefits. If you no longer have it, ask the AHC for a copy. If DSHS did not send you a letter, you should say DSHS 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 DSHS’s act or statement.

You relied on DSHS’s act or statement. You believed you were eligible for the benefits DSHS sent you. You acted accordingly by using the benefits for things you or your family needed. You must tell the AHC or judge:

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

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 DSHS to do its job right and give you the right amount of benefits.

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

You must show:

- It would harm you if DSHS can now claim you owe the benefits.
- You cannot afford to pay back the money or have DSHS lower 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 DSHS 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 AHC or judge as many examples as possible of ways you used the benefits

that you would not have if DSHS 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) You were not responsible for the overpayment. You must show the overpayment was not your fault, and you did not know you were overpaid. Point out to the judge that you gave DSHS the correct info. You had no reason to know you were not eligible for the extra benefits.

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

You do not have to do much to meet this. Judges have found it can improve DSHS's function to not collect an overpayment: it encourages DSHS to be more careful in awarding benefits.

Point out that you reported everything to DSHS timely and accurately, and DSHS should do its job timely and accurately. Tell the judge it is DSHS's responsibility, not yours, to

determine eligibility and make sure mistakes do not happen. You did your part in reporting info, changes, and so on. DSHS should do its part.

What if I need legal help?

- Apply online with [CLEAR*Online](https://nwjustice.org/get-legal-help) - <https://nwjustice.org/get-legal-help> or

- Call CLEAR at 1-888-201-1014

CLEAR is Washington’s toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014, weekdays 9:15 a.m. - 12:15 p.m.
- **King County:** Call 211 for info and referral to an appropriate legal services provider, weekdays 8:00 am – 6:00 pm. You may also call (206)

461-3200, or toll-free 1-877-211-WASH (9274). You can also get info on legal service providers in King County at www.resourcehouse.com/win211/.

- **Persons 60 and Over:** Seniors age 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income. Assets limits may apply. Seniors in King County can call 2-1-1.

Deaf, hard of hearing or speech impaired callers can call CLEAR, 211, or toll-free 1-877-211-9274 using the relay service of your choice.

CLEAR and 211 will conference in free interpreters when needed.

Free legal education publications, videos and self-help packets covering many legal issues are available at www.washingtonlawhelp.org.

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