

# Fighting an Overpayment of Cash or Medical Assistance

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## Should I use this?

Use this when the Department of Social & Health Services (DSHS) or Health Care Authority (HCA) notifies you of a cash or medical overpayment. “The agency” here means DSHS or HCA.

## What is an overpayment?

It is when you get benefits you are not eligible for according to DSHS or HCA rules.

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- ❖ DSHS rules are [Chapter 388-410](#) and HCA rules are Chapter [182-520](#) of the [Washington Administrative Code \(WAC\)](#). They are available at the public library or online at <http://apps.leg.wa.gov/wac/>.
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The agency treats different types of overpayments differently.

## What are the different types of cash overpayments?

1. **Intentional overpayment:** When a person willfully or knowingly fails to report a change in circumstances under [WAC 388-418-0005](#) or misstates or fails to reveal a fact that affects eligibility.
2. **Unintentional overpayment:** When a mistake is made but not on purpose to get more benefits. This can also happen if the agency made a mistake. Example: they did not consider info

you gave them to determine your benefits. [WAC 388-410-0001\(2\)](#).

## What are the different types of medical assistance overpayments?

1. **Fraud:** You purposely gave incorrect info to qualify for medical assistance. [WAC 182-520-0005](#).
2. **Continued Benefits:** You get benefits while waiting for a hearing. The judge agrees after the hearing that you got an overpayment. You might have to repay up to 60 days of those benefits. [WAC 182-520-0010\(2\)\(a\)](#) (medical). See [DSHS policy manual](#) for cash assistance policy.
3. **Long-term services and supports:** You gave incorrect info or failed to give info affecting your eligibility; OR your representative failed to report changes in your info; OR the agency made a mistake. [WAC 182-520-0015](#).

## Can I face criminal charges for any of these types of overpayment?

Maybe. The agency can refer an intentional overpayment case to the prosecuting attorney for welfare fraud. If charged with a crime, ask for a public defender. Talk to a lawyer before making any statements to the agency.

## Can I appeal an overpayment?

**Yes.** You can ask for an administrative hearing. You can argue any or all of these:

- There was no overpayment.
- The amount is wrong.
- The overpayment was not intentional.
- You should not have to pay back an unintentional overpayment.

## How do I make these arguments?

1. There is **no overpayment**. Example 1: DSHS says your car is worth more than allowed. You can prove its value is within the amount the rules allow. Example 2: DSHS says your bank account has too much money in it. It is your grandmother's account. Your name is on it for your grandmother's convenience. Your grandmother gives DSHS a written statement confirming this. Example 3: HCA says you got benefits for a time you did not live in Washington. You can prove you were only gone temporarily.
2. The **overpayment amount** may be less than the agency says. Ask them to double-check it. They often find mistakes. Give them any info you think will show you were eligible for all or part of the benefits.

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❖ DSHS might discover the overpayment was **more** than they thought. You could owe more!

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**Cash overpayments only:** ask if DSHS collected any child support during the period the overpayment happened. If so, they should lower the overpayment amount by the amount of support they got. [WAC 388-410-0005\(4\)\(b\)](#).

You might have been eligible for other benefits. Any amount they should have paid you, and did not, is an underpayment.

Example 1: You asked for emergency assistance. You were eligible. You did not get any. Example 2: You reported an additional person in your family. You should have gotten more benefits. You did not.

The agency must subtract any underpayment they owe you from the overpayment amount. It does not matter how long ago the underpayment happened.

3. An **unintentional** overpayment was not your fault. Your income and resources are barely or not enough for basic expenses. You can ask the agency or judge to *waive repayment under "equitable estoppel."* A waiver means you will not have to pay back the overpayment. See [How to Present an Equitable Estoppel Defense](#).
4. If you disagree that the overpayment was **intentional**, CALL CLEAR at 1-888-201-1014 before trying to represent yourself. You must be able to tell the administrative law judge why it was not intentional. If you agree it was intentional, do not discuss it with the agency.

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❖ If the police arrest you on fraud charges, discuss the matter only with your lawyer. If you have criminal charges and cannot afford a lawyer, ask the court to appoint you one.

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## How long does DSHS have to act on an overpayment?

Generally, DSHS has six years from the date of the overpayment notice to collect. If DSHS has filed a court case to collect against you, it generally has ten years. [RCW 43.20B.030](#).

If DSHS has not met the time limit, ask them to dismiss the overpayment. If they will not, ask for an administrative hearing. At the hearing, ask the Administrative Law Judge to dismiss the overpayment because notice or collection was not timely.

## How do I ask for an administrative hearing?

You fill out a Hearing Request form at your local DSHS office or write the **Office of Administrative Hearings, P.O. Box 42489, Olympia, WA 98504** to say you want an administrative hearing. You should review the overpayment notice for any other instructions. If it is an emergency, call the Office of Administrative Hearings nearest you. Ask them to have your hearing as soon as possible. Go to [www.oah.wa.gov](http://www.oah.wa.gov). Click on "Contact" for the right phone number.

## How long do I have to request a hearing?

You must ask for the hearing no later than 90 days from the date the agency mailed the overpayment notice. [RCW 74.08.080](#).

If you currently get benefits and want them to stay the same until the judge decides your case, you must ask for a hearing no later than:

- Ten days after the agency sent you notice OR

- If the ten days falls before the end of the month, you have until the end of the month the notice says your benefits will stop or be less. [WAC 388-458-0040](#)

The agency and OAH should get your request by these deadlines. **Allow extra time.** If you miss the deadline, you can lose your right to a hearing.

Put your request **in writing**. Keep a copy. Make a note of when and how you delivered the request. Example: "sent to OAH and HCA 3/14/18 by regular US Mail"; "dropped off at DSHS front desk on 3/14/18"; "by phone with DSHS worker, Mary Jones, on 3/14/18". If you fax your request to DSHS, you must also mail it.

## How will I find out about the hearing date?

OAH will mail you a notice with the hearing date and time. If you move, tell the agency and OAH your new address. Then you will get important notices on time.

Read [Representing Yourself at an Administrative Hearing](#) to learn more.

## Can the agency recover the overpayment from anyone in my household?

**Cash assistance overpayment:** Yes. They can collect from anyone in the assistance unit at the time of the overpayment, even if the person was a minor at that time. [WAC 388-408-0005](#).

**Medical assistance:** Generally, no. Agents or other third parties usually are not responsible for the overpayment. [WAC 182-520-0010](#).

## How does the agency recover overpayments?

**Cash** – DSHS can lower your monthly benefit amount to repay an overpayment. This applies to anyone who was part of the assistance unit during the overpayment, even if they were children at the time and are no longer part of that assistance unit. [WAC 388-410-0015](#).

For **intentional overpayments**, DSHS usually takes 10% out of your benefits until it recovers the overpayment in full. In rare cases, DSHS may take your full benefit amount until it is repaid. [WAC 388-410-0015\(4\)](#).

For **unintentional overpayments**, DSHS will take five percent of your cash benefits until it recovers the overpayment in full. You can ask in writing for a larger deduction to pay it off sooner. [WAC 388-410-0015\(5\)](#).

**Cash and Medical:** The agency can collect overpayments through tax intercept, liens, garnishment, including of wages, bank accounts and Social Security benefits, and attachment of income or resources. [RCW 74.04.300](#).

## I do not want them to garnish anything. Can we work something out?

Maybe. You might be able to negotiate a repayment agreement with the agency based on your monthly expenses and ability to pay. See [WAC 388-410](#) or [WAC 182-520](#).

## What if I need legal help?

- Apply online with [CLEAR\\*Online](#) - <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 can 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/](http://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 may call 2-1-1.

Deaf and hard-of-hearing callers can call 1-800-833-6384 for a free relay operator. They will then connect you with 211 or CLEAR.

CLEAR and 211 will conference in free interpreters when needed.

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