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from Noun Project

Fighting a Food Assistance Overpayment

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- ❖ Read this only if you live in the state of Washington.
 - ❖ You can find all the fact sheets we link to here at WashingtonLawHelp.org.
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Should I read this?

Use this when the Department of Social & Health Services (DSHS) tells you that you have a food assistance overpayment. **Food assistance** includes basic food, FAP, or WASHCAP assistance.

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- ❖ **Cash and medical overpayments:** read [Fighting an Overpayment of Cash or Medical Assistance](#).
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What is an overpayment?

It happens when you get food assistance you should not have under DSHS rules. See [Washington Administrative Code \(WAC\) 388-410-0020](#) through [388-410-0035](#).

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- ❖ Only the adults in your household are responsible for the overpayment.
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There are different kinds of food assistance overpayments.

DSHS treats them differently:

- 1. Intentional program violation (IPV) overpayment:** On purpose, to get more food assistance, you did not give DSHS information you knew you should or you gave wrong information that affected your assistance amount.

- 2. Inadvertent household error overpayment:** You made a mistake or did not understand what you were supposed to do. You did not do anything on purpose to get more food assistance. This is an **unintentional** (not on purpose) overpayment.
- 3. Administrative error overpayment:** DSHS made a mistake. Example: they did not look at information you gave them to determine your benefits. This is an **unintentional** overpayment.

[WAC 388-410-0020.](#)

How does DSHS treat an IPV?

They might refer your case to the prosecuting attorney for fraud. If charged with a crime, ask for a public defender. Talk to a lawyer before making any statements to the agency. See [WAC 388-446](#).

Can I appeal the overpayment?

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

- There was no overpayment.
- The overpayment amount is wrong.
- The overpayment was unintentional (not on purpose).
- DSHS made a mistake that led to the overpayment.

[WAC 388-410-0030\(12\).](#)

DSHS must follow certain rules about the timing of the overpayment.

Intentional Overpayments: DSHS must calculate an overpayment back to the first month you broke a food assistance rule on purpose. They cannot go back more than six years before they discovered the overpayment.

- **Example:** DSHS overpaid you for ten years. They discovered this at the end of the 10th year. They will not try to collect the first four years.

Inadvertent Household Errors: When calculating your overpayment, DSHS will not go back more than 24 months before they discovered it.

- **Example:** DSHS overpaid you for six years. They discovered this at the end of the sixth year. They will not try to collect the first four years.

Administrative Errors: When calculating your overpayment, DSHS will not go back more than 12 months before they discovered it.

- **Example:** DSHS overpaid you for six years. They discovered this at the end of the sixth year. They will not try to collect the first five years.

[WAC 388-410-0030\(8\)](#).

When does DSHS have to establish (set up) an overpayment?

DSHS must set up an overpayment by the next calendar quarter from when it discovers the overpayment.

Overpayment Establishment Timeline				
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
If the date of discovery is in:	January; February; or March	April; May; or June	July; August; September	October; November; or December
DSHS must set up the claim by:	June 30	September 30	December 31	March 31

See [7 CFR 273.18\(d\)\(1\)](#).

Here are some **examples**:

- DSHS discovers an overpayment on February 6 (1st quarter). They must set up the overpayment by June 30 (2nd quarter).
- DSHS discovers an overpayment on June 28 (2nd quarter). They must set up the overpayment by September 30 (3rd quarter).

How is an overpayment established?

It is established if any of these happen:

- You do not respond to an overpayment notice within 90 days of DSHS giving it to you.
- An Administrative Law Judge (ALJ) decides after a hearing that the overpayment was correct.
- You create a written agreement with DSHS that the overpayment is correct.

[WAC 388-410-0030\(11\)](#).

What if DSHS has not met the time limits?

1. DSHS should not charge you with an overpayment **or** they should reduce the months of the overpayment.
2. You should ask DSHS to dismiss (do away with) all or part of the overpayment. If they will not, ask for an administrative hearing. At the hearing, ask the Administrative Law Judge to dismiss or lower the overpayment.

I agree the overpayment is correct or the judge decided at the hearing that it is correct. I currently get food assistance. Will DSHS collect on the overpayment?

Yes.

Intentional overpayments: They must reduce your food assistance by twenty percent of the monthly amount **or** twenty dollars a month, whichever is more.

Inadvertent Household Errors and Administrative Errors: They must reduce your food assistance by ten percent of the monthly amount **or** ten dollars a month, whichever is more. [WAC 388-410-0033\(7\)](#).

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- ❖ To pay off the overpayment faster, you can agree in writing to a payment plan with a larger reduction in benefits.
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I no longer get public assistance. How will DSHS collect the overpayment from me?

You can work out a payment plan with the Office of Financial Recovery (OFR). They will work with you to find a payment you can afford.

If you agree to a payment plan, and then cannot make payments, you can ask OFR to **compromise** the balance of your overpayment. See next section.

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- ❖ If you cannot make a scheduled payment, let OFR know right away. Call 1-800-562-6114 or 360-664-5700 **or** write them at PO Box 9501, Olympia WA 98507-9501.
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Will DSHS refer my overpayment for collection?

Maybe, **if**:

- An overpayment debt is more than 120 days past due.
- You are not meeting the terms of a scheduled repayment agreement.
- You no longer get public assistance.

DSHS can garnish (take) your tax refund or Social Security benefits, **if** you get more than \$750 a month in Social Security.

If you no longer get food assistance, DSHS might also

- Garnish your wages and bank accounts.
- File liens against your property.

[WAC 388-410-0033\(11\), \(12\)](#).

What if I cannot pay back the overpayment or lowering my benefits would be a financial hardship?

Ask the OFR to compromise (lower or cancel) some or all of the overpayment amount. Contact them

- **By phone** at 1-800-562-6114 or 360-664-5700

- **By mail:** PO Box 9501, Olympia WA 98507-9501

[WAC 388-410-0033\(13\)](#).

When will OFR compromise an overpayment?

They will consider it if:

- You cannot repay the balance **or** it would be a hardship and you cannot repay within three years.
- The overpayment claim is incorrect.
- All adults responsible for the overpayment have died.
- Your balance is less than \$25 **and** you have not made any payments for 90 days.
- DSHS accepted a partial payment as payment in full.

[WAC 388-410-0033\(13\), \(14\)](#).

How do I show that repaying the overpayment would be a hardship?

You will probably have to fill out a monthly budget form. OFR will also consider:

- You expect to be in jail or prison or institutionalized for at least three years. You have no assets they can legally collect.
- Your only income relates to age or disability, like SSI, Social Security Disability or Retirement, or ABD.
- You have a history of homelessness, poverty, or addiction.
- Household income from wages and other sources.
- Health factors for you and your dependents.
- Employment potential.
- Chance your income or assets will change in the next three years.
- Money and assets you could use to repay the debt.

- Equity in real property (land you own, and any buildings on it) - how much you could sell it for, minus how much you owe on it.
- Household debts and expenses.
- Any other relevant factors.

There are three types of compromise.

❖ **Tip for representing yourself:** There are no state regulations about compromise. The types of compromises come from OFR policy.

- 1. Full and immediate:** They write off the overpayment debt in full right now.
- 2. Partial and immediate:** You offer to settle your debt right now. Example: Your debt is \$150. You offer to pay \$100 today. The agency compromises the rest.
- 3. Partial and continued:** OFR reduces the amount of the overpayment debt. You make payments until you have paid the reduced amount.

I disagree with OFR's decision regarding compromise of my overpayment debt. What can I do?

If you ask OFR to compromise (lower or cancel) your overpayment, they will send you a written decision within 30 days of getting your request. If you disagree with the decision, you can write or call OFR to review it within 30 days.

Asking for review by phone: Call 360-664-5700, 1-800-562-6114, or TTY WA 1-800-833-6388. Any OFR agent can give your request to an OFR Manager.

Asking for review in writing: Mail it to PO Box 9501, Olympia, WA 98507-9501. Address it to the person who sent you the written decision not to compromise your overpayment. Include your client ID number from your overpayment notice.

An OFR Manager reviews your request. The Manager will mail you a written review decision no later than 30 days after they received your request for review.

OFR reviewed my decision. They did not change it.

You can ask for a review by the OFR Chief. You must do this by phone or mail within 30 days from getting the first review decision. OFR will mail you a written decision within 30 days of your request.

Can I go to an administrative hearing over OFR's decision not to compromise my overpayment?

No. There is no right to an administrative hearing for review of any decisions regarding compromise of an overpayment.

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- ❖ OFR only stops collection action during these reviews if you get a court order requiring them to do so. Talk to a lawyer.
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Get Legal Help

Outside King County: Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

In King County: Call 2-1-1 for referral to a legal services provider weekdays from 8:00 am – 6:00 pm.

Persons 60 and Over can call CLEAR*Sr at 1-888-387-7111 (statewide).

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

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

CLEAR and 211 will provide a free interpreter.

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