

Fighting an Overpayment of Cash or Medical Assistance

Should I read this?

Yes, you should read this if you live in Washington state and the Department of Social & Health Services (DSHS) or Health Care Authority (HCA) tells you they've given you too much cash or medical assistance. When we say "the agency" here, we mean either DSHS or HCA, whichever one you are having this problem with.

What is an overpayment?

It is when you get benefits you are not eligible for according to DSHS or HCA rules. You can read DSHS rules at [Chapter 388-410 WAC](#) and HCA rules at [Chapter 182-520 WAC](#) of the Washington Administrative Code (WAC). They are available at the public library or online at <https://apps.leg.wa.gov/wac/>.

Are there different types of cash overpayments?

Yes:

Intentional overpayment: When you purposely or knowingly do not report a change in your circumstances, or you misstate or do not reveal a fact that affects your eligibility.

Unintentional overpayment: When you make a mistake, but you did not do it on purpose to get more benefits. This can also happen if the agency made a mistake. For **example:** the agency did not consider information that you gave them to determine your benefits.

Are there different types of medical assistance overpayments?

Yes:

Fraud: You purposely gave incorrect information to qualify for medical assistance.

Continued Benefits: You get benefits while waiting for a hearing. If the judge agrees after a

hearing that you got an overpayment, you might have to repay up to 60 days of those benefits.

Long-term services and supports: You gave incorrect information or failed to give information affecting your eligibility, **or** your representative failed to report changes in your information, **or** the agency made a mistake.

Can I face criminal charges for any of these types of overpayments?

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. Read [When DSHS or DCYF thinks you made an intentional program violation](#) to learn more.

Can I appeal an overpayment?

Yes. You can ask for an administrative hearing. At the 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.

Read [Representing yourself at an administrative hearing](#) to learn more.

Do you have examples of how I can make these arguments?

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.

The **overpayment amount** may be less than the agency says. Ask them to double-check it. They often find mistakes. Give them any information you think will show you were eligible for all or part of the benefits. Be careful in doing this, though. DSHS might discover the overpayment was **more** than they thought. You could owe more!

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.

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 did not get any. You were eligible and should have gotten some. 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.

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. Read *How to Present an Equitable Estoppel Defense* to learn more.

If you disagree that the overpayment was **intentional**, CALL CLEAR at 1-888-201-1014 before trying to represent yourself. If you agree it was intentional, do not discuss it with the agency.

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.

How long does DSHS have to act on an overpayment?

Generally, DSHS has 6 years from the date of the overpayment notice to collect. If DSHS has filed a court case to collect against you, it generally has 10 years.

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.

What is my deadline to ask for a hearing?

You have **up to 90 days from the date of the termination or reduction notice** to ask for an administrative hearing. **Starting July 1, 2023**, if circumstances beyond your control, such as medical issues, housing instability, language barriers, or domestic violence, keep you from meeting that deadline, you should still ask for a hearing as soon as you can.

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 10 days after the agency sent you notice **or**, if the 10 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.

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.

Verbally: You can call OAH at (360) 407-2700 or 1-800-583-8271 or tell DSHS that you want a hearing. DSHS may have you follow up with a written request.

If you contact OAH to ask for a hearing and to keep getting benefits until your hearing, you should also call your DSHS office and let them know you asked for a hearing and continued

benefits.

When will the hearing take place?

If it is an emergency, you should call OAH to ask them to hold the hearing as soon as possible. This is called an *expedited* hearing. Otherwise, your hearing will probably be 20 days or more after you ask for it.

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

Cash assistance overpayment: Yes. They can collect from anyone who was an adult in the assistance unit at the time of the overpayment. They cannot collect from anyone who was a child at the time of the overpayment.

Medical assistance: Generally, no. Agents or other third parties usually are not responsible for the overpayment.

How does the agency recover overpayments?

Cash overpayments – 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.

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.

For **unintentional overpayments**, DSHS will take 5% 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.

Cash and medical overpayments: 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.

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.

Get Legal Help

- **Apply online:** nwjustice.org/apply-online
- **Facing Eviction?** Call 1-855-657-8387
- **Facing Foreclosure?** Call 1-800-606-4819
- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 211 (or toll-free 1-877-211-9274) weekdays 8:00 am to 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 and 12:15 pm or apply online at nwjustice.org/apply-online.
- **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.

Interpreters provided.

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