

Fight an overpayment of cash or medical assistance

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Read this if the Washington 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're 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](http://apps.leg.wa.gov/wac/default.aspx?cite=388-410) (<http://apps.leg.wa.gov/wac/default.aspx?cite=388-410>) and HCA rules at [Chapter 182-520 WAC](http://apps.leg.wa.gov/wac/default.aspx?cite=182-520) (<http://apps.leg.wa.gov/wac/default.aspx?cite=182-520>) of the [Washington Administrative Code \(WAC\)](https://app.leg.wa.gov/waC/default.aspx?cite=182-520) (<http://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.

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.

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's 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 when you didn't 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.

If you disagree that the overpayment was intentional, get legal help 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 hasn't met the time limit, ask them to dismiss the overpayment. If they won't, ask for an administrative hearing. At the hearing, ask the Administrative Law Judge to dismiss the overpayment because notice or collection was not timely.

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 aren't 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's 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 don't 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.

WashingtonLawHelp.org gives general information. It is not legal advice.

Find organizations that provide free legal help on our [Get legal help](#) page.

<https://assets.washingtonlawhelp.org/en/fight-overpayment->

[cash-or-medical-assistance](#)