

# Fight a food stamp overpayment

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Use this when the Department of Social & Health Services (DSHS) notifies you that they believe they gave you too much food stamps (called a food assistance overpayment).

## What is an overpayment?

It happens when you get food stamps you shouldn't have under DSHS rules. You can read the state rules about that at Washington Administrative Code (WAC) 388-410-0020 (<http://app.leg.wa.gov/wac/default.aspx?cite=388-410-0020>) through 388-410-0035 (<http://app.leg.wa.gov/wac/default.aspx?cite=388-410-0035>).

Only the adults in your household are responsible for the overpayment.

There are 3 kinds of overpayments:

1. **Intentional program violation (IPV) overpayment:** On purpose, to get more food stamps, you didn't give DSHS information you knew you

should, **or** you gave wrong information that affected your food stamp amount.

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

If DSHS believes your overpayment was intentional, 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.

### Can I appeal the 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 overpayment amount is wrong.
- The overpayment wasn't on purpose (it was unintentional or *inadvertent*).
- DSHS made a mistake that led to the overpayment.

### Does DSHS have to follow any rules about the timing of the overpayment?

Yes. The rules depend on the type of overpayment.

**Intentional Overpayments:** DSHS must calculate an overpayment back to the first month you broke a food stamps rule on purpose. However, they can't go back more than 6 years before they discovered the overpayment.

**Example:** DSHS overpaid you for 10 years. They discovered this at the end of the 10<sup>th</sup> year. They won't try to collect the first 4 years.

**Inadvertent Household Errors:** When calculating your overpayment, DSHS won't go back more than 24 months before they discovered it.

**Example:** DSHS overpaid you for 6 years. They discovered this at the end of the 6<sup>th</sup> year. They won't try to collect the first 4 years.

**Administrative Errors:** When calculating your overpayment, DSHS won't go back more than 12 months before they discovered it.

**Example:** DSHS overpaid you for 6 years. They discovered this at the end of the 6<sup>th</sup> year. They won't try to collect the first 5 years.

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

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

Overpayment establishment deadlines

|                                                   | 1st Quarter                 | 2nd Quarter         | 3rd Quarter             | 4th Quarter                    |
|---------------------------------------------------|-----------------------------|---------------------|-------------------------|--------------------------------|
| If the date DSHS discovers the overpayment 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                       |

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's established if any of these happen:

- You don't respond to an overpayment notice within **90 days** of DSHS giving it to you, unless you had good reason for not asking for a hearing within **90 days**.
- An Administrative Law Judge (an ALJ) decides after a hearing that the overpayment was correct.
- You create a written agreement with DSHS that the overpayment is correct.

### **What if DSHS hasn't met the time limits?**

DSHS shouldn't charge you with an overpayment, **or** they should reduce the months of the overpayment.

You should ask DSHS to dismiss all or part of the overpayment. If they won't, you should ask for an administrative hearing. At the hearing, you should ask the Administrative Law Judge to dismiss or lower the overpayment.

**I agree that the overpayment is correct, or the judge decided at the hearing that it's correct. Will DSHS collect on the overpayment?**

Yes.

- **Intentional overpayments:** They must reduce your food stamps by 20% of the monthly amount **or** \$20 a month, whichever is more.
- **Inadvertent household errors and administrative errors:** They must reduce your food stamps by 10% of the monthly amount **or** \$10 a month, whichever is more.

To pay off the overpayment faster, you can agree in writing to a payment plan with a larger reduction in benefits.

**I no longer get food stamps. 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.

If you can't make a scheduled payment, let OFR know right away.  
Call 1-800-562-6114 or 360-664-5700 **or** write to them at PO Box  
9501, Olympia WA 98507-9501.

### **Will DSHS refer my overpayment for collection?**

Maybe, if any of these is true:

- Your overpayment debt is more than **120 days** past due.
- You aren't meeting the terms of a scheduled repayment agreement.
- You no longer get food stamps.

If any of the above are true, DSHS can take (can garnish) your tax refund or your Social Security benefits, **if** you get more than \$750 a month in Social Security.

If you no longer get food stamps, DSHS might also:

- Garnish your wages or other financial property.
- File liens against your property.

### **What if I can't pay back the overpayment or lowering my benefits would be a financial hardship?**

Contact OFR **by phone** at 1-800-562-6114 or 360-664-5700 **or by mail:** PO Box 9501, Olympia WA 98507-9501 to ask them to compromise (lower or cancel) some of or all the overpayment amount. OFR might compromise an overpayment if any of these is true:

- You can't repay the balance, **or** it would be a hardship and you cannot repay within 3 years.
- The overpayment claim is incorrect.
- All adults responsible for the overpayment have died.
- Your balance is less than \$25 **and** you haven't made any payments for **90 days**.
- DSHS accepted a partial payment as payment in full.

If you claim that repaying the overpayment would be a hardship, you'll 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 3 years.  
You have no things of value you own (assets) that 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, having very low income, or addiction.
- Your household income from wages and other sources.
- Health factors for you and your dependents.
- Your employment potential.
- If there's a chance that your income or assets will change in the next 3 years.
- If you have money or assets that 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.
- Your household debts and expenses.
- Any other relevant factors.

**Are there different ways to compromise?**

Yes, there are 3.

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, for less than you in fact owe. **Example:** Your debt is \$150. You offer to pay \$100 today. The agency compromises the rest.
3. **Partial and continued:** OFR lowers the amount of the overpayment debt. You make payments until you've paid the reduced amount.

**Tip for representing yourself:** There are no state rules about compromise. The types of compromises and review process for compromise decisions come from OFR policy.

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

OFR 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 got your request for review.

If the OFR Manager doesn't change the decision, 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. That will be the final decision.

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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