

SHD Paraphrased Regulations - CalWORKs

150 Overpayments

Code Effective
ParaReg Text

150-1

An overpayment is that amount of aid payment an AU has received to which it was not eligible. It may be all or a portion of the aid payment. It includes an immediate need payment, a special need payment, or aid paid pending a state hearing. §44-350.15)

150-1A

It is the policy of CDSS that an immediate need payment is collectible as an overpayment both when there is actual ineligibility, and when the facts provided by the applicant are never verified and the eligibility determination process is thus incomplete. (All-County Letter No. 94-01, January 10, 1994)

150-1B ADDED 8/04

Under QR/PB, an overpayment shall be assessed when the AU receives more cash aid than the AU was entitled to receive because the county was unable to provide ten-day notice of an adverse action following the receipt of a mandatory recipient report, including the QR 7. §44-350.5 effective July 1, 2004)

150-1C REVISED 11/05

Under QR/PB, an overpayment shall not be assessed based on any differences between the amount of income the county reasonably anticipated the recipient would receive during the QR Payment Quarter and the income the recipient actually received provided the recipient's reports were complete and accurate. §44-350.18)

150-2

If a recipient is receiving aid pending following a discontinuance of aid, he or she shall be entitled to reestablish eligibility during the aid pending period. Any aid pending overpayment will only exist from the date of the discontinuance to the date that eligibility is reestablished during the aid pending period. (All-County Letter No. 85-35, March 22, 1985)

150-3

An overpayment shall not include aid paid when all four of the following criteria are met: (1) The applicant or recipient fails to perform an act constituting a condition of eligibility for aid. (2) The applicant's/recipient's failure to perform an act constituting a condition of eligibility is caused by a state agency error or by county error and not by an applicant/recipient error. (3) The amount of aid paid would have been the same had the act constituting the condition of eligibility been performed. (4) The state agency or county error is discovered, or an overpayment is being calculated or an overpayment is being recouped on or after January 1, 1985. §44-350.151)

150-4 REVISED 8/04

Under MR/RB, a reduced income supplemental payment which was correctly computed based on the AU's reasonable estimate of the income and other circumstances for the payment month shall not be subject to an overpayment determination. If there is a computational error, the payment shall be corrected. §44-350.17 prior to implementation of QR/PB in the county)

150-4A ADDED 8/04

Under QR/PB, a supplemental payment which was correctly computed, based on the county's determination of reasonably anticipated income, shall not be subject to an overpayment

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determination provided that the recipient's report, upon which the county based its determination was complete and accurate. If there is a computational error, the supplemental payment shall be corrected. (§44-350.17 effective July 1, 2004)

150-5

An administrative error overpayment is an overpayment which was caused by error on the part of the county when all information necessary to a correct determination of the grant was in the possession of the county. (§44-350.2(b))

150-8

When the county discovers that a person required to be in the AU is in the home, it shall notify the AU by mail that the discovered person is required to be included on the Statement of Facts. The county shall then redetermine the AU's eligibility from the date the person was required to be in the AU until the date notice was mailed. In recomputing the grant, include the person's income, resources and needs. The county shall initiate recovery of any overpayment which has occurred. (§44-355.11-.15, effective July 1, 1993)

150-11

If on the first day of a month a child is eligible for aid, aid for the entire month shall be paid. (W&IC§11455)

150-12 REVISED 8/04

Under MR/RB, no overpayment or underpayment shall be assessed against a reduced income supplemental payment which was correctly computed based on the AU's reasonable estimate of expected income and other circumstances for the reduced income supplemental payment month. (§44-402.6 prior to the implementation of QR/PB in the county)

150-13 ADDED 2/04

In the QR/PB system, a CalWORKs overpayment will be established as applicable based on:

- Recipient failure to report accurately and completely;
- County error;
- Recipient late reporting; and
- County inability to issue the correct grant amount due to the 10-day notice requirement when the recipient reported timely, completely and accurately.

Late reporting applies to both a late submission of the QR 7 and to late mandatory mid-quarter reports. The county will establish an overpayment when the recipient received a grant amount to which he/she was not entitled under QR/PB rules regardless of whether the recipient reported timely. (ACL 03-18, April 29, 2003, p.68)

In the food stamp program, an overissuance will be established if the household received an allotment greater than the amount it was entitled to receive under QR/PB rules and was due to recipient failure to report accurately or due to county error. If the recipient reports a mid-quarter change that is required to be reported timely, completely and accurately, the county shall not establish an overissuance due to the 10-day notice requirement.

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An overissuance will be assessed when late reporting alone or together with the 10-day notice requirement delayed issuance of the correct amount. An overissuance will be established when a recipient submits a late QR 7 which results in the recipient receiving more food stamps than he/she was entitled to receive because the county could not reduce the food stamps without giving 10-day notice.

(All-County Letter No. 03-18, April 29, 2003, postponement.68-69)

150-13A ADDED 2/04

No overpayment/overissuance or underpayment/underissuance shall be assessed when actual income received during the quarter differs from the amount of income reasonably anticipated, as long as the recipient met his/her reporting responsibilities. No reconciling based on actual income is done if reporting requirements are met accurately and completely and the county averaged and issued benefits based on reasonably anticipated income.

Reconciling beginning months of CalWORKs to determine the correct grant amount does not apply in QR/PB rules. (All-County Letter No. 03-18, April 29, 2003, p.74)

151-1

Prior to April 9, 2003, overpayments not due to excess property were calculated as follows:

To determine the amount of an overpayment due to income or any circumstances other than excess property: (a) Compute the correct grant amount based on correct information for the month involved in the overpayment. (b) Subtract the correct grant amount from the amount of aid actually paid. (c) Subtract any support payments received by the county and credited against the aid payment from the aid actually paid. (d) The total overpayment for each month is the lesser of the amount computed under (b) or (c) above. (e) The total overpayment is the sum of all amounts calculated under (d).

§44-352.12, revised effective April 9, 2003)

151-1A ADDED 8/04

An overpayment shall be assessed when the AU receives more cash aid than entitled to as a result of not reporting income or circumstances timely, or the county does not act correctly on a recipient report, or the county did not act timely. The county shall redetermine cash aid the recipient should have received based on the required report and correct county action. §44-352.12 effective July 1, 2004)

151-1B

To determine the amount of an overpayment due to income or any circumstances other than excess property: (a) Compute the correct grant amount based on correct information for the month involved in the overpayment. (b) Subtract the correct grant amount from the amount of aid actually paid. (c) "Subtract any money, excluding child support recoupment, received by the county and credited against the aid payment from the aid actually paid." (d) The total overpayment for each month is the lesser of the amount computed under (b) or (c) above. (e) The total overpayment is the sum of all amounts calculated under (d).

§44-352.12, revised effective April 9, 2003)

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151-2A

Effective January 1, 1998, all AUs with earned income will receive the appropriate disregards of \$225, plus one-half of the remainder, in accord with the instructions in All-County Letter (ACL) No. 97-59, regardless of when the monthly income report is submitted. In addition, any overpayments established for grants paid in January 1998 and later as a result of a failure to report earned income will be computed allowing such disregards. (ACL No. 97-67, October 23, 1997; §44-350.121, as revised effective July 1, 1998)

151-4 ADDED 2/04

If a recipient fails to report income any time he/she is required to report, or the county fails to act correctly when a recipient reports income, the county shall determine benefits the recipient would have received based on an accurate report of income and correct county action on that report. The overpayment/overissuance begins on the first date the change would have been made based on an accurate recipient report.

Example: The assistance unit/household has income that exceeded the IRT since January 5, 2002. The assistance unit/household never reported this income and the county discovers this failure to report income. Since the assistance unit/household was required to report this income within 10 days (i.e., by January 15), the assistance unit/household was financially ineligible effective January 31 and the overpayment/overissuance is established effective February 2002.

Example: The assistance unit/household submits a QR 7 on March 5 and reports that dad started a job on February 10 and that the income is expected to continue. The income does not exceed the IRT. The county fails to consider the income in issuing the CalWORKs grant and food stamp allotment beginning in April. If the increased income should have resulted in lower benefits, the county must establish an overpayment/overissuance beginning in April.

(All-County Letter No. 03-18, April 29, 2003, p.70)

151-4A ADDED 2/04

Changes that are not required to be reported, but that may voluntarily be reported should not be considered when determining whether there is an overpayment/overissuance. Voluntary changes need only be reported on the QR 7 that follows the change.

Example: Dad moves back into an assistance unit on January 16. He is employed full time. The assistance unit submits a QR 7 in March for the February report month, but does not report this change on the QR 7 or at any other time. The county discovers in December that dad has been in the home since January. Because there is no deprivation the assistance unit is not eligible for CalWORKs. However, the assistance unit was not required to report dad in the home until it completed the QR 7 in March for the February report month. The first month of overpayment is April.

Example: A recipient assigned to the January-March quarter correctly reports on the QR 7 due in March that the assistance unit/household has not acquired new property since the last QR 7. In April the recipient wins a car but sells it for fair market value in May and spends the money on bills. The recipient reports these facts on the QR 7 due in June. Since the assistance unit/household is property eligible in July-September quarter based on the June QR 7 and was not required to report the property mid-quarter, the county does not establish a property overpayment/overissuance for April-June. (All-County Letter No. 03-18, April 29, 2003, p.71)

152-1

Prior to April 9, 2003, the following regulations governed excess property overpayments:

To determine the amount of an overpayment due to excess property: (a) Determine the period of time in which the recipient held property in excess of the property maximum. (b) Determine the month within the period computed under (a) in which the property value, on the first day of the month was the highest and calculate the amount by which the property exceeded the property limit. (c) Calculate the total amount of aid paid to the recipient during the months excess property was held, subtracting any support payments received by the county credited against the aid payment for those months. (d) Determine whether the recipient received aid in "good faith". If it is determined that the recipient received aid in good faith as that term is specifically defined in §44-352.114, the amount of the overpayment is the lesser of the amount of excess property calculated in (b) above or the total amount of aid paid as calculated in (c) above. If the recipient did not receive aid in "good faith", the amount of the overpayment shall be the total grant paid during the months the excess property was held as calculated in (c) above. §44-352.11, revised effective April 9, 2003) A determination of "good faith" shall be based on a preponderance of evidence establishing that the recipient believed himself/herself to be eligible to the aid received. A determination of "good faith" shall not be made in cases when the county has informed the recipient of his/her reporting responsibilities and, under the circumstances, the recipient knew of his/her reporting responsibilities and failed to report within his/her competence.

§44-352.114)

152-2 REVISED 8/04

The calculation of a CalWORKs "excess property" overpayment is governed by the following regulations, set forth in §44-352.11.

Determine the period of time when the recipient's property exceeded the maximum allowable. (.111 renumbered .112(a) effective July 1, 2004)

For these purposes, the "period" includes all months in which the "total property value of the same items of property exceeds limits on the first day of the month, even though there may be intervening months in which the total property value is below limits." Fluctuations in the value of individual property items do not affect the "period", so long as the "same items of property" are included in the total property evaluation. If an item of property is disposed of, or acquired, a new period begins and a separate calculation is required. (.111(a) renumbered .112(a)(1) effective July 1, 2004)

Determine the month in which the property value, on the first day of the month, was highest. Calculate the amount by which that value exceeded the property limit. (.112 renumbered .112(b) effective July 1, 2004)

Determine the "total amount of aid actually paid to the recipient during the months excess property was held, subtracting any money, excluding child support recoupment, received by the county which was credited against the aid payment for these months." (.113 renumbered .112(c) effective July 1, 2004)

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Determine whether the recipient received aid in "good faith". In order to establish good faith, the recipient must have believed he/she was eligible for the aid received. (.114 renumbered .112(d) effective July 1, 2004). The recipient has not received aid in good faith when he/she has been informed of his/her reporting responsibilities, and the recipient knew of these responsibilities but failed to report within his/her competence. (.114(a) renumbered (d)(1) effective July 1, 2004)

If it is determined the recipient received aid in good faith, the overpayment is the lesser amount, as determined in §112 (renumbered .112(b) effective July 1, 2004) and .113 (renumbered .112(c) effective July 1, 2004). (.115 renumbered .112(e) effective July 1, 2004)

If it is determined the recipient did not receive aid in good faith, the overpayment is the total aid paid during the period of excess property. (.116 renumbered .112(f) effective July 1, 2004)

§44-352.1, effective April 9, 2003 and renumbered as noted effective July 1, 2004)

152-2A ADDED 2/04

In the QR/PB system, the only time an assistance unit /household is required to report property is on the QR 7. Property related overpayments/overissuances will be determined based on information that should have been reported on the QR 7. An assistance unit/household is only required to report property when property exceeds the limit in the second month of the quarter (i.e., the QR Data Month).

If a recipient owned property that exceeded the resource limit in the second month of the quarter and failed to report it on the QR 7, or if the county failed to act correctly on a report of property that exceeds the limit, the county shall determine the benefits the assistance unit/household should have received. (All-County Letter No. 03-18, April 29, 2003, p.72)

152-2C ADDED 8/04

Under QR/PB, excess property overpayments shall be assessed based on information that should have been reported on the QR 7. If an AU held excess property in the QR Data Month and failed to report it on the appropriate QR 7 or if the county failed to act correctly on the QR 7, the county shall determine the overpayment based on an accurate report and/or correct county action. §44-352.111 effective July 1, 2004)

152-2D ADDED 11/05

Unless excess property was spent down prior to the first day of the next QR Payment Quarter which followed the QR 7 on which the excess property should have been reported, the county shall determine an excess property overpayment based on an accurate report and/or correct county action when the recipient should have but did not report property on the QR 7, or the county failed to correctly act on property reported on the QR 7. §44-352.111 (QR))

153-2 REVISED 8/04

CalWORKs grants may be reduced because of prior overpayments. The grant shall be reduced by 5% of the MAP for the AU, rounded to the next lower dollar, if the overpayment was caused by administrative error; or by 10% of the MAP, rounded to the next lower dollar, for the AU in all other cases. §44-352.411, .412, effective July 1, 1998)

153-2A ADDED 2/05

Under QR/PB, recoupment by grant adjustment shall only be initiated at the beginning of the QR Payment Quarter. Grant adjustment shall be discontinued mid-quarter when the debt is paid in

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full. A new overpayment collection may continue mid-quarter by grant adjustment if the new collection of the overpayment does not decrease aid mid-quarter. (§44-352.41)

153-3A ADDED 8/04

Under QR/PB, recoupment by grant adjustment shall only be initiated at the beginning of a QR Payment Quarter. Grant adjustment shall be discontinued mid-quarter when the debt is paid in full. A new overpayment collection may continue mid-quarter by grant adjustment if the new collection of the overpayment does not decrease mid-quarter. (§44-352.41 effective July 1, 2004.)

154-1C

CalWORKs (formerly AFDC) overpayments shall be recouped in the following priority order (unless exempted under§44-352.2):

- (1) When the caretaker relative was a member of the overpaid AU, seek recoupment from that individual even if he/she moves to another AU, or no longer receives aid.
- (2) When the caretaker relative, described in 1., dies and the county cannot collect the unpaid balance from the estate of the deceased; is "unlocatable"; has the overpayment discharged in bankruptcy; is no longer on aid, the nonfraudulent overpayment is less than \$35, and other overpaid AU members remain on aid; or is no longer on aid, and the county has determined it is not "cost effective" to collect the overpayment from the caretaker relative: Then, the county shall initiate recovery of the overpayment from the other members of the overpaid AU, in sequence or concurrently.

(§44-352.31, .33)

154-1D

For purposes of determining overpayment recoupment under§44-352.3, the following definitions apply:

- (1) "Unlocatable" means the county is unable to determine the physical whereabouts of the caretaker relative, or is able to locate the caretaker relative but is unable to execute a legal process to collect. (§44-350.2(l))
- (2) "Cost effectiveness" of collection is determined by considering total administrative and personnel costs, legal filing fees, investigative costs, and any other applicable costs. (§44-350.161(b))

154-1F

The appropriate methods for collecting overpayments from former caretaker relative CalWORKs (formerly AFDC) recipients with outstanding overpayments is summarized in All-County Letter (ACL) No. 96-36.

If the former caretaker relative is locatable, a demand notice informing the individual of the amount and reason for the overpayment must be sent. (§44-352.44) No further collection efforts are required if it is not cost effective (per§44-352.312(e)) to collect the overpayment. (§44-352.22)

If the former caretaker relative's whereabouts are unknown to the county, the county may want to contact the other overpaid AU members to obtain information as to how to contact the

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relative. The county should also use data sources (such as records from State Employment Insurance, State Department of Revenue, State Department of Motor Vehicles, or the Payment Verification system (per Handbook §44-352.312(b)(1)) to locate the caretaker relative.

If, after contacting these sources, the relative is still unlocatable (per §44-350.2(l)) then the county may collect from other overpaid AU members (per §44-352.312(b)).

(ACL No. 96-36, July 22, 1996)

154-2

The county shall take all reasonable steps necessary to promptly correct and collect any overpayments that are known to the county. This includes recovery of overpayments due to either applicant or recipient and/or county administrative error. (§44-350.16)

154-3

When the caretaker relative was not a member of the overpaid AU, the county shall seek recovery from the members of the overpaid AU, as set forth in §44-352.33. (§44-352.32) The caretaker relative, in this case, did not benefit from the overpayment, and is not responsible for the overpayment. (All-County Letter No. 95-55, September 20, 1995)

155-1

The county shall not pursue collection of nonfraudulent overpayments totaling less than \$35 from individuals no longer receiving aid. (§44-350.161)

155-2 REVISED 3/07

The county shall demand repayment of any overpayment not recovered by grant adjustment. (§44-352.44)

155-3

When the nonfraudulent overpayment owed by an individual no longer receiving aid totals \$35 or more, the county shall send a demand notice for repayment. No further collection efforts shall be made unless the county determines it is cost effective to collect the overpayment. Costs to be considered when determining cost effectiveness include total administrative and personnel costs, legal filing fees, investigative costs, and any other applicable costs. (§44-350.161)

155-4 REVISED 3/07

The county shall not be precluded from arriving at a reasonable settlement of its demand for repayment with the recipient or former recipient. (§44-352.46)

155-5

When an AU has both an overpayment and an underpayment, the county may offset one against the other. (§44-351.3)

155-5A

Section 44-351.3 (permitting the county to offset an overpayment against an underpayment) has been challenged on the basis that the AFDC Program was replaced by the Temporary Assistance to Needy Families (TANF) and then by CalWORKs, and that state law does not authorize balancing. This section, per the CDSS, remains in effect despite the lawsuit attacking its validity, because the Sacramento County Superior Court has upheld §44-351.3.

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However, when the counties apply an offset to an underpayment, the county must send a separate Notice of Action to inform the AU of the offset. (All-County Information Notice (ACIN) No. I-56-98; *Lopez v. Anderson*, Sacramento County Superior Court No. 97CS 00135)

155-5B

State law provides that in CalWORKs (formerly AFDC) cases that have both an underpayment and an overpayment, the underpayment shall be offset against the overpayment prior to issuing any remaining underpayment. (W&IC§11004(k), as amended effective January 1, 1999)

155-6 REVISED 11/05

CDSS has agreed to include in its collection letters which demanded repayment the following specific language:

"You do not have to use any Social Security or SSI benefits you get to repay this overpayment."

(*Louis v. McMahon*, Case No. 869355, Stipulated Judgment of April 7, 1989, San Francisco County Superior Court; Handbook§44-352.451(c))

155-7

The statute of limitations for commencing an action for a liability created by statute is three years. That section further provides for a three-year statute of limitations for relief on the ground of fraud or mistake. The cause of action in the latter case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake. (Code of Civil Procedure§338)

Hearings before a quasi-judicial body (the Board of Medical Examiners) and before the Board of Education have been held not to be civil actions, and therefore such hearings were not governed by the CCP statutes of limitations. (*Bold v. Board of Medical Examiners* (1933) 133 Cal. App. 23, 23 P. 2d 826; *Saxton v. State Bd. of Education* (1934) 137 Cal. App. 167, 29 P. 2d 873)

155-8

The United States Supreme Court has held that in a Chapter 13 bankruptcy, where restitution had been ordered to recover an AFDC overpayment caused by welfare fraud, the restitution obligation is discharged. (*Penn. Department of Public Welfare v. Davenport* (1990) 110 S. Ct. 2126)

156-1

The county may not initiate the interception of taxes when the case is eligible for grant adjustment, where the claimant is making regular restitution payments, where the time to request a state hearing regarding the overpayment has not expired, where the individual has requested a state hearing or is awaiting a decision from a state hearing or has received an adopted state hearing decision which determines there is no overpayment or FS overissuance, or where there is a nonfraudulent overpayment or overissuance totaling less than \$35. The county must have a "right of recovery" pursuant to CDSS regulations which existed at the time of the overpayment. Right of recovery is defined as the ability to make collections based on the regulations, subsequent court cases, and any All-County Letters. (All-County Information Notice I-53-89, August 3, 1989)

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156-2

All counties participating in the AFDC/FS tax intercept program are required to establish and use a mechanism for promptly (within ten-calendar days after decision has been made to refund money) refunding to the individual monies intercepted for which: (1) a request for intercept has been submitted to the CDSS in error, or (2) a deletion request has been submitted to the CDSS and the intercept has already occurred before the deletion request is processed by the Franchise Tax Board. The refund must not be held until the monies are received from the CDSS. (All-County Information Notice I-53-89, August 3, 1989)

A specific notice must be sent to AFDC and FS recipients who had been overpaid or overissued benefits. This notice must include the county's right to recover the overpayment or overissuance through withholding from the state tax refund.

For tax intercepts in 1989 and thereafter, CDSS shall require the counties to offer an opportunity for an administrative review, at which point the county must determine if it has a right of recovery. If the individual is dissatisfied with the county review, a state hearing may be requested. The scope of that hearing shall be limited to whether tax intercept in the claimant's case is permitted under CDSS' tax intercept instructions. (All-County Welfare Directors Letter No. 90-14, February 9, 1990, implementing the August 22, 1989 Stipulation in *Anderson v. McMahan*)

156-2A ADDED 2/05

If a recipient challenges an intercept submission after receipt of the warning notice, the submitting county shall attempt to resolve the dispute through an administrative review which may include a face-to-face meeting. This review may be requested at any time during the calendar year in which the tax intercept may have occurred. (§20-406.1)

156-3

Tax intercepts are appropriate when there is a delinquent AFDC (now CalWORKs) overpayment/FS overissuance of at least \$10, and one of the following situations exists:

- .11 The AFDC household has failed to respond to a written demand letter.
- .12 There is a court-ordered restitution of an AFDC overpayment.
- .13 There is a court-ordered restitution of an IPV.
- .14 There is an FS Administrative Disqualification Hearing decision which determined that an IPV occurred.
- .15 The FS household has failed to respond to written demand letters and the claim has not been terminated.

(§20-403.1)

The following cases are not eligible for tax intercepts:

- .21 Cases eligible for AFDC grant adjustment or FS allotment reduction.
- .22 Cases in which the individual is making regular restitution payments.

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- .23 Cases in which the time to request a state hearing has not elapsed.
- .24 Cases in which a request for a state hearing has been requested or a decision is pending, or where the decision has determined there is no overpayment/overissuance.
- .25 Nonfraudulent overpayment(s)/overissuance(s) totaling less than \$35.

§20-403.1, .2)

156-4

Counties shall refund excess monies intercepted to the recipient within ten calendar days after the decision has been made to refund money regardless of whether or not the counties have received the intercepted funds. (§20-408.1)

156-6 ADDED 6/08

When intercepting federal income tax returns, counties are responsible for refunding Internal Revenue Service administrative offset fees to the client when an offset occurred as a result of a state or county error. (All County Information Notice I-16-99, February 25, 1999)

158-1 ADDED 6/04

Aid pending a state hearing decision is a recoverable overpayment except to the extent that the claim is granted. (§44-350.4)