

DHS OVERPAYMENTS

1. INTRODUCTION

This information is meant to be a general guide based on DHS's rules at the time the flyer is drafted. This flyer covers overpayments in DHS programs such as TANF, Food Stamps and Medical Benefits.

If you want information about DHS Overpayments, call the **Public Benefits Hotline (1-800-520-5292)** or your local Legal Aid Services Office for possible advice or representation. Go to www.oregonlawhelp.org for a directory of legal aid programs.

2. WHAT IS AN OVERPAYMENT?

An overpayment is when someone receives public benefits to which they are not entitled. Overpayments are debts that are owed to the State of Oregon.

3. HOW DO OVERPAYMENTS HAPPEN?

Sometimes people receiving benefits don't report something they should have such as income or a change in circumstances. Sometimes the overpayment is the result of a mistake made by someone at the welfare office.

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4. HOW ARE OVERPAYMENTS FIGURED?

The overpayment is the difference between the amount of benefits you actually receive and the amount of benefits you were eligible to receive. The overpayment may also include medical costs paid by Medicaid or OHP.

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5. WHO IS LIABLE FOR THE OVERPAYMENT?

The state can recover the overpayment from any person who was on the grant when the overpayment happened. Sometimes the government may even recover the overpayment from a family member who moves out of the household and currently receives cash benefits or food stamps.

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6. IF AN OVERPAYMENT ISN'T MY FAULT, IS IT STILL AN OVERPAYMENT?

Yes. It doesn't matter whether it was you or your worker who caused the overpayment. It is still an overpayment and you have to pay it back.

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7. DO I HAVE TO PAY BACK THE ENTIRE AMOUNT OF THE OVERPAYMENT?

In most cases you have to pay it all back. But, if you are owed any back payments, the back payments will be used to reduce the amount of your debt.

Similarly, if you had a TANF overpayment and you had to pay medical expenses during the period of the overpayment, some of those expenses can be deducted from the overpayment.

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8. DO I HAVE TO PAY IT BACK ALL AT ONCE?

No. You will not be forced to pay it back all at once. You can repay the overpayment gradually over a long period of time. To work out a payment plan, you should contact the Overpayment Recovery Unit at 1 (800) 273-0548.

9. HOW CAN WELFARE COLLECT TANF AND CHILD CARE OVERPAYMENTS?

The state has many ways of collecting overpayments, including the following:

- 1. If you are receiving cash assistance, your benefits may be reduced.
 - a. The state can only collect an overpayment of cash benefits from future cash benefits that you receive in the same program.

- b. Food Stamps overpayments are collected from future food stamps benefits you receive.
- c. In other words, the state can only collect an overpayment from future benefits you receive in the same program as the overpayment.
- d. If welfare is your only income, your cash benefits will be reduced by 10%. If you have other income besides welfare, your cash benefits may be reduced by more than 10%.

- 2. Child care overpayments may be collected from the person who caused the overpayment.
 - a. If you are eligible for child care payments, and the error was caused by the provider, the provider is responsible for the overpayment. DHS will collect the overpayment by reducing future child care payments made to the provider.
 - b. If you were not eligible for child care benefits, then you will be responsible for the overpayment

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- 3. If you are eligible for a state or federal income tax refund, the state can take it to repay your overpayment.
- 4. If you are owed any retroactive cash benefits by the welfare office, they can be held to repay your overpayment as long as they are from the same program as the overpayment.

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5. If you are on TANF and you are working, welfare can reduce your earned income deductions.
 - a. This may result in a smaller welfare check. You will be left with income for the month that is equal to 90% of the amount of the cash assistance for your family size, even though this may be money from work, cash assistance or both.
6. You can be sued by the state in court or you can be asked to sign a "confession of judgment."
 - a. ***In either case, you should seek legal advice immediately.*** If you receive a notice that your income will be garnished or your personal property will be taken, you should seek legal advice to learn your rights. ***In the meantime, don't sign anything you don't understand or agree with.***
7. You can make payment arrangements. To do that, call the Overpayment Recovery Unit, (1)(800) 273-0548.
If you don't make payments and you don't ask the ORU to make a new payment plan, DHS may start collecting your overpayment in other ways, such as referring your case to the Department of Revenue for collection.
8. DHS can refer your case to the Oregon Department of Revenue for collection.
9. You may ask the Overpayment Recovery Unit to "compromise" an overpayment and reduce the total amount you owe. You may offer to pay a lump sum that is less than what you owe to settle the debt. Also, if you find that you can't

afford the payments, you can request a new payment plan.

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10. HOW DOES WELFARE COLLECT FOOD STAMP OVERPAYMENTS?

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1. If the overpayment was the welfare office's fault, or a client error, the Overpayment Recovery Unit can take 10% of your monthly allotment or \$10 per month, whichever is greater.
2. If you have committed fraud, your monthly food stamp grant may be reduced by 20% or \$20.00, whichever is greater.
3. The welfare office may withhold any retroactive food stamps it owes you to reduce or repay the debt.
4. State or federal tax refunds may be taken by the state government as repayment for the overpayment.
5. You may be able to make a lump sum payment with cash or recovery from an EBT account to repay the overpayment.
6. You can enter into a payment plan with the Overpayment Recovery Unit (ORU) . To do that, call the Overpayment Recovery Unit, (1)(800) 273-0548.
If you don't make payments and you don't ask the ORU to make a new payment plan, DHS may start collecting your overpayment in other ways, such as referring your case to the Department of Revenue for collection.
7. The federal government can take some of your Social Security benefits to repay a food

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stamp overpayment. It has to let you keep at least \$750. Your SSI benefits cannot be taken.

31 CFR 285.4

8. The Division may decide not to collect an overpayment if it is too small and not cost effective for the Division to collect it.

NOTE: You may ask the Overpayment Recovery Unit to “compromise” an overpayment and reduce the total amount you owe. You may offer to pay a lump sum that is less than what you owe to settle the debt. Also, if you find that you can't afford the payments, you can request a new payment plan.

However, if you don't make payments and you don't ask the ORU to make a new payment plan, welfare will reduce your monthly food stamp grant by 10 or 20 percent as explained above. If you are not receiving benefits, the Division may take you to court to get the money back.

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Remember, welfare cannot reduce your TANF to pay a food stamp overpayment and they cannot reduce your food stamps to pay a TANF overpayment.

For more information on repayment plans call the **Public Benefits Hotline (1-800-520-5292)** or your local Legal Aid Services Office for possible advice or representation. Go to www.oregonlawhelp.org for a directory of legal aid programs.

11. WHAT IS FRAUD?

Fraud is intentionally giving false information or withholding information to get benefits to which you are not entitled. If you knowingly give false information or withhold information in order to

get ANY type of public benefits, you are committing fraud.

DHS may refer your case to the District Attorney for criminal prosecution, or it may choose to handle your case within the agency and impose a disqualification penalty for an Intentional Program Violation (IPV). You may also be referred to the U.S. Attorney’s Office for Food Stamp fraud.

12. WHAT IF THE STATE THINKS I MAY HAVE COMMITTED FRAUD?

Your case will be referred to a DHS Fraud Investigator if your case manager thinks you may have lied or withheld information to get benefits. The investigator may decide that DHS should treat it as an Intentional Program Violation (IPV) or the investigator may refer your case to the District Attorney.

It is then up to the District Attorney to decide whether to bring criminal charges against you in state court. You may be separately prosecuted in federal court if the fraud involved food stamps. *In Oregon, welfare fraud is a Class C felony punishable by fines, restitution and, in rare cases, jail sentences. Therefore, if you have been accused of fraud, you should seek legal advice immediately to learn your rights.*

Call the **Public Benefits Hotline (1-800-520-5292)** or your local Legal Aid Services Office for possible advice or representation. Go to www.oregonlawhelp.org for a directory of legal aid programs and a flyer on “DHS Fraud Investigators.”

13. WHAT ARE THE PENALTIES THAT CAN BE IMPOSED IF I COMMITTED FRAUD?

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The welfare office itself does not have the authority to prosecute you or put you in jail for fraud. As discussed above, only the U.S. Attorney or District Attorney can do that. But, if welfare finds you committed fraud, it can impose an IPV penalty after a hearing. They can cut off your TANF check and food stamps for:

- 12 months for the first violation
- 24 months for the second violation; and
- Permanently for the third violation.

*For food stamp cases where a person is found guilty of **trading food stamps for firearms, ammunition, explosives, or controlled substances**, the penalty is greater and could result in permanent disqualification from the food stamp program no matter where you live.*

If you received TANF, Medicaid or Food Stamps in two or more states and are found by a court, IPV hearing or written admission to have committed fraud you will be disqualified from receiving benefits in that program for 10 years.

Only the person who committed the fraud will be cut off from receiving benefits. The rest of the family will still be eligible for benefits.

In addition to the disqualification, you will have to pay back the benefits that you were overpaid. DHS can reduce your food stamps by 20% to collect the overpayment.

14. HOW WILL WELFARE DECIDE IF I HAVE COMMITTED FRAUD?

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To impose any of the penalties discussed above, the state must first establish that you committed

fraud. Fraud can be found in any one of three ways:

1. The state can have an administrative hearing to determine whether you committed fraud. This is called an "IPV" hearing. The only issue at the IPV hearing will be whether you committed fraud. If you are sent an IPV notice, you will have a hearing scheduled sometime in the future without having to request the hearing.
2. If you sign a form agreeing you committed fraud and give up your right to an IPV hearing, welfare may impose fraud penalties. ***Since the consequences of signing this form are great, get legal advice before you sign anything.***
3. If a state or federal court finds in a criminal proceeding you committed fraud, the court will impose fraud penalties and you will be cut off from receiving benefits.

15. 15.WHAT RIGHTS DO I HAVE IN AN OVERPAYMENT CASE?

1. You must receive a written notice before the state can cut off or reduce your benefits.
 - a. You must receive notice of the action at least 10 days before the date the action is to take place. The notice must include information about how the overpayment was figured.
2. You can ask your worker to explain the overpayment to you and how it was figured.
3. You have the right to refuse to talk to welfare workers or investigators about the overpayment. If you do choose to talk to them about the overpayment, *anything you say can be used against you.*

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4. Welfare must tell you what method will be used to get the overpayment back from you, if any.
5. You have a right to a hearing. If you don't agree there is an overpayment, or you disagree with the amount of the overpayment or the method of collection, or just are not sure **ASK FOR A HEARING**.
 - a. You have the right to request a hearing within 45 days of the date on the notice if the overpayment involves TANF, Medicaid, OHP or General Assistance.
 - b. You have the right to request a hearing within 90 days from the date on the notice if the overpayment is for food stamps.
 - c. If you get an IPV notice, you do not have to request a hearing. It will be scheduled automatically unless you sign a hearing waiver and agree to the IPV.
 - d. **If you get an overpayment notice as well as an IPV notice**, you will not have a hearing on the overpayment issue unless you request it.

An IPV and an overpayment are different. You have separate hearing rights for each one. ***Remember, if you get an IPV notice and an overpayment notice, you must request a hearing on the overpayment or you will give up the right to challenge the overpayment.***

16. CAN I KEEP RECEIVING BENEFITS WHILE I WAIT FOR MY HEARING?

If you request a hearing within 10 days of the date on the notice, you can keep getting your benefits in the same amount, in most cases, until the hearing decision is issued.

17. HOW CAN I GET MORE INFORMATION?

For more information on DHS Overpayments, call the **Public Benefits Hotline (1-800-520-5292)** or your local Legal Aid Services Office for possible advice or representation. Go to www.oregonlawhelp.org for a directory of legal aid programs.

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