

Chapter 388-410 WAC

BENEFIT ERROR

WAC

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WAC 388-410-0001 What is a cash assistance overpayment? (1) An overpayment is any cash assistance paid that is more than the assistance unit was eligible to receive.

(2) There are two types of cash overpayments:

(a) Intentional overpayments, presumed to exist if you willfully or knowingly:

(i) Fail to report a change you must tell us about under WAC 388-418-0005 within the time frames under WAC 388-418-0007; or

(ii) Misstate or fail to reveal a fact affecting eligibility as specified in WAC 388-446-0001.

(b) Unintentional overpayments, which includes all other client-caused and all department-caused overpayments.

(3) If you request a fair hearing and the fair hearing decision is in favor of the department, then:

(a) Some or all of the continued assistance you get before the fair hearing decision must be paid back to the department (see WAC 388-418-0020); and

(b) The amount of assistance you must pay back will be limited to sixty days of assistance, starting with the day after the department receives your hearing request.

(4) If you receive child support payments directly from the noncustodial parent, you must turn these payments over to the division of child support (DCS). These payments are not cash assistance overpayments.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 2011 1st sp.s. c 15. WSR 13-18-004, § 388-410-0001, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-08-124, § 388-410-0001, filed 4/5/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-410-0001, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d)(6). WSR 99-24-131, § 388-410-0001, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0001, filed 7/31/98, effective 9/1/98.]

WAC 388-410-0005 Cash assistance overpayment amount and liability. (1) The amount of overpayment for cash assistance households is determined by the amount of

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assistance received to which the assistance unit was not entitled.

(2) Cash overpayments are recovered from:

(a) Any individual member of an overpaid assistance unit, whether or not the member is currently a recipient; or

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member.

(3) A cash assistance overpayment is not recovered from:

(a) A nonneedy caretaker relative or guardian who received no financial benefit from the payment of assistance; or

(b) A person not receiving assistance when an unintentional overpayment of less than thirty-five dollars is discovered and/or computed.

(4) Overpayments resulting from incorrectly received cash assistance are reduced by:

(a) Cash assistance a household would have been eligible to receive from any other category of cash assistance during the period of ineligibility; and

(b) Child support the department collected for the month of overpayment in excess of the amount specified in (a) of this subsection; or

(c) Any existing grant underpayments.

(5) A cash assistance overpayment cannot be reduced by a food assistance underpayment.

(6) An underpayment from one assistance unit cannot be credited to another assistance unit to offset an overpayment.

(7) All overpayments occurring after January 1, 1982 are required to be repaid by mandatory grant deduction except where recovery is inequitable as specified in WAC 388-410-0010.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 2011 1st sp.s. c 15. WSR 13-18-004, § 388-410-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0005, filed 7/31/98, effective 9/1/98.]

WAC 388-410-0010 Repayment of grant overpayment occurring prior to April 3, 1982, and resulting department error. (1) An assistance unit will not be held liable for an overpayment occurring prior to April 3, 1982, which was caused by departmental error, until the department determines recovery would not be inequitable. Recovery is considered inequitable if:

(a) The department informed the recipient or the recipient's authorized representative that the recipient was entitled to part or all of the financial assistance or services overpaid; or

(b) The department acted in a manner which would reasonably lead the recipient to believe he/she was eligible to receive the assistance or services overpaid; and

(c) The department acted in a manner which would reasonably lead the recipient to believe he/she was eligible to receive the assistance or services overpaid; and

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(c) The recipient retained or accepted the assistance with the understanding that he/she had the right to rely upon the information received from the department; and

(d) The recipient would suffer an injury if the department were allowed to refuse to recognize the department's admission, statement, act or omission; and

(e) Injury as used in this section includes liability for repayment of a debt due the state.

(2) If the department determines recovery would be inequitable:

- (a) The recipient is not liable for repayment;
- (b) The overpayment is not a debt due the state; and
- (c) The recipient is so informed.

(3) If recovery would not be inequitable, the recipient will be notified:

- (a) Of the specific reason why recovery is not inequitable;
- (b) That the recipient is liable for repayment of the debt;
- (c) Whether the overpayment is subject to a mandatory deduction from the current grant; and
- (d) Of the right to contest the decision.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0010, filed 7/31/98, effective 9/1/98.]

WAC 388-410-0015 Recovery of cash assistance overpayments by mandatory grant deduction. (1) All overpayments of cash assistance are recovered by means of a mandatory deduction from future continuing assistance grants except as specified by WAC 388-410-0010.

(2) All members of an overpaid assistance unit are responsible for repayment of an overpayment. Repayment may be from:

- (a) Resources and/or income; or
- (b) Deductions from subsequent grants; and
- (c) An assistance unit member's estate.

(3) The mandatory grant deduction of an intentional overpayment is ten percent of the monthly grant payment standard.

(4) A monthly grant deduction of up to one hundred percent of the grant can be established when:

- (a) The overpayment is intentional;
- (b) The client has liquid resources available but refuses to use these resources in full or partial satisfaction of the overpayment; and

(a) Administrative error overpayment:	(b) Inadvertent household error overpayment:	(c) Intentional program violation overpayment:
We must discover the overpayment within twelve months of the date you were overpaid.	We must discover the overpayment within twenty-four months of the date you were overpaid.	We must discover the overpayment within seventy-two months of the date you were overpaid.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-20-062, § 388-410-0020, filed 9/29/06, effective 11/1/06. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510, 7 C.F.R. 273.18. WSR 02-06-090, § 388-410-0020, filed 3/1/02, effective 4/1/02. Statutory Authority: RCW 74.04.510. WSR 01-14-032, § 388-410-0020, filed 6/28/01, effective 8/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0020, filed 7/31/98, effective 9/1/98.]

(c) The amount of income and resources remaining available to the assistance unit is not less than ninety percent of the grant payment standard.

(5) An unintentional overpayment is recovered by grant deduction of five percent of the monthly grant payment standard unless the client voluntarily requests a larger deduction in writing.

(6) A monthly deduction for overpayment recovery can be established against the clothing and incidental grant of a recipient in a nursing facility, intermediate care facility, or hospital. A monthly deduction cannot be established against the vendor payment to the nursing facility, intermediate care facility or hospital.

(7) When the monthly grant deduction is equal to or more than the current grant for which the client is eligible had no overpayment occurred, the grant is suspended.

(8) No more than the total amount of an overpayment may be collected by mandatory deduction from a client's public assistance grant. The client will receive compensation for an underpayment resulting from any erroneous monthly deduction.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0015, filed 7/31/98, effective 9/1/98.]

WAC 388-410-0020 What happens if I receive more Basic Food or WASHCAP benefits than I am supposed to receive? (1) If you receive more Basic Food or WASHCAP benefits than you were supposed to receive, your assistance unit (AU) has an overpayment. There are three types of overpayments:

(a) **Administrative error overpayment:** When you received too many benefits because the department made a mistake.

(b) **Inadvertent household error overpayment:** When you received too many benefits because you made a mistake or didn't understand what you were supposed to do.

(c) **Intentional program violation (IPV) overpayment:** When you received too many benefits because you broke a food stamp rule on purpose. If you have an IPV, you could be disqualified from receiving Basic Food or WASHCAP benefits under chapter 388-446 WAC.

(2) We must discover an overpayment within certain time frames for us to establish and collect an overpayment. If we do not discover that you received too many benefits within the time frame described below based on the type of overpayment, we will not set up an overpayment:

WAC 388-410-0025 Am I responsible for an overpayment in my assistance unit? If your assistance unit (AU) received more Basic Food or WASHCAP benefits than it was supposed to receive, your AU has an overpayment. If you have an overpayment, we determine the amount you were overpaid and set up a claim to recover this overpayment.

(1) We set up an overpayment for the full amount your AU was overpaid for every adult AU member at the time your AU was overpaid.

(2) Each adult member is responsible for the whole overpayment until we recover the entire amount of the overpayment. We do not collect more than the amount your AU was overpaid.

(3) If we determine you are responsible for an overpayment, you are responsible for the overpayment even if you are now in a different AU than you were when you had the overpayment.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-20-062, § 388-410-0025, filed 9/29/06, effective 11/1/06. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510, 7 C.F.R. 273.18. WSR 02-06-090, § 388-410-0025, filed 3/1/02, effective 4/1/02. Statutory Authority: RCW 74.04.510. WSR 01-14-032, § 388-410-0025, filed 6/28/01, effective 8/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0025, filed 7/31/98, effective 9/1/98.]

WAC 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment? (1) We calculate the amount of your Basic Food or WASHCAP overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
- (b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If we paid you too few Basic Food or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

- (a) We have **not** already issued you benefits to replace what you were underpaid; and
- (b) We have **not** used this amount to reduce another overpayment.

(5) We **must** set up an inadvertent household error or administrative error overpayment if:

- (a) We discovered the overpayment through the federal quality control process;
- (b) You currently receive Basic Food or WASHCAP benefits; or
- (c) The overpayment is over one hundred twenty-five dollars and you do not currently receive Basic Food or WASHCAP benefits.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will not set up and start collecting the overpayment if doing so could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative disqualification hearing (chapter 388-02 WAC) unless:

- (a) Your AU has repaid the overpayment; or

(b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-20-062, § 388-410-0030, filed 9/29/06, effective 11/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 03-21-027, § 388-410-0030, filed 10/7/03, effective 12/1/03; WSR 03-01-005, § 388-410-0030, filed 12/4/02, effective 2/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510, 7 C.F.R. 273.18. WSR 02-06-090, § 388-410-0030, filed 3/1/02, effective 4/1/02. Statutory Authority: RCW 74.04.510. WSR 01-14-032, § 388-410-0030, filed 6/28/01, effective 8/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0030, filed 7/31/98, effective 9/1/98.]

WAC 388-410-0033 How and when does the department collect a Basic Food or WASHCAP overpayment?

(1) When we set up an overpayment because you received more Basic Food or WASHCAP benefits than you were supposed to receive, we start to collect the benefits you were overpaid. This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) Set up an overpayment that we do not have to set up under WAC 388-410-0030(5).

(2) You can repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your EBT account;

(c) Making regular payments under a scheduled repayment agreement as described in subsection (4) of this section; or

(d) Having your current Basic Food or WASHCAP benefits reduced.

(3) If you have an inactive EBT account and we cancelled Basic Food or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled benefits to reduce the amount of your overpayment.

(4) If your AU currently receives Basic Food or WASHCAP benefits, you can repay your overpayment by making monthly payments. The payments must be more than we would recover through us reducing your benefits. Your AU or the department can request a change to the agreement if necessary.

(5) If you are responsible for repaying an administrative or inadvertent household error overpayment, we automatically reduce your monthly benefits unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; or

(c) Request a hearing and continued benefits within ninety days of the date you received your collection action notice.

(6) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date you receive your collection action notice. If you do not do this, we will reduce your current monthly benefits.

(7) If you receive ongoing Basic Food or WASHCAP benefits, we can reduce your monthly benefits to repay the overpayment. We do not reduce your first Basic Food or WASHCAP allotment when we first approve your application for benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

- (i) Ten percent of your monthly benefits; or
- (ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

- (i) Twenty percent of your monthly benefits; or
- (ii) Twenty dollars per month.

(8) If you do not meet the terms of a repayment agreement with the department, we automatically reduce your current benefits unless you:

(a) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

(9) If your overpayment claim is past due for one hundred eighty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, Social Security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date;

(b) Have your monthly benefits reduced to repay the overpayment; or

(c) Meet the requirements of your scheduled repayment agreement.

(10) If you no longer receive Basic Food or WASHCAP benefits, we can garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

(11) We suspend collection on an overpayment if:

(a) We cannot find the responsible AU members; or

(b) The cost of collecting the overpayment would likely be more than the amount we would recover.

(12) We can negotiate the amount of an overpayment if the amount you offer is close to what we could expect to receive from you before we can no longer legally collect the overpayment from you.

(13) We write off unpaid overpayments and release any related liens when:

(a) We can not possibly collect any more funds;

(b) We agreed to accept a partial payment that left an unpaid balance after this payment; or

(c) There is an unpaid balance left after an overpayment case has been suspended for three consecutive years unless a collection may be possible through the Treasury Offset Program.

(14) If your AU has an overpayment from another state, we can collect this overpayment if the state where you were overpaid does not plan to collect it and they give us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-20-062, § 388-410-0033, filed 9/29/06, effective 11/1/06. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510, 7 C.F.R. 273.18. WSR 02-06-090, § 388-410-0033, filed 3/1/02, effective 4/1/02.]

WAC 388-410-0035 Are alien and alien sponsors jointly responsible for cash and food assistance overpayments? (1) The following applies to cash assistance overpayments:

(a) When a cash overpayment to a sponsored alien results from incorrect information provided by the alien's sponsor, both the alien and their sponsor are jointly and individually liable for the cash assistance overpayment made to the sponsored alien during the three years after the alien's entry into the United States.

(b) Collection action is initiated against the sponsored alien's cash assistance unit for an inadvertent household error when:

(i) Collection action is taken first against the alien's sponsor; and

(ii) The alien's sponsor does not respond within thirty days; or

(iii) The sponsored alien provides incorrect information concerning the sponsor or sponsor's spouse through misunderstanding or unintended error.

(2) The following applies to food assistance overpayments:

(a) Responsibility for food assistance overpayments under WAC 388-410-0025 also apply to sponsored alien assistance units.

(b) A sponsored alien is individually liable for any food assistance overpayments made to the sponsored alien. The alien's sponsor cannot be held liable for food assistance overpayments.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.18(a). WSR 11-11-088, § 388-410-0035, filed 5/18/11, effective 6/18/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0035, filed 7/31/98, effective 9/1/98.]

WAC 388-410-0040 Cash and food assistance underpayments. (1) All cash assistance underpayments not credited against an overpayment are repaid upon discovery to any current or former recipient.

(2) All food assistance benefits underpaid are restored when:

(a) An underpayment was caused by department error;

(b) An administrative disqualification for intentional program violation was reversed;

(c) A rule or instruction specifies restoration of unpaid benefits; or

(d) A court action finds benefits were wrongfully withheld.

(3) A client is eligible for restoration of underpaid benefits for any of the twelve months prior to:

(a) The month the client requests restoration;

(b) The month the department discovers an underpayment;

(c) The date the household makes a fair hearing request when a request for restoration of benefits was not received; or

(d) The date court action was started when the client has taken no other action to obtain restoration of benefits.

(4) The client may request a fair hearing if they disagree with the amount of benefits the department determines were underpaid.

(5) If household composition changes prior to the department's restoration of an underpayment, the underpayment is paid to:

(a) First, the household containing a majority of the persons who were household members at the time of the underpayment; or

(b) Second, the household containing the head of the household at the time of the underpayment.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-410-0040, filed 7/31/98, effective 9/1/98.]