

Department of Social and Health Services

Olympia, Washington

### **WAC Manual**

Revision	# 872
Category	Benefit Errors – Basic Food Overpayments
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Revision Author:	Bob Thibodeau
Division	CSD
Mail Stop	45470
Phone	360-725-4634
Email	<a href="mailto:thiborl@dshs.wa.gov">thiborl@dshs.wa.gov</a>

### **Summary**

The Office of Programs and Policy in the Community Services Division (CSD) amended rules to align with federal regulations for the establishment and calculation of overpayments for Basic Food and WASHCAP benefits. The changes were made as part of the corrective action plan for a recent USDA Food and Nutrition Service Recipient Claim Management Evaluation Review (RCMER).

The rule changes are under WAC 388-410-0020, “What happens if I receive more Basic Food or WASHCAP benefits than I am supposed to receive?” and WAC 388-410-0030, “How does the department calculate and set up my Basic Food or WASHCAP overpayment?”. The changes include:

- Corrects the overpayment policy so it is in compliance with federal regulations (7 CFR 273.18(d)(3)), which requires states to establish overpayment claims even if they cannot be established within the required timeframes.
- Adds clarification to overpayment procedures by inserting maximum look-back periods for each of the three overpayment types:
  - Administrative error (AE) – up to twelve months before we became aware of the overpayment;
  - Inadvertent household error (IHE) – no more than twenty-four months before we became aware of the overpayment; and
  - Intentional program violation (IPV) – from the month the act of IPV first occurred but no more than six years before we became aware of the overpayment.
- Adds clarification to the definition of intentional program violation overpayment and removes “food stamp” terminology.

Programs and Policy is also amending rules to explain the options concerning waiving, compromising, writing off, or terminating Basic Food and WASHCAP overpayment claims. Additionally, the amended rules clarify that federal law does not allow for SNAP overpayment claims to be dismissed on the basis of equitable estoppel.

DSHS is amending the following rules to clarify that equitable estoppel is not a valid option on basic food overpayments and presents other options available to compromise, reduce or waive overpayment claims:

- WAC 388-410-0025, "Am I responsible for an overpayment in my assistance unit?" ; and
- WAC 388-410-0033, "How and when does the department collect a Basic Food or WASHCAP overpayment?"

Please see highlighted text below:

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**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 federal food ((stamp)) assistance 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:

(a) Administrative error overpayment:	(b) Inadvertent household error overpayment:	(c) Intentional program violation overpayment:
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<b>(a) Administrative error overpayment:</b>	<b>(b) Inadvertent household error overpayment:</b>	<b>(c) Intentional program violation overpayment:</b>
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.))

**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 [WAC 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.
8. We must calculate the overpayment amount:

- a. For an administrative error overpayment - up to twelve months prior to when we became aware of the overpayment;
- b. For an inadvertent household error overpayment – for no more than twenty-four months before we became aware of the overpayment; and
- c. For intentional program violation (IPV) overpayments – from the month the act of IPV first occurred but no more than six years before we became aware of the 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.

(4) You may be responsible for a Basic Food or WASHCAP overpayment even if it was the department's fault you were overpaid.

(5) We do not apply equitable estoppel, as described under WAC 388-02-0495, to Basic Food or WASHCAP overpayments.

(6) We may reduce all or part of an overpayment if we determine you are unable to repay the balance or that doing so would be a hardship. See WAC 388-410-0033.

**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) Arrange with us to compromise (reduce) or waive all or part of your overpayment under section (13) below; or

(d) 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) Arrange with us to compromise (reduce) or waive all or part of your overpayment under section (13) below; or

(d) 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))~~ compromise (reduce) all or part of any unpaid claim when:

(a) ~~((the))~~ The amount you offer to repay is close to what we could expect to receive from you before we can no longer legally collect the overpayment from you ~~((-))~~ ; or

(b) We determine that you are unable to repay the balance or that doing so would be a hardship.

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

(a) ~~((We can not possibly collect any more funds))~~ The claim is invalid;

(b) All adult household members die;

(c) The claim balance is less than twenty-five dollars and has been delinquent for ninety days or more;

(d) We determine it is not cost effective to pursue the claim further;

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

(f) You have paid ten percent of your monthly benefits or ten dollars, whichever is greater, on an administrative or inadvertent household error overpayment for at least thirty-six months;

~~((c) There is an unpaid balance left after an overpayment case has been suspended))~~ (g) The claim has been delinquent for three ((consecutive)) years or more unless ((a collection may be possible)) we plan to pursue the claim through the Treasury Offset Program((-)) ; or

(h) An administrative law judge orders us to do so.

(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.

(15) You can ask for a hearing to contest whether you owe an overpayment, whether we calculated the overpayment correctly, or whether we should have waived an overpayment.