

CHAPTER 6

OVERPAYMENTS/UNDERPAYMENTS AND FRAUD

OVERPAYMENTS

Responsibilities

Applicant/Recipient Responsibilities

The IHSS applicant/recipient, his/her conservator, or in the case of a minor, his/her parents or guardian are responsible for:

- Completing or participating in the completion of all documents required to determine eligibility and the need for IHSS services.
- Making available to the County all documents that are in his/her possession, or that are available to him/her, which are necessary to determine IHSS eligibility and the need for services.
- Reporting all known facts, which are material to his/her IHSS eligibility and level of need.
- Reporting any change in any of these facts within ten calendar days of the occurrence.
- Reporting all information necessary to assure timely and accurate payment to providers of IHSS service.

County Responsibilities

IHSS Social Workers and Medi-Cal Workers are responsible for:

- Informing recipients of their rights and responsibilities in relation to IHSS eligibility and need for services.
- Evaluating the capacity of each applicant or recipient to perform their responsibilities.
- Assisting recipients as needed in establishing their IHSS eligibility and need for service.
- Correctly determining IHSS eligibility and need for services.
- Complying with administrative standards to ensure timely processing of recipient requests for service.
- Taking prompt action on any information received or circumstances noted which would affect eligibility or require a change in the share of cost.

Definitions

Overpayment (30-768)

A payment made for the purchase or delivery of IHSS services in an amount to which the recipient or the provider was not entitled. (MPP 30-768 .11)

Aid Paid Pending Appeal

Payments for services delivered pending a State Appeal Hearing decision as required by MPP 22-022.5 are not considered overpayments (even when the recipient is found to be ineligible for the services) and cannot be recovered.

Administrative Overpayments

An administrative overpayment occurs when the action or inaction of IHSS staff results in a payment for IHSS services to which the recipient was not entitled. An administrative

overpayment cannot be referred to PAFD. Any administrative overpayments greater than \$5.00 occurring in an IHSS Residual (IHSS-R) case will be processed for overpayment recovery.

Welfare and Institutions Code (WIC) section 12305.83 provides the authority for the collection of all IHSS overpayments (including overpayments that are not fraud related) that have been made to an IHSS provider. When an IHSS provider has received an overpayment, it may be collected to the extent that is allowed under existing labor laws. In a Personal Care Services Program (PCSP), or an IHSS Plus Waiver (IPW) case, state law does not recognize *recipient* liability when an administrative error results in an overpayment to the *recipient*. An administrative overpayment made to a PCSP or an IPW eligible recipient cannot be collected.

Willful Overpayments

Willful overpayments result when a recipient or provider fails to report essential information. All overpayments will be evaluated to determine if there was willful intent to provide false, misleading, or incomplete information in order to receive benefits to which the recipient was not entitled.

Fraud

Fraud is the intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person. Fraud also includes any act that constitutes fraud under applicable federal or state law. WIC 12305.8 (a)

Overpayments (Non-PCSP)

Repayment Liability

The repayment liability for the non-PCSP recipient is limited to:

- The amount of liquid resources and income **excluded** or **disregarded** by the SSI/SSP Program.
- The amount of the overpayment.

Excluded Income/Resources

Exclusions

- Refunds, credits and tax rebates.
- Twenty (\$20.00) per month disregard.
- Earned income - \$65.00 per month plus one-half of the remaining dollar amount once \$65.00 has been subtracted from the gross earnings.
- Income Necessary To Achieve Self-Support.
- The dollar amount of un-reconciled advance payments.

Exceptions

- Overpayments totaling less than \$5.00 will not be collected.
- Funds set aside for burial *are not* liquid resources for collection of overpayments.

Overpayment Recovery Periods

Overpayments are calculated:

- From the first effective date of the recipient/provider ineligibility for benefits, or the first effective date of the under-assessed share-of-cost (SOC).
- Through the date of discovery and 10-day notification of intent to reduce or discontinue benefits, or the correction of the SOC.

Time Limit

There is *no time limit* on the length of the recovery period for an overpayment.

O/P Due To Fraud

Overpayments due to either provider or recipient **Fraud** are:

- Referred to the District Attorney's Public Assistance Fraud Division (PAFD) for prosecution if the amount is more than \$1,500.
- Processed for overpayment collection. (See referral procedures for overpayments and/or fraud in this chapter.)

Evaluation Of Potential Fraud

All overpayment situations must be evaluated by the Social Worker and/or the Medi-Cal Worker to determine if the recipient/provider provided false, misleading, or incomplete information with the intent to receive benefits to which they were not entitled.

Calculating The Amount Of Overpayment For Non-PCSP***Failure To Report Change In Status***

The recipient fails to report changes within 10 days of the change, and receives benefits to which he/she are not eligible resulting in an over-assessment of services, or an under-assessed SOC.

Calculation

- The Social Worker determines the number of service hours for which payment was made in excess of the correct service authorization.
- Multiply this amount by the County's Individual Provider hourly wage rate, during the period of the overpayment.

The Social Worker will inform the Medi-Cal Worker *immediately* if any information affecting Medi-Cal eligibility or share-of-cost is received.

Advance Pay – Total Amount Not Used for Purchase of Services

A recipient receives a direct advance payment to purchase services in a given month, but fails to submit a reconciling time sheet for the total number of hours paid within 45 days from the date of payment.

- The service authorization is based on an hourly rate.
- Determine the number of service hours for which payment was made in excess of those actually provided.

- Multiply this amount by the hourly wage rate used in computing the recipient's authorized payment.

The amount of the overpayment is the difference between the amount that should have been paid, and the amount that was actually paid.

Restaurant Meals

The restaurant meals allowance is not pro-rated when determining the overpayment amount. All restaurant meal allowance overpayments are treated as if the recipient used the full amount of the allowance. The full restaurant meal allowance dollar amount received by the recipient is an overpayment regardless of whether the recipient:

- Used none of the allowance for the intended purpose.
- Was ineligible for a restaurant meal allowance.
- Or used only a portion of the allowance for its intended purpose.

In all examples the entire amount is an overpayment.

Excessive Compensation To Provider

The provider was paid for hours not actually worked.

All excess provider compensation may be recovered. The County will request repayment from the provider. The County has the option to seek recovery of excess compensation through civil suit

Fraud

Provider or recipient eligibility for benefits was authorized based upon inaccurate, incomplete, or false statements made with the intent to receive benefits to which he/she was not otherwise entitled.

- The Social Worker determines the number of service hours for which payment was made in excess of the correct service authorization.
- Multiply this amount by the county's Individual Provider hourly wage rate during the overpayment period.
- The Medi-Cal Worker determines the amount of underpaid SOC per month based upon the difference between the SOC paid and the correct SOC.

Administrative Overpayment

Timely notification of change is received from the recipient but staff inaction results in the recipient being over-assessed for services or the SOC is under-assessed. Use the calculations as outlined above.

Overpayment Referral Procedures

When a County or Public Authority employee becomes aware that an overpayment for IHSS has occurred, he/she must inform the assigned IHSS Social Worker. The Social Worker will evaluate the information and if appropriate, initiate the overpayment collection process or make a referral to the PAFD unit.

The most common overpayment occurs when a provider continues to collect payment for IHSS services after the recipient is hospitalized or deceased.

Social Worker Procedure

Review the case file for the following:

- The reason the overpayment occurred.
- The start date.
- The stop date.
- The estimated overpayment amount.

When determining the dates for an overpayment resulting from a hospitalization, the Social Worker must allow for:

- Services received at home on the date the recipient was admitted to a care facility.
- Services received at home on the date the recipient returned to his/her own home.

Overpayments Under \$1500.00

For overpayments that are *under* \$1500.00 dollars, *a fraud referral will not be made to the PAFD Unit*. When the overpayment amount is clearly less than \$1500.00, and there is a confirmed beginning and end date to the period of ineligibility:

- Complete the Overpayment Referral form.
- Forward the form with any appropriate documentation attached to the Social Work Supervisor.
- The Social Work Supervisor will review and route to:

IHSS Overpayment Specialist
Mail Stop W253
Fax No. (619) 476-6293

The Social Worker will document all of the actions taken in the case narrative. A copy of the Overpayment Referral and the information attached should be maintained in the case file under the QC tab. The Overpayment Specialist will determine the actual overpayment amount factoring in any amounts withheld from the provider's paycheck.

Overpayment over \$1500.00

When the overpayment amount is more than \$1500.00 dollars or the amount is unknown or unclear:

- Complete the 12-50 HHS A IHSS Fraud Referral form. (Note: This form is only available electronically.)
- Leave the overpayment amount blank until the fraud investigators response is received.
- On the IHSS 12-50 for fraud "type", check "suspected" or "confirmed" e.g. payments submitted for an ongoing period after a recipient is deceased would be considered confirmed.

- PAFD will be responsible for the determination of intent and deciding if the fraud will be prosecuted by the District Attorney's Office.
- Forward the form with any appropriate documentation attached to the Social Work Supervisor for Review.
- The Social Work Supervisor will review the form for completeness and forward to the IHSS Program Manager at W253.
- The IHSS Program Manager will forward the referral to the PAFD unit at the District Attorney's Office.
- Do not complete the Overpayment Referral until the results of the PAFD referral are received.

Overpayment information is confidential and will be kept in a locked file cabinet.

Overpayment Specialist Procedures

1. Review the Overpayment Referral and the attached information for completeness. Contact the referring Social Worker (if necessary) for additional information, then create an overpayment folder.
2. Review the CMIPS records and make a print of each of the following screens:
 - a. RELA
 - b. RELB
 - c. RELC
 - d. PELG
 - e. PSUM
3. Calculate the amount of the overpayment by completing the automated Overpayment Worksheet.
4. If the overpayment was made to the recipient, complete form 12-86 CL or the 12-86 CL Spanish. *
5. If the overpayment was made to the provider, complete form 12-86 IP or the 12-86 IP Spanish.*
6. Complete an Overpayment Activity Log entry. Maintain the automated Overpayment Referral/Collections Log.

*Form 12-86 informs the recipient/provider that there has been an overpayment that they have an obligation to repay. File a copy in the overpayment folder and forward copies to the following:

- IHSS Recipient
- IHSS provider that received the overpayment
- Fiscal - Department of Revenue and Recovery
- IHSS Social Worker
- IHSS Program Manager
- Public Assistance Fraud Division (if applicable)

Overpayment and PAFD Referral files that have been inactive for three or more years may be purged. If repayments are still being made, the files must be kept for three years after the last date of payment.

Methods Of Recovery

The following repayment methods are available:

- Balancing
- Payment Adjustment
- Voluntary Cash Recovery
- Civil Judgment
- Fiscal Collection

The County may recover an overpayment using any single method, or combination of the methods listed. If the Social Worker/Medi-Cal Worker makes a determination that the overpayment was due to fraudulently obtained benefits, the Social Worker will complete a referral to the District Attorney's Office, Public Assistance Fraud Division for any amounts in excess of \$1,500. The Social Worker will initiate efforts to collect all overpayments over \$5.00 as outlined below. (Information regarding determinations of fraudulent receipt of IHSS benefits, as well as referrals based on suspicion of fraudulent receipt of benefits, is located in Part II of this chapter.)

Balancing

Balancing means recovery of all or a portion of an overpayment by applying all or a portion of an underpayment against it.

An underpayment will not be balanced against an overpayment if the underpayment is discovered and payable prior to the time an overpayment is discovered and adjustable.

Payment Adjustment

Payment adjustment means that the County reduces payment for future authorized services to recover an overpayment. The adjustment can be made in one month, or if needed, be spread out over several months. For example:

- The County may reduce an overpaid recipient's purchased services by an agreed upon number of hours per month until the overpayment has been collected. Recipient's assessment would remain the same but the number of hours to be adjusted for the O/P would be shown as an alternate resource.
- The overpaid provider would agree to work the assessed number of hours but would be paid for a lesser number based on the number of O/P hours per month to be collected. The hours that the provider is working to repay the overpayment are shown as alternate resources on the SOC 293.

This type of adjustment is not implemented until:

- The Social Worker discusses the action with the recipient (usually via telephone);
- A Notice of Action reflecting the revised purchase of services and the effective date is mailed to the recipient,
- The recipient or provider signs an IHSS Overpayment Adjustment Agreement form.

NOTE: While the process above is available as an option for negotiation, it is not currently in use in this county.

Voluntary Cash Recovery

Voluntary cash recovery means repayment is voluntarily made to the County by the individual who has incurred an overpayment. This type of recovery is implemented by:

- A discussion of the action (usually by phone) between the Social Worker, the Medi-Cal Worker (if applicable), the recipient, and/or the provider.
- A written notification prepared by the Social Worker to the Overpayment Specialist stating the nature and amount of the O/P. The O/P Specialist sends an O/P Notification to the over-payee, and a copy to the Social Worker/Medi-Cal Worker.

The recipient/provider has the option of a voluntary cash repayment of all or a part of the overpayment amount. He/she is advised in the notice of overpayment and demand for repayment that he/she can contact Fiscal Control and make arrangements for the repayment. The Fiscal Control telephone number is contained in the notice of overpayment. Fiscal Control advises the over-payee that he/she may make payments by check or money order payable to “The Health & Human Services Agency.” Checks should be mailed to:

**County of San Diego
Health & Human Services Agency
Attn: Donna Scott
P. O. Box 122028
San Diego, CA 92112-2028**

The recipient case number should be included on the front of the check.

Cases Already in Collection

Cases that have already been referred for collection and have an existing Revenue and Recovery account will send payment to:

**Revenue & Recovery
P.O. Box 129037
San Diego CA 92112-0037**

Payments Submitted To District Offices

If payment is submitted to the district office it should be forwarded to Fiscal if:

- If a payment is in collection and the amount is under 100.00
- If a payment is not in collection, any amount submitted goes to Fiscal.

Fiscal Collection-Closed Case

If a case is closed and an overpayment is discovered, the County may request payment through Fiscal Control. The IHSS Payroll Clerk will send the recipient Form 08-72 DSS (4/96) (see Appendix B) - and will forward a copy to Fiscal Control. The recipient will contact Fiscal Control to arrange a repayment program.

Civil Judgment

The County has the authority to demand repayment and file suit for any unadjusted portion of the overpayment.

Repayment Methods/Agreement

The Social Worker contacts and informs the overpaid recipient/provider that there has been an overpayment and of the obligation for repayment. The Social Worker reviews with the recipient/provider the various repayment methods available. The Social Worker tries to reach an agreement with the recipient/provider on a repayment method and terms. The Social Worker needs to discuss the circumstances of the overpayment with the Social Work Supervisor. A determination must be made as to who the overpayment will be collected from, i.e., recipient or provider, after careful consideration of all the facts.

If an agreement for repayment is reached, the Social Worker completes the Overpayment Adjustment Agreement form and obtains the recipient/provider's signature. The original of this form is placed in the Social Worker case file with copies to the recipient/provider and the Overpayment Specialist.

Notifying The Recipient/Provider Of The Overpayment

When the Social Worker/Medi-Cal Worker has reached an agreement with the recipient/provider to adjust the overpayment against future benefits, the Social Worker (if there is to be an adjustment in hours) or the Medi-Cal Worker (if there is to be an adjustment in the SOC), prepares a Notice of Action for the recipient which states the following:

- The period of time during which the overpayment occurred.
- The reason for the overpayment.
- The total amount of the overpayment.
- A description of how the amount was calculated.
- The method by which the County proposes to recover the overpayment.

If there is no repayment agreement with the recipient/provider, or if the recipient/provider requests Voluntary Cash Recovery, the Social Worker sends an Overpayment Referral to the designated account clerk requesting that a "Demand Letter" be sent and a collection account be set up with Revenue and Recovery.

The "Demand Letter" sent by the Overpayment Specialist must contain the same information as listed above for the Notice of Action.

Utilization Restrictions

A beneficiary who has been determined by the California Department of Social Services (CDSS) to be misusing or abusing Medi-Cal benefits by obtaining IHSS services at a frequency or amount not necessary to remain safely in his/her own home, he/she may be subjected to the following form of utilization restriction:

- Restriction to a specific provider of IHSS services that can include restriction to a contract provider.
- Utilization restriction will be imposed upon a beneficiary only on the written order of the California Department of Health Care Services (CDHCS) Director or the Director's designee. The written order, hereinafter referred to as the Notice of Action, will:
 - Include the reasons for the action.
 - State the dates of restriction.
 - Explain the beneficiary's right to and procedures for requesting a hearing.

- Be mailed to the beneficiary by regular mail at least ten (10) days prior to the effective date.
- The restriction as described above will be for a period of two (2) years from the effective date designated in the Notice of Action.
- Should the CDHCS determine during the term of the restriction that the potential for abuse still exists, so as to warrant continued restriction beyond the two-year period, the CDSS may extend the period of restriction. Each such extension will:
 - Be for an additional period of two (2) years.
 - Require a separate Notice of Action in accordance with above except that the NOA must be mailed at least ninety (90) days prior to the effective date of the action.
 - Should the beneficiary's request for a hearing be received prior to the effective date of action:
 - Said action will not be taken until the hearing has been held and a final decision is rendered.
 - The effective date of the action will be the first day of the month following the adoption, by the CDHCS Director, of the final hearing decision, provided the notice of decision was mailed at least ten (10) days prior to the effective date of the action.
- Should the beneficiary's request for a hearing be received on or subsequent to the effective date of the action, said action will remain in full force and effect until the hearing has been held and a final decision rendered, or unless Appeals notifies us to pay aid paid pending.
- Under no circumstances shall the month in which a beneficiary is off restricted status, solely due to requesting a hearing, be counted toward the two-year period as provided for above.
- There is no right to a hearing when a beneficiary is placed on restricted status as a result of his or her conviction of any misdemeanor or felony involving fraud or abuse of PCSP benefits. (California Department of Health Services Regulations 50793)