

CHAPTER 5 INDIVIDUAL PROVIDERS

PERSONAL CARE SERVICES PROGRAM (PCSP) PROVIDER APPEALS

General

Individual Providers (IPs) provide in-home services to IHSS recipients. They are required by the State of California to submit timesheets for time worked. Recipients are required to sign the timesheets verifying that the provider(s) performed all of the hours that are approved on the timesheet.

Overpayment Definition

Overpayments are defined as cash payments made for the purchase or delivery of IHSS services in an amount to which the recipient was not entitled. This includes excess compensation to an Individual Provider. (Manual of Policies and Procedures, Division 30-768.11)

It is considered an overpayment when an IP submits timesheets and collects payment for:

- More hours than authorized.
- More hours than actually worked.
- Any period that the client is ineligible to services e.g. hospitalization.

COLLECTION OF OVERPAYMENTS

When an IHSS Provider has received an overpayment it may be collected to the extent that is allowed under existing labor laws. In a PCSP 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 eligible recipient cannot be collected.* See Chapter 6 for additional information on overpayments and forms.

Revenue And Recovery

The IP is charged for the payments he/she has received that are not eligible payments. Repayment is requested from the IP for overpayments which may be recovered by repayment or by adjusting the IP's future pay. (See chapter six for additional information on collection.) Overpayments over \$400.00 are referred to the County of San Diego's Office of Revenue and Recovery for collection. Referrals sent to Revenue and Recovery may be for either active or closed cases.

Right To Appeal

Under some circumstances, Personal Care Services Program (PCSP) providers are eligible to an *appeal* (not a State hearing) to dispute issues relevant to an overpayment. These situations are described in California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) 30-767.6.

Provider Appeal Process

If a PCSP provider in the IHSS Program has a complaint concerning the processing or payment of money for services rendered, the provider can initiate an *appeal*, by submitting the complaint

in writing to the designated county department within 90 days of the date of the action (notice of action date). The designated county department:

- Acknowledges the complaint within 15 days
- Reviews the complaint
- Sends a written conclusion within 30 days.

Since this only addresses payments for services rendered, it does not indicate that an IP can appeal issues regarding assessed hours.) **This appeal right is not available for IHSS Residual Program IPs.**

The County of San Diego has an appeal process for IPs who are eligible to and request an appeal. The appeal process is a way to hear and resolve problems in a systematic, objective, and expedient manner. The HHS A Appeals Division and IHSS have established an agreement, similar to other HHS A departments to work cooperatively to address IP appeals. (All other IHSS appeals, namely all recipient appeals, continue to be covered under the State hearing process.)

When an overpayment is discovered, it is referred by the IHSS Social Worker (via the Social Work Supervisor) to the designated IHSS Account Clerk. The Account Clerk prepares the overpayment for recovery, including sending a notice (12-86 IP HHS A) to the IP. For cases that are eligible to an appeal (PCSP cases only), a box is marked on the notice telling the IP of the right to appeal the information in the notice. The IP must submit a grievance or complaint in writing within 14 days of the notice date to the South Bay IHSS headquarters office. The complaint must identify the claim and describe the dispute involved.

Overpayment Review Process

When a complaint regarding an overpayment is received from a provider, the designated Account Clerk will send the complaint and the overpayment information for review within three working days to the Aging and Independence Services (AIS) Planning and Program Support Manager along with the overpayment information. The overpayment review will be completed by the IHSS Program Specialist.

If necessary, the Program Specialist will request the IHSS case folder from the district office or the Record Library as appropriate. The Program Specialist will:

- Review the case and all overpayment documentation to ensure that the action taken by the Social Worker is appropriate and defensible.
- Review the information and render a finding within 14 calendar days from the date of receipt.
- Send a Notice of Supervisory Review Action, 12-08 IHSS to the Provider indicating the decision.

If the Program Specialist determines that the overpayment is questionable and not defensible in a hearing:

- The review packet is returned to the designated Account Clerk with a copy of the notice of action and finding
- The overpayment packet is then returned to the Social Worker of record for corrective action.
- The Social Worker will recompute the overpayment.
- The designated Account Clerk notifies Revenue & Recovery and/or Fiscal Section of the change.

If the overpayment is found to be correct and defensible, the claimant is informed of the standing of the overpayment and his/her right to further appeal. This information is included on the notice of action.

All information regarding the Overpayment Supervisory Review must be retained in the case file; the documents will be filed under the Miscellaneous Divider along with other Appeals forms and decisions.

Administrative Hearing

If the Provider disagrees with the finding of the Program Specialist, he/she may request an Administrative Hearing by a county Hearing Officer. The appeal must be filed within 14 calendar days of the date of the Supervisory Review Notice of Action. The provider is instructed, via form 12-86 IP IHSS, (the Notice of Action) to send in writing his/her request, along with an explanation of why he/she disagrees, to the County Appeals Section-Calendar Clerk. The Appeals Calendar Clerk will send an acknowledgement of the request and schedule a date for a hearing with a county Hearing Officer within 30 days. Appeals will request the IHSS case folder from the district office or the Record Library, as appropriate.

The Appeals Section assigns the claim and the matter is heard within 30 days. The Appeals Section has the option to conduct a hearing by phone or in person. The IHSS Social Worker and the IHSS Program Specialist must be available as requested by the Appeals Officer.

The Appeals Officer will provide a copy of the hearing decision to the following:

- Claimant
- IHSS Program Manager
- IHSS Social Worker to file in the IHSS case record
- Designated IHSS Account Clerk to file in the IHSS overpayment file

All information regarding the Administrative Hearing must be retained in the case file; the documents will be filed under the Miscellaneous Divider.

The Social Worker is responsible for notifying the designated Account Clerk of the actions necessary to comply with the Administrative Hearing decision. The designated Account Clerk will provide a monthly report to the IHSS Program Manager showing a summary of hearing decisions for IP appeals.

If the IP disagrees with the decision rendered by Appeals and wishes to dispute the decision, the IP must pursue the matter in Superior Court within one year from the date of the decision (W&IC 14104.5). This information is included in the decision sent to the claimant.

Staff Responsibilities

IHSS Social Worker

- Determines if there is an overpayment and the amount of the overpayment.
- Narrates the findings in the case narrative.
- Refers the overpayment to the designated Account Clerk via the IHSS Supervisor.
- Provides information as needed to the designated Account Clerk, Appeals Officer, or Program Specialist.
- Must be available either in person or by phone as requested by the Appeals Officer at the date and time of the administrative hearing.
- If upon completion of a hearing, the Hearing Officer determines the overpayment is to be changed or revoked, the Social Worker must follow the instructions provided with the decision.

IHSS Supervisor

- Review all documents prior to submission for overpayment.
- Sign off narrative in case.
- Submit overpayment referral to the IHSS Overpayment Specialist.
- Be available as an alternate by phone at time of administrative hearing.
- Monitor all appeals compliance actions.

IHSS Program Specialist

- Review all documents pertaining to claimant's dispute and overpayment.
- Request additional information, if needed from the Social Worker of record.
- Draw a conclusion regarding the correctness of the overpayment, and the ability to defend the overpayment in hearing.
- Send the claimant a Supervisory Review Notice of Action describing the findings of the review within fourteen working days of receipt of the review request.
- Provide any information requested to the Appeals Section if the claimant requests an administrative hearing.
- Retain a copy of the review notice in the IHSS Provider Review file.

Designated Account Clerk

- Prepares overpayments as requested and sends Notice of Action (NOA) 12-86 IP, as appropriate.
- If the IP was designated as PCSP-eligible, marks the box that indicates the IP has a right to an administrative hearing.
- Retains a copy of all evidence used to compute the overpayment amount in the overpayment case file.
- Within three working days of receipt of a request for Supervisory Review, attaches copies of the evidence used to determine the overpayment amount, and forwards the information to the AIS Planning and Program Support Manager, or to Appeals.

If the overpayment is altered or reversed, the designated Account Clerk, upon receipt of instructions from the IHSS Program Specialist, will correct the overpayment Notice of Action, including notifying the Individual Provider, Social Worker, Fiscal and/or Revenue & Recovery of the changes.

Appeals Section

- Receives the request for Administrative Hearing after a supervisory review.
- Acknowledges the written grievance or complaint within 15 days of its receipt.
- Reviews the merits of the grievance or complaint.
- Sends a written decision within 30 days of the acknowledging the receipt of the grievance or complaint.
- Conducts a hearing by phone or in person, as is deemed appropriate.

Appeals Calendar Clerk

- Sends acknowledgement of the hearing request to the claimant.
- If an appeal is to be heard in person, the Appeals Calendar Clerk will arrange the appeal according to the appeal schedule.
- Requests the IHSS case record and overpayment file.

Appeals Hearing Officer

- Contacts the IP to gather information regarding the dispute and set up a hearing, if appropriate.
- Conducts the hearing and/or hears the complaint by phone or in person. The Hearing Officer may conference call with the Social Worker if needed.
- Make a decision and notify the claimant in writing within 30 days of the acknowledging receipt of the grievance or complaint.
- Provide a copy of the decision to the IHSS Social Worker.
- If the overpayment is to be altered or revoked, the Hearing Officer sends the decision and instructions to all parties entitled to receive copies.
- Retains a copy of the decision for the appeal folder.

Forms

To maintain the consistency of materials distributed to recipients, providers and throughout the program, the attached forms have been created or revised. It is the responsibility of all staff to ensure that the materials used are the most current versions and to cease the use of obsolete materials. The Supply Clerk is responsible for maintaining a supply of current forms and recycling obsolete forms. IHSS forms are also available on the “S” drive at the following link:

S:\AIS\Operations\IHSS\Automated Forms

INCOME TAX WITHHOLDING

General

Income tax withholding, both federal and State, is voluntary for IHSS Individual Providers. Internal Revenue Service (IRS) rules exempt household employees, providing domestic service in private homes, from income tax withholding. If a provider does not want Federal Income Tax (FIT) or State Income Tax (SIT) withheld, he/she does not need to complete and file an Employee’s Withholding Allowance Certificate form(s).

Withholding Allowance Certificate W-4

Although income tax withholding is voluntary, all IHSS Individual Providers remain subject to both Federal and State income tax regulations, and their earnings remain taxable. If an IHSS Individual Provider wants federal and/or state income tax withheld from his/her paycheck, he/she must complete the appropriate Employee’s Withholding Allowance Certificate form(s): a W-4 for FIT and, if necessary, a DE-4 for SIT.

Withholding Allowance Certificate DE-4

Generally it is not necessary for an IHSS IP to also complete the state DE-4 form. The marital status and number of claimed allowances entered on the W-4 is automatically entered for state withholding purposes. However, when an IHSS IP wants to request additional withholding from his/her paycheck and completes line 6 on the Federal W-4 form, that amount is *not automatically* entered for state withholding purposes. If the IP wants additional withholding for state income tax he/she must complete a DE-4.

When a provider submits a W-4, it applies to every recipient/employer under his/her care at that time unless a particular recipient/employer is specified on the form. If the provider begins working for another recipient after a W-4 has been submitted, he/she needs to submit another W-4 for each additional recipient, even if he/she wishes to claim the same marital status and the same number of withholdings.

Employee’s Withholding Allowance Certificates (W-4s and DE-4s) for IHSS Individual Providers

INDIVIDUAL PROVIDER (IP)	FEDERAL FORM W-4	STATE FORM DE-4
Multiple Recipients/Employers	An IP’s W-4 applies to every recipient under the IP’s care at the time the W-4 is submitted, unless a particular recipient is named on the W-4.	Same as Federal, unless the IP specifically requests otherwise.

INDIVIDUAL PROVIDER (IP)	FEDERAL FORM W-4	STATE FORM DE-4
Recipient(s) Added to IP’s care AFTER Original Submission Date of W-4	A new W-4 must be submitted for each recipient added to the IP’s care after the original W-4 was submitted, even if the IP wants the same withholdings as the original W-4.	SIT will receive information from the W-4(s), unless the IP specifically requests otherwise.
Marital Status	Line 3 on W-4 Applied to FIT and SIT	Marital Status on the W-4 is automatically entered on DE-4, unless the IP specifically requests a different status for SIT withholding. In that event, the IP must complete a DE-4 in addition to a W-4.
<p>Number of Regular Allowances If an IP claims more than 10 allowances on the W-4, CMIPS, by law, must submit the W-4 to IRS for their review and approval. If the IP is claiming more than 10 to avoid any amount being withheld for income tax, IHSS staff will inform the IP that income tax withholding for IPs is voluntary, and that it is not mandatory to submit a W-4 or DE-4, although all earnings are subject to current taxation laws.</p>	Line 5 on W-4 Applied to FIT and SIT	Number of Regular Allowances on W-4 is automatically entered on DE-4, unless the IP specifically requests a different number for SIT withholding. In that event, the IP must complete a DE-4 in addition to a W-4.
<p>Additional Withholding Request When an IP works for multiple recipients/employers, IHSS needs specific instructions from the provider as to which recipient /employer case the additional withholding request should be applied. In the absence of specific instructions, the dollar amount will be withheld from every paycheck.</p>	Line 6 on W-4 Applied to FIT only	Additional Withholding Request entered on W-4 is not automatically carried over to SIT. If an IP wants an additional withholding request for SIT, the IP must complete a DE-4 in addition to a W-4.
IHSS Staff: To Obtain Blank Forms W-4 and DE-4	Available through IRS at 1-800-829-3676.	Available through the Franchise Tax Board at 1-800-852-5711.

IHSS Staff: Incorrect or Incomplete W-4s or DE-4s.	IHSS staff will review for accuracy all W-4s or DE-4s prior to mailing to CMIPS. When additional withholding is requested, IHSS staff will attempt to provide specific instructions from the IP.
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