

44-350.G Overpayment Recovery

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44-350.G.1 Amount That Can Be Recovered

Refer to [CPG 44-350.A.8](#) and [CPG 44-350.A.9](#) for the amount that can be recovered.

44-350.G.2 State Income Tax Refund Intercept Program

Under the Tax Refund Intercept Program any individual who has an outstanding CalWORKs overpayment may have his/her State tax return “intercepted” by the California Department of Social Services (CDSS), through the Franchise Tax Board. The individual’s tax refund is diverted to the department to be applied as payment against the overpayment. Recipients contacting staff with questions regarding the Intercept Program are to be referred to the Office Revenue and Recovery (ORR) at (619) 515-6187 #3 or (619) 515-6200 #3.

**44-350.G.3
Multiple
Overpayments**

When a case contains multiple overpayments, the oldest fraudulent overpayment is to be adjusted first. Once this overpayment has been fully recouped, the next oldest fraudulent overpayment is to be adjusted. When there are no fraudulent overpayments, the oldest non-fraudulent overpayment is to be adjusted first. When there is an on-going recoupment of a non-fraudulent overpayment and a fraudulent overpayment occurs, the Human Services Specialist (HSS) is to cease recoupment of the non-fraudulent overpayment and begin collection of the new overpayment that was caused by fraud.

NOTE: When a new overpayment occurs another NOA must be completed and mailed to the liable individual(s).

**44-350.G.4
Priority of
Recovery**

Aided Caretaker Relative (Liable Individual)

Overpayments are to be recovered in the following priority. When the caretaker relative (the liable individual) was a member of the AU at the time of the overpayment, the county shall first seek recoupment from the liable individual.

- The county shall continue to seek recovery of the overpayment from the liable individual even when he/she moves to another AU, or is no longer on aid.
- The county shall initiate recovery of the overpayment from the other members of the overpaid AU, after all efforts to collect from the liable individual have been exhausted, and when the liable individual:
 - Dies and the county cannot collect the entire unpaid balance of the overpayment from the liable individual's estate; or
 - Is unlocatable (NOTE: After review and interview with the liable individual and the overpayment has been referred to ORR for collection, HSSs can contact ORR to determine if the person is unlocatable, as described in the CPG 44-350.B Definitions section); or
 - Has the overpayment discharged in bankruptcy; or
 - Is no longer on aid; the overpayment is less than \$35 and there are other members of the overpaid AU who remain on aid.

Unaided Caretaker Relative

When the caretaker relative was not a member of the AU at the time of the overpayment, the county shall seek recovery from the other members of the overpaid AU.

Recovery from AU Members

There shall be no priority order in seeking collection of the

overpayment from members of the overpaid AU who were not the caretaker relative.

Collection may occur in sequence against any one member at a time or concurrently from any of the members, when in separate AUs or when not receiving aid.

Note:

See the Child Only Cases and Minors In Overpaid Assistance Units sections for information regarding Adults, Emancipated minors, or Head of households, **who were minors in an overpaid CalWORKs AU at the time the overpayment was incurred.**

**44-350.G.5
Child Only
Cases**

Overpayments cannot be collected from unaided adults if the adult was not aided at the time the overpayment was established. This includes adults who are excluded from the AU because they are a sanctioned individual, fleeing felon, undocumented non-citizen, or non-needy caretaker relative.

However, recoupment on overpayments from active child-only cases can occur via grant adjustment **while the case is active**. Once the case is discontinued, recoupment from the (previously) unaided adult or the child cannot occur.

**44-350.G.6
Minors In
Overpaid
Assistance
Units**

Effective January 6, 2012 the county will not collect CalWORKs overpayments from Adults, Emancipated minors, or Head of households, **who were minors in an overpaid CalWORKs AU at the time the overpayment was incurred**, by *any means*, including, but not limited to:

- Grant adjustment,
- Tax intercept,
- Administrative or civil action, or
- Voluntary repayment agreement,

Also the county will no longer recoup CalWORKs overpayments from any **minor who becomes a member of a new AU if the overpayment occurred while the minor was a member of the previous AU**. In other words, if a child in an overpaid AU moves to a different AU, and the responsible relative in the first (overpaid) AU cannot be located pursuant to CPG 44-350.G.6 Priority of Recovery, the overpayment will not follow the child to the new AU, and the county may not grant adjust or otherwise recoup the overpayment (that occurred in a previous AU) from that new AU.

The county will also ensure that, in accordance with these instructions, a minor will not be listed as a responsible party for the overpayment that occurred when he or she was a minor in an AU, regardless of whether the minor enters a new AU, becomes an aided adult, or remains unaided.

Grant Adjustments and Amounts Collected in Error after January 6, 2012

The county is required to refund the AU as underpayments any grant adjustments deducted from grants on or after February 1, 2012 in order to collect overpayments from this population. In addition, the county is required to send NOA message M44-340C (underpayment adjustment) to the AU.

In addition, if the county recouped an overpayment from a member of this population via any other method (e.g. voluntary cash repayment, tax intercept, etc.) after January 6, 2012, the county is required to provide the individual and/or AU a refund of the repaid amount. For non-grant adjustment methods of collection, the county will refund those amounts to the individual, as soon as possible, but no later than 90 days after the county identifies or is provided with information regarding the collection that is being stopped, and will issue an informing notice informing him or her of the amount of the refund.

Notice of Actions (NOAs)

M44-350J

Use this NOA to notify clients that an overpayment recoupment that was previously being collected from his or her AU will stop as a result of this settlement.

M44-340C

Use this NOA to notify clients of an underpayment of aid, for any months on or after February 2012 in which the AU's grant was reduced for an overpayment collection against one of the types of individuals as identified as part of this settlement.

Reminders:

Once a minor becomes an adult or minor head of household or is emancipated, that individual will be responsible for repayment of any overpayments that are established in their own separate AU in accordance with standard overpayment collection regulations.

The HSS will continue collection of overpayments from the responsible relative in the original overpaid AU via all appropriate collection methods described in <u>CPG 44-350.E Method Of Recovery</u> .
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The HSS will first collect overpayments from the **caretaker relative who was a member of the AU at the time the overpayment was established**. Recoupment should be through grant adjustment if the AU is receiving CalWORKs cash aid and via post-aid recovery efforts if the AU is no longer aided.

The HSS will also continue collecting overpayments via grant adjustment when the children who were in the overpaid AU are receiving aid in the same AU in which the overpayment was established.

See [CPG 45-000.C Hartley v. Lightbourne Q&A](#) section for additional information

**44-350.G.7
Inter-County
Transfers**

Inter-County Transfer (ICT) with Overpayments

When an ICT is initiated, overpayments are subject to recoupment by the second or receiving county. After the ICT has been accepted, any money recouped by the second county is retained by that county, and the first county is to make no further attempts to collect the overpayment.

Transfer to Another County

The following overpayment information must be included in the ICT packet:

- Type of overpayment (i.e., administrative, failure to report, etc.); and
- Balance owing; and
- Recipient's liquid resources; and
- Information regarding when and how the overpayment occurred; and
- A copy of the informing NOA sent to the recipient, if available.

When the receiving county accepts responsibility for recouping the overpayment, no further action is required. The overpayment is NOT referred to ORR. The HSS will document the transfer of the overpayment to another county in the case comments. If in the future, the recipient returns to San Diego County and becomes eligible to receive aid, the HSS will contact the county that originally received the ICT to verify the overpayment balance and:

- If the overpayment has been fully recovered the HSS will remove the overpayment, and document verification of overpayment recovery in the case comments, and image any documentation under Benefit Recovery; or
- Document verification of the balance owing in the case comments

and begin recoupment procedures.

Acceptance From Another County

When an incoming ICT is received with documentation of an overpayment, the appropriate overpayment and recoupment information is to be entered into the CalWIN Non-System Determined Claim (NSDC) window. The HSS shall manually generate the appropriate overpayment NOAs and provide timely notification to the liable individual of the grant reduction due to recoupment for the established claim. Appropriate case comments shall be made and any overpayment documentation shall be imaged under the 16-139 Benefit Recovery template.

44-350.G.8 Bankruptcy Proceedings

Dischargeable Overpayments

Overpayments which are not the result of misrepresentation or fraud can be discharged through bankruptcy proceedings. Willful failure to report or fraud overpayments are not dischargeable under bankruptcy law.

Pending Bankruptcy Proceedings

When a recipient reports that he/she has filed for bankruptcy and has requested discharge of an outstanding overpayment, Family Resource Center (FRC) management shall notify Eligibility Operations, CalWORKs Program Manager. Information provided must include:

- The case name and number;
- The original amount of the overpayment(s) and the outstanding balance(s);
- The date the overpayment(s) was/were discovered;
- The period of the overpayment(s);
- Information regarding the parties, if any, responsible for the overpayment; and
- Any information provided by the recipient regarding the pending bankruptcy proceedings.

The CalWORKs Program Manager will refer the information, as appropriate, to County Counsel. Grant reduction is to be continued pending the outcome of the court proceedings.

Overpayments Discharged by Bankruptcy

When an applicant/recipient reports that his/her overpayment has been discharged by bankruptcy proceedings, the HSS shall request verification. Acceptable evidence of a discharged overpayment would be a copy of the "Order Granting Discharge" issued by the bankruptcy court. Interim orders may also be issued by the court which can require a suspension of collection efforts, including grant adjustment and/or balancing against underpayment.

When an applicant/recipient verifies that an overpayment has been discharged, the HSS shall discontinue collection efforts accordingly.

Specific case questions that arise are to be directed to Eligibility Operations for referral to County Counsel.

**44-350.G.9
Dissolution of
Marriage**

A Dissolution of Marriage decree may identify the responsible party of the overpayment. The terms of the dissolution may be honored if these terms were made between ORR and the court. The HSS must contact ORR, through the district liaison, and confirm the arrangements. Examples of these arrangements include:

- The debt is determined to be a community debt, and each party is ordered to pay half of the debt; or
- It is determined that the debt belongs to one party and that party has been ordered to pay.

Documentation of the arrangement is required and is to be imaged together with the overpayment documentation.

**44-350.G.10
Sponsored
Aliens**

The sponsor and the sponsored alien are jointly and individually liable for any overpayment due to the sponsor's failure to provide correct information for determination of eligibility or grant amount except as provided below:

- If it is determined that the sponsor is without fault or had good cause for failure to report correct information, then the sponsor is not liable for the overpayment.
 - A sponsor will be determined to be without fault or have good cause for not providing correct information only when the sponsor has met all his/her reporting responsibilities but the alien has not.
 - A sponsor is not liable for an administrative error overpayment.
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**44-350.G.11
Informing
NOAs**

Should immediate recoupment not be possible once an overpayment has been identified and computed (i.e., another overpayment is currently being collected through grant reduction), the HSS must send the client the appropriate NOA informing him/her of the overpayment at the time the overpayment is computed.

**44-350.G.12
Court Ordered
Restitution**

Grant adjustment normally is **not** affected by court ordered restitution. However, an overpayment cannot be collected through grant adjustment when the court order:

- Specifically precludes grant adjustment;
- Substitutes another activity (community service) for cash

- restitution; and/or
- Dismisses the overpayment.

If a court order sets a total restitution amount lower than the overpayment amount determined by the HSS or Overpayment Specialist Unit (OSU) and grant adjustment is **not** ruled out by one or more of the above cited reasons, the overpayment amount previously determined by the HSS or OSU will be recouped (See Example 1).

Example 1 - HSS/OSU determines an overpayment of \$2,000. The court order sets restitution at \$1,500. The HSS will recoup \$2,000 by grant adjustment. If the case closes before the \$2,000 is fully recouped, the HSS will refer the remainder to ORR for collection.

If a court order does not rule out collection by grant adjustment and additionally orders a recipient to pay an amount of restitution directly to ORR, the HSS will recoup by grant adjustment at the same time (See Example 2).

Example 2 - The HSS/OSU determines that the recipient has been overpaid \$1,000. The recipient is court-ordered to pay \$25 restitution monthly to ORR. The HSS determines the monthly adjustment amount and recoups by grant reduction during the same period that ORR collects on its court-ordered account.

The determination that the overpayment amount is not revised by the court order can, however, be overturned in a fair hearing.
