

Was I overpaid or overissued benefits???

What is an overpayment/overissuance? It is when you get more benefits than you were eligible to get.

Why would I have an overpayment/overissuance? Sometimes it is the county's mistake, sometimes it is your mistake, and sometimes the county says it is your fault (you knew how to report household circumstances and didn't).

Can the county collect from me? It depends on the program:

- ◆ CalWORKs: The county can cut your grant 5% for agency error; 10% for your error (whether a mistake or your fault). The County cannot collect welfare-to-work support services overpayments if it would interfere with your doing your welfare-to-work activity. Overpayments include if you got higher aid pending a state hearing, and then lost.
- ◆ CalFresh (food) program: The county can cut your grant 5% (or \$10, whichever is less) if it was the agency's error; 10% if it was your mistake, and 20% if you are found to have committed an intentional program violation. If it is the agency's fault, 3 years from the first benefits reduction, the county must cancel the debt. Overissuances include if you got higher aid pending a state hearing, and then lost.
- ◆ IHSS: Overpayments are limited in IHSS. Generally, there are no overpayments unless there was fraud (knowingly not reporting something that affected your share of cost or eligibility). For the IHSS residual program, there can be overpayments certain times when there were payments not used for services (example: not fully using an advance payment; share of cost was incorrectly calculated). *See IHSS brochure.* There is no overpayment for aid you got pending a state hearing decision.
- ◆ Medi-Cal: There is no overpayment, unless you committed fraud.
- ◆ Foster Care: If it is the county's fault, or if both you and the county were unaware of the information that made the child ineligible, the county **cannot** make you repay. (They can ask you to volunteer to pay.) The county must also have a "write off" policy if you cannot pay back the funds or it is not cost effective to try to collect it.
- ◆ Adoption Assistance: If it is the county's fault, they cannot ask you to repay. If you knew the child was no longer eligible or didn't report the child was not living with you, the county can ask you to repay. They can't adjust your payments for other children to get the Adoption Assistance overpayment back.
- ◆ KinGAP: Same as Foster Care. Also, there is no overpayment for temporary absences, when the relative needed the funds to maintain the home for the youth. The County can't lower current KinGAP payments unless you ask.

Are There Defenses to Collection???

Is there a way to lower the amount owed? The county can lower, suspend or cancel your debt if it is not cost-effective to collect it. Ask if you qualify.

My worker says it's the law that I repay!

The county may be wrong. You may have a defense. Ask for a state fair hearing, and have a judge decide. Get advice from a legal advocate. For agency error overpayments, if you want the whole amount cancelled, you **must** ask for a hearing: Only an Administrative Law Judge can cancel the overpayment out of fairness.

But it's unfair! It was the County's Fault...

If it will be hard for you to pay back the money for an agency mistake, ask for a state fair hearing. (*This does not apply to Food Stamps overissuances.*) You will need to make an "unfairness" argument. In legal terms, this argument is called "Equitable Estoppel." This means that fairness should stop the county from asking you to repay. To win, you **must** show **all 4 facts** listed below. *Get advice from a legal advocate about your case.*

1. The county had all the information it needed to make the correct calculation of your monthly benefits.
2. The county made a mistake.
3. You did not know about the county's mistake, and thought the aid you got was the right amount.
4. You depended on the county to pay you the right amount of benefits, and you can't pay back the overpayments.

Sometimes the judge will look at whether your hardship in having to repay is greater than the county's interest in getting the money back. (The judge will look at the amount of the overpayment and how long the county's mistake lasted.)

What if I disagree about whose fault it is?

Ask for a state hearing!!! A finding of fault could lead to a fraud charge against you. It will cause a higher amount to be taken out of your grant. For the programs where there is usually no overpayment, fraud is a reason to collect from you. For CalFresh, agency error collection has a 3 year limit.

How do I ask for a hearing?

Look on the back of any notice from the county. It will have a toll-free number to call, and an address if you want to mail your appeal. You have 90 days from the date on the Notice, or longer if you had a good reason why you could not ask within 90 days (you did not get the notice, you were in the hospital, etc.)

Getting Help From Legal Services: