





# Post-Entitlement Issues: Overpayments and Fraud

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Brianna Boone



# What is a “Post-Entitlement” Issue?

- Post-Entitlement = legal issues that occur after someone is found eligible for a benefit program and has started receiving benefits
  - Termination
  - Reduction
  - Overpayment
  - Fraud

# Why Do We Care About Post-Entitlement Issues?


- In a poverty law practice post-entitlement issues are extremely common
  - Make up the majority of government benefits cases; most subsidized housing cases involve post-entitlement issues as well
- High priority for legal aid
  - Limited resources, initial focus is on protecting benefits clients have already been receiving and relying on
- Agencies tend to do a worse job following policies and procedures (and due process) with post-entitlement issues
  - Mistakes frequently happen
  - Less assistance provided by agencies



Overpayments



# What Is an Overpayment?

- When a person receives more benefits than they were eligible to receive under program rules
  - Could be an overpayment over the course of several years, a couple months, or even one month
  - Total v. Partial:
    - *Total overpayment* – person was not eligible for any benefit amount in a particular month and owes the entire amount
    - *Partial overpayment* – person was eligible for some benefits but not the amount they received and owes the different between the two
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# Types of Overpayments

## Agency Error

- The agency had all the information they needed to determine the correct benefit amount, but messed up

## Client Mistake


- The client did not tell or give the agency a piece of information that impacted their benefit amount, but this mistake was due to a misunderstanding or unintended error on the part of the client

## Client Fraud

- The client intentionally made a false or misleading statement, misrepresented facts, or concealed facts that impacted their benefit amount




# When Overpayments are Recovered

- When overpayments are recovered varies from program to program
    - Some programs will not recover agency error overpayments
    - Some programs always recover any overpayment
    - Some programs allow overpaid individuals to request forgiveness/waiver of the overpayment debt due to circumstances surrounding the overpayment or financial hardship
      - Usually (but not always) limited to agency error or mistake, and not available for fraud
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# Recovery Methods

- Benefit offset
    - Agency keeps a portion of ongoing benefit to repay the overpayment
      - For agency error and mistake usually capped at 10%
      - May be able to recover more/all if based on fraud
  - Repayment agreement
  - Treasury Offset Program (TOP)
    - Revenue recapture
      - Intercept tax refund, property tax refund
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# Client Options to Address Overpayments

- Appeal the validity of the overpayment
  - Appeal the overpayment amount
  - Appeal the overpayment classification (agency error, client mistake, client fraud)
  - Agree that there is an overpayment but ask for forgiveness/waiver from having to pay some or all of the debt
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# Food Assistance (SNAP) Overpayments

- Time Period / Statute of Limitations:
  - 7 CFR § 273.18(c)(1)
  - Must collect any OP back to at least twelve months prior to when the agency became aware of the OP
  - Must collect fraud OP back to the month the act of fraud first occurred
  - Cannot go back more than six years for any OP
- Option to compromise an overpayment?
  - "As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years." 7 CFR § 273.18(e)(7)
  - Required to notify overpaid recipients of this option 7 CFR § 273.18(e)(e)(iv)(M)
  - In Minnesota DHS and county agencies have refused to recognize or exercise this option thus far

# State Cash Assistance (MFIP, GA, MSA)

## Overpayments


- Agency error overpayments are not collected unless the amount is large enough that a reasonable person would know it is an error Minn. Stat. § 256P.08, subd. 2(c)
  - In practice, agency error OPs are *rarely* recovered per DHS policy
- Client error (mistake and fraud) OPs must always be recovered
- Statute of Limitations
  - Establishment of an OP is limited to six years prior to month of discovery of the OP Minn. Stat. § 256P.08, subd. 2(b)
- Compromise option?
  - Same as SNAP – counties are supposed to notify overpaid recipients of the option, but do not have any policy/procedure to actually consider a compromise

# Social Security Overpayments

- Social Security recipients struggle to pay back agency after unexpected overpayments – 60 minutes
- SSA recovers all overpayments, regardless of whether it is agency error or client error
- Overpaid recipient can request a waiver
- Best strategy on these cases is usually a combination of appeal and waiver request



## SSI

- Disability
  - No prior earnings required
  - Max benefit is \$943 in 2024
  - Program for low-income individuals
  - Income will reduce benefits
  - Caps on assets
  - Income/assets from spouse or parent deemed to recipient
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## SSDI

- Disability
- Benefit amount is calculated based on prior earnings
- Can receive more than \$943, if less than \$943 will also get SSI (concurrent benefits)
- Income does not change benefit
- No asset cap
- Work incentive rules – if making over Substantial Gainful Activity (\$1550/month in 2024) for more than 9 months will be determined no longer disabled (exceptions apply)

# SSI Overpayments – Common Causes

- Over the resource limit - \$2000 for individual, \$3000 for couple
  - Most SSI recipients have no idea there is an asset limit or what SSA considers an asset
  - SSA excludes home and one car used for transportation but anything beyond that is a resource (second or third car, any bank accounts with name on it)
- Over the income limit – this happens most often for children receiving SSI who have working parents or people who have spouses who work
  - Even when family timely reports wages district offices often do not update claim timely and an overpayment still happens
- In-Kind Support (“ISM”) discovered and retroactively applied
  - If individual has housing and food provided for them, SSA considers this income and reduces SSI by one third – often discovered after the fact

# SSDI Overpayments – Common Causes

- Determined to no longer be disabled due to working over SGA, usually found and processed many months to many years after the fact, leading to MASSIVE overpayments
- Work Incentive rules
  - 9-month Trial Work Period - can earn any amount of money, no impact on benefits
  - Extended Period of Eligibility – can keep getting SSDI if earning less than SGA (\$1550 in 2024), deductions taken into account when calculating earnings
  - 3-month grace period – Can earn over SGA for 3 months (does not need to be consecutive) during EPE and still get benefits, after that no longer eligible

# Waiver Standard

SSA must waive an overpayment if the overpaid individual shows:

- They were **without fault** in causing the overpayment; and
- Recovery of the overpayment from the individual would **defeat the purpose of the program**

SSDI: 42 U.S.C. § 404(b)(1); 20 CFR § 404.506; POMS GN 02201.019.

SSI: 42 U.S.C. § 1383(b)(1)(B); 20 CFR § 416.550; POMS SI 02260.001





# Without Fault

- SSA must consider all relevant circumstances in case
- SSA must take into account physical, mental, education, or linguistic limitations
- If it is clear individual did not understand reporting responsibilities or reasonably believed they were entitled to benefit amount SSA should find them without fault
- SSA will also consider individual's attempts to report change to SSA, significance of change to individual, knowledge of event that changed benefits, experience dealing with government agencies

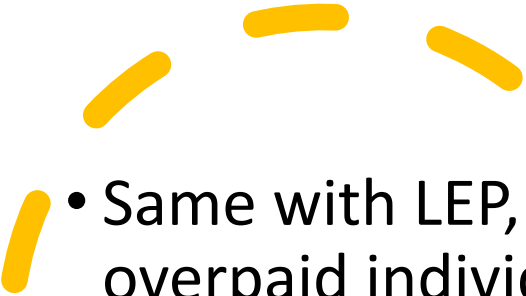
42 U.S.C. 404(b)(2); 20 CFR § 404.507; 20 CFR § 416.552

POMS GN 02250.005; POMS SI 02260.010; POMS SI 02260.015; POMS GN 02250.020

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- Per SSA regulations and policies, they must consider an individual's ability to read and speak English when assessing fault
  - If an individual did not understand program rules or reporting rules due to LEP SSA should find them without fault



Limited  
English  
Proficiency  
and Without  
Fault

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- Same with LEP, SSA must consider overpaid individual's mental impairments when assessing without fault
  - If mental impairment prevented them from complying with program rules they should be without fault



Mental  
Impairment  
and Without  
Fault

# Defeat the Purpose

- Essentially means financial hardship, or having to go into debt to repay the overpayment
- Assumed if overpaid individual still receiving SSI or receives MFIP or GA
- Otherwise: Individual needs to show that they need almost all their current income to meet ordinary and necessary living expenses and recovery of the overpayment would reduce their assets to below \$3000 (for ind.) or \$5000 (for person with one dependent, plus \$600 for each add. dependent)
- Ordinary and necessary living expenses is defined broadly
- Individual should provide SSA proof of income and expenses – include copies of bills and bank statements with waiver request

20 C.F.R. 404.508; 416.553

POMS GN 02250.100; POMS GN 02250.105; POMS GN 02250.110; POMS GN 02250.115; SI 02260.020

# Process for Requesting SSA Waiver

- Can be requested at any time
  - No deadline
  - Res judicata will apply to without fault determination
- Complete waiver form and submit via mail or fax (no online option) to district office
  - Form SSA-632BK
- Once a waiver is requested SSA *must* stop collecting the overpayment (if they have started collecting it) and cannot collect until they issue a decision
- If SSA district office cannot grant the waiver based on written request they *must* meet with overpaid individual for a conference
  - Different employee needs to do initial review and conference
- After conference, SSA must either waive the OP or deny the waiver and issue a written notice
- If waiver denied, individual can request a hearing in front of an ALJ

# Common Problems with SSA Waiver Requests

- District office loses or does not enter waiver request
- District office does not stop recovering overpayment after waiver requested
- District office takes no action on the waiver request for months or years
- District office denies (or approves) waiver without a conference and never sends a notice
- After waiver denied and hearing requested, it takes months/years for case to get to hearing office
- Notices not sent to attorney
- Once waiver granted, SSA does not refund amounts recouped or refunds less than they should



# SSI Overpayment Waiver Exercise

## Instructions:

- Help client complete an SSI overpayment waiver form
- Make a list of documents that you could get from client to support the waiver request
- Outline arguments and POMS references for cover letter



# Fraud

(Intentional Program Violations)



# Racial Disparities

- In 12 of SMRLS counties households of color are more than twice as likely to be accused of fraud than white households
  - Black households receiving SNAP or cash assistance more likely to be referred for fraud
    - Faribault: 250%
    - Jackson: 464%
    - McLeod: 240%
    - Redwood: 121%
    - Watonwan: 155%
    - Winona: 133%
    - Washington: 104%

# Intentional Program Violation

- Intentional Program violations shall consist of having intentionally:
  - (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
  - (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.

7 CFR § 273.16(c)

# Disqualification Penalties

- If determined to have committed an IPV, the individual is ineligible for SNAP, cash, and childcare assistance benefits for:
    - First IPV – 12 months
    - Second IPV – 24 months
    - Third IPV - permanently
- 7 CFR § 273.16(b)(1)

# IPV Procedure

- *Referral*: Financial worker discovers an issue and refers the household for a fraud investigation
- *Investigation*: Counties have a “Fraud Specialist” office or person who coordinates the investigation. A detective from the sheriff’s office usually does the actual investigation.
  - Interview accused individual(s) – by phone or in person
  - Review employment and wage data for household members
  - Review EBT records
  - Review cell phone tower records
  - Home visit
  - Interview neighbors, landlords, etc.

# IPV Procedure

- *Investigation Findings*: Investigator writes up a report and concludes whether an IPV was or was not committed
  - May suggest referral for prosecution if fraud was particularly egregious
    - usually proposes finding an IPV and proceeding with administrative disqualification
- *Notice of IPV and Opportunity to Waive an Administrative Disqualification Hearing (ADH)*
- *Hearing (if not waived)*
- *Disqualification Penalty Begins*


# Notice of IPV Finding and Administrative Disqualification Hearing Waiver

- County/sheriff's office sends individual a notice stating that they have been found to have committed an IPV, basic reasons for the finding
- Also send a request that the individual waive their right to an administrative disqualification hearing (ADH) and accept the disqualification penalties
  - The notice must contain specific information required by federal law
- Individual can (1) deny facts and waive, (2) admit facts and waive, (3) refuse waiver and ask for an ADH, or (4) do nothing and the county must proceed with an ADH

7 CFR § 273.16(f)



# Administrative Disqualification Hearing (ADH)

- ADH occurs through the DHS fair hearing process
    - Almost all the same procedural and evidentiary rules apply
  - Individual appealing IPV must be notified of ADH date at least 30 days in advance
  - ADH will be consolidated with hearing for overpayment or termination that occurs due to the IPV
  - Agency must prove IPV by clear and convincing evidence  
7 CFR § 273.16(e)
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# Common Themes in IPV Cases

- “Man-in-the-house”
  - When household reported that father of the minor children does not live in the household, but county is convinced he does.
- Repeatedly using SNAP outside home county
  - Someone uses EBT to pay for food in Twin Cities but has said they reside in Mankato. County will question where the person is actually living.
- Did not report a job on application or household report form but it shows up on wage data





Hypo

- Sahro is a Somali-speaking client. Washington County has sent her a letter saying she has been determined to have committed an IPV and will be disqualified from benefits for one year.
- 11/29: Sahro submitted an application requesting SNAP and MFIP benefits
  - Selected Somali as preferred spoken and written language
  - Sahro had a friend's daughter help her complete the application in English
  - Answered "no" when asked if anyone in her household has a job or expected to get income from a job this month or next
  - Signed application and attested to truth of information
- 12/7: During interview with Washington County financial worker (with Somali interpreter) Sahro confirmed that she and her family was unemployed, said she was seeking employment
- 12/12: Wash Co received a notification that Sahro was hired by a company
  - County called Sahro, Sahro said she had orientation for the job that evening but was not sure what her hours would be
- 12/13: Sahro sent Wash Co her offer letter which was dated 11/28
  - Included Sahro's signature, and showed Sahro accepted employment and would begin paid orientation on 12/12
- County has determined Sahro committed an IPV based on not reporting the job in the 11/29 app or during her 12/7 interview