

Chapter 13: Underpayment/Overpayment and Recovery

(i) Overpayments

Intent:	To identify the circumstances under which overpayments are created and recovered.
Act: (if applicable)	<p>Definitions</p> <p>2. In this Act</p> <p>(n) "overpayment" means income or employment support</p> <p>(i) provided to or on behalf of a recipient or to a trustee where evidence indicates that there was no entitlement to all or part of those benefits, or</p> <p>(ii) which a recipient receives to meet an immediate need, and which the recipient agrees, in writing, to repay all or a portion of at a future date;</p> <p>Support improperly paid - overpayment</p> <p>24. (1) An overpayment is a debt due by a recipient to the Crown in right of the province</p> <p>(2) An overpayment shall be calculated for a retroactive period not more than 6 years from the date of its discovery, but where</p> <p>(a) the income or employment support was fraudulently obtained, or</p> <p>(b) the income or employment support paid was agreed, in writing at the time the support was paid or in the course of its being paid, to be repayable,</p> <p>this subsection shall not apply.</p> <p>(3) Where an overpayment is to be recovered from a recipient</p> <p>(a) receiving income support only; or</p> <p>(b) receiving income and employment support,</p> <p>the amount may be recovered from the income support described in paragraph 2 (k)(i) in the manner and at the rate prescribed by the regulations.</p> <p>(4) Where an overpayment is to be recovered from a recipient receiving employment support only, the amount may be recovered from funds available for employment support for which a person may be eligible under section 14 in the manner and at the rate prescribed by the regulations.</p> <p>(5) In addition to the manner of recovery referred to in subsections (3) and (4), an overpayment may be recovered from a person</p>

	<p>receiving income or employment support, or both income and employment support in another manner set out in this Part.</p> <p>(6) Where a person who formerly received income or employment support under this Act has received an overpayment of that support, it may be recovered</p> <p>(a) under a restitution agreement, where that person enters into a restitution agreement under section 27 ; or</p> <p>(b) where that person is unwilling or unable to enter into a restitution agreement or defaults on a restitution agreement, under section 26 .</p> <p>(7) An overpayment of income support may be apportioned by the minister in the manner prescribed by the regulations.</p> <p>(8) Notwithstanding subsection 8(4) of the Limitations Act, the limitation period for commencing an action to recover an overpayment under this Act shall be 6 years.</p> <p>38. The defence of change in circumstance shall not apply in an action to recover an overpayment</p>
Regulations:	<p>Administration of recipient's estate</p> <p>35. Where an overpayment is owed by the estate of a deceased recipient who dies with or without a will and no letters of probate or of administration have been granted, the Trial Division shall, on the application of the minister, grant administration of the estate to the Registrar of the Supreme Court</p> <p>Rate of recovery</p> <p>50. (1) Where an overpayment has accrued, the minister may recover that overpayment</p> <p>(a) where a recipient receives income support only, at a rate of 5% of the recipient's income support referred to in section 13 , 14 or 15</p> <p>(b) where a recipient receives employment support only, at a rate of 5% of the recipient's employment support; or</p> <p>(c) where a recipient receives both income and employment support, at a rate of 5% of the recipient's income support referred to in section 13, 14 or 15 .</p> <p>(2) The employment support referred to in this section includes monetary employment support only.</p> <p>(3) Notwithstanding subsection (1), the minister may, in his or her discretion,</p>

(a) recover the overpayment at a rate lower than the rate prescribed in that subsection; or

(b) decline to recover the overpayment.

(4) Notwithstanding subsection (1), where a child benefit adjustment is paid to a recipient under paragraph 19 (1)(g) and that recipient receives a retroactive payment of the Newfoundland and Labrador child benefit or the Canada Child Tax Benefit, or both benefits with respect to the same period, the amount of child benefit adjustment that was paid or the retroactive payment, whichever is less, shall be recovered in full from the recipient's income support entitlement.;

Apportionment

51. (1) Where an overpayment of income support accrues during a marriage or cohabitation, it shall be apportioned equally between the recipient and the recipient's spouse or cohabiting partner for the time period during which they both received the benefit of that overpayment of the income support during the marriage or cohabitation.

(2) Subsection (1) applies notwithstanding the subsequent dissolution of the marriage or cohabitation.

(3) Notwithstanding subsection (1), the minister may, in exceptional circumstances, vary the manner of apportionment prescribed in that subsection.

Certificate of judgment

52. A certificate of judgment referred to in section 34 of the Act shall only be issued against former income support recipients who have an overpayment.

Set off

53. Where a former recipient who is owed money from an underpayment according to section 23 of the Act also owes a debt to the Crown in the form of an overpayment under section 24 of the Act, the money owing to the Crown may be recovered from the money owing to the former recipient and the remainder, if any, shall be paid to the former recipient.

Amount and rate of garnishment

54. The amount and rate of garnishment under section 29 of the Act shall be the same as that under section 49 of the Judgment Enforcement Regulations under the Judgment Enforcement Act.

Overview: (if applicable)	N/A
Policy:	<p>(a) Reasons for Overpayments</p> <ul style="list-style-type: none"> • An overpayment is defined as income or employment support which was provided to or on behalf of a recipient where it is determined that the recipient: <ul style="list-style-type: none"> ○ was not entitled to any of the benefits which had been issued; ○ was not entitled to a portion of the benefits issued. This may be due to a change in circumstances which alters the requirements of the individual or family; or there was a change in income (usually, income which had not previously been reported, an increase in the income, or receipt of income which was for a retroactive period of time that overlapped with the receipt of Income Support benefits) or ○ receives benefits to meet an immediate need, and the recipient agrees in writing to repay all or a portion of at a future date. • For information on overpayments related to municipal tax, please reference the Municipal Taxes and Fees policy. • In addition to cases where there is no or partial entitlement to benefits, overpayments are set up for: <ul style="list-style-type: none"> ○ payment of security deposits ○ payment of mortgage arrears ○ emergency assistance, where in the opinion of the Client Services Manager (CSM) monies are being repeatedly issued for the same type of requests ○ payment of specific items where the item was not purchased or a receipt was not provided to the Department within 30 days ○ the recovery of funds paid to a hotel due to damages/theft committed by a client who was placed there by the Department on an emergency basis • Where an overpayment has been created as a result of an error or omission by Departmental staff, the overpayment is still valid and must be recovered.

- In setting up an overpayment in some cases, staff may be limited to only having information on gross income, and may not have details of time frames (e.g. when income is identified through the Canada Revenue Agency interface or where the client does not provide required verification). Without details surrounding net earnings and time frames, there is no ability to correctly apply employment exemptions or expenses. Therefore, an overpayment of the lesser amount received for the period in question – Income Support or gross income, must be established. When subsequent information is provided confirming net income and time frames, the overpayment should be adjusted, taking into account employment exemptions, expenses and other benefits (i.e. Job Start Benefit, 30 day overlap etc.). In the event that a client provides an ROE, it can be used to confirm some information and adjustments can be made to the overpayment with this document. However clients will not receive the benefit of full deductions as an ROE only provides information on gross pay and not net.

(b) Rank of Recovery

- When there are multiple payees on a case and the system is making a recovery, the recovery is applied in the following order, commencing with the A1. If funds provided to the A1 are insufficient to cover the full monthly recovery amount, the recovery is applied to the subsequent payee on the list if applicable:
 - A1
 - A2
 - Proxy
 - Other payee which is not a utility or landlord
 - Utilities (i.e. NL Power)
 - Landlord(s)
- Regardless of which payee the recovery is deducted from, the credit is applied equally to the AR balances of both the A1 and A2, where both have balances.

(c) Apportionment/Splitting Overpayments

- Where a case involves two cohabitating partners, any overpayment which is set up is to be split between both
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partners for the time period during which they both received the benefit of that overpayment. Within CAPS, recoveries made on the case are split between both partners. If the relationship subsequently ends, each partner will be responsible for their portion of the balance owing and will carry this debt with him/her to subsequent Income Support cases. For overpayments which were created prior to the apportionment feature available in CAPS, it may be necessary at the request of clients to review such overpayments and apportion them manually, particularly in cases where the family unit has since dissolved.

(d) Recovering Overpayments

- Active Income Support cases with an accounts receivable balance will have recoveries taken from their individual/family benefits automatically and applied towards their balance.
- Inactive clients will be contacted by the Accounts Receivable section of the Finance Division once they have been inactive for a period of approximately sixty days, to make payment arrangements on any outstanding balance.

(e) Rate of Recovery

- Unless otherwise indicated, the rate of recovery is 5% of the individual or family benefit rate included in the payment. The system will also split the recovery if there is an active A1 and an A2.
 - The rate of recovery can be set to zero for reasons such as when the account receivable is under appeal, the client has filed for bankruptcy, or a write off has been requested etc.
 - A Client Services Officer (CSO) can set the recovery rate to 100% at the client's request (usually when the client is only entitled to a small supplement and wishes the whole amount to be applied to the debt, as opposed to getting a cheque for a few dollars) or setting the recovery rate to zero in the case of bankruptcy.
 - The CSO can change the recovery rate for bankruptcy cases only. In all other situations, any change to the rate of recovery requires the approval of a CSM.
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	<ul style="list-style-type: none"> • In some cases the recipient's entitlement amount may be less than the recovery amount being taken. In these cases, the case remains active and recoveries will continue to be applied towards the accounts receivable balance. For recurring pay cases, a pay stub will be mailed to the client at the beginning of each month which includes the ambulance/dental card. As well, the client remains eligible for drug card coverage through NLPDP as long as this is indicated on the client's request within CAPS. • Where it has been determined that an inactive client is owed an underpayment, the amount of the underpayment is to be applied to an existing overpayment before any refund is issued to the client.
<p>Procedure:</p>	<p>(f) CSO's Should Set Up all Overpayments in a Timely Manner</p> <ul style="list-style-type: none"> • Failure to set up overpayments in a timely manner can result in inaccurate information sent to the client from the Accounts Receivable section when the account is initiated. The timely set up of these adjustments is critical in ensuring that the client's account shows accurate amounts owing. Failure to do so can have negative repercussions for the Department. <p>(g) Determining the Amount of an Overpayment</p> <ul style="list-style-type: none"> • An overpayment most often occurs when there is an overlap of Income Support and income which was not deducted. This can occur in situations where a client was provided Income Support to address an immediate need and at a later date received income for the same period, i.e. Canada Pension Plan benefits. • In order to calculate the amount of the overpayment, the CSO must first determine if the recipient would have been eligible for any of the Income Support benefits issued using the following procedure: <ol style="list-style-type: none"> 1. Determine the covering period for which the client received both income and Income Support benefits. 2. Total the amount of Income Support benefits provided during each month of the covering period. The total amount includes all basic assistance (such as family or individual benefits, shelter, fuel supplement etc.) plus any special needs items (i.e. special diets, vision care, medical transportation, etc.) or payments provided.

Where the income is earnings, the CSO should ensure that no calculation of overpayment begins until 30 days after the recipient began work. As well, the CSO must consider whether or not the recipient may have been eligible for the Job Start benefit. If so, only in circumstances such as an inactive case should the Job Start be applied to the overpayment and not actually paid to the client.

3. Calculate the total amount of income for each month, which had not been deducted during the same **covering period**, allowing expenses and exemptions if applicable to the type of income.
4. If the total deductible income received is **less than** the total amount of Income Support provided in that month, set up an overpayment/account receivable for the total amount of the deductible income.
5. If the total income is **greater than** the total amount of Income Support provided, the CSO must set up the full amount of Income Support benefits provided during the covering period as an overpayment. This process should be repeated for each month of the covering period.
6. Once the amount of the overpayment has been calculated, the CSO must complete an **action memo** within CAPS which documents the source and calculation of the overpayment. This process must be used each time to set up a new overpayment as well as to increase or decrease an existing account receivable balance.
7. The approval of a CSM is required for any overpayments which exceed \$1,000 and the Regional Manager for any amount over \$10,000.
8. The CSO must notify the client in writing ("Notice of Overpayment" form) of the overpayment which was set up, identifying:
 - the amount of the overpayment,
 - the reason why the overpayment was set up,
 - the covering period for which the client received benefits to which there was no or only partial entitlement,
 - their responsibility to pay the amount, and
 - their right to appeal the decision.

9. In cases where the overpayment requires a more detailed explanation, in addition to the letter of overpayment which must be completed, the CSO should also send a separate letter to the client with a break-down of the reasons and time-period for the overpayment.

(h) Completing a New Action Memo

- All income is considered as family income. Therefore, the action memo must be split between the A1 and A2 who were on the case during the covering period (or part thereof) in question. The CSO does one action memo and splits that action memo two or more ways as is necessary. The overpayment will follow each individual client should they move to another file. This also ensures that the overpayment will be set up simultaneously for both parties.
- **Action memos are to be completed in a timely manner to ensure that clients have current information on their accounts and credit balances are not created unnecessarily.**
- When a new overpayment is set up, it is advisable to review any old overpayments converted from FACTS to see if they should be split and a portion assigned either the current spouse or with an ex-spouse who has since moved from the case. When the overpayments were transferred from FACTS to CAPS, they were automatically assigned to the current A1 on the case. They should be reviewed to determine that this person actually owns the whole overpayment.
- It is very important that the AR work queue is checked on a regular basis to ensure that all action memos are completed and not left with a status of “in progress,” or returned for an adjustment.
- The PAU should ensure the accuracy and timely verification of action memos so that clients have accurate information on their current balance and that recoveries begin as quickly as possible.

(i) Adjusting Existing Action Memos

- An adjustment is made when the reason and covering period is the same as the original action memo, but the amount has changed. Otherwise, a new action memo should be created.

(j) Reducing an Account Receivable Balance

An account receivable balance can be reduced by:

- recovering a small amount from future Income Support benefits provided to the client at the rate of recovery of 5% of the family/individual benefits amount or the Comforts Allowance amount,
- applying a lump sum payment provided by the client or a third party (cash receipt is provided) which can be an amount smaller than or equal to the amount of the account receivable created,
- paying off the account receivable either in one lump sum payment or by monthly payments (most common for inactive clients),
- adjusting the account receivable because an incorrect amount was set up, or
- by writing-off the account receivable, through Provincial Office, because it is deemed uncollectible.

(k) Refunds

When it is necessary to issue a refund, the CSO should:

- confirm that the refund is actually owed to the client before issuing, and
 - use the requirement code "Refund of a Credit Balance under \$500," or "Refund of a Credit.
 - For a balance over \$500," using the correct requirement code ensures that:
 - the correct amount is refunded to the client
 - the overpayment is automatically adjusted
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- no recovery will be taken, as will happen if the wrong requirement is used and the recovery is not turned to 0%.

- There is no need to complete action memos when issuing refunds.

(l) Credit Balance Reports

- CSO's should review each case to determine the cause of the credit balance. The review may identify that a refund must be issued, or that an action memo that was not done previously needs to be created.
- By clicking on the "Action Memo" tab on the accounts receivable screen, it can be determined if an action memo is started but not verified to avoid duplication of work.
- If there is an action memo created, the "status" should be checked to determine if an action needs to be taken on the action memo in question.
- An action memo should never be done to remove a credit balance unless one legitimately needs to be done.
- If the client is owed a refund, it must be given.
- If an action memo is completed, it must be done for the proper amount of the assignment, and not simply the credit amount.
- **Note:** In most cases, a credit balance if caused by a debit action memo needing to be set up. This would erase the credit balance, leaving the account with a zero balance or a debit balance. No refund would be due.

(m) Assignment of Benefit (AOB) – Employment Insurance Report

- Although this is a report of funds received by this Department from Employment Insurance and not a credit balance report, there may be instances when staff must set up overpayments/action memos.
 - Approximately three weeks after the report is sent out to the districts/regions, the Department receives a cheque from
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Employment Insurance and the receipts are keyed into the client accounts.

- The receipt is split between the client and spouse; therefore, the action memo should be split as well.
- Ideally, it is beneficial to create action memos as soon as receiving the report. If they are not, Provincial Office staff must key in a receipt on the client account, often leading to duplication of efforts.

(n) Accounts Receivable Work Queue in CAPS:

- As action memos may require further follow up by staff, or be returned by CSM's or PAU staff for adjustments or due to errors, it is very important that the AR work queue is checked by staff on a regular basis. To do so, staff should:
 - look under their worker name in the A/R work queue under the "in progress, returned for adjustment by PAU, and returned for adjustment by the PS/DM" and follow up with the accounts receivable as required; and
 - remove the district office from the "office" box as there may be action memos completed for other districts in the worker's region besides their own district.
- It is important that staff review the work queue to ensure that the balance showing is correct.

(o) Accounts Receivable Section – Finance Division

- Within the Department, staff assigned to the Accounts Receivable section work towards collecting payments from inactive clients. The processes involved include:
 - contacting the client and making a repayment agreement,
 - utilizing third party demands, normally with employers who collect amounts from their employee and forward to the Department; and
 - utilizing the federal Set-Off Program which allows this Department to garnish federal payments to clients with an accounts receivable balance.

(p) Active and Inactive Clients:

- When a client contacts an office enquiring about information on their account, if the client is currently active:
 - their inquiry should be handled by the district office.

If the client is inactive:

- if they received the notice of overpayment from the district office, their enquiry should be dealt with by the CSO; or
- if they received a letter from the Accounts Receivable section or the Government of Canada, they should be directed to the Accounts Receivable section. The only exception is in cases when accounts receivable has directed the client to the district office if there is a dispute regarding the overpayment balance owing.

(q) Recoveries through the Financial Administration Act

- 31 (1) Where an officer in a department dealing with a claim against the Crown knows that the claimant is in arrears in respect of a debt due to the Crown, whether the indebtedness is of record in the department in which the officer is employed or not, the officer shall ensure that an application made to the comptroller general for the issue of public money to that claimant is clearly annotated so that the comptroller general may take those steps that appear to him or her to be necessary to effect recovery, including the application of all or part of the payment in question towards the liquidation of the claimant's indebtedness.
 - The Comptroller may recover any overpayment made out of the Consolidated Revenue Fund for salary, wages, pay, gratuities, allowances, or pensions out of any sum of money that may be due or payable by the province to the person to whom such overpayment was made.
 - This Act makes it possible to recover outstanding accounts receivables/overpayments from former recipients of Income Support who may receive remuneration from provincial public funds. Not only does this Act make it possible, but it imposes an obligation on the staff of the Department to affect recovery. CSO's who know of any such cases should immediately notify the Director of Income Support who will
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take appropriate action to recover the outstanding debt on behalf of the Department.

- There are situations where former recipients of Income Support who have an outstanding overpayment perform contracting work which is paid by the Department. In such situations, it is responsibility on the CSO to recover the overpayment. The rate of recovery should be negotiated between the contractor (former client), bearing in mind the full accounts receivable/overpayment should be recovered wherever possible. Each case will have to be considered on its own merits. In these situations, two cheques should be issued as follows:
 - one payable to the contractor on behalf of the client; and
 - the other payable to the Newfoundland Exchequer Account on account of arrears due the Government by the contractor.
- It is important to note that the cheque made payable to the Newfoundland Exchequer Account must clearly indicate that the refund of overpayment is on account of the contractor (include file number of the contractor/former client) and not the client.

(r) Questions regarding A/R Balances (from Clients or the Accounts Receivable Section)

- Active clients should be encouraged to discuss their balance with local office staff who will answer any questions they have.
 - Inactive clients who have been contacted by the A/R section should initially contact staff within that unit.
 - There are times when Financial Collections Officers will need to refer clients to district offices for responses to their questions. Examples of when this is necessary are:
 - when clients dispute the amount of the balance or the fact that it was set up as an overpayment;
 - when a collections officer discovers that a discrepancy with the overpayment amount set up by the CSO is
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	<p>incorrect, and the file needs to be reviewed to make the necessary adjustments,</p> <ul style="list-style-type: none"> ○ when an account needs to be split due to couples separating. The CSO will need to review the file to determine what portion of the overpayment needs to be credited to which spouse. If the CAPS overpayments were split properly, this would only be necessary for any overpayments that came from the FACTS system, and ○ when information on the action memo needs clarification such as in cases of incomplete address, amount of money owing, missing dates or covering periods, or the reason for the overpayment. <ul style="list-style-type: none"> • When action memos for the file are not verified by the PAU causing the account not to show the correct balance owing, the Collections Officer will contact the PAU CSM to have the action memo processed. This can involve setting up action memos for overpayments or the reduction of overpayment amounts.
Authority Level:	<p>Client Services Officer</p> <ul style="list-style-type: none"> • set the recovery rate to zero for bankruptcy cases <p>Client Services Manager</p> <ul style="list-style-type: none"> • revise the recovery rate for any other reason (as per Minister's Authority under section 50(3) of the IES Regulations) • increase the recovery rate to 100% at the request of the client • approve any overpayment in excess of \$1,000 • setting up an overpayment for emergency assistance <p>Regional Managers</p> <ul style="list-style-type: none"> • overpayments in excess of \$10,000
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