

5101:1-23-70

Ohio works first: erroneous payments.(A) What is the definition of "erroneous payment?"

Section 5107.02 of the Revised Code defines Ohio works first (OWF) as the temporary assistance to needy families (TANF) program established in Title IV-A of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301(8/1981). An "erroneous payment" is defined in section 5107.76 of the Revised Code as a payment of cash assistance under OWF to assistance groups not eligible to receive the assistance. The provisions set forth in this rule apply to all erroneous payments made on or after July 1, 1998, under OWF, including payments of cash assistance for support services funded with TANF monies.

An erroneous payment may occur because of any change in an assistance group's situation which decreases the level of assistance for which the assistance group is eligible. Paragraph (J) of this rule sets forth the provisions for calculating the amount of the erroneous payment.

(B) How are aid to families with dependent children (ADC)/TANF cash assistance and/or OWF overpayments that occurred and were discovered prior to July 1, 1998 collected?

All ADC/TANF cash assistance and/or OWF overpayments that occurred and were discovered prior to July 1, 1998 are subject to the provisions set forth in rule 5101:1-23-70.1 of the Administrative Code.

~~(A) Cash assistance under the former aid to families with dependent children (ADC) or temporary assistance to needy families (TANF) programs and/or Ohio works first (OWF) erroneous payments that occurred on or after July 1, 1998, or that occurred prior to July 1, 1998, but were discovered on or after July 1, 1998.~~

~~All ADC/TANF cash assistance and/or OWF erroneous payments that occurred on or after July 1, 1998, or that occurred prior to July 1, 1998, but were discovered on or after July 1, 1998, shall be recovered in accordance with the provisions set forth in this rule.~~

(C) How are erroneous payments that are discovered on or after July 1, 1998 collected?

All cash assistance under the former aid to families with dependent children (ADC) or TANF programs and/or OWF erroneous payments that occurred on or after July 1, 1998, or that occurred prior to July 1, 1998, but were discovered on or after July 1, 1998, shall be collected in accordance with the provisions set forth in this rule.

- ~~(B) ADC/TANF cash assistance and/or OWF overpayments that occurred and were discovered prior to July 1, 1998.~~

~~All ADC/TANF cash assistance and/or OWF overpayments that occurred and were discovered prior to July 1, 1998 are subject to the provisions set forth in rule 5101:1-23-70.1 of the Administrative Code.~~

- (D) How are work allowance overpayments that occurred prior to October 1, 1997 collected?

Work allowance overpayments that occurred prior to October 1, 1997 are subject to the provisions set forth in rule 5101:1-23-70.2 of the Administrative Code.

- ~~(C) Work allowance overpayments that occurred prior to October 1, 1997.~~

~~Work allowance overpayments that occurred prior to October 1, 1997 are subject to the provisions set forth in rule 5101:1-23-70.2 of the Administrative Code.~~

- (E) Are agency-caused overpayments that occurred prior to October 1, 1997 and that are discovered on or after July 1, 1998 required to be collected?

The county agency has the option of whether to collect agency caused overpayments that occurred prior to October 1, 1997, and that are discovered on or after July 1, 1998. If the county agency chooses not to collect the overpayment, the debt will remain and can be recovered in accordance with the provisions set forth in this rule. Failure to repay erroneous payments as a result of an agency error does not result in ineligibility for OWF.

- ~~(D) Agency caused overpayments that occurred prior to October 1, 1997.~~

~~The county department of job and family services (CDJFS) has the option of whether to collect agency caused overpayments that occurred prior to October 1, 1997 and that are discovered on or after July 1, 1998.~~

- ~~(E) What is the definition of "erroneous payment?"~~

~~An "erroneous payment" is defined in section 5107.76 of the Revised Code as a payment of cash assistance under OWF to assistance groups not eligible to receive the assistance. Section 5107.02 of the Revised Code defines OWF as the TANF program established in Title IV-A of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301(8/1981). The provisions set forth in this rule apply to all erroneous payments made on or after July 1, 1998, under OWF, including payments of cash assistance for support services funded with TANF monies.~~

~~An erroneous payment may occur because of any change in an assistance group's situation which decreases the level of assistance for which the assistance group is eligible. Paragraph (J) of this rule sets forth the provisions for calculating the erroneous payment.~~

(F) What are the responsibilities of the county agency?

- (1) Provide the assistance group with frequent and complete explanations of program eligibility, the factors that cause ineligibility and erroneous payments, and the assistance group's responsibility to report changes in income, need, and other circumstances affecting eligibility, as set forth in rule 5101:1-2-20 of the Administrative Code.
- (2) Take action to terminate or adjust the OWF payment as soon as ~~it~~the county agency learns of a change in circumstances which affects the assistance group's future eligibility for assistance, in accordance with the hearing provisions set forth in division 5101:6 of the Administrative Code.
- (3) Take action to recover the erroneous payments in accordance with the provisions set forth in this rule and sections 5107.05 and 5107.76 of the Revised Code.
- (4) When the assistance group has a change, and the change results in the decrease in or termination of OWF cash assistance, the county agency shall issue a notice of adverse action within ten days of the date the change was reported or the county agency becomes aware of the change, unless one of the exceptions to the notice of adverse action in Chapter 5101:6-2 of the Administrative Code applies.

(G) What are the reporting requirements for an assistance group?

- (1) The reporting requirements and timeframes are described in rule 5101:1-2-20 of the Administrative Code.
- (2) Notwithstanding the requirements in rule 5101:1-2-20 of the Administrative Code, the assistance group is not required to report any other changes in circumstances until the next reapplication. In such situations, no erroneous payments exist between the date that the unreported change occurs and the date that the change is reported or the ~~CDPS~~county agency otherwise becomes aware of the change.
- (3) The assistance group's report of an impending change in circumstances does not negate its responsibility to report any change identified in rule 5101:1-2-20 of the Administrative Code within ten days from the date that the change actually occurs.

(H) What is the effective date of a budget adjustment?

- (1) When a notice of adverse action is issued, the decrease in the benefit level shall be made effective with the OWF benefit for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.
- (2) When a notice of adverse action is not issued due to one of the exceptions of rule 5101:6-2-05 of the Administrative Code, the decrease shall be made effective no later than the month following the change. This applies for all reporting requirements listed in rule 5101:1-2-20 of the Administrative Code.
- (3) When the change is new employment of an assistance group member, the budget adjustment does not become effective until the later of:
 - (a) The first day of the month following the month in which the assistance group receives earned income from employment, consistent with the application of the earned income disregard set forth in rule 5101:1-23-20 of the Administrative Code; or
 - (b) The month following the month in which the notice of adverse action period has expired.

(I) When is an assistance group liable for an erroneous payment?

- (1) When the county agency discovers that the assistance group failed to report a required change within the required timeframes as set forth in rule 5101:1-2-20 of the Administrative Code and as a result of the change, the assistance group received benefits it was not entitled to receive;
- (2) When the county agency failed to act on a change timely and as a result, the assistance group received benefits it was not entitled to receive;
- ~~(3) The assistance group is not liable for an erroneous payment because of a failure to report a change that is not a part of the required reporting requirements as set forth in rule 5101:1-2-20 of the Administrative Code.~~
- (3) When an erroneous payment occurs because an adverse action was proposed, payments continued without change due to a timely hearing request, and the hearing decision affirmed the county agency proposal; or
- (4) The assistance group is not liable for an erroneous payment because of a failure to report a change that is not a part of the required reporting requirements as set forth in rule 5101:1-2-20 of the Administrative Code.

(J) How is an erroneous payment calculated?

The amount of the erroneous payment is the difference between the amount of benefits the assistance group should have received for a calendar month, and the amount of benefits the assistance group actually received for that month. In determining the amount of an erroneous payment, the agency ~~must~~ shall consider the federal Fair Labor Standards Act (FLSA) (5/2007) applicable requirements and/or any other federal labor laws which may apply. When the county agency becomes aware of a change in the assistance group's circumstances, the county agency shall determine the following:

- (1) The date on which the change occurred, and whether the change was due to one of the reporting requirements listed in rule 5101:1-2-20 of the Administrative Code.
- (2) The date on which the change was reported by the assistance group to the county agency, or the county agency became aware of the change.
- (3) In accordance with the provisions set forth in paragraph (H) of this rule, the date on which the decrease or termination of benefits should have been effective had the assistance group reported the change in accordance with the timeframes as set forth in rule 5101:1-2-20 of the Administrative Code and/or had the county agency acted timely on reported and/or discovered ~~changes~~ change(s).
- (4) The dates and amounts of any erroneous payments, by month.
 - (a) When the assistance group has earned income, the earned income disregards set forth in rule 5101:1-23-20 of the Administrative Code, shall be deducted as appropriate in computing the amount of the erroneous payment.
 - (b) For any month that the assistance group failed to timely report a change in earned income ~~timely~~ as set forth in rule 5101:1-2-20 of the Administrative Code, the earned income disregards shall not be deducted from the assistance group's gross earned income in accordance with rule 5101:1-23-20 of the Administrative Code when computing the erroneous payment.
 - (c) When an erroneous payment occurs because an adverse action was proposed, payments continued without change due to a timely hearing request, and the hearing decision affirmed the county agency proposal, the amount of the erroneous payment is the difference between the amount the assistance group actually received each month, and the

amount the assistance group should have received for each month. When specific amounts of erroneous payments are stipulated in the hearing decision, those amounts are binding, in accordance with the rules set forth in division 5101:6 of the Administrative Code.

- (d) Child support that is assigned to ~~ODJFS~~ the Ohio department of job and family services (ODJFS) and which is paid through the child support enforcement agency (CSEA) ~~must~~ shall be included in the calculation of the erroneous payment. The county agency shall determine the exact amounts of the following categories prior to computing the erroneous payment:
- (i) Child support collected on current obligation.
 - (ii) Child support used to reimburse assistance paid to the family.
42 U.S.C. 657 (01/02/06) defines what is reimbursable for child support distribution purposes.
 - (iii) Assistance provided to the assistance group.
 - (iv) Correct amount of OWF benefits the assistance group should have received. For purposes of this rule only, this amount shall be referred to as the OWF entitlement.
 - (v) Erroneous payment prior to child support adjustment. The erroneous payment will always equal the difference between OWF actually paid to the assistance group and the OWF entitlement.
 - (vi) Collectible erroneous payment after child support adjustment.
 - (vii) The erroneous payment to be collected after child support adjustment is computed using the table ~~below~~ in this paragraph and one of the two formulas in the paragraphs immediately following the table.

(1) Child support collected on current obligation/child support used to reimburse OWF case grant.	(2) Amount of OWF cash assistance actually paid to the AG for the month.	(3) Actual OWF "entitlement" as defined in paragraph (4)(d)(iv) of this rule.	(4) Amount of OWF erroneous payment [column (2) minus column (3)] prior to child support adjustment.	(5) Collectible erroneous OWF payment after child support adjustment. See below.
<p>The determination of the amount in column (5) is made using the one of the following 2 formulas:</p> <ul style="list-style-type: none"> - If the amount in column (3) is greater than or equal to the amount in column (1), the amount of the collectible erroneous OWF payment to be reflected in column (5) is the difference reflected by subtracting the amount in column (3) from the amount in column (2); - If the amount in column (3) is less than the amount in column (1), the amount of the collectible erroneous OWF payment to be reflected in column (5) is the amount in column (4) less the difference calculated by subtracting the amount in column (3) from column (1). 				

(K) What is a grant reduction?

Grant reduction is one of the collection methods set forth in section 5107.76 of the Revised Code. If the method of recovery chosen by the county agency is grant reduction, the OWF cash payment is reduced each month until the total amount of the erroneous payment is repaid.

- (1) The OWF cash payment may be reduced, provided that for any payment month, the assistance group shall retain from its combined income (without disregards) and assistance payment an amount equal to ninety per cent of the payment standard (as set forth in rule 5101:1-23-20 of the Administrative Code) for an assistance group of the same composition with no other income, unless the assistance group volunteers to pay more. The monthly recovery amount shall be computed from the income and assistance payment available in the payment month. Liquid assets may be explored as well.
- (2) If recovery of the erroneous payment through grant reduction reduces the amount payable to the assistance group to zero, the members of the assistance group are considered to be OWF participants.

- (3) When an assistance group is eligible for a monthly OWF payment of at least ten dollars, but recovery of an erroneous payment reduces the monthly payment to less than ten dollars, the minimum payment provision set forth in rule 5101:1-23-40 of the Administrative Code does not apply because the assistance group was eligible for a cash payment of at least ten dollars prior to adjustment of the overpayment.
- (4) All grant reductions shall be effected with due regard for the fair hearing provisions, including prior notice, set forth in division 5101:6 of the Administrative Code.
- (5) If the assistance group becomes ineligible to participate in OWF, the balance of the erroneous payment shall be recovered in accordance with the provisions set forth in section 5107.76 of the Revised Code.

(L) What if an assistance group has an erroneous payment and an underpayment?

When an assistance group has both a current erroneous payment and underpayment as defined in rule 5101:1-23-60 of the Administrative Code, one may be offset against the other provided the erroneous payment is not being challenged under the state hearing procedures as set forth in division 5101:6 of the Administrative Code. There will be no delay in the issuance of the underpayment in this instance.

- (1) The county agency will notify the assistance group when an underpayment occurs concurrently with the discovery of an erroneous payment or when there is an outstanding delinquent balance from a previous erroneous payment. The notice will advise the assistance group of the underpayment and the amount the county agency proposes to use to offset the reported or delinquent erroneous payment balance. The assistance group may exercise its right to a state hearing if it disagrees with the decision of the county agency to offset the underpayment against the erroneous payment using the notice. All proposed actions shall be suspended pending the hearing decision.
- (2) In a situation in which the underpayment amount is greater than the amount of the erroneous payment, the assistance group shall be issued the difference.

(M) Can an erroneous payment be recovered from a minor child?

As set forth in section 5107.76 of the Revised Code, if a minor child was a member of an assistance group that received an erroneous payment but becomes a member of a new assistance group that does not include a minor head of household or adult who also was a member of the previous assistance group, a county agency shall not

take action against the new assistance group to recover the erroneous payment the previous assistance group received.

(N) IV-A/IV-D overpayments

- (1) Payments made directly to the assistance group on support orders established or modified prior to December 1, 1986, constitute a IV-D overpayment.
- (2) All support orders established or modified on or after December 1, 1986, ~~must~~shall be paid through the CSEA. Payments on such orders which are made directly to the assistance group are not considered child support payments, but are considered a gift to the assistance group. The overpayment created by the assistance group's retention of direct payments constitutes a IV-A overpayment.
- (3) In all cases, regardless of the date of the order, payments sent to the assistance group erroneously by the CSEA also constitute a IV-D overpayment.

Effective:

Five Year Review (FYR) Dates: 8/19/2019

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5107.05, 5107.76
Rule Amplifies: 5107.05, 5107.76
Prior Effective Dates: 07/01/1983, 07/11/1983, 11/11/1983, 07/15/1984,
10/01/1984 (Emer.), 12/27/1984, 01/01/1985 (Emer.),
04/01/1985, 04/01/1986, 11/01/1986, 10/01/1987,
04/01/1988 (Emer.), 06/10/1988, 06/30/1988,
07/01/1988 (Emer.), 09/25/1988, 05/01/1991 (Emer.),
07/11/1991, 09/01/1993, 09/01/1994, 06/11/1995,
10/01/1996 (Emer.), 12/15/1996, 05/01/1997,
12/30/1997, 07/01/1998 (Emer.), 09/29/1998,
10/01/1999, 12/01/2003, 02/01/2009, 05/01/2014,
10/01/2016