

## TO BE RESCINDED

5101:1-23-70

**OWF: erroneous payment.**

## (A) Definition of erroneous payment

- (1) An "erroneous payment" is defined in section 5107.76 of the Revised Code as a payment of cash assistance under Ohio works first (OWF) to assistance groups not eligible to receive the assistance Section 5107.02 of the Revised Code defines OWF as the temporary assistance for needy families (TANF) program established in title IV-A of the Social Security Act.

The provisions set forth in paragraphs (A) to (H) of 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. Paragraph (F) of this rule sets forth the provisions regarding overpayments made prior to July 1, 1998, under the former ADC and/or TANF program.

- (2) 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 (D) of this rule sets forth the provisions for calculating the erroneous payment.

(B) The prevention of erroneous payments in OWF is an important CDHS objective. To achieve this objective, the CDHS must:

- (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 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 agency level designation 5101:6 of the Administrative Code), which are contained in paragraph (D) of this rule.
- (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.

## (C) Assistance group responsibilities

- (1) The assistance group shall make an accurate and complete disclosure of all information necessary for a determination of eligibility and for computation of the correct amount of assistance.
- (2) Such disclosure shall be made at the time of initial application, at reapplication, and within ten days of the date that any change specifically identified as a reporting requirement in rule 5101:1-2-20 of the Administrative Code occurs.
- (3) 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 CDHS otherwise becomes aware of the change.
- (4) 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.

(D) Effective date of the budget adjustment

- (1) When the assistance group has a change that is identified in rule 5101:1-2-20 of the Administrative Code as a reporting requirement, the effective date of the budget adjustment must be the first day of the month following the month in which the change occurred. This applies for all reporting requirements listed in rule 5101:1-2-20 of the Administrative Code, whether the change is due to an income-related or non-income-related eligibility factor, except when the change is new employment of an assistance group member. While the new employment must be reported within ten days from the date the employment began, the budget adjustment does not become effective until the first day of the month following the month in which the assistance group receives earned income from the employment, consistent with the application of the earned income disregard set forth in rule 5101:1-23-20 of the Administrative Code and section 5107.10 of the Revised Code.
- (2) When the assistance group has a change which is not specifically listed in rule 5101:1-2-20 of the Administrative Code as a reporting requirement, and the change is not reported by the assistance group until the next reapplication (or between reapplication periods), the effective date of the budget adjustment is the first day of the month following the month in which the change was reported, or that the CDHS became aware of the change.

(E) General rule of eligibility

The provisions regarding the general rule of eligibility as set forth in paragraph (A)(3) of rule 5101:1-23-40 of the Administrative Code are applicable with respect to erroneous payments.

(F) Calculation of erroneous payment

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 erroneous payments, the agency must consider the federal Fair Labor Standards Act applicable requirements and/or any other federal labor laws which may apply. When the CDHS becomes aware of a change in the assistance group's circumstances, the CDHS 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 CDHS, or the CDHS became aware of the change.
- (3) The date on which the budget change should have been effective, in accordance with the provisions set forth in paragraph (D) of this rule.
- (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 section 5107.10 of the Revised Code and 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 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 CDHS 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 agency level designation 5101:6 of the Administrative Code.

- (d) Child support that is assigned to ODHS and which is paid through the CSEA must be included in the calculation of the erroneous payment. The CDHS 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 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 one of the two following methods:
  - (a) When the OWF entitlement is equal to or greater than the child support used to reimburse the assistance paid to the family, the collectible erroneous payment equals the OWF paid to the assistance group minus the OWF entitlement.
  - (b) When the OWF entitlement is less than the child support used to reimburse the assistance paid to the family, the

collectible erroneous payment must be reduced by the amount of the child support reimbursement in excess of the OWF entitlement.

(G) 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 CDHS 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 and in receipt of OWF benefits.
- (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 agency level designation 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.

(H) Offsetting erroneous payment against 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 agency level designation 5101:6 of the Administrative Code. There will be no delay in the issuance of the underpayment in this instance.

- (1) The CDHS 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 CDHS 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 CDHS 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.

(I) Recovery of erroneous payment 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 CDHS shall not take action against the new assistance group to recover the erroneous payment the previous assistance group received.

(J) Overpayments of ADC/TANF and/or OWF that occurred prior to July 1, 1998.

- (1) All OWF/TANF and/or OWF overpayments that occurred and were discovered prior to July 1, 1998, are subject to the provisions set forth in appendix "A" of this rule. Appendix "A" of this rule contains the Administrative Code rules which set forth the provisions regarding ADC overpayment identification, computation and collection that existed prior to July 1, 1998.
- (2) All ADC/TANF and/or OWF overpayments that occurred prior to July 1, 1998 and were discovered on or after July 1, 1998, shall be recovered in accordance with the provisions set forth in paragraphs (B) to (I) of this rule.
- (3) The CDHS 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.

(K) Work allowance overpayments that occurred prior to October 1, 1997

- (1) Work allowance overpayments that occurred and were discovered prior to October 1, 1997 are subject to the provisions set forth in appendix "B" of this rule. Appendix "B" of this rule contains the Administrative Code rules regarding collection of work allowance overpayments that existed prior to October 1, 1997.
- (2) Work allowance overpayments that occurred prior to October 1, 1997, and were discovered on or after October 1, 1997, shall be recovered in accordance with the provisions set forth in section 5107.76 of the Revised Code.

(L) 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 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:

R.C. 119.032 review dates: 09/16/2003

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 5107.05  
Rule Amplifies: 5107.05  
Prior Effective Dates: 7/1/83, 7/11/83, 11/11/83,  
7/15/84, 10/01/84 (Emer.),  
12/27/84, 01/01/85 (Emer.),  
04/01/85, 04/01/86, 11/01/86,  
10/01/87, 04/01/88 (Emer.),  
06/10/88, 06/30/88, 07/01/88  
(Emer.), 09/25/88, 05/01/91  
(Emer.), 07/11/91, 09/01/93,  
09/01/94, 06/11/95, 10/01/96  
(Emer.), 12/15/96, 05/01/97,  
12/30/97, 07/01/98 (Emer.),  
09/29/98, 10/01/99