



Overpayments:

**Aid to Families with Dependent Children (AFDC-FC) (Foster Care)
Kinship Guardianship Assistance Payments (Kin-GAP)
Adoption Assistance Program (AAP)**

A Fact Sheet Prepared by the Youth Law Center

What is an overpayment?

An overpayment is when the county says that you got more money than you were eligible to get. This can happen several ways. Sometimes you have to pay the overpayment back. Sometimes, you do not have to pay it back, but the agency can ask for a voluntary repayment. The county must give you a written notice that explains why there is an overpayment. Be sure to read the notice you get carefully. Check with an advocate to know your rights and obligations.

How do overpayments happen?

Overpayments can happen because of county error, or because of a mistake in reporting information to the county. Overpayments also can be caused by fraud.

Who collects the overpayments?

Counties collect overpayments.¹ In some cases, counties will have to pay back a part of what they collect to the federal government.

Are there times when an overpayment does not have to be repaid?

Yes, but the rules vary for different programs. See the program rules listed at the end of this factsheet. Even if you have to pay back the overpayment, you can ask the county to lower or cancel it. (Tell the worker about MPP 44-352.46² which talks about this). If you disagree that there is an overpayment *make sure you appeal in time* (see below). In some cases, the county will ask you to voluntarily repay the amount of the overpayment – you do not have to if you do not want to.

When should I ask for a hearing?

If you disagree with the overpayment or it would be difficult for you to repay it, you need to ask for a fair hearing. The notice may say the overpayment is your fault, and you think it is the county's fault. The notice may say that the child was gone for more than a certain number of days, and you disagree. You can ask for a hearing, and then decide to cancel it. If you agree that there has been an overpayment, but it would be difficult for you to repay it, you should also ask for a hearing.

If you get a notice of an overpayment, how long do you have to appeal?

You have 90 days from the date listed on the Notice of Action telling you about the overpayment to ask for the hearing. Appeal forms to request a hearing are located on the back of the Notice of Action.

¹ Cal. Welf. & Inst. Code § 11466.23

² CDSS Manual of Policy & Procedures (MPP) § 44-352.46.

Overpayments

How do I appeal and what do I say?

First, you should seek legal assistance and ask an advocate to review your case. The advocate can go over whether you should ask for a hearing and review with you any arguments you can make against the county's action.

In general, write a very basic statement about why you want a hearing. This should list the program (Foster Care, Kin-Gap or Adoption Assistance) and the issue (such as "it's not my fault," "I don't think I should have to pay it back"). Your request for a hearing is part of the hearing record, so if you state facts in the request, they will be part of your statement in the hearing.

AFDC-FC (Foster Care)

How do Foster Care overpayments happen?

A Foster Care overpayment happens when aid is paid for a foster child, but that child was not in the home or was not cared for by the foster parent. An overpayment does not occur when the child was temporarily absent from the provider's home.

How are Foster Care overpayments calculated?

The overpayment is calculated by taking the correct grant amount and subtracting that from the actual amount paid.³

Will a Foster Care Overpayment be collected?

Collection cannot be done against your will if:

- 1) the overpayment was the result of the county's administrative error;
- 2) neither the county nor foster parent was aware of information that made the foster child ineligible;
- 3) the foster parent did not have knowledge of the issue that caused the overpayment, and did not contribute to or cause the overpayment; or,
- 4) the cost of collecting is more than the amount of the overpayment.

If you asked for a hearing and had the benefits continue at the higher rate and then lose, you will have an overpayment. The county can collect this, even if the overpayment itself (not the aid paid pending portion) was for one of the reasons listed above.⁴

From whom can the overpayment be collected?

An overpayment can only be collected from the foster parent who got the benefit, not from a subsequent provider for the child. This means that if the child is no longer living with the foster parent who was overpaid, the new foster parent cannot have the benefits lowered to pay back the overpayment.⁵

Is there a time limit for when counties can collect overpayments?

A foster parent must receive notice that an overpayment happened within one year of when the county finds an overpayment. The overpayment may have happened more than a year before

³ Cal. Welf. & Inst. Code § 11466.24; MPP § 45-304.2 (The regulations in the Adoption Users Manual may also be found in Title 22 of the California Code of Regulations—22 Cal. Code Regs. §§ 35000 *et seq.*).

⁴ MPP § 45-304.1

⁵ MPP § 45-304.32

Overpayments

the notice because the clock starts when the county officially decides that there was an overpayment, known as the date of determination.⁶

How are overpayments collected?

A foster parent gets a written Notice of Action from the county. The notice must say what caused the overpayment. It must also say whose fault or mistake caused the overpayment. It must say whether the foster parent must repay or if repayment is voluntary. The notice gives foster care providers the option to enter a voluntary repayment agreement or (when the overpayment must be repaid) to get lower benefits to make up for the overpayment. If this agreement is not entered into, the county will start collection for cases when the overpayment must be repaid.

Voluntary Repayment Agreement

If the provider agrees to repay the overpayment, the county and provider sign a written agreement. The agreement will list the amount and schedule of payments.⁷ Foster parents should tell the county if their finances change and they need to get a lower payment plan.

Voluntary Grant Offset

A voluntary grant offset is when the foster care is lowered to pay back an overpayment. This can be done only when the foster parent is still caring for the child who was overpaid. The grant cannot be lowered more than 10% to collect the overpayment.⁸

Grant Adjustment

A grant adjustment is like an offset, except that the provider has no choice. The overpayment is collected by lowering the current benefits for the child who had been overpaid. The county cannot lower the grant more than 10% of the child's grant amount each month.⁹

Civil Judgment

If a grant offset is not available because the foster child is no longer in the home, and the foster parent does not agree to a voluntary repayment agreement, the county can consider legal action.¹⁰

Kin-GAP

The same rules apply to Kin-Gap as Foster Care. See the Foster Care rules above.¹¹

AAP

How do overpayments from AAP happen?

An adoptive parent can receive an overpayment of AAP benefits when:

- 1) the parent gets aid after a child becomes ineligible for assistance;
- 2) the adoptive parent has committed fraud in the application for, or reassessment of, AAP benefits; or
- 3) the AAP payment was more than the foster care payment that the child would have received if not adopted.¹²

⁶ MPP § 45-304.4

⁷ MPP § 45-305.2

⁸ MPP § 45-305.24

⁹ MPP § 45-305.3

¹⁰ MPP § 45-305.35

¹¹ CA Dept. of Social Services, All County Letter No. 11-86, Director Will Lightbourne (March 1, 2012).

Overpayments

How does a child become ineligible for assistance, leading to an overpayment?

A child is ineligible for AAP benefits:

- 1) upon turning 18 (in some cases 21, based on the child's mental or physical disability);
- 2) when the adoptive parent is no longer supporting the child; or
- 3) when the adoptive parent is no longer legally responsible for the child.¹³

How is the overpayment calculated?

The agency will compute the correct benefit amount that an adoptive parent should have received, and subtract this correct amount from the assistance actually paid. This difference is the overpayment amount.¹⁴ For information on how the correct benefit amount is collected, please see YLC factsheet "Adoption Assistance Program."¹⁵ An adoptive parent is not required to repay an overpayment when it was the county's administrative error.¹⁶

How are overpayments collected?

The county must send a written notice of the overpayment to the adoptive parent and the responsible public agency.¹⁷ The notice must state whose benefits were overpaid, the time period, the reason the overpayment occurred, and whether the parent must repay the overpayment.

Methods of recovery:

Grant Adjustment

The overpayment will be subtracted from the AAP payment. If the AAP payment is not enough to recover the amount of the overpayment, the remaining amount of the overpayment will be subtracted from the AAP payments in the following six months, or by the end of the child's eligibility, whichever comes first. The amount the AAP is lowered cannot cause the family's net (after tax) income to fall below the Aid to Families with Dependent Children Minimum Basic Standard of Adequate Care (See MPP Section 44-315.311).¹⁸

Civil Judgment

If the adoptive parent is no longer receiving aid and does not agree to repay the amount owed, the county can consider legal action.

¹² 22 CCR 35344

¹³ Cal. Welf. & Inst. Code § 16121.05(a); 22 CCR 35344

¹⁴ 22 CCR 35344

¹⁵ See, 22 CCR 35333.

¹⁶ 22 CCR 35344

¹⁷ MPP § 45-806

¹⁸ MPP § 45-808.21