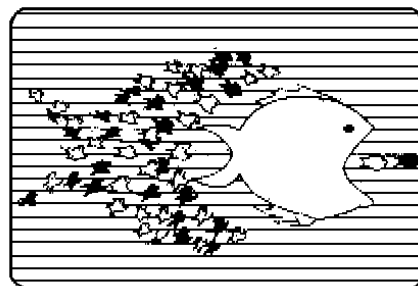


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## Welfare Overpayments

Tips for Advocates dealing with alleged overpayments  
to the BC Ministry of Housing and Social Development

November, 2008

### Resources and Assistance

The Ministry of Housing and Social Development (MHSD) legislation, policies and procedures are available through the MHSD Online Resource. The section of the Online Resource that covers a range of topics related to overpayments is found at:

[http://www.gov.bc.ca/meia/online\\_resource/verification\\_and\\_eligibility/rec/policy.html](http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/rec/policy.html)

Some overpayment cases can be complicated. If you are assisting a client to deal with an alleged welfare overpayment and are not sure what to do, you can post your question to the Povnet Welfare-BC list. You can also call the LawLINE Community Advocate Support Line, or lawyers with the BC Public Interest Advocacy Centre at 604-687-3063 and the Community Legal Assistance Society at 604-685-3425.

Legal Services Society also publishes "Your Welfare Rights – A Guide to BC Employment and Assistance, which includes a section called "When the Ministry says you owe them money", available at

[http://www.lss.bc.ca/publications/pub.aspx?p\\_id=167](http://www.lss.bc.ca/publications/pub.aspx?p_id=167)

### Overpayments and MHSD investigations

If MHSD overpays your client or gives her a benefit that she was not entitled to, this is called an **overpayment**. Overpayments can arise in several situations, for example where MHSD says that a client has not declared income or assets, or

knowingly gave MHSD false or misleading information to get benefits that she was not entitled to.

If MHSD believes that a client may have an overpayment, MHSD staff are to send a **letter to the client** requesting an interview to discuss the findings of the review. The letter *must* advise the client of the following:

- the role of the staff member
- the purpose of the review
- what is being reviewed
- a summary of the evidence
- the purpose of the interview
- the preliminary findings
- the amount of overpayment and how it was calculated
- possible consequences
- an appropriate timeframe for written response or personal interview
- that the client may be accompanied at the interview by an advocate or other person of their choice

If your client decides to attend the meeting, let her know that if she does not feel comfortable at the meeting, she has the right to leave.

The approach you take, or the consequences MHSD may want to impose on your client, could be quite different depending on whether your client agrees with MHSD or disputes their claims. In either situation, it is best to review the information carefully before deciding what to do.

MHSD may give your client an **Overpayment Notification Form** and ask your client to sign it. This form is used by MHSD to:

- notify clients that they have been determined to have received assistance for which they were not eligible
- advise them that they are liable to repay the overpayment and that a minimum of \$10 per calendar month will be deducted from future assistance until the debt is paid
- inform them of their right to reconsideration of the ministry decision

Your client does not have to sign the Overpayment Notification Form if she disagrees with MHSD about the overpayment.

If your client does not agree that there is an overpayment or with the amount of the overpayment, she must be given an **Overpayment Chart**, and supporting documents and advised of her right to request a reconsideration. The Overpayment Chart shows clients how the overpayment was calculated.

Overpayments involving amounts greater than the rate of three months' assistance for the client's family unit must not be dealt with by EAWs and should be referred to **Prevention and Loss Management Services** (PLMS). PLMS investigation policies can be found at:

[http://www.gov.bc.ca/meia/online\\_resource/verification\\_and\\_eligibility/lossman/policy.html](http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/lossman/policy.html)

**Protect your client when MHSD is investigating an overpayment.** Keep copies of all letters or other documents that are given to MHSD, keep a written record of any conversations with MHSD, and keep copies of letters and documents that MHSD provides.

## Overpayments and living arrangements

For the purpose of determining eligibility for income assistance, disability assistance or hardship assistance, a **family unit** is defined by MHSD as either of the following:

- married persons
- persons living in a marriage-like relationship with or without dependent children
- sole persons with or without dependent children

When two people (over 19 and excluding dependent children) live together and there is no acknowledgement that a dependency, spousal, or marriage-like relationship exists, MHSD will assess the nature of the relationship to determine if a **marriage-like relationship** exists, using the following factors:

1. Two people who reside together are spouses of each other for welfare purposes if they have resided together for at least
  - the previous 3 consecutive months, or
  - 9 of the previous 12 months, AND
2. MHSD is satisfied that the relationship demonstrates
  - financial dependence or interdependence, and
  - social and familial interdependence,

that is consistent with a marriage-like relationship.

If your client believes that she is not in a marriage-like relationship, put together documents that explain why your client and her housemate do not meet the requirements for a marriage-like relationship that are set out above.

## Getting all of the information about the alleged overpayment

If a client approaches you about a welfare overpayment, ask her to bring in all documents that she has related to the overpayment, and ask her to explain what has happened.

If MHSD has not provided your client with a letter explaining why they think there is an overpayment, ask them for one, and for an Overpayment Chart and all other documents supporting MHSD's view that there is an overpayment.

If you think that there might be information in your client's MHSD file that has not been disclosed to your client, make a **request under the Freedom of Information and Protection of Privacy Act** for your client's MHSD file. You can do this by filling out the Request for Records form found at: [http://www.cio.gov.bc.ca/legislation/best\\_practices/privacy/access\\_request\\_form.pdf](http://www.cio.gov.bc.ca/legislation/best_practices/privacy/access_request_form.pdf) and asking for all records related to the alleged welfare overpayment.

Send the completed form to:

**Ministry of Housing and Social Development**  
Information, Privacy and Records Services  
Records and Forms Services  
PO Box 9972 Stn Prov Govt  
Victoria, BC V8W 9R5  
Ph: 250-387-3128  
Fax: 250 387-3311

## Repayment Agreements

If your client agrees there was a mistake and that she owes MHSD money, she may be asked to sign a **Repayment Agreement**. In a Repayment Agreement, your client acknowledges that she owes some money to MHSD. By signing a Repayment Agreement, your client is giving MHSD permission to deduct an amount from her welfare cheque each month to repay the debt.

Your client can arrange to have as little as \$10 per month taken out of her income assistance cheque in order to repay the overpayment.

Advise your client not to sign a Repayment Agreement if:

- she does not agree that she owes MHSD money.
- she is not sure whether or not she owes MHSD money.

- she is uncertain about what the agreement means, or what effect it will have.

## Appealing the Ministry's decision

In some circumstances, your client can ask MHSD to change the decision they have made about a welfare overpayment.

The first step in any appeal about a welfare benefit is called a **reconsideration request**. If your client disagrees with the reconsideration decision, she may **appeal** that decision to the **Employment and Assistance Appeal Tribunal**. In some cases, she may also ask a court to **judicially review** an overpayment-related decision that MHSD has made about her.

It is very important to act quickly if your client disagrees with any decision MHSD has made about her benefits. The **time limits** for reconsiderations and appeals are very strict. If she misses the time limits, she will not be able to make her appeal.

## Disputes with MHSD about overpayments - civil court

If MHSD believes that your client has received an overpayment but your client disagrees, MHSD may sue your client in either **Small Claims Court** or **BC Supreme Court**. If the case goes to one of these courts, MHSD will have to prove the existence of the overpayment to a judge. If MHSD succeeds in proving the overpayment, the judge may order your client to pay the money back.

If MHSD gets a judgment against your client in civil court, MHSD can choose whether or not to apply **sanctions** (see heading below). If MHSD applies any of the sanctions listed, your client can make a reconsideration request to MHSD. If your client disagrees with the reconsideration decision, she can appeal that decision to the Employment and Assistance Appeal Tribunal.

## Offences and criminal fraud

In addition to the actions MHSD can take to get recover an overpayment, if your client knowingly gives false or misleading information to MHSD to get benefits that she is not entitled to, she may be charged with an **offence** under the Employment and Assistance Act. In serious cases, she may be charged with **fraud** under the Criminal Code of Canada.

If MHSD says they want to have your client charged with an offence or criminal fraud, get legal help right away. In some circumstances, your client may be able to get a legal aid lawyer.

Remember that there are a lot of steps between MHSD saying they suspect fraud and proving their allegations.

If your client is convicted of criminal fraud or under the Employment and Assistance Act, she could face some of the sanctions described below.

## Sanctions

In certain circumstances, MHSD can apply **sanctions** to your client because of an overpayment. Sanctions mean that your client will either be ineligible for benefits, or will face a benefits reduction, for a certain period of time.

When applying sanctions, MHSD must use discretion in situations where there are legitimate mitigating circumstances or the non-compliance is a one-time occurrence. Sanctions are **not** to be applied in situations where non-compliance is beyond the client's control.

The type of sanctions imposed on your client will depend on a variety of factors, including whether there is a judgment against your client, and what type of family unit she lives in. Sanctions will last for different periods of time, depending on your client's situation.

MHSD's policy about sanctions can be found at:

[http://www.gov.bc.ca/meia/online\\_resource/verification\\_and\\_eligibility/sanctions/policy.html](http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/sanctions/policy.html)

Below are two tables that outline sanctions that can be imposed based on issues involving overpayments:

**Table: Sanctions for inaccurate or incomplete reporting**

Types of Sanctions	Consequence	Period of Time
Failure to accurately or completely report (on the Monthly Report EIA0081) any income, assets or circumstances that affect the eligibility of the family unit that result in an overpayment.	The amount of assistance the family unit is eligible to receive is reduced by \$25.  Note: The overpayment recovery amount is deducted from the reduced (sanctioned) amount.	1st occurrence – 3 months  2nd occurrence – 6 months  3rd occurrence – 12 months  Each subsequent occurrence – 12 months

**Table: PLMS Imposed Sanctions**

Types of Sanctions	Consequence	Period of Time
Conviction under Criminal Code for Fraud in respect of the BCEA legislation	<p>Single persons or couples without dependants where both are subject to a sanction for any reason under this section of the Act are ineligible.</p> <p>Families with a dependent child are subject to a reduction as follows:</p> <p>\$100 per month for a single parent</p> <p>\$100 per month for a couple with dependant children if only one parent is sanctioned.</p> <p>\$200 a month for a couple with dependent children if both parents are sanctioned.</p> <p>Couples without dependent children are subject to a \$300 reduction per month if only one person is subject to a sanction.</p>	Lifetime of person
Conviction under BCEA legislation	Same as above	<p>1st occurrence – 1 year</p> <p>2nd occurrence – 2 years</p> <p>3rd occurrence – Lifetime</p>
Civil Court judgment under the BCEA legislation	Same as above, except that the decision to impose the sanction is discretionary.	<p>1st occurrence – 3 months</p> <p>2nd occurrence – 6 months</p> <p>3rd and subsequent occurrence – 12 months</p>
Conviction under former legislation or	Family unit is ineligible	3 months

Criminal Code for fraud in respect an offence charged wholly under former legislation		
Civil Court judgment under former legislation	Family unit is ineligible. The decision to impose the sanction is discretionary	3 months