

Part 6 Administrative Determination of Overpayment Act

35A-3-601 Title.

This part is known as the "Administrative Determination of Overpayments Act."

Amended by Chapter 221, 2015 General Session

35A-3-603 Civil liability for overpayment.

- (1) A provider, recipient, or other person who receives an overpayment shall, regardless of fault, return the overpayment or repay its value to the department immediately:
 - (a) upon receiving written notice of the overpayment from the department; or
 - (b) upon discovering the overpayment, if that occurs before receiving notice.
- (2)
 - (a) Except as provided under Subsection (2)(b), interest on the unreturned balance of the overpayment shall accrue at the rate of 1% a month.
 - (b) If the overpayment was not the fault of the person receiving it, that person is not liable for interest on the unreturned balance.
 - (c) In accordance with federal law and rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an overpayment may be recovered through deductions from cash assistance, General Assistance, SNAP benefits, other cash-related assistance provided to a recipient under this chapter, or other means provided by federal law.
- (3) A person who knowingly assists a recipient, provider, or other person in obtaining an overpayment is jointly and severally liable for the overpayment.
- (4)
 - (a) In proving civil liability for overpayment under this section, or Section 35A-3-605, when fault is alleged, the department shall prove by clear and convincing evidence that the overpayment was obtained intentionally, knowingly, recklessly as "intentionally, knowingly, and recklessly" are defined in Section 76-2-103, by false statement, misrepresentation, impersonation, or other fraudulent means, including committing any of the acts or omissions described in Sections 76-8-1203, 76-8-1204, or 76-8-1205.
 - (b) If fault is established under Subsection (4)(a), Section 35A-3-605, or Title 76, Chapter 8, Part 12, Public Assistance Fraud, a person who obtained or helped another obtain an overpayment is subject to:
 - (i) a civil penalty of 10% of the amount of the overpayment; and
 - (ii) disqualification from receiving cash assistance from the Family Employment Program created in Section 35A-3-302 and the General Assistance program under Section 35A-3-401, if the overpayment was obtained from either of those programs, for the period described in Subsection (4)(c); or
 - (iii) disqualification from SNAP, if the overpayment was received from SNAP, for the period described in Subsection (4)(c).
 - (c) Unless otherwise provided by federal law, the period of a disqualification under Subsection (4)(b)(ii) and (iii) is for:
 - (i) 12 months for a first offense;
 - (ii) 24 months for a second offense; and
 - (iii) permanently for a third offense.

- (5)
 - (a) Except as provided under Subsection (5)(b), if an action is filed, the department may recover, in addition to the principal sum plus interest, reasonable attorney fees and costs.
 - (b) If the repayment obligation arose from an administrative error by the department, the department may not recover attorney fees and costs.
- (6) If a court finds that funds or benefits were secured, in whole or part, by fraud by the person from whom repayment is sought, the court shall assess an additional sum as considered appropriate as punitive damages up to the amount of repayment being sought.
- (7) A criminal action for public assistance fraud is governed by Title 76, Chapter 8, Part 12, Public Assistance Fraud.
- (8) Jurisdiction over benefits is continuous.
- (9) This chapter does not preclude the Department of Health from carrying out its responsibilities under Title 26, Chapter 19, Medical Benefits Recovery Act, and Chapter 20, Utah False Claims Act.

Amended by Chapter 221, 2015 General Session

35A-3-604 Obligor presumed to have notice of department's rights -- Authority to administer oaths, issue subpoenas, and compel witnesses and production of documents -- Recovery of attorney fees, costs, and interest -- Rulemaking authority -- Administrative procedures.

- (1) An obligor is presumed to have received notice of the rights of the department under this part upon engaging in this state in any of the acts described in Subsections 35A-3-603(3) and (4) or Section 76-8-1203, 76-8-1204, or 76-8-1205.
- (2) For the purposes of this part, the department may administer oaths and certify official acts, issue subpoenas, and compel witnesses and the production of business records, documents, and evidence.
- (3)
 - (a) Except when an overpayment results from administrative error, the department may recover from the obligor:
 - (i) reasonable attorneys' fees;
 - (ii) costs incurred in pursuing administrative remedies under this part; and
 - (iii) interest at the rate of 1% a month accruing from the date an administrative or judicial order is issued determining the amount due under this part.
 - (b) The department may recover interest, attorney fees, and costs, if notice of the assessment has been included in a notice of agency action issued in compliance with Title 63G, Chapter 4, Administrative Procedures Act.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make, amend, and enforce rules to carry out the provisions of this part.
- (5) Service of all notices and orders under this part shall comply with:
 - (a) Title 63G, Chapter 4, Administrative Procedures Act;
 - (b) Utah Rules of Civil Procedure; or
 - (c) rules made by the department under this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that meet standards required by due process.

Amended by Chapter 221, 2015 General Session

35A-3-605 Issuance or modification of administrative order -- Voluntary acknowledgment of overpayment -- Court orders supersede administrative orders -- Notification requirement.

- (1)
 - (a) Through an adjudicative proceeding, the department may issue or modify an administrative order that:
 - (i) determines whether an overpayment was made, the amount of the overpayment, and whether benefits were obtained by an intentional program violation;
 - (ii) reduces the overpayment determined by an administrative judgment; or
 - (iii) renews an administrative judgment.
 - (b) The department shall commence an adjudicative proceeding to renew a judgment by serving notice of agency action on the obligor before the judgment is barred by the applicable statute of limitations.
- (2) The department may accept voluntary acknowledgment of an overpayment obligation and enter into stipulated agreements to issue orders and judgments.
- (3)
 - (a) A provision of an administrative order is enforceable against an obligor, unless it is in direct conflict with or is superseded by a provision of a court order.
 - (b) To the extent of any conflict, the court order governs.
- (4) After being properly served with a notice of agency action under this part, an obligor shall notify the department of any subsequent change of address or employment.

Amended by Chapter 221, 2015 General Session

35A-3-606 Docketing abstract of final administrative order -- Real property and personal property liens -- Effect of order -- Execution.

- (1)
 - (a) An abstract of a final administrative order may be docketed in the district court of any county in the state.
 - (b) The time of receipt of the abstract shall be noted by the clerk on the abstract and entered in the docket.
- (2)
 - (a) From the time the abstract is docketed in the judgment docket of a district court, any administrative judgment included in the order abstracted constitutes a lien upon the real property of the obligor situated in that county.
 - (b) Unless satisfied, the lien is for a period of eight years from the date the order is entered.
- (3) The final administrative order fixing the liability of the obligor shall have the same effect as any other money judgment entered in a district court.
- (4)
 - (a) Except as provided under Subsection (4)(b), an attachment, garnishment, or execution on a judgment included in or accruing under an administrative order filed and docketed under this section shall be in the same manner and with the same effect as an attachment, garnishment, or execution on a judgment of a district court.
 - (b) A writ of garnishment on earnings shall continue to operate and require the garnishee to withhold the nonexempt portion of the earnings at each succeeding earnings disbursement interval until released in writing by the department or by court order.
- (5) The lien and enforcement remedies provided by this section are in addition to any other lien or remedy provided by law.

Amended by Chapter 221, 2015 General Session

35A-3-607 Property subject to execution or lien -- Restriction on transfer or conveyance -- Release of excess amount above liability to obligor.

- (1)
 - (a) Unless released under Subsection (1)(b), after receiving notice that an abstract has been docketed and a lien established under this part, a person in possession of property that may be subject to execution or lien may not pay over, release, sell, transfer, encumber, or convey that property to a person other than the department.
 - (b) The restrictions under Subsection (1)(a) do not apply if the person in possession first receives a release or waiver from the department, or a court order releasing the lien or stating that the liability does not exist or has been satisfied.
- (2) If a person has in his possession earnings, deposits, accounts, or balances owed to the obligor in excess of \$100 over the amount of the liability claimed by the department, the person may, without liability under this part, release the excess to the obligor.

Amended by Chapter 221, 2015 General Session

35A-3-608 Schedule of payments to be paid upon liability -- Establishment -- Cancellation.

- (1) The department may at any time:
 - (a) consistent with the income, earning capacity, and resources of the obligor, set or reset the level and schedule of payments to be paid upon the liability; and
 - (b) cancel the schedule of payments and demand immediate payment in full.
- (2) The department may recover an overpayment through deductions from cash assistance or SNAP benefits under Section 35A-3-603.

Amended by Chapter 221, 2015 General Session

35A-3-609 Statute of limitation -- Enforcement of lien or order.

The department may not take action for the enforcement of an order or lien issued under this part unless the action is commenced within eight years of the date of the order.

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35A-3-610 Legal representation at hearings.

- (1) A party may be represented by legal counsel at a hearing held under this part.
- (2) At the request of the department, the attorney general or the county attorney shall represent the department in a proceeding commenced under this part.

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