

Chapter 26: WAIVERS OF REPAYMENT OF ERRONEOUSLY PAID BENEFITS
(OVERPAYMENTS)

1. ~~Notice.~~

~~Requests for Waiver of Repayment of Erroneously Paid Benefits. Whenever a decision of the commission or the Division of Administrative Hearings or a deputy establishes that amounts have been erroneously paid to a claimant, such decision shall include a notice to the claimant of his or her right to request waiver of repayment of the erroneously paid benefits. Requests for such waiver shall be made to the commission on forms prescribed by the commission. A decision on the request shall be made in accordance with 26 M.R.S.A. section 1051(5) and this chapter.~~

2. ~~Definitions.~~

For purposes of this subsection and of subsection 5 of section 1051 of the Employment Security Law, the following term shall have the following meanings:

- A. "Bureau" means the Bureau of Unemployment Compensation, which administers this Rule pursuant to 26 M.R.S. § 1082(1).
- B. "Amounts erroneously paid" means benefit payments made to a claimant to which, as a result of a later determination, reconsidered determination, redetermination, or decision by a deputy, the Division of Administrative Hearings, the commission, or a court, the claimant was not eligible or qualified for benefits.
- ~~B. "Without fault on his part" means that the claimant, in applying for benefits, made no misrepresentations or omissions as to any information used to determine his or her eligibility or qualification for benefits. Acceptance of a payment which the claimant knew, or could have been expected to know, was incorrect will constitute fault on the claimant's part. In determining whether a claimant is at fault, the commission shall consider all pertinent circumstances, including the claimant's age and intelligence as well as any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language).~~
- ~~C. "Against equity and good conscience" and "defeat the purpose of benefits otherwise authorized" shall be determined in the discretion of the commission and shall require consideration of the totality of the circumstances surrounding the~~

~~erroneously paid amounts as well as the claimant's personal circumstances. Factors to be considered shall include, but are not limited to the following:~~

- ~~1. The claimant's general health and earning capacity;~~
- ~~2. Whether other individuals depend or rely upon the claimant for support and sustenance;~~
- ~~3. The claimant's employment status at the time of the request;~~
- ~~4. The claimant's current family income and reasonable expenses;~~
- ~~5. The claimant's assets, liquid and otherwise. Certain assets, such as a home, a car, basic household furnishings and other basic necessities will be excluded from consideration ;~~
- ~~6. The existing long and short term debts of the claimant and his or her family;~~
- ~~7. Any extraordinary medical or other expenses of the claimant and his or her family;~~
- ~~8. Whether the claimant has received unemployment benefits as a windfall, for example, where a back pay award is later received;~~
- ~~9. The notice, if any, and the clarity of such notice provided by the bureau to the claimant of the possibility of a later determination of erroneously paid amounts. This factor is intended to ensure that adequate notice be given, not to penalize a claimant for using unemployment benefits when they are received. For example, the Commission would consider the fact that adequate notice was not provided in determining to grant a waiver but would not deny a waiver solely because the claimant relied on the receipt of benefits with notice that to do so might result in an overpayment that must be repaid in the future.~~

2. Notice

Requests for Waiver of Repayment of Erroneously Paid Benefits. Whenever a decision of the Unemployment Insurance Commission ("Commission") or the Division of Administrative Hearings or a deputy establishes that amounts have been erroneously paid to a claimant, such decision shall include a notice to the claimant of his or her right to request waiver of repayment of the erroneously paid benefits. The notice shall include instructions as to the method of requesting the waiver.

3. Criteria for granting a waiver of repayment of amounts erroneously paid.

The Bureau may grant a waiver of repayment of amounts erroneously paid when two criteria are found: 1. the claimant is without fault and 2. when such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

4. Criteria for determining whether the overpayment is due to the fault of the claimant, thus disqualifying the claimant from a waiver of overpayment.
 - A. Acceptance of a payment which the claimant knew, or could have been expected to know, was incorrect will constitute fault on the claimant's part. In determining whether a claimant is at fault, the Bureau shall consider all pertinent circumstances, including the claimant's age and intelligence as well as any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language).
 - B. Unless individual circumstances show otherwise, the following will be considered to be fault:
 1. claimant made false or misleading statements;
 2. claimant failed to be able and available without compelling reasons beyond the claimant's control;
 3. claimant failed to report earnings;
 4. claimant failed to fulfil the work search requirement;
 5. claimant failed to attend WPRS, RESEA, REA or other required or mandated reemployment services; or
 6. claimant refused an offer of suitable work without reasonable basis.
 - C. A claimant who is found to have committed unemployment fraud or misrepresentation within the meaning of 26 M.R.S. § 1193(6) is not eligible for a waiver of repayment of the overpayment or any penalty imposed by 26 M.R.S. § 1051(4).
5. Criteria for determining whether recovery of the overpayment would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.
 - A. The Bureau has the discretion to find that requiring repayment of an overpayment to be against equity and good conscience after considering the totality the circumstances surrounding the overpayment.
 - B. The Bureau may find that repayment would be against equity and good conscience because recovery of the overpayment would cause financial hardship to the claimant considering factors to be including, but are not limited to, the income of the claimant, the claimant's household income, the claimant's expenses and debts, and liquid assets of the claimant.

- C. The Bureau may presume financial hardship in the following instances:
1. if the claimant self-attests that they are currently recipients of SNAP, TANF, LIHeap, MaineCare (includes having a dependent child on MaineCare), SSI or SSDI.
 2. if the claimant's income is below 185% of the Federal Poverty level.
- D. The Bureau will generally consider collection of an overpayment due to agency error, in circumstances in which the claimant is fully without fault, to be against equity and good conscience, regardless of current financial circumstances.
- E. If the amount of the overpayment was increased due to significant delay by the Bureau in processing the decision, the Bureau may waive all or a portion of the overpayment due to such delay.

3 6. Interested Parties.

The claimant requesting waiver of repayment of amounts erroneously paid shall be the only interested party to the waiver determination.

4 7. Application for Waiver of Overpayment.

- A. At any time that the Bureau issues a Deputy Decision that creates an overpayment of benefits, the adjudicator may issue a waiver of repayment of such overpayments at the same time if the conditions set forth herein are met. The Bureau is not required to undertake this review.
- B. A claimant may request a waiver of an overpayment once a decision is final by submitting a waiver request to the Bureau through the form or mechanism set forth in the Notice in Section 2. A waiver request will not be considered if a decision is on appeal and the overpayment is not yet final.
- C. There is no deadline for request of a waiver of repayment.
- D. A claimant who has been denied a waiver may submit a subsequent waiver request, if circumstances change.

~~A claimant may request a waiver under this subsection, in writing, after the decision establishing or affirming amounts erroneously paid has become final. Upon such written request, the commission shall furnish to the claimant a form to be completed with the claimant's personal, employment, and financial information. Such form shall be completed and returned to the commission within 14 (fourteen) days after it was sent to the claimant at the address provided by the claimant in the written request for waiver.~~

~~This period may be extended for an additional 30 (thirty) days for good cause. Failure to return the completed form shall result in a commission decision denying the waiver request.~~

~~5. Hearing.~~

~~The commission, in its discretion, may conduct a hearing at which additional information in support of the waiver request may be presented.~~

~~6-8.~~ Decision.

The ~~commission~~Bureau, after considering the claimant's request for waiver, shall issue a written decision setting forth the reasons for its decision which shall be sent to the claimant or to the claimant's representative of record. The ~~commission's~~Bureau's decision shall be one of the following alternatives:

- A. Approve waiver of repayment of the entire amount erroneously paid;
- B. Approve waiver of a specified portion of the erroneously paid amount, with the balance not so waived to be collected under one of the following remaining alternatives; or
- C. Deny waiver of all or part of the repayment, and require repayment via:
 - 1. Deduction of future benefits payments to the claimant in the amount specified in section 1051 of the Employment Security Law; or
 - 2. Other methods of collection available to the commissioner as set forth in subsections 6 and 8 of section 1051 of the Employment Security Law.

9. Future Benefit Deductions.

- A. The ~~Commission~~Bureau, in accordance with 26 M.R.S.A. section 1051(5) and ~~Chapter 26(6)(C)(1) this Rule above~~may determine, upon a claimant's request for a waiver, that collection of an erroneous payment of benefits may be by offset of future benefits. Such a determination will prevent further collection of the overpayment under 26 M.R.S.A. section 1051(6) and 36 M.R.S.A. Chapter 831 relating to income tax setoffs. It will not, however, prevent further collection under 26 M.R.S.A. section 1051(8) relating to the setoff of lottery winnings.
- ~~B. Pursuant to 26 M.R.S.A. section 1051(5), the Commission authorizes the Commissioner or his or her designees to withhold from future benefits amounts erroneously paid to a claimant as unemployment benefits in accordance with the following procedures:~~

1. ~~Final Agency Action. No recovery may be attempted under this delegation of authority until the determination of the erroneous payment is final as to fact and law.~~
2. ~~Cessation of Withholding of Benefits Pending Waiver Applications. Upon a claimant's filing of a written request for the waiver of repayment of amounts erroneously paid to the claimant as unemployment benefits, withholding from the claimant's benefits must cease as of the date of the filing of the waiver application pending the Commission's decision on the application and the expiration of all appeal rights from that decision.~~
3. ~~Limitation on Recovery. Deduction from benefits that may be or become payable under this delegation of authority shall be limited to the amount specified in the Employment Security Law of any weekly benefit payment otherwise due the claimant. This delegation of authority does not affect deductions, recoveries or repayments under section 1051(4) of the Law, which covers nondisclosure or misrepresentation to receive benefits.~~
4. ~~Notice to Claimant. No recovery may be attempted under this delegation of authority until the claimant has been notified of the opportunity to apply for a waiver of repayment under section 1051(5) of the Law.~~

10. Right of Appeal.

A claimant may appeal a denial of a waiver of repayment of erroneous payment to the Division of Administrative Hearings and to the Unemployment Insurance Commission in accordance with the procedure and deadlines for appealing a benefit determination, in accordance with 26 M.R.S. 1194 (2),(3) and (5). A denial of a waiver of repayment of erroneous payment will include notice of the right to appeal and the mechanism for such appeal. A claimant does not have the right to appeal a decision by the bureau not to grant a waiver at the time of the issuance of the Deputy Decision creating the waiver in accordance with Section 7.A. above, in the absence of a request for a waiver by the claimant.

STATUTORY AUTHORITY: 26 MRSA § 1082(12)

EFFECTIVE DATE:
May 30, 2000

NON-SUBSTANTIVE CORRECTION:
August 29, 2001 - Sec. 2(C)(7)