

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

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1. 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.

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. Such notice will also be included in demands for repayments of erroneously paid benefits.

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 should reasonably 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). A good faith mistake of fact by the claimant in the filing of a claim for benefits that results in an overpayment of benefits does not constitute fault.
- 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, Heap, 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.

6. Interested Parties.

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

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.

8. Decision.

The 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 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 Bureau, in accordance with 26 M.R.S.A. section 1051(5) and this Rule 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.
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.

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STATUTORY AUTHORITY: 26 MRSA § 1082(1)

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May 30, 2000

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