# 10-144 DEPARTMENT OF HUMAN SERVICES

Chapter 400: FRAUD, INVESTIGATION AND RECOVERY MANUAL

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Chapter 1 - Definitions

The following words, phrases, and terms, unless the context suggests otherwise, have the following meanings:

Assistance unit. The person or persons whose need the department considers to determine eligibility for program benefits.

Court Order. An order, decision, judgment or other entry of a court of this State for the repayment of an overpayment.

Decision. A written decision under 22 MRSA 3813(5), 22 MRSA 3816(5), 22 MRSA 3822(4), or chapter 4, section 6 of this Manual.

Department. The Maine Department of Human Services.

Fraud, Investigation and Recovery. The Fraud Investigation Unit of the Department of Human Services, also called FIR.

Hearing officer. A person acting as presiding officer at a hearing under 22 MRSA 3813(4), 22 MRSA 3816(4), 22 MRSA 3822(3), or chapter 4, section 5 of this Manual.

BFI. The Bureau of Family Independence of the Department of Human Services.

Notice to repay. A notice of an overpayment, not recouped, repaid or otherwise recovered, sent to an obligor who no longer gets benefits from the program that issued the overpayment.

Obligor. A person who receives an overpayment, or an adult member of an assistance unit that receives an overpayment.

Overpayment. For these rules only, program benefits received by a person or assistance unit that exceed the amount of program benefits for which the person or assistance unit is eligible when the department or a court has decided that the benefits were received because of an intentional program violation, an unintentional error by the individual or household, or an error by the department. This includes any overpayment made before or after the effective date of this rule.

Pre-offset notice. The notice concerning tax refund offset described in chapter 4, section 3 of this Manual.

Proceeding. A general term that refers to an action involving a notice to repay, income withholding order, certificate of lien, or state income tax refund.

Program benefits. Money payments or food coupons issued by the department in response to an application for benefits made to Aid to Families with Dependent Children (AFDC), Temporary Assistance for Needy Families (TANF), or the Food Stamp program.

State. The State of Maine.

Chapter 2 - Collection of Overpayments

1. Notice to repay (22 MRSA 3813)

A. Repayment. Fraud, Investigation and Recovery (FIR) may serve a notice to repay upon a person or other member of an assistance unit who received an overpayment that has not been recovered by the department, but only if the person no longer receives benefits from the program that issued the overpayment.

B. Notice. A notice to repay must state all the following.

(1) The name of the obligor.

(2) The amount of the overpayment, when the overpayment was made and when it was established.

(3) The name of the benefit program that issued the overpayment.

(4) The amount of the overpayment that has not been recovered by the department.

(5) The obligor may complete an assignment of earnings, or other agreement acceptable to FIR, to repay that part of the overpayment that has not been recovered.

(6) If the overpayment is not repaid within 21 days of when the notice is served, FIR may collect the amount owed by income withholding, filing liens against the obligor's real and personal property for the amount owed, and may report the obligor and the amount owed to a consumer credit reporting agency.

(7) The obligor has the right to ask for a hearing within 21 days of service of the notice to repay. If the department receives a timely request for hearing, collection action stops until the department issues written decision on the obligor's appeal.

C. Collection action. If an obligor who is served a notice to repay does not ask for a hearing within the time allowed, FIR may use the remedies in this chapter to collect the amount of the overpayment that has not been recovered.

D. Request for hearing. An obligor may ask for a hearing within 21 days of service of a notice to repay. A request for hearing must be in writing. If mailed to the department, the request must be postmarked not later than 21 days after the date of service. If delivered to an office of the department, the request must be delivered not later than 21 days after the date of service.

E. Hearing. At hearing, the obligor may contest the accuracy of the notice to repay. The obligor also may contest whether FIR followed the rules in this chapter. The obligor may not contest the amount of the overpayment if the obligor had a previous opportunity to contest it. The obligor also may not contest the amount of the overpayment if it was established by judicial or administrative action, by agreement of the obligor and the department or by operation of law. The obligor may raise the issue of credits, including underpayments, that would reduce the amount owed. The department shall conduct the hearing as provided by 5 MRSA 9051-9064.

F. Jurisdiction of the hearing officer. The hearing officer has jurisdiction to decide:

(1) The accuracy of the notice to repay.

(2) If the notice was issued according to the requirements of this chapter.

(3) If the obligor is entitled to credit that reduces the amount of the overpayment.

The hearing officer shall decide these issues only. The amount of an overpayment established by BFI cannot be reconsidered at the hearing.

G. Decision after hearing. The department shall issue a written decision without undue delay. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must include a finding of the amount of the overpayment that has not been recovered by the department. The decision must tell the obligor of the right to appeal to Superior Court within 30 days of the date of the decision (Rule 80C, Maine Rules of Civil Procedure). The department shall send an attested copy of the decision to the obligor. The decision must be sent by regular mail to the obligor's most recent address of record. Thirty days after the decision is made, FIR may use any remedies in this chapter to collect any unpaid amount due under the decision.

H. Stay. If the obligor timely requests a hearing to contest a notice to repay, FIR shall stop all collection action under these rules until there is a written decision on the obligor's appeal. If the obligor withdraws the hearing request or waives the right to hearing, the stay ends.

I. Service. FIR may serve a notice to repay by certified mail, return receipt requested, by personal service by an authorized representative of the commissioner or as specified by the Maine Rules of Civil Procedure.

2. Income withholding order (22 MRSA 3816)

A. Income withholding. FIR may serve an income withholding order upon the obligor's employer or other payor of income to collect the unrecovered amount of the overpayment 21 days after service of a notice to repay, unless collection action is stayed under section 1, subsection H (page 5). FIR shall send the obligor a copy of an income withholding order issued under this section. The copy must be sent by regular mail to the obligor's most recent address of record.

B. Exempt property; withholding limit. An obligor's weekly income equal to 30 times the federal minimum wage is exempt from income withholding. In addition, an income withholding order may not exceed 25% of the obligor's gross income.

C. Payor duty. When an income withholding order is received, the obligor's employer or other payor of income shall withhold the amount stated in the order when the obligor is next paid. Income withheld must be sent to the department within 10 days of the date of withholding.

D. Withholding order; payor notice. An income withholding order must state all the following.

(1) The name of the obligor.

(2) The amount owed to the department.

(3) The amount of income that the employer or other payor of income must withhold.

(4) Withholding must take place when the obligor is normally paid. The income withheld must be sent to the department within 10 days of each withholding.

(5) The withholding order applies to current and future periods of employment.

(6) The rules for exempt income and withholding limits.

(7) The substance of any other rights, duties, and potential liabilities of an employer or other payor of income as provided in section 3 (page 8).

E. Request for hearing. An obligor may ask for a hearing to contest an income withholding order. The request must be in writing. If mailed to the department, the request must be postmarked not later than 30 days after the date the withholding order was mailed to the obligor. If delivered to an office of the department, the request must be delivered not later than 30 days after the date of mailing to the obligor. The department shall tell the obligor of the right to hearing when it mails the obligor a copy of the income withholding order.

F. Hearing. At hearing, the obligor may contest the accuracy of the income withholding order. The obligor also may contest whether the order was issued according to the requirements of this chapter. The department shall conduct the hearing as provided by 5 MRSA 9051-9064.

G. Decision after hearing. The department shall issue a decision after hearing without undue delay. The decision must include a ruling on the accuracy of the withholding order. It also must state if the order was issued according to the terms of this chapter. The decision must be based on the hearing record and rules adopted by the commissioner. A copy of the decision must be sent by regular mail to the obligor's most recent address of record. The decision must tell the obligor of the right to appeal to Superior Court within 30 days of the date of the decision (Rule 80C, Maine Rules of Civil Procedure).

H. Duration of order. An income withholding order stays in effect until:

(1) FIR releases the order in writing; or

(2) A court order changes or ends the order.

 3. Employers and other payors of income

 A. Payor compensation (22 MRSA 3818). As payment for honoring an income withholding order or assignment of earnings, the employer or other payor of income may deduct $2.00 from the obligor's income for each withholding.

B. Payor protected (22 MRSA 3819). An employer or other payor of income may not be held liable for honoring an income withholding order or assignment of earnings issued by FIR.

C. Failure to honor (22 MRSA 3820). An employer or other payor of income who knowingly fails to honor an income withholding order or assignment of earnings is liable to the department for the amount of income not withheld or the amount of income withheld and not sent to the department, as applicable. A court may award the department costs, interest and attorney's fees in an action brought under this section.

D. Employee protected (22 MRSA 3821). An employer may not fire, refuse to hire, punish, or otherwise discriminate against an employee because of action by the department under this section. An employer who violates this section can be fined up to $5,000, payable to the State, to be recovered in a civil action. The employee can also sue the employer for damages, attorney's fees and court costs.

4. Assignment of earnings (22 MRSA 3817)

A. When available. FIR may collect an overpayment at any time by completing an assignment of earnings with the obligor.

B. Payor duty. An employer or other payor of income shall honor an assignment of earnings the same way as an income withholding order. An assignment of earnings is effective until released by FIR in writing. Income withheld from an obligor under the provisions of an assignment of earnings must be sent to the department within 10 days of withholding.

C. Payor notice. When FIR sends an assignment of earnings to an employer or other payor of income, FIR shall include the same instructions and notices required for an income withholding order under section 2, subsection D (page 6).

5. Liens (22 MRSA 3822)

A. Claim on property. Twenty-one days after service of a notice to repay, FIR may issue a certificate of lien, unless collection action is stayed under section 1, subsection H (page 5). A lien issued under this section attaches to all nonexempt real and personal property of the person named in the notice to repay. FIR shall send a copy of the certificate of lien to the obligor at the obligor's most recent address of record.

B. Filing. FIR may file the certificate of lien in the registry of deeds of any county in which the obligor may own real property or with the Secretary of State. The certificate must include all the following information.

(1) The name of the obligor served with the notice to repay.

(2) The obligor's most recent address of record.

(3) The date of the notice to repay.

(4) The unrecovered amount of the overpayment.

(5) The name and address of the person who issued the lien.

C. Effect. No person having notice of the lien or in possession of any property subject to the lien may pay over, release, sell, transfer, encumber or convey such property, unless one of the following occurs:

(1) FIR executes and delivers a release or waiver.

(2) A court of competent jurisdiction orders the department to release the lien.

D. Request for hearing. An obligor may ask for a hearing to contest a certificate of lien. The request must be in writing. If mailed to the department, the request must be postmarked not later than 30 days after the date of mailing of the obligor's copy of the certificate of lien. If delivered to an office of the department, the request must be delivered not later than 30 days after the date of mailing to the obligor. The department shall tell the obligor of the right to hearing when it mails the obligor a copy of the certificate of lien.

E. Hearing. At hearing, the obligor may contest the accuracy of the certificate of lien. The obligor also may contest whether FIR issued the lien according to the terms of this section. The department shall conduct the hearing as provided by 5 MRSA 9051-9064.

F. Decision after hearing. The department shall issue a decision without undue delay. The decision must include a ruling on the accuracy of the certificate of lien. It also must state if the lien was issued according to the terms of this section. The decision must be based on the hearing record and rules adopted by the Commissioner. A copy of the decision must be sent to the obligor at the obligor's most recent address of record. The decision must tell the obligor of the right to appeal to Superior Court within 30 days of the date of the decision (Rule 80C, Maine Rules of Civil Procedure).

G. Release. FIR may release a lien. A release must be in writing and must name the obligor. It also must state whether the lien is released in whole or in part. If the lien is partly released, the amount of the claim that remains must be stated on the form.

H. Foreclosure on liens (22 MRSA 3823). The commissioner may foreclose on liens created under this section.

(1) Liens on real property. Actions to foreclose liens on real property may be brought in the county where the property is located. The department shall proceed under 14 MRSA 2001-2023.

(2) Liens on personal property. Actions to foreclose liens on personal property may be brought in the county where the obligor lives or the county where the property is located. The department shall proceed under 14 MRSA 4751-4953.

 6. Credit reporting (22 MRSA 3824). FIR may submit the name of an obligor and the amount of an overpayment not recovered to a consumer credit reporting agency. FIR may submit the obligor's name only if the overpayment was established by judicial or administrative action, by agreement of the obligor and the department, or by operation of law and only upon prior notice to the obligor.

Chapter 3 - Hearings

1. Decision based on hearing record. The hearing officer's decision must be based solely on evidence in the hearing record.

2. Decision and finding of no jurisdiction. If the hearing officer finds there is no jurisdiction to decide an issue, the hearing officer shall state this in the decision. The decision must clearly identify the issue and include a specific statement why there is no jurisdiction.

3. Withdrawal from proceedings. A party that starts a proceeding may withdraw its action. The action can be started later, unless a time limit has ended. If a party withdraws an action, that party shall notify all other parties.

4. Clerical errors, mistakes. Any party to a proceeding may ask the hearing officer to correct a clerical error in a decision. A party that does this shall notify all other parties. A hearing officer also may act to correct a clerical error, but shall notify all parties before changing the decision. A hearing officer may make other changes to a decision only when all parties agree to the changes in writing.

Chapter 4 - State Income Tax Refunds

1. Submittal. The department shall notify the State Tax Assessor each year of all persons who owe liquidated debts of more than $25.00 for overissued Food Stamps, AFDC or TANF overpayments and other debts to repay welfare costs the department is entitled to recover. The department shall provide the State Tax Assessor with whatever information the State Tax Assessor requires to identify each person submitted for offset. The State Tax Assessor shall set off the debts owed against any refund due the person according to 36 MRSA 5276-A(1).

2. Payment agreements. As an exception to Section 1, the department shall not include a person in the submittal to the State Tax Assessor if both of the following apply.

A. The person has a written agreement with the department to make regular payments on the debt.

B. The person has paid according to the agreement at the time of the yearly submittal.

3. Pre-offset notice. At or before the time of submittal, the department shall send a notice to each person reported to the State Tax Assessor. The department shall send the notice to the person's last known address, according to the department's records. The notice must tell the person and their spouse the following information.

A. The amount of the debt.

B. The department intends to take all or part of the person's state tax refund, as needed, to pay the debt.

C. The person may ask for a hearing to contest the department's action within 30 days of the date the notice is mailed.

D. The issues at the hearing are limited to whether the debt was legally established and whether the amount of the debt has changed since it was legally established.

E. If the person asks for a hearing, the person must give the department written proof or other facts that support the request.

F. The department will not consider a hearing request until it receives written proof or other facts that support the request.

G. If the person has filed a joint return, a spouse who does not owe the debt may ask the State Tax Assessor to pay the spouse's part of the refund.

4. Request for hearing. A person sent a pre-offset notice may ask for a hearing to contest the department's action. If mailed to the department, the request must be postmarked not later than 30 days after the date the notice was mailed. If delivered to an office of the department, the request must be delivered not later than 30 days after the notice was mailed.

5. Hearing. The following two issues are the only issues that can be considered at the hearing.

A. Whether the debt was legally established.

B. Whether the amount of the debt has changed since it was legally established.

6. Decision. After hearing, the department shall issue a written decision. The department shall send the decision by regular mail to the person who asked for the hearing and to all other parties. The decision is sent to the last known address. The decision must tell the person who asked for the hearing of the right to appeal to Superior Court within 30 days (Rule 80C of the Maine Rules of Civil Procedure).

A. In the decision, the hearing officer shall decide only the following two questions.

(1) Whether the debt was legally established.

(2) Whether the amount of the debt has changed since it was legally established. If so, the hearing officer shall decide the amount owed based on the evidence in the hearing record.

B. For purposes of these rules, a debt is legally established, or liquidated, as that term is used in 36 MRSA 5276-A, when the amount of the debt is fixed the by judicial or administrative action, agreed to in writing or owed by operation of law. Examples of legally established overpayments include the following.

(1) BFI sends a notice of overpayment to a person who has gotten program benefits and the person does not ask for a hearing to contest the overpayment within the time allowed.

(2) The obligor agrees in writing as to the amount of the overpayment.

(3) A person notified of an overpayment signs a statement waiving their right to a hearing.

(4) A decision or court order states the amount of the overpayment.

The department shall consider the mailing of an overpayment notice by BFI to be adequate prior notice if the notice is sent to the person's last known address, according to the department's records.

7. Hearings and decisions after setoff. Under 36 MRSA 5276-A, the State Tax Assessor must give notice to a person whose refund is setoff. For these hearings, the rules in sections 5 and 6 apply. A person notified by the State Tax Assessor is presumed to have received the notice within 7 days of the date of the notice.

8. Joint returns. The department has no authority to decide if all or part of a refund belongs to a person who files a joint return with a

person subject to setoff. The department shall refer persons who

have questions about refunds in these cases to the State Tax

Assessor.

9. Excess payment. If the department collects more than the amount of the debt it submits, the department shall return the excess promptly to the person who owed the debt. Unless the excess is due to the department's error, the department shall not return the excess until it is received from the State Tax Assessor.

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