

CHAPTER 25
BENEFIT PAYMENT CONTROL

[Prior to 9/24/86, Employment Security[370]]
[Prior to 3/12/97, Job Service Division [345] Ch 5]

871—25.1(96) Definitions.

“Administrative penalty” means the disqualification of a claimant from the receipt of benefits due to fraud or misrepresentation or the willful and knowing failure to disclose a material fact for a period of not more than the remaining benefit year, including the week in which such determination is made.

“Allegation of fraud” means any form of communication from a party which implies fraudulent activity.

“Anonymous tip” means information about suspected fraudulent activity received from a party who wishes to remain unidentified.

“Appeals” means a request for a review by an appeals authority of the department from any determination made by a representative of the department, and including any request for a review by a higher appeals authority of a decision made by a lower appeals authority. It also includes any appeal from a determination of a representative, or any appeal or request for a hearing by a properly affected party.

“Benefits” means money payments to an individual with respect to unemployment. See 871—subrule 24.1(18).

“Claim” means a request for benefit payment. See 871—subrule 24.1(25).

“Claimant.” See 871—subrule 24.1(26).

“Earnings” means the remuneration for services performed.

“Employing unit” means any individual or entity which engages the services of one or more individuals; one for whom employees work and who pays their wages or remuneration.

“Evidence” means any witnesses’ testimony, records, documents, copies of documents, statements, demonstrations, or any other relevant testimony or concrete objects before the department or at an employment appeal hearing or trial of an issue for the purpose of inducing belief in the minds of the hearing officer, department, court or jury as to the truth of a contention.

“Fact-finding interview” means a face-to-face discussion between a claimant or an employer and an investigator for the purpose of obtaining from the claimant or employer a statement containing information on a specific eligibility or disqualification issue.

“Fraud” means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury.

“Fraudulent activity” means actions based on or in the spirit of fraud.

“Initial determination” means the first determination with respect to a claim or a request for determination of insured status.

“Intent” means the design, resolve, or determination with which an individual or group of individuals acts in order to reach a preconceived objective.

“Internal audit” means the audit of local offices, conducted by the benefit payment control section, to ensure that proper procedures and policies are being adhered to by local workforce development center personnel.

“Investigator” means investigation and recovery section investigator.

“Local office” means the workforce development center office in which claims functions are performed.

“Material fact” means a fact which necessarily has some bearing on the subject matter, such as is necessary to determine the issue.

“Misconduct.” See 871—subrule 24.32(1), paragraph “a,” and 871—subrule 24.32(3).

“*Misrepresentation*” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

“*Month*” means the time beginning with any day of one month to the corresponding day of the next month, or if there is no corresponding day, then through the last day of the next month.

“*Overpayment*” means the amount of unemployment insurance benefits erroneously paid to a claimant due to error, misrepresentation, or fraud.

“*Social security account number*.” See 871—subrule 24.1(115).

“*Surveillance*” means the observance of activities.

“*Wage cross match audit*” means the computerized quarterly cross match of benefits received by Iowa claimants and wages reported by employers to the state of Iowa.

“*Wages*” means the same as earnings. See rules 871—24.13(96) and 871—24.16(96).

a. When a money value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

b. Cash value of room and board.

(1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in the Act (Iowa Code chapter 96) the reasonable cash value of same shall be deemed wages.

(2) Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in subparagraphs (4) and (5) of this paragraph.

(3) In the absence of an agreement in a contract of hire the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in subparagraph (4) of this paragraph.

Full board and room per week	\$126.35
Meals (without lodging) per week	56.35
Meals (without lodging) per day	8.05
Lodging (without meals) per week	70.00
Lodging (without meals) per day	10.00
Individual meals:	
Breakfast	2.05
Lunch	2.60
Dinner	3.40
A meal not identifiable as either breakfast, lunch, or dinner	2.00

(4) The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with subparagraph (3) of this paragraph, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

“*Week*.” See 871—subrule 24.1(135).

This rule is intended to implement Iowa Code chapter 96 and sections 96.3(3), 96.3(5), 96.19(38), 96.19(12), and 96.19(20).

871—25.2(96) Policy of the investigation and recovery section.

25.2(1) The policy of the investigation and recovery section is to take aggressive action to prevent, detect, and deter benefits paid through error by the agency or through willful misrepresentation or error by the claimant or others and investigate and penalize fraudulent actions on the part of claimants and employing units.

25.2(2) It shall be the policy of the investigation and recovery section to maximize the recoupment of overpayments from those claimants who have received benefits to which they were not entitled. It shall also be the policy of the section to seek prosecution of persons whom the section believes have committed serious violations of the employment security law of Iowa.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.3(96) Functions of the investigation and recovery section. The function of the investigation and recovery section is to:

25.3(1) Investigate and make determinations on issues within the scope of the investigation and recovery section which are referred by the general public, employing units, agency personnel, other agencies, and anonymous sources. The section shall examine allegations of the following type:

- a.* Failure to report earnings while receiving unemployment insurance benefits.
- b.* Collusion between claimant and employer or between two or more claimants, in the fraudulent obtaining of benefits.
- c.* The use of multiple identities and social security numbers to obtain unemployment insurance benefits.
- d.* Forgery and fraudulent certification for unemployment insurance benefits by one person impersonating another.
- e.* Corporations, partnerships, individual proprietorships, and other employing units which fraudulently evade unemployment insurance coverage and tax assessment. Determine status of claimants employed by these entities.
- f.* Claims involving contrived or fictitious employment, (i.e., family relationships).
- g.* Cases of possible concurrency in claiming workers' compensation, railroad retirement, or social security while receiving benefits. Also concurrency of claiming benefits outside of Iowa while receiving unemployment insurance benefits. Possible welfare concurrency will be referred to the appropriate agency.
- h.* Issues of availability, capability, voluntary leaving of employment, refusal of employment, misconduct, intervening employment, and industrial controversy where the facts are complex and field work is necessary to establish proper findings.
- i.* Validity of alien registration numbers through a cross-check with Immigration and Naturalization Service. If an alien has falsely claimed to be a U.S. citizen or used a false alien registration card in order to receive benefits, prosecution cases will be prepared when appropriate. Refer to 871—24.60(96) for definition of alien.

25.3(2) Collect refunds of overpayments resulting from determinations of claimant fraud.

25.3(3) Prepare all cases for prosecution.

- a.* Submit cases to the county attorneys.
- b.* Assist county attorneys and others by presenting evidence and giving testimony in court proceedings.

25.3(4) Formulate methods and procedures to prevent and detect all types of fraud by claimants, employing units, and unemployment insurance services personnel.

25.3(5) Provide liaison with local, state, and federal law enforcement agencies.

25.3(6) Testify and produce evidence before hearing officers and employment appeal board hearings regarding fraudulent activities.

25.3(7) Conduct internal audits as established by federal guidelines.

This rule is intended to implement Iowa Code sections 96.11(1), 96.16, and 96.17(2).

871—25.4(96) Allegation of claimant fraud. The procedure to be followed where an allegation of claimant fraud has been made is:

25.4(1) Upon receipt of an allegation of claimant fraud, the alleging party should supply sufficient information to proceed. The alleging party shall be advised that the investigation and recovery section will make a full investigation of the allegation and that the party will be advised of the section's findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

25.4(2) The allegations will be promptly forwarded to the investigation and recovery section for investigation.

25.4(3) If the findings revealed through the investigation by the investigation and recovery section indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The investigation and recovery section will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

25.4(4) If the claimant or any other party with pertinent information wishes to invoke the fifth amendment right to remain silent, the investigator can require the claimant or any other party with pertinent information to answer all questions or produce any pertinent documents. However, the claimant or any other party with pertinent information cannot be prosecuted on the basis of any transaction, matter, or thing concerning which the claimant or any other party with pertinent information is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence.

25.4(5) In the event a local office receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery section, provided the communication identifies the claimant or employer or supplies sufficient information to proceed with an investigation.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.5(96) Allegation of employing unit fraud. The following is the general procedure to be followed by the investigation and recovery section in an employing unit fraud investigation:

25.5(1) Upon receipt of an allegation of employing unit fraud the party making the allegation will provide sufficient information to proceed with an investigation. Information such as the identification and location of the employing unit, the individual or group of individuals suspected of fraudulent action, and what fraudulent action is occurring will be provided, if possible.

25.5(2) The allegation will be promptly forwarded to the investigation and recovery section for investigation.

25.5(3) The investigation and recovery section may seek the assistance and expertise of the field auditors in investigating suspected cases of employing unit fraud.

25.5(4) If the findings, revealed through the investigation by the investigation and recovery section, indicate that misrepresentation occurred on the part of the employer, an informal fact-finding interview will be scheduled for the party or parties to allow them an opportunity to present testimony either refuting or affirming the allegation of employer fraud.

25.5(5) If the employer wishes to invoke the fifth amendment right to remain silent, the investigator can require the employer to answer all questions. However, the employer cannot be prosecuted on the basis of any transaction, matter, or thing concerning which such employer is compelled, after having invoked the privilege against self-incrimination, to testify or produce evidence.

25.5(6) In the event the local workforce development center receives an allegation by anonymous communication, the office will forward such information to the investigation and recovery section, provided the communication identifies and supplies sufficient information to proceed with an investigation.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(10).

871—25.6(96) Investigation of fraud (procedure).

25.6(1) Upon receipt of an allegation of fraudulent activity, an investigation file will be prepared containing all necessary documents. A case number will be assigned and the case assigned to an investigator. All investigation files will remain confidential.

25.6(2) The investigator will make a thorough review of all documents contained within the file and determine what issues need to be investigated. Documented evidence will be obtained from claimants, employing units, witnesses, law enforcement agencies, local, state, and federal agencies, and any other source as may be necessary.

25.6(3) The investigation shall include the gathering of pertinent evidence and statements regarding any suspected fraudulent activity.

25.6(4) An investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda, and other records necessary in the investigation of any error or potential fraudulent activity committed by a claimant, employing unit, or other party. Likewise, testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by an investigator to produce records or give testimony, must be available personally to give testimony or to produce records within a reasonable time to the investigator. If any person does not comply with the investigator's request to give testimony to the department or produce records, a subpoena may be issued summoning the individual to appear before the investigator to give testimony or present the records.

If the investigator determines any request for the voluntary production of pertinent records might endanger the existence of such records, the investigation and recovery section may immediately issue a subpoena duces tecum which orders an individual to produce some document or paper that is pertinent to a pending investigation by the investigation and recovery section, in order to secure the production of such records.

25.6(5) The investigation and recovery section may seek the assistance and expertise of the field auditors.

25.6(6) Surveillance of an individual or location may be conducted by the investigator when that individual or location is pertinent to the investigation.

25.6(7) Upon completion of the investigation a determination shall be made as to whether or not fraudulent activity has occurred. If there is fraudulent activity, appropriate corrective action shall be initiated and the alleging party shall be advised of the investigation and recovery section's findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party. The case may be prepared for prosecution if prosecution is warranted.

25.6(8) A detailed report will be entered in the case management system upon completion.

This rule is intended to implement Iowa Code sections 96.16 and 96.11(7).

871—25.7(96) Determination of overpayment by reason of claimant's fault or fraud.

25.7(1) A determination that a claimant, by reason of the claimant's own fault or fraud as provided in Iowa Code section 96.16, has received benefits to which such claimant was not entitled shall be made by the investigation and recovery section on the basis of such facts as it may obtain.

25.7(2) A notice of such determination shall be promptly given to the affected claimant. Such notice shall be dated and shall advise the claimant as to the benefit weeks involved and shall advise the claimant as to the reason for overpayment and the total amount of said overpayment. Unless the claimant, within ten days after such notification was mailed to the claimant's last-known address, files with the department a written request for review of, or an appeal from, such determination, the determination shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the hearing and appeals bureau within ten calendar days from the date of mailing.

25.7(3) Upon receiving a written request for review, the investigation and recovery section may, based upon such facts as it has or may acquire, affirm, modify, or reverse the prior decision or refer the matter to an administrative law judge. The claimant shall be promptly notified of such decision or referral. Unless the claimant files an appeal within ten calendar days after the date of mailing, such decision shall be final. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the appeals section within ten calendar days from the date of mailing.

25.7(4) The claimant may directly appeal the decision of the investigation and recovery section without a request for review, in which case the appeal will be referred directly to the appeals section of the department.

25.7(5) Claimants affected by determinations made in accordance with this rule shall have the same rights to further appeal as are provided in Iowa Code section 96.6.

25.7(6) When such determination has become final the benefits shall be recovered.

a. The department shall always demand immediate repayment of the overpayment as its first option for those claimants not in benefit claiming status at the time of the initial overpayment determination. If not paid immediately, the overpayment amount will be deducted from future benefits. Recovery of overpayments due to misrepresentation or fraud may also include the filing of a notice of lien or other civil action.

b. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment to the department.

c. If a claimant fails to respond to the first statement of overpayment a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment the department will consider a monthly repayment agreement. Monthly amounts based on the minimum repayment agreement schedule below will be printed on the second billing. The first repayment is expected 10 days from the date of the second repayment statement and the additional repayments every 30 days thereafter until the debt is paid in full. The department reserves the right to accept or reject any proposed repayment agreement. The following minimum repayment agreement is acceptable by the department.

Amount of Original Overpayment	Minimum Monthly Payments	Number of Months Required to Liquidate the Overpayment
Under \$199	\$ 25	1 to 8
\$200 to \$399	\$ 40	5 to 10
\$400 to \$599	\$ 50	8 to 12
\$600 to \$799	\$ 65	9 to 13
\$800 to \$999	\$ 80	10 to 13
\$1000 to \$1499	\$ 90	11 to 17
\$1500 to \$1999	\$100	15 to 20
\$2000 to \$2999	\$110	18 to 28
\$3000 and over	\$130	23 to —

d. If a claimant fails to respond to the second repayment statement a third notice shall be sent in approximately 30 days. The department has the option to send a notice which allows the claimant another 10 days to make full repayment of the indebtedness or a partial payment with an acceptable signed repayment agreement to prevent further collection action by the department, or the department may send a lien warning letter as the third billing notice. This warning gives 10 days to make full payment which will prevent lien filing. The department may proceed with any appropriate civil action to collect the debt which would include, but not be limited to, a judgment in a court having jurisdiction over the matter. The same type of action may be pursued by the department in those cases where a claimant defaults on a repayment schedule.

e. If the department receives a cash repayment to liquidate all or part of an indebtedness the department shall issue a receipt and mail it to the claimant's last-known address. If the department receives a repayment that is not identified by a social security number, name or other means of identification, the money shall be retained until such time as a positive identification can be made and proper credit given to the claimant.

f. An overpayment to the claimant will cause the employer to be relieved of charges except when the overpayment is a result of payment of a back pay award.

g. Reserved.

h. An underpayment of \$5 or less will not be set up and paid to an individual unless the individual requests the payment in writing.

This rule is intended to implement Iowa Code sections 96.3(3), 96.3(7), 96.4(3), 96.5(1), 96.5(3), 96.6(1), 96.8(5), 96.11(1), 96.16, and 96.19(38).

871—25.8(96) Recovery of benefit overpayments when benefits are erroneously received.

25.8(1) Good faith overpayment. If an individual has acted in good faith in claiming benefits for any week and it is later determined that the individual is not entitled to receive the benefits, the department shall have the right to recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. The department shall mail the overpayment decision to the claimant's last-known address. Once the overpayment amount has been established, an overpayment schedule shall be set up to leave a proper audit trail even if the claimant pays to the department a sum equal to the overpayment.

a. The department shall mail a first statement of overpayment to the claimant's last-known address. This statement will request full repayment in the form of a negotiable check, money order, or bank draft payable to the Department of Workforce Development.

b. If a claimant fails to respond to the first statement of overpayment a second statement shall be sent 30 days later. The second statement notifies the claimant that full repayment must be made. If the claimant cannot make full repayment the department will consider a monthly repayment agreement.

c. If an individual has acted in good faith and is without fault in claiming any type of Federal Supplemental Compensation (FSC) or any other federal supplemental benefit payment and it is subsequently determined that the individual is not entitled to the benefits, the department shall have the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal supplemental overpayments recovered shall be credited to the appropriate account of the United States. Three years after the original determination of the federal supplemental benefit overpayment, the department shall cease recovery by offset from future benefits. The department will maintain an administrative record of the federal supplemental overpayment.

d. If an individual has acted in good faith and is without fault in claiming federal unemployment compensation under any of the following programs:

- (1) Unemployment Compensation Federal Employees (UCFE)
- (2) Unemployment Compensation Ex-servicemembers (UCX)
- (3) Trade Readjustment Allowances (TRA)

and it is subsequently determined that the individual is not entitled to the benefits, the department shall have the right to recover the benefits in accordance with the procedure outlined in subrule 25.8(1). Any federal unemployment compensation overpayments recovered shall be credited to the appropriate account of the United States. Three years after the instance of the federal unemployment compensation overpayment, if the department concludes that continued collection efforts would result in diminishing returns, then the unrecovered amount will be removed from the department accounting records. An administrative record will be maintained for possible collection through offset or other appropriate method. If no collection action has taken place during the three years after the department has removed the overpayment from its accounting records, then the overpayment will be disposed of.

Any overpayment of Trade Readjustment Allowances or Trade Adjustment Assistance will be offset at the rate of 50 percent of the benefit amount otherwise payable to the individual for unemployment insurance, extended benefits or any other federal unemployment compensation program.

25.8(2) *Misrepresentation.*

a. Whenever it is found that a claimant has received benefits through misrepresentation and has been assessed with an overpayment, no further benefits shall be paid to such claimant until the total amount of the overpayment has been reimbursed or otherwise liquidated to the satisfaction of the department.

b. The claimant may make refund of an overpayment by cash or by means of an offset against future benefit payments, at the discretion of the department.

(1) If the department seeks to recover the amount of the benefits, the department may file a lien with the county recorder for the amount of the overpayment against the property and rights to property, whether real or personal, belonging to the individual.

(2) The department may attempt to collect the overpayment in the manner provided in Iowa Code section 96.14(3).

c. Any benefits which may become due an individual against whom a fraudulent overpayment is outstanding may be used to reduce the amount of the fraudulent overpayment. The employer's account will be noncharged for overpayments caused by fraud or misrepresentation.

d. If it is found that an individual has received benefits through misrepresentation and has been assessed with an overpayment under any of the following programs:

- (1) Unemployment Compensation Federal Employees (UCFE)
- (2) Unemployment Compensation Ex-service members (UCX) and criminal charges are not involved, the department will limit deduction from future benefits to a two-year period following the original determination of overpayment. If an individual is convicted for fraud, the department shall have the right to recover any resulting overpayment in accordance with the procedure outlined in subrule 25.8(2).

25.8(3) *Purging uncollectible overpayments.* On the last working day of each calendar month, the department reviews all outstanding overpayments, which are ten years or older from the date of the overpayment decision, and determines as uncollectible and purges from its records the unpaid balances of overpayments which are ten years or older from the date of the most recent recovery of a part of the outstanding overpayment.

This rule is intended to implement Iowa Code sections 96.7(2), 96.11(1), 96.11(11), 96.11(13), 96.14(3), 96.16, 96.20, and 96.29.

871—25.9(96) Administrative penalties.

25.9(1) When, subsequent to the filing of a valid claim, it has been determined that within the preceding 36 calendar months the claimant fraudulently reported or failed to report wages earned during a week, or failed to disclose a material fact upon separation from employment from such claimant's most recent employing unit or employer, with intent to obtain benefits, or failed to disclose a material fact concerning any claimant's ability to work, availability for work, or any other eligibility requirements, with intent to obtain benefits, such claimant shall forfeit all unemployment insurance benefits for the week in which the determination is made and for a period of not more than such claimant's remaining benefit year.

25.9(2) Penalties.

a. Any penalties imposed by this rule shall be in addition to those imposed by Iowa Code section 96.16.

b. The general guide for disqualifications for deliberate falsification for the purpose of obtaining or increasing unemployment insurance benefits is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the investigator because each case must be decided on its own merits. The administrative penalty recommended for falsification ranges from three weeks through the end of the benefit year. The department shall also consider the filing of fraud charges whenever an administrative penalty is imposed against a claimant. If the same offense is repeated, loss of benefits through the end of the benefit year will result.

c. The department shall issue a determination which sets forth the specific penalty being applied.

(1) The degree and severity of penalty shall be determined at the discretion of the investigator and shall be based upon the nature of the offense and the facts.

(2) The determination shall be based on the facts obtained and shall become final within ten days after the decision was mailed to the claimant's last-known address, unless an appeal is made to the department by filing a notice of appeal at any local office or at the administrative office of the department of workforce development. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received in the appeal section within ten calendar days from the date of mailing.

25.9(3) Sources of information concerning the application of an administrative penalty shall be the same as those pertaining to fraud and overpayment, namely:

a. Employer report of wages, with comparative analysis of them with concurrent benefit payments.

b. Local office obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.

c. Tips and leads from other sources of claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.

d. Cross-checking of information on death tapes from the vital statistics section, division of administration, department of public health.

e. Review of claims using social security numbers not issued by the social security administration.

25.9(4) The claimant shall be notified of the possible application of the administrative penalty by Form 65-5315, Notice of Job Insurance Fact-finding Interview, in the same manner a claimant is notified of a possible overpayment.

25.9(5) If the claimant wishes to invoke the right to remain silent, the investigator can require the claimant to answer all pertinent questions. However, the claimant cannot be prosecuted on the basis of any transaction, matter, or event concerning which the claimant is compelled to testify or produce evidence after the individual has claimed the privilege against self-incrimination.

25.9(6) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud and may be represented by legal counsel at such hearing.

25.9(7) The determination shall be based on the facts obtained and shall become final within ten days after the decision was mailed to the claimant's last-known address, unless an appeal is made to the department by filing a notice of appeal at any local office or at the administrative office of the department of workforce development. Timeliness shall be determined by postmark within ten calendar days from the date of mailing shown on the decision or be received by the appeals section within ten calendar days from the date of mailing.

25.9(8) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for all other determinations involving a denial of benefits.

25.9(9) A criminal conviction of a claimant for fraud or an order of the court requiring restitution for the amount of the overpayment shall not preclude the investigation and recovery section from also imposing an administrative penalty denying further benefits to the claimant for a period of time not to exceed the remainder of said claimant's benefit year and including the week in which such determination is made by the investigation and recovery section.

This rule is intended to implement Iowa Code sections 96.5(8), 96.11(1), and 96.11(10).

871—25.10(96) Prosecution on overpayments.

25.10(1) When an overpayment occurs due to misrepresentation, the case shall be given a thorough and detailed review of the facts, as obtained by the investigation and recovery section, to determine, in most cases, if prosecution for fraud meets the county attorney's criteria.

a. The claimant shall be afforded an opportunity to give testimony either refuting or affirming the overpayment.

b. The investigation and recovery section will issue a decision concerning the overpayment.

25.10(2) Restitution or the establishment of a repayment plan of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the investigation and recovery section from instituting criminal proceedings against such claimant.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.11(96) Prosecution for fraud (procedure).

25.11(1) If prosecution is warranted, supportive documentation and evidence will be requested and thoroughly reviewed upon receipt by the investigator.

25.11(2) A handwriting sample will be taken from claimant when necessary and submitted for investigation.

25.11(3) A summary of the case will be prepared and the case taken to the county attorney for filing of criminal charges.

25.11(4) Upon request by the county attorney, the investigator may make recommendations regarding plea bargaining, dismissals, and sentencing.

25.11(5) Investigators may testify and produce evidence at district court and grand jury proceedings.

This rule is intended to implement Iowa Code sections 96.11(1) and 96.16(2).

871—25.12(96) Wage cross match audit procedure.

25.12(1) Each quarter, cross match audit Forms 65-5321 are mailed to selected employers requesting wage information on specific claimants as it concerns benefit payments.

25.12(2) The form, upon completion and return to the investigation and recovery section, is reviewed for errors and discrepancies. If the form is completed correctly, it is forwarded to the data processing department for the entering of information into the computer. If the form is not completed correctly it is returned to the employer for corrections, or an investigator will call the employing unit for verification of information. Any potential cases of conflict generated by the computer will result in the production of Form 65-5321, Wage Cross Match Audit Form, and Form 65-5332, Notice to Claimant of an Alleged Overpayment. Claimants will be notified of a fact-finding interview by means of Form 65-5332. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031 on which the amount, type, and reason for overpayment are identified. Claimants are notified of the determination on Form 65-5323.

This rule is intended to implement Iowa Code section 96.11(1).

871—25.13(96) Duplicate benefit warrants.

25.13(1) *Undelivered warrant.* If any warrant issued in payment of benefits is returned undelivered to the department by the postmaster, such warrant will be canceled 90 days after the original issue date unless it can be mailed to the new correct address. If a warrant remains outstanding beyond a period of six months from the date of issuance after the end of the quarter in which the warrant was issued, this warrant will be canceled when the records management section receives notification from the state comptroller's office.

25.13(2) *Canceled warrant.* On a quarterly basis, the comptroller shall cause to be canceled each benefit warrant which, at this time, has been outstanding six months or longer. Any individual who has an outdated warrant less than five years old may contact any local office for assistance. They will be instructed to return the outdated warrant to the records management section with a request that a duplicate warrant be issued. If the outdated warrant is more than five years old, miscellaneous claim Form 60-0224 should be used to request reissuance of the warrant. The miscellaneous claim form shall be transmitted to the state board of appeals for determination, at their regular monthly meeting, as to payment or nonpayment of the warrant.

25.13(3) *Lost and uncashed warrant.*

a. In the event that a warrant issued in payment of benefits is lost, stolen, mutilated, destroyed, or canceled under conditions cited in subrules 25.13(1) and 25.13(2), the payee shall contact the local office representative of the workforce development center for assistance. The local office will forward the necessary information to the administrative office.

b. The administrative office will ascertain whether the warrant has been cashed and take the following action:

(1) If the warrant has been cashed, the procedure in subrule 25.13(4) of this rule shall be followed.

(2) If the warrant has not been cashed, the administrative office shall issue a stop payment order on the warrant and a Form 68-0163, Affidavit and Agreement for Issuance of Duplicate Warrant, will be mailed to the local office for completion by the individual. The affidavit is a sworn statement that the original warrant was not received and that the warrant will be surrendered voluntarily if received by the claimant. The claimant should be warned by the local office that the warrant cannot be cashed after the stop payment order is in effect.

c. The affidavit shall be personally prepared in duplicate by the claimant and the claimant's signature on the affidavit must be notarized. The affidavit shall then be transmitted in duplicate to the administrative office.

d. The administrative office will then request that the state comptroller reissue a duplicate warrant and this warrant will be mailed to the claimant by the administrative office.

e. If the claimant should cash the original warrant after the stop payment order is in place, an overpayment shall be set up and possible prosecution considered, if warranted.

f. If the claimant should find the original warrant after the duplicate warrant has been issued, the original warrant shall be sent to the administrative office.

25.13(4) Forged warrants.

a. In the event that the original warrant has been endorsed by and paid to someone allegedly not authorized to receive payment, the payee whose endorsement was forged will be given the opportunity to examine the endorsement on the copy of the warrant.

b. If the payee determines that the endorsement is a forgery, the following action shall be taken:

(1) The Form 68-0320, affidavit as to forged endorsement, shall be personally prepared in duplicate by the claimant and the claimant's signature on the affidavit must be notarized.

(2) The claimant shall be required to file a police report with the local law enforcement agency and return a copy of the police report to the local office.

(3) The local office will forward the copy of the original warrant, the notarized affidavit and the copy of the police report to the administrative office for action. The local office will explain to the claimant that the documents will be reviewed by the administrative office and that a handwriting analysis will be completed.

c. The investigation and recovery section will make a handwriting analysis to determine if the warrant was forged. If the handwriting is determined to be a forgery, a duplicate warrant will be issued to the payee only after the state comptroller has recouped the money.

25.13(5) Employer account credit. At the time of cancellation of any outstanding benefit warrant(s), the employer account shall be credited with the amount of the warrant(s) so canceled. The reissuance of any benefit warrant canceled in subrule 25.13(1) or 25.13(2) shall be charged to the employer account.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.14(96) Payments of benefits due deceased person.

25.14(1) Benefits due deceased claimants. An eligible week for a deceased claimant will be one where the week is claimed by the individual prior to death. If benefits are due a deceased person, the benefits shall be paid to the person or persons who have been issued letters testamentary or of administration pursuant to an application filed within 30 days after the claimant's death.

25.14(2) In the event that no application for letters testamentary or of administration has been filed within 30 days after the claimant's death, the benefits which were due shall be paid to the decedent's surviving spouse, if any; or, if no spouse survives the decedent and the decedent is survived by an unmarried minor child or children, the benefits shall, at the discretion of the department, be paid:

a. To the guardian or guardians of unmarried minor child or children for their benefit; or

b. To the person or institution who or which the department finds shall have assumed the obligation of providing support for or maintenance of such minor child or children; or

c. To any person who the department finds has furnished to such child or children necessities of a value equaling or exceeding the amount of benefits; or

d. To any person who the department finds has paid expenses of the claimant's last illness or burial expenses in an amount equaling or exceeding the amount of benefits.

25.14(3) The comptroller shall cause any unredeemed warrant or warrants payable to a deceased person to be surrendered and voided and shall issue a new warrant or warrants bearing the same dates and numbers and made payable to the entitled person or persons under the provisions of this rule. The issuance of the new warrant or warrants shall fully discharge the department of its obligation in respect to the claims covered thereby and no other person shall claim or assert any right to them.

25.14(4) Any person claiming entitlement to the payment of benefits under this regulation shall present said claim in writing within 60 days after the death of the claimant and shall offer proof thereof in such form as the department may require; however, the department may, upon good cause shown, extend the time for presentation of said claim. In the event no claim is made for the payment of such benefits within the time limit specified above or any extension thereof, the benefits shall not be paid but shall remain in the unemployment compensation fund.

This rule is intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

871—25.15(96) Back pay—benefit recovery and charging.

25.15(1) When an individual receives benefits for a period of unemployment and subsequently receives a payment in the form of or in lieu of back pay for the same period from the individual's employer, the department shall recover the benefits in the following manner:

a. The department shall first attempt to reach an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer and to remit that amount to the unemployment compensation fund.

b. If the department fails to reach an agreement with the individual and the employer as provided in paragraph "a," then the department shall either deduct an amount equal to the benefits received by the individual from any future benefits received by the individual or have the individual pay the department an amount equal to the benefits received by the individual.

c. The burden of proof shall rest with the employer to establish the dollar amount of the back pay award which is remuneration for lost wages and the specific period of time to which the remuneration applies.

25.15(2) If the department reaches an agreement with the individual and the employer to allow the employer to deduct an amount equal to the benefits received by the individual from the payment in the form of or in lieu of back pay paid by the employer, then the employer's account shall be relieved of benefit charges in an amount equal to the amount remitted by the employer to the unemployment compensation fund; however, if the department fails to reach an agreement, then the benefit charges shall not be relieved until the benefits paid to the individual are recovered either by deducting that amount from any future benefits received by the individual or by having the individual pay that amount to the department.

871—25.16(96) State payment offset. An individual who is owed a payment from the state of at least \$50 and owes an overpayment of benefits of at least \$50 is subject to an offset against the individual's payment from the state to recover all or a part of the individual's overpayment of benefits and to reimburse the department of revenue and finance for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

25.16(1) If the individual has made no attempt to repay the overpayment of benefits within the preceding six months, the individual's name and social security number are given to the department of revenue and finance.

25.16(2) The department of revenue and finance notifies the department that an overpaid individual is owed a payment from the state. The department then notifies the overpaid individual of the potential offset against the individual's payment from the state.

25.16(3) In the case of a joint or combined income tax filing, the individual has ten days from the postmark date on the decision to request a split of the refund to ensure the other party's portion of the refund is not offset. When a request is made, the department notifies the department of revenue and finance to make the split. The department then notifies the overpaid individual of the amount of the offset. If the request for split of the refund is not made timely, the entire income tax refund becomes subject to offset.

25.16(4) Any appeal by the individual is limited to the validity of job service's authority to recoup the overpayment through offset.

25.16(5) In the event that the amount of the offset exceeds the remaining overpayment, the department shall issue to the individual a special check equal to the amount of the excess.

This rule is intended to implement Iowa Code sections 96.11 and 421.17(26,29).

- [Filed 8/1/80, Notice 4/30/80—published 8/20/80, effective 9/24/80]
- [Filed 4/10/81, Notice 2/18/81—published 4/29/81, effective 6/4/81]
- [Filed 4/27/84, Notice 2/29/84—published 5/23/84, effective 6/28/84]
- [Filed emergency 9/5/86—published 9/24/86, effective 9/5/86]
- [Filed 12/16/86, Notice 9/24/86—published 1/14/87, effective 2/18/87]
- [Filed emergency 6/12/87—published 7/1/87, effective 7/1/87]
- [Filed 7/24/87, Notice 6/3/87—published 8/12/87, effective 9/16/87]
- [Filed 9/4/87, Notice 7/1/87—published 9/23/87, effective 10/28/87]
- [Filed 2/19/88, Notice 12/30/87—published 3/9/88, effective 4/13/88]
- [Filed 6/24/88, Notice 4/20/88—published 7/13/88, effective 8/17/88]
- [Filed 11/14/88, Notices 8/24/88, 10/19/88—published 11/30/88, effective 1/4/89]
- [Filed 11/23/88, Notice 10/19/88—published 12/14/88, effective 1/18/89]
- [Filed 2/3/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
- [Filed 3/31/89, Notice 2/22/89—published 4/19/89, effective 5/24/89]
- [Filed 3/30/90, Notice 2/21/90—published 4/18/90, effective 5/23/90]
- [Filed 6/22/90, Notice 5/16/90—published 7/11/90, effective 8/15/90]
- [Filed 7/30/91, Notice 6/12/91—published 8/21/91, effective 9/25/91]
- [Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
- [Filed 12/20/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]
- [Filed 6/17/93, Notice 5/12/93—published 7/7/93, effective 8/11/93]
- [Filed 11/16/94, Notice 9/14/94—published 12/7/94, effective 1/11/95]
- [Filed 12/28/95, Notice 11/22/95—published 1/17/96, effective 2/21/96]
- [Transferred from 345—Ch 5 to 871—Ch 25 IAC Supplement 3/12/97]