

CHAPTER 46
OVERPAYMENT RECOVERY

[Prior to 7/1/83, Social Services[770] Ch 46]

[Prior to 2/11/87, Human Services[498]]

DIVISION I

FAMILY INVESTMENT PROGRAM—CONTROL GROUP

[Rescinded IAB 2/12/97, effective 3/1/97]

441—46.1 to 46.20 Reserved.

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

[Prior to 10/13/93, 441—46.1(239) to 46.8(239)]

441—46.21(239) Definitions.

“*Agency error*” in overpayments means: (a) The same as circumstances described in 441—subrule 45.24(1) pertaining to underpayments, or (b) any error that is not a client or procedural error.

“*Client*” means a current or former applicant or recipient of the family investment program.

“*Client error*” means and may result from:

False or misleading statements, oral or written, regarding the client’s income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent Notice of Decision, Form PA-3102-0, or the receipt of a duplicate grant; or

Failure to refund to the child support recovery unit any nonexempt payment from the absent parent received after the date the decision on eligibility was made.

False or misleading statements regarding the existence of a sponsor or the income or resources of the sponsor and the sponsor’s spouse, when a sponsor is financially responsible for an alien according to 441—subrules 41.25(6) and 41.27(10).

“*Good cause*” for the sponsor of an alien not reporting income or resources means the change results in a monthly error of less than \$10.

“*Intentional program violation*” is an action by a person for the purpose of establishing or maintaining the family’s eligibility for FIP, or for increasing or preventing reduction in the grant amount by intentionally (1) making a false or misleading statement; (2) misrepresenting, concealing or withholding facts; or (3) acting with the intent to mislead, misrepresent, conceal or withhold facts, or provide false information.

“*Overpayment*” means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive.

“*Procedural error*” means: A technical error which does not in and of itself result in an overpayment. Procedural errors include:

Failure to secure a properly signed application at the time of initial application or reapplication.

Failure to require an application when a new person is added to the eligible group or when a parent or a stepparent becomes a member of the household.

Failure of the local office to conduct the face-to-face interviews described in 441—subrules 40.24(2) and 40.27(1).

Failure to request a Public Assistance Eligibility Report at the time of a monthly or six-month review.

Failure of local office staff to cancel the family investment program when the client submits a Public Assistance Eligibility Report which is not complete as defined in 441—paragraph 40.27(4) “*b.*” However, overpayments of grants as defined above based on incomplete reports are subject to recoupment.

“*Recoup*” means reimburse, return, or repay an overpayment.

“*Recoupment*” means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance grant or both.

“*Without fault*” means an alien’s sponsor is “without fault” when the department fails to determine that an alien has a sponsor, fails to determine that an alien sponsored by an agency or organization is ineligible for assistance in accordance with 441—subrule 41.25(6), fails to count the sponsor’s income in accordance with 441—subrule 41.27(10) and resources in accordance with 441—subrule 41.26(9) in determining the alien’s eligibility or an overpayment results from an agency error.

441—46.22(239) Monetary standards.

46.22(1) *Amount subject to recoupment.* All family investment program overpayments shall be subject to recoupment.

46.22(2) *Grant issued.* When recoupment is made by withholding from the family investment program grant, the grant issued shall be for no less than \$10.

441—46.23(239) Notification and appeals. All clients shall be notified by the department of inspections and appeals, as described at 441—subrule 7.5(6), when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The local office shall provide additional information regarding the computation of the overpayment upon the client’s request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with 441—subrule 7.5(6).

441—46.24(239) Determination of overpayments. All overpayments due to agency or client error or due to assistance paid pending an appeal decision or due to assistance paid while real property is exempt as a resource in accordance with 441—paragraph 41.26(6) “d” shall be recouped. A procedural error alone does not result in an overpayment.

46.24(1) *Agency error.* When an overpayment is due to an agency error, recoupment shall be made, including those instances when errors by the department prevent the requirements in 441—subrule 41.22(6) or 41.22(7) from being met or when the client receives a duplicate grant. An overpayment of any amount is subject to recoupment with one exception: When the client receives a grant that exceeds the amount on the most recent notice from the department, recoupment shall be made only when the amount received exceeds the amount on the notice by \$10 or more. The client is required to timely report receipt of excess assistance under 441—subrule 40.27(4). An overpayment due to agency error shall be computed as if the information had been acted upon timely.

46.24(2) *Assistance paid pending appeal decision.* Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing shall begin no later than the month after the month in which the final decision is issued.

46.24(3) *Client error.*

a. An overpayment due to client error shall be computed as if the information had been reported and acted upon timely.

EXCEPTION: When the client, without good cause, as defined in 441—subparagraph 41.27(2) “d”(2), fails to report income earned as specified in 41.27(2) “d”(2), the deductions in 441—paragraphs 41.27(2) “a” and “b” shall not be allowed. However, the work incentive deduction in 441—paragraph 41.27(2) “c” shall be allowed except as described in 441—paragraph 41.27(9) “a.”

b. Overpayments due to failure to refund payments received from the absent parent shall be the total nonexempt support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the recipient or eligible group may also be subject to recoupment under provisions in 441—subrules 41.22(6) and 41.27(8).

46.24(4) *Failure to cooperate.* Failure to cooperate in the investigation of alleged overpayments shall result in ineligibility for the months in question and the overpayment shall be the total amount of assistance received during those months.

46.24(5) *Overpayment in special alien cases.*

a. Overpayment in special alien cases when the sponsor is an individual. An overpayment due to client error regarding the income and resources of the alien's sponsor and the sponsor's spouse shall be recouped from the alien or from the resources of the sponsor and the sponsor's spouse which were available to the alien according to 441—subrule 41.26(9).

EXCEPTION: When the sponsor is found to have “good cause” or to be “without fault” recoupment shall be from the alien.

b. Overpayment in special alien cases when the sponsor is an agency or organization. An overpayment due to the sponsor's failure to provide correct information shall be recouped from the alien or from the resources of the sponsor. An overpayment due to client error regarding the sponsor's ability to support the alien shall be recouped from the alien or resources of the sponsor.

EXCEPTION: When the sponsor is found to have “good cause” or to be “without fault” the recoupment shall be from the alien.

46.24(6) Real property exempted as a resource. Excess assistance paid while real property is exempt as a resource in accordance with 441—paragraph 41.26(6) “d” shall be recouped. The amount of the overpayment shall be determined as follows:

a. If the applicant or recipient fails to reimburse the department from the net proceeds of the sale, the family investment program assistance paid during the period of exemption shall be considered an overpayment subject to recovery. The amount of the overpayment shall be either the amount of cash assistance received or the net proceeds from the sale, whichever is less.

b. If the property is not disposed of during the exemption period, or if eligibility no longer exists for some other reason, the entire amount of cash assistance received during the exemption period shall be considered an overpayment subject to recovery. Recoupment, however, shall not be initiated until the property is disposed of.

441—46.25(239) Source of recoupment. Recoupment shall be made from basic needs or in accordance with 46.24(5) above. The minimum recoupment amount shall be the amount prescribed in 46.25(3). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the department of inspections and appeals, or have repayment withheld from the grant. The client shall sign either Form PA-3164-0, Agreement to Repay Overpayment, or Form PA-3167-0, Agreement to Repay Overpayment after Probation, when requested to do so by the department of inspections and appeals. When the client fails to make the agreed upon payment, the agency shall reduce the grant. Recoupment, whether it be by a lump sum payment, periodic installment payments, or withholding from the grant, can be made from one or both of the following sources:

46.25(1) and 46.25(2) Rescinded, effective February 8, 1984.

46.25(3) Basic needs.

a. Recoupment by withholding from basic needs for overpayments due to client error or a combination of client and agency errors shall be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

b. Recoupment by withholding from basic needs for overpayments due to the continuation of benefits pending a decision on an appeal as provided under rule 441—7.9(217) or a combination of continued benefits and agency or client errors shall be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

c. Recoupment by withholding from basic needs for overpayments due to agency error shall be 1 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

d. When the client fails to reimburse the department in accordance with 441—paragraph 41.26(6) “d” recoupment shall be made. The amount of the overpayment shall be determined in accordance with subrule 46.24(6). The amount of recoupment from basic needs shall be 10 percent of the basic needs standard in accordance with the schedule in 441—subrule 41.28(2).

46.25(4) Recoupment in special alien cases.

a. Recoupment in special alien cases when the sponsor is an individual. Recoupment shall be made from the resources deemed to an alien according to 441—subrule 41.26(9) when

- (1) The sponsor is financially responsible for the alien according to 441—subrule 41.27(10),
- (2) The alien and sponsor failed to provide accurate information regarding the sponsor's income or resources, and
- (3) An overpayment resulted.

When recoupment is to be made from the resources deemed to an alien, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

b. Recoupment in special alien cases when the sponsor is an agency or organization. Recoupment shall be made from the resources of the sponsor when

- (1) The sponsor is financially responsible for the alien in accordance with 441—subrule 41.25(6).
- (2) The alien or sponsor failed to provide accurate information regarding the sponsor's ability to support the alien, and
- (3) An overpayment resulted.

When recoupment is to be made from the sponsor's resources, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

441—46.26 Rescinded, effective February 8, 1984.

441—46.27(239) Procedures for recoupment.

46.27(1) Rescinded IAB 2/8/89, effective 4/1/89.

46.27(2) Referral. When the local office determines that an overpayment exists, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

46.27(3) Rescinded IAB 2/8/89, effective 4/1/89.

46.27(4) Change of circumstances. When financial circumstances change, the recoupment plan is subject to revision.

46.27(5) Collection. Recoupment for overpayments shall be made from the parent or nonparental relative who was the caretaker relative, as defined in 441—subrule 41.22(3), at the time the overpayment occurred, except as provided in 46.24(5). When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

46.27(6) Suspension and waiver. Recoupment will be suspended on nonfraud overpayments when the case is canceled and the amount of the overpayment is less than \$35. If the case is reopened within three years, recoupment is initiated again. Recoupment will be waived on nonfraud overpayments of less than \$35 which have been held in suspense for three years.

441—46.28(239) Intentional program violation. This rule applies to family investment program overpayments except for PROMISE JOBS expense allowance overpayments described at rule 441—93.151(249C).

46.28(1) Referral.

a. Administrative disqualification hearings. The following types of cases shall be referred for an administrative disqualification hearing: (1) cases with sufficient evidence to substantiate one or more acts of intentional program violation by the person, and (2) cases previously referred for prosecution that were declined by the legal authority or formally withdrawn by the state.

The department shall coordinate its FIP intentional program violation actions with any corresponding actions being taken under the food stamp program where the factual issues arise from the same or related circumstances.

Referrals shall be made by the county office for the aforementioned types of overpayments that are processed on or after November 1, 1996, even when the actual overpayment occurred before that date.

A referral shall be made regardless of the person's current eligibility status. More than one assistance unit member may be referred.

Referral shall be made by the county office to the appeals section of the department of human services. The referral shall be in writing and include a detailed statement of charges against the assistance

unit member and evidence and shall identify each assistance program involved in the incident. The appeals division of the department of inspections and appeals shall notify the assistance unit member of the scheduled hearing on intentional program violation as described at 441—subrule 7.22(1).

Referral for an administrative disqualification hearing shall not be made on a person who has been referred to the department of inspections and appeals for a court hearing unless notified to do so by the department of inspections and appeals.

b. Court referrals. Court referrals shall be made to the investigations division of the department of inspections and appeals. The investigations division shall notify the department of the court's ruling. The department shall notify the person of the court's ruling and of any disqualification period. A referral shall be made regardless of the person's current eligibility status.

46.28(2) Penalties. A person found, either through an administrative disqualification hearing or by a court, to have committed an intentional program violation shall be ineligible to participate in the family investment program as follows: 6 months for the first violation; 12 months for the second violation; and permanently for the third violation. Only the persons found to have committed the intentional program violation shall be disqualified.

An intentional program violation imposed in another state shall be considered the same as if the person had committed an intentional program violation in Iowa in determining whether it is the person's first, second or third violation, provided the referral for intentional program violation by the other state occurred on or after November 1, 1996. In addition, the person shall be excluded from participation in the family investment program until the disqualification period determined by the other state has ended.

Income of the disqualified person shall be treated in accordance with 441—subparagraph 41.27(8) "a"(1) and subrule 41.27(11). When the disqualified person is a nonneedy nonparental relative, income is exempt.

Overpayments resulting from an intentional program violation shall be subject to rules 441—46.21(239) to 46.25(239) and 46.27(239), except as otherwise specified.

46.28(3) Disqualification period.

a. The person found to have committed intentional program violation by an administrative disqualification hearing shall be disqualified the first month that action can be taken following the final decision as described at 441—subrule 7.22(5) regardless of the person's current eligibility status. Once the disqualification period begins, the disqualification shall continue uninterrupted until completed.

EXCEPTION: The period of disqualification may be subject to stay if the person files for judicial review and requests a stay order, and a stay order is issued by the court preventing the department from implementing the disqualification or interrupting a disqualification already in progress.

Only one disqualification period shall be imposed on the same person for the same time period regardless of the number of infractions that are stated in the referral for intentional program violation. Once a disqualification period is established, another disqualification period shall not be imposed for infractions that may have occurred before that period.

The person shall be notified in writing of the disqualification. For recipients, notice shall be subject to the limitations at 441—subrule 7.7(1).

The assistance unit shall agree to repay excess assistance in accordance with rule 441—46.25(239).

b. A disqualification period ordered by the court shall be imposed as in paragraph "a" except as otherwise specified by the court order. When a court orders a disqualification period but does not specify a beginning date, the disqualification period shall begin within 45 days of the date disqualification was ordered.

These rules are intended to implement Iowa Code sections 239.2, 239.5, 239.6, 239.14 and 239.17.

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