

Subpart G. RESTITUTION AND REIMBURSEMENT

Chap.		Sec.
255.	RESTITUTION	255.1
257.	REIMBURSEMENT	257.21
258.	MEDICAL ASSISTANCE ESTATE RECOVERY	258.1
259.	THIRD-PARTY LIABILITY	259.1

CHAPTER 255. RESTITUTION

GENERAL PROVISIONS

Sec.	
255.1.	Restitution and disqualification policy.
255.2.	Definitions.
255.3.	Requirements.
255.4.	Procedures.

MA RESTITUTION PROVISIONS FOR THE CATEGORICALLY NEEDY

255.71.	Policy.
----------------	---------

MA RESTITUTION PROVISIONS FOR THE MEDICALLY NEEDY

255.81.	Policy.
255.82.	Definitions.
255.83.	Requirements.
255.84.	Procedures.

Cross References

This chapter cited in 55 Pa. Code § 105.4 (relating to procedures); 55 Pa. Code § 140.21 (relating to conditions of eligibility); 55 Pa. Code § 140.221 (relating to conditions of eligibility); 55 Pa. Code § 140.421 (relating to conditions of eligibility); 55 Pa. Code § 140.541 (relating to restitution); 55 Pa. Code § 140.603 (relating to conditions of MA eligibility); 55 Pa. Code § 140.721 (relating to conditions of eligibility); 55 Pa. Code § 141.41 (relating to policy); 55 Pa. Code § 141.61 (relating to policy); 55 Pa. Code § 141.71 (relating to policy); 55 Pa. Code § 165.44 (relating to verification for special allowances for supportive services); 55 Pa. Code § 165.91 (relating to restitution); 55 Pa. Code § 168.91 (relating to restitution); 55 Pa. Code § 183.93 (relating to sponsor deductions); 55 Pa. Code § 183.108 (relating to minimum payment); 55 Pa. Code § 183.121 (relating to incorrect payments); 55 Pa. Code § 299.32 (relating to restitution); 55 Pa. Code § 231.24 (relating to procedures); 55 Pa. Code § 257.22 (relating to definitions); 55 Pa. Code § 287.24 (relating to procedures); 55 Pa. Code § 451.4 (relating to procedures); 55 Pa. Code § 601.144 (relating to treatment of overpayments); and 55 Pa. Code § 3040.92 (relating to eligibility agent responsibilities).

GENERAL PROVISIONS**§ 255.1. Restitution and disqualification policy.**

(a) This chapter applies to AFDC, GA and SBP, except as modified in subsections (c)—(e) and in Chapter 451 (relating to State Blind Pension) and MA. This chapter does not apply to overpayments resulting from the forged endorsement of assistance checks. Recovery of overpayments is described in § 231.24(c) (relating to procedures).

(b) The general restitution policy of the Department will be as follows:

(1) The course of action of the Department in respect to overpayments will be directly related to the cause or reason underlying the client's receipt of assistance for which the client was not eligible. When the overpayment appears due to fraud, the Public Welfare Code (62 P. S. §§ 101—1412) will set the course of action to be taken.

(2) The decision as to whether or not fraud is suspected will be an administrative decision which will place on the Department the responsibility of distinguishing between overpayments due to fraud, and those due to error. To carry out this responsibility, the Department has developed certain objective criteria which will be used in deciding the appropriate action for an overpayment.

(3) Assistance regulations, including this chapter, are aimed at reducing and preventing the incidence of overpayment. Accomplishment of this objective will depend to a large extent on the degree to which the respective responsibilities of the client and the worker are understood and developed. These responsibilities are given in detail in other sections of this title but essential elements are repeated here because of their importance.

(4) A person applying for or receiving assistance has an obligation to report his resources and changes in circumstances. An adult applicant and recipient will be responsible for reporting these facts as they apply to him and to other persons in his assistance unit.

(5) The worker will have an obligation to explain eligibility requirements in terms that fit the situation of the client. The worker will be responsible for being alert to the possibility of resources or changes in the circumstances of the client and for setting up with the client definite and specific reporting requirements appropriate to the situation. The plan for reporting will be entered in the case record.

(c) In addition to being subject to other civil or criminal penalties, an AFDC or GA recipient who has been found by a Federal or State court or by the Department, following an administrative disqualification hearing—as described in Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings)—to have committed an intentional program violation shall be disqualified from receiving Cash Assistance for 6 months for the first offense, 12 months for the second offense and permanently for the third offense. The Department will not take the disqualified individual's needs into account when determining the budget group's need for and amount of assistance. The Department will consider available to the budget group countable income and resources of the disqualified individual.

(d) The Department will provide an applicant for GA and AFDC, at the time of application or reapplication for aid, with written notice of the penalties for intentional program violation which are provided in subsection (c).

(e) The Department will provide current recipients of GA and AFDC with a one-time written notice of the penalties which are provided for in subsection (c) prior to imposition of disqualification.

(f) If the individual is eligible for benefits under the program in which the intentional program violation occurred, the Department will impose the disqualification within 45 days of the date of the finding of the court, administrative disqualification hearing final order or signing of a consent agreement or waiver of administrative disqualification hearing as set forth in Chapter 275, Subchapter B (relating to administrative disqualification hearings). If the individual, who is found to have committed an intentional program violation or who signs a consent agreement or waiver of administrative disqualification hearing is not eligible for benefits under the assistance program in which the intentional program violation occurred, the Department will impose the disqualification effective on the date of the finding of the court, administrative disqualification hearing final order or signing of a consent agreement or waiver of administrative disqualification hearing. Once the Department imposes the disqualification, the disqualification period shall continue uninterrupted.

Authority

The provisions of this § 255.1 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)).

Source

The provisions of this § 255.1 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended February 9, 1979, effective February 10, 1979, 9 Pa.B. 505; amended April 12, 1991, effective May 1, 1991, 21 Pa.B. 1557; amended December 16, 1994, effective December 17, 1994, 24 Pa.B. 6300; amended July 6, 2001, effective July 7, 2001, and apply retroactively to February 1, 1996, for the Food Stamp Program and retroactively to March 4, 1996, for the TANF and GA Cash Assistance Programs, 31 Pa.B. 3538. Immediately preceding text appears at serial pages (254002) and (246039).

(Editor's Note: The amendment made to this section at 21 Pa.B. 1557 (April 13, 1991) was promulgated under section 6(b) of the Regulatory Review Act (71 P.S. § 745.6(b)).)

Cross References

This section cited in 55 Pa. Code § 255.2 (relating to definitions); 55 Pa. Code § 275.51 (relating to imposing the disqualification); and 55 Pa. Code § 3042.111 (relating to general provisions for former TANF families).

§ 255.2. Definitions.

The following words and terms, when used in this section and §§ 255.1, 255.3, 255.4 and 255.71, have the following meanings, unless the context clearly indicates otherwise:

Found by a State or Federal court—The term includes one of the following:

- (i) A verdict of guilty, a plea of guilty or a plea of nolo contendere.

(ii) Receiving probation without verdict, disposition in lieu of trial, an accelerated rehabilitative disposition or a similar deferred adjudication process in lieu of trial, including a process in which the accused recipient signs a voluntary consent disqualification agreement which is approved by the court.

Intentional program violation—An action by an individual applying for or receiving AFDC or GA for himself or others for the purpose of establishing or maintaining his own, his household's or his family's eligibility for AFDC or GA or for the purpose of increasing or preventing a reduction in the amount of the grant, which involves one of the following:

(i) An intentionally made false or misleading statement or misrepresentation or concealment or withholding of a fact.

(ii) An act intended to mislead, misrepresent, conceal or withhold a fact or propound a falsity.

Overpayments—Classified either as suspected fraud, or as nonfraud will be made by relating the case facts nonfraud for purposes of administrative action. The decision as to whether or not the overpayment is suspected fraud will be made by relating the case facts to the following definitions and criteria.

(i) *Causes of overpayment*. There are two basic causes of overpayment: fraudulent misrepresentation by the client and error on the part of the agency or the client.

(ii) *Fraud*. Suspected if the overpayment was caused by what appears to be willful withholding of information on the part of the client.

(iii) *Nonfraud*. An overpayment resulting from the client's misunderstanding of eligibility requirements or of his responsibility for providing the county office with information, from the innocent concealment of facts, or from county office omission or administrative error in securing or acting on information.

(iv) *Suspicion of fraud*. When a person is believed to have knowingly and deliberately withheld information or provided incorrect information to obtain assistance for which he would otherwise not be eligible, a suspicion of fraud will exist. Only the court will have jurisdiction to convict for fraud. Under the Public Welfare Code (62 P.S. §§ 101—1503), obtaining, or aiding or abetting a person in obtaining assistance by means of a willfully false statement or misrepresentation, or by impersonation, or other fraudulent means, is a misdemeanor. A person convicted of fraud under this statute will be sentenced to make restitution of the money received by virtue of his fraudulent acts and, in addition, will be subject to fine or imprisonment.

(v) *Willful withholding*. The person had in fact been told by the CAO, knew and understood what was required and the consequences of any action or lack of action. It further means that noncompliance with known requirements was planned for the express purpose of getting assistance that would not otherwise have been granted.

Restitution—Recovery of assistance from a recipient who has been overpaid. Overpayment will exist when a person receives assistance for which he was not eligible.

State—The states of the United States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

Authority

The provisions of this § 255.2 amended under sections 201 and 403(b) of the Public Welfare Code (62 P. S. §§ 201 and 403(b)).

Source

The provisions of this § 255.2 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended April 12, 1991, effective May 1, 1991, 21 Pa.B. 1557. Immediately preceding text appears at serial pages (130737) to (130738).

(Editor's Note: The amendment made to § 255.2 at 21 Pa.B. 1557 (April 13, 1991) was promulgated under section 6(b) of the Regulatory Review Act (71 P. S. § 745.6(b)).)

Cross References

This section cited in 55 Pa. Code § 275.11 (relating to general policy); and 55 Pa. Code § 275.12 (relating to definitions).

§ 255.3. Requirements.

(a) *General.* In cases of suspected overpayment the information must be verified. The client must consent to the county office obtaining the needed verification or face the alternative of ineligibility for continued assistance. If the client refuses to consent, the county office will proceed in obtaining the necessary verifications without client consent on active or inactive cases.

(b) *Criteria for distinguishing between suspected fraud and nonfraud.* The determining factor in distinguishing between fraud and nonfraud will be the intent of the client. Intent will be established by examining and evaluating pertinent objective facts, including the following:

(1) *Actions and attitudes of the client.* The answers to the following questions will be employed in determining the actions and attitudes of the client:

- (i) Did the client deny the fact that caused the overpayment?
- (ii) Did the client provide information that was misleading or incorrect?
- (iii) Were the actions of the client directed to concealing information?

For example, did he deface or alter documents or arrange appointments with the caseworker so as to conceal other activities?

(iv) What was the reaction of the client to the fact of the overpayment? What did he see as the cause?

(2) *Nature of the overpayment.* The answers to the following questions will be employed in determining the nature of the overpayment:

- (i) Was the overpayment in an amount that the client could not have failed to realize that his assistance payment was incorrect?

- (ii) Did the period of overpayment extend over a period of time that the client had repeated opportunities to report?
- (iii) Were there previous overpayments for related reasons?
- (3) *The ability of the client to comprehend requirements.* The answers to the following questions will be employed in determining the ability of the client to comprehend requirements:
 - (i) Are there physical disabilities, such as advanced age, defective hearing or vision or illness which affect the ability of the client to understand the requirements and his responsibilities in connection with them?
 - (ii) Are there mental limitations, such as emotional or psychiatric disturbances or mental retardation which affect the client's understanding of what is expected of him?
 - (iii) Does the client have any social handicaps, such as illiteracy, language barriers or lack of education which affect his comprehension of requirements?
 - (iv) Were there social factors at the time of the overpayment such as death, accident, serious illness, desertion and the like that so involved the client that comprehension of the importance of meeting reporting requirements was affected?
- (4) *Quality of worker's job with the client.* The answers to the following questions will be employed in determining the quality of the worker's job with the client:
 - (i) Does the case record indicate that the pertinent regulations were explained in terms suited to the capacity of the client?
 - (ii) Were appropriate reporting plans worked out with the client?
 - (iii) Were redeterminations of eligibility made as frequently as appropriate to the situation?
 - (iv) Has the method of working with the client been such as to demonstrate to him the importance of reporting changes in his circumstances? Has the capacity of the client for carrying responsibility been evaluated realistically?
- (c) *Overpayment pending hearing decision.* Restitution will be required for overpayments which occur when assistance is continued pending a hearing decision.
- (d) *Closure.* The county office will have the basic responsibility for determining ineligibility as well as eligibility for assistance. When a closure is requested, information must be obtained from the client concerning the reasons for closure to determine whether the closing is timely or whether overpayment has occurred. When the closing is due to income from employment, support and the like, follow-up will be needed to establish the amount and the date the income began. If overpayment has occurred and repayment is to be sought, referral to claims settlement must be submitted before the case record is disposed of. When the specific reasons for a closure are not provided by the client and reasonable efforts

to obtain the information fail, the county should make a notation as a last entry in the case record so that at subsequent reapplications, intake will be alerted that the situation must be cleared by taking the following actions:

- (1) Verifying that a resource precipitating closure no longer exists.
- (2) Exploring possible overpayment.
- (3) Reviewing the credibility of the client and reliability in reporting.
- (e) [Reserved].

Authority

The provisions of this § 255.3 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 255.3 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended January 13, 1983, effective January 15, 1983, 13 Pa.B. 464. Immediately preceding text appears at serial page (74966).

Notes of Decisions

Overpayments paid to an illiterate recipient who was receiving Social Security payments in addition to AFDC benefits were not due solely to administrative error, since the recipient admitted that she knew that when she received the Social Security payments she would be ineligible for AFDC payments. *Sease v. Department of Public Welfare*, 399 A.2d 1175 (Pa. Cmwlth. 1979).

Even though there was a five-month delay in reporting one spouse's employment, there was no intent to commit fraud within the guidelines of 55 Pa. Code § 255.3(b) (relating to requirements), since no specific procedures existed for reporting employment, there was no evidence of secretive or evasive behavior and the recipients eventually did inform the Department fully and accurately of the terms of the employment of the spouse. *Commonwealth v. Luther*, 403 A.2d 1329 (Pa. Super. 1979) (dissenting opinion).

Given the determination that the recipient was capable of reporting his unemployment compensation income and was obligated to do so, it cannot be said that the Department erred in not promptly investigating his pending unemployment compensation claim. *Schofield v. Department of Public Welfare*, 408 A.2d 588 (Pa. Super. 1979).

Since the provisions of § 255.3 (relating to requirements) require restitution for overpayments which occur when assistance is continued pending a hearing decision, a case did not become moot where appellant continued to receive payments during pendency of her departmental appeal and subsequently continued to receive payments because the disqualifying factor no longer existed. *Fritsch v. Wohlgenuth*, 378 A.2d 849 (Pa. 1977).

Cross References

This section cited in 55 Pa. Code § 255.2 (relating to definitions); and 55 Pa. Code § 255.83 (relating to requirements).

§ 255.4. Procedures.

(a) *Determination of overpayment.* The Department is responsible for identifying overpayments and recovering incorrectly paid assistance.

255-7

(1) *County Assistance Office.* The County Assistance Office has the basic responsibility for determining and redetermining eligibility for assistance and, therefore, for discovering ineligibility. County Assistance Office duties are:

- (i) To explore possible overpayments on active and closed cases.
- (ii) To determine whether an overpayment has occurred.
- (iii) To determine the cause or causes of the overpayment.
- (iv) To collect verification of the resource or resources which caused the overpayment.
- (v) To recommend the nature of the action to be taken on referred overpayments.
- (vi) To furnish Bureau of Claim Settlement with current information which may affect action on the overpayment.

(2) *Quality control.* The Department's Division of Evaluation, Quality Control Branch, informs the County Assistance Office of unreported resource or circumstance discovered during their review process. The County Assistance Office has the responsibility to review the case and determine whether an overpayment has occurred.

(3) *Complaints from community residents.* The County Assistance Office may receive complaints from identified persons or from anonymous callers who want to report what they believe to be incorrect public assistance payments. The complaint is referred to the appropriate County Assistance Office worker to investigate the complaint and determine whether an overpayment has occurred. The confidentiality of the informant must be ensured.

(4) *The Treasury Department.* The Treasury Department may investigate and prosecute cases involving replacement of assistance checks, duplicate receipt of assistance checks or altered assistance checks. Treasury may collect funds resulting from the investigations and prosecutions. See Chapter 231 (relating to checks requiring special handling) for procedures relating to duplicate or altered assistance checks.

(b) *Exploring overpayments.* The methods of exploring overpayments must be appropriate to the particular situation and to the different eligibility factors. These methods must not infringe on the civil liberties of individuals nor interfere with the due process of law.

(1) Specifically prohibited activities are:

(i) Forcible entrance to a home, entering a home under false pretenses, searching the home, questioning based on a presumption of guilt or other practices that violate personal dignity or privacy or that constitute harassment of the individual.

(ii) Making home visits during normal sleeping hours, generally 10 p.m. to 7 a.m. The County Assistance Office worker shall not visit the client before or after normal working hours or on weekends unless the visits have been previously scheduled with the individual.

(2) The County Assistance Office worker explores the overpayment in the same way as any other determination of eligibility for assistance. The usual sources of information and verification are used, such as, but not limited to, the recipient, the case record, banks and employers.

(3) When the County Assistance Office worker determines that an overpayment has occurred, the worker sufficiently establishes the facts of the overpayment to support final action on the case.

(4) Whenever possible, the overpayment is discussed with the client unless such discussion might interfere with the recovery of unreported personal property. The County Assistance Office worker should not compute the amount of the overpayment claim. The Bureau of Claim Settlement will contact the client and arrange repayment.

(5) If the overpayment resulted from unreported personal property that is currently available for repayment, the County Assistance Office should report the situation to Bureau of Claim Settlement immediately, by telephone if necessary. The usual overpayment referral will be prepared later. The County Assistance Office should also report immediately to Bureau of Claim Settlement whenever the County Assistance Office discovers that a person who had a previous overpayment has a liquid asset which can be used for repayment.

(c) *Overpayment referral.* The overpayment referrals are as follows:

(1) *Overpayment investigation control card.* The purpose of the overpayment control card is to provide the County Assistance Office with a control over the process of investigating and referring overpayments. The County Assistance Office worker prepares an overpayment control card for each possible overpayment.

(2) *Overpayment referral.* The County Assistance Office prepares an overpayment referral for an overpayment within 30 days from the date the County Assistance Office verifies the overpayment. The referral is prepared according to directions printed on the form.

(i) *Cash overpayments.* The County Assistance Office submits the overpayment referral to the Bureau of Claim Settlement along with supporting documents needed to substantiate the overpayment. The County Assistance Office recommends on the overpayment referral whether to consider the overpayment suspected fraud or nonfraud. The Bureau of Claim Settlement makes the final decision on whether the overpayment is fraud or nonfraud, and whether prosecution is appropriate.

(ii) *Food Stamp overpayments.* The County Assistance Office submits the overpayment referral to the Bureau of Claim Settlement according to Chapter 561 (reserved).

(d) *Claim computation.* The Bureau of Claim Settlement is responsible for computing cash overpayment claims. Food stamp overpayment claims are computed according to Chapter 561.

(1) The Bureau of Claim Settlement verifies the amount of assistance received and computes the claim as follows:

(i) Assistance received means assistance granted to the client, to the client's spouse and to the minor children in the same grant group during the overpayment claim period. The claim period begins with the first assistance check the grant group receives after an unreported change of circumstances in the grant group has occurred or an unreported resource has been received.

(ii) If the overpayment was caused by a resource owned by a specific person in the grant group, which resource did not affect the eligibility of others in the grant group, the assistance received is the fractional share of the grant for that specific person.

(iii) Available resources are computed using the same disregard, work expense deductions and income incentives as in determining eligibility with the following exceptions:

(A) The 10-day appeal period after advance notice, as set forth in § 133.4(b)(2) (relating to procedures), does not apply to the receipt of resource.

(B) When an AFDC or GA client fails to report earned income on a timely basis as defined in § 125.24(d) (relating to procedures), no deductions are allowed from the earned income unless there is good cause as set forth in § 183.97(3) (relating to ineligibility for disregards from earned income for TANF and GA). If good cause does not apply, the net resource is the gross earned income.

(iv) The amount of the claim is the total net resource or the total amount of assistance received during the overpayment period, whichever is less.

(v) If the overpayment results from an unreported decrease or overstatement of the family size, the amount of the claim is the difference between the assistance received and that which should have been received if the correct family size allowance has been used. If the overpayment results from an unreported decrease or overstatement of special needs, the amount of the claim is the difference between the assistance received and that which should have been received if the correct needs were known.

(2) [Reserved].

(e) *Collection activities.* The Bureau of Claim Settlement is responsible for collecting and settling overpayments referred by the County Assistance Office, except for specific cases referred to the Bureau of Special Investigations.

(1) *Collection principles for overpayments.* Collection efforts continue until the claim is paid in full or until the Bureau of Claim Settlement determines that full payment cannot be collected.

(i) The Bureau of Claim Settlement is responsible for collecting and settling claims.

(ii) The County Assistance Office should not compute claims nor attempt to settle claims. However, if a debtor or his representative offers

payment to the County Assistance Office the payment may be accepted “on account” except when the Bureau of Claim Settlement is considering prosecution. If the County Assistance Office accepts payment, the payor must be provided with a receipt.

(iii) The Bureau of Claim Settlement collects from the debtor. The debtor usually is the payment name of the overpaid grant group, but may be any adult of the grant group or the sponsor of the alien.

(2) *Collection principles for prosecution cases.* The Bureau of Claim Settlement reviews every overpayment referral coded suspected fraud, computes the claim, and decides whether or not to prosecute the case. Prosecution procedures are as follows:

(i) The Bureau of Claim Settlement initiates prosecution through the proper judicial channels. The County Assistance Office employes may be called upon to testify before district justices, judges, juries and grand juries as part of their responsibilities.

(ii) The Bureau of Claim Settlement advises the County Assistance Office when prosecution is initiated. No advance written notification is given to the client by the Bureau of Claim Settlement. Under no circumstances does the client have the right to appeal under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(iii) If the client is found guilty, the court orders the method and terms of restitution. Repayment is made through the court.

(3) *Collection principles for nonprosecution cases.* The method the Bureau of Claim Settlement uses to collect restitution depends on whether or not the debtor is receiving cash assistance.

(i) *Debtors receiving AFDC or GA.* If the debtor is receiving a cash grant, the collection method is as follows:

(A) The Bureau of Claim Settlement notifies the debtor by letter of the amount of the claim and gives the debtor three options of repayment:

(I) Repayment of the total claim in one payment.

(II) Partial repayment with grant reduction until the claim is fully recouped.

(III) Grant reduction alone until the claim is fully recouped.

(B) If the debtor does not select one of the options, the Bureau of Claim Settlement will implement grant reduction until the claim is fully recouped. The Bureau of Claim Settlement will notify the debtor by a second letter of the amount of the grant reduction and the number of checks to be reduced.

(C) For overpayments, the grant reduction shall not reduce the income and resources in the grant group to less than 90% of the family size allowance, as specified in § 175.23(a) (relating to requirements).

(D) The debtor may elect a larger amount of recoupment to repay the claim in a shorter period of time.

(E) In cases where the recoupment reduces the semimonthly assistance payment to less than \$5.00, the minimum grant requirements specified in § 225.24(b)(1)(i) (relating to procedures) do not apply. If recoupment eliminates the assistance payment entirely, the client continues to receive categorically needy medical assistance benefits.

(F) The Department provides the client with an Advance Notice form according to § 133.4 (relating to procedures) before taking action to reduce the grant. Chapter 275 applies if the client wishes to appeal.

(G) The Department may collect a claim by recoupment while the Bureau of Claim Settlement is seeking restitution by court action as long as the amount of the overpayment claim is reduced by the amount collected through recoupment.

(H) The County Assistance Office is responsible for establishing controls to ensure recoupment is removed when the claim is fully paid.

(I) When the claim cannot be fully recouped because of a discontinuance of the entire grant group, the County Assistance Office notifies BCS of the date of discontinuance and the amount recouped.

(J) After discontinuance, the County Assistance Office documents the case record to alert the worker making future assistance authorizations that a claim is pending so that recoupment can be resumed.

(K) When the debtor is no longer receiving assistance, or moves to another grant group, the collection method may be:

(I) Repayment from the debtor.

(II) Grant reduction of the grant group which was overpaid or of any grant group which subsequently includes a member of the overpaid grant group.

(III) Repayment from any individual members of the overpaid grant group no longer receiving cash assistance.

(ii) *Debtors not receiving AFDC or GA.* The Bureau of Claim Settlement pursues repayment for every overpayment not referred for prosecution through the repayment letter system as follows:

(A) The Bureau of Claim Settlement notifies the debtor of the amount of the overpayment claim by a computer-generated letter which requests full repayment.

(B) If the debtor does not respond to the first letter, the Bureau of Claim Settlement computer system automatically sends a second letter requesting repayment and notifying the client of the minimum repayment amount.

(C) Criminal prosecution is not appropriate to collect nonfraud overpayments. However, the Bureau of Claim Settlement may institute civil proceedings if the debtor refuses to acknowledge the claim, refuses to make repayment, or fails to fulfill the Bureau of Claim Settlement repay-

ment agreement. If legal action is initiated, the Bureau of Claim Settlement will notify the County Assistance Office.

(f) *Exchange of information.* Effective collection of overpayment claims depends on prompt and accurate communication between the Bureau of Claim Settlement and the County Assistance Office.

(1) *County Assistance Office to claim settlement.* The County Assistance Office is the primary source of information for the Bureau of Claim Settlement and Bureau of Special Investigations. The County Assistance Office may assist collection activity by providing current information as requested, including the case record.

(2) *Bureau of Claim Settlement to County Assistance Office.* The Bureau of Claim Settlement notifies the County Assistance Office of the final disposition of the overpayment referral by returning to the CAO the last copy of the overpayment referral form.

Authority

The provisions of this § 255.4 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 255.4 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended July 21, 1978, effective August 28, 1978, 8 Pa.B. 2065; amended December 4, 1981, effective December 5, 1981, 11 Pa.B. 4192; amended January 14, 1983, effective January 15, 1983, 13 Pa.B. 464; amended August 26, 1988, effective November 1, 1988, 18 Pa.B. 3921. Immediately preceding text appears at serial pages (109131) to (109137).

Notes of Decisions

Although subsection (d)(1)(i) was inapplicable since it only addressed overpayments due to nonreporting of an income source, DPW has power to collect an overpayment due to administrative error and the failure to promulgate regulations governing the procedure to compute the overpayment will not preclude collection. *Andino v. Department of Public Welfare*, 496 A.2d 1274 (Pa. Cmwlth. 1985).

The regulation in subsection (i)(3)(iii)(A) which concerns an informal interview with the recipient to determine the correctness of the claim and to work out a payment schedule is merely a general guideline and not a mandated procedure in restitution cases. *Charlesworth v. Department of Public Welfare*, 471 A.2d 917 (Pa. Cmwlth. 1984).

A delay of one month between the cessation of non-recurring income and the downward adjustment of assistance payments to allow for the receipt of such income is not so long a delay as to allow characterizing the adjustment as a recoupment under 55 Pa. Code § 255.4(i)(1) (relating to procedures). *Sloneem v. Department of Public Welfare*, 403 A.2d 1070 (Pa. Cmwlth. 1979).

Cross References

This section cited in 55 Pa. Code § 121.3 (relating to requirements); 55 Pa. Code § 142.23 (relating to requirements); 55 Pa. Code § 147.24 (relating to procedure); 55 Pa. Code § 255.2 (relating to definitions); 55 Pa. Code § 255.84 (relating to procedures); 55 Pa. Code § 275.1 (relating to policy); 55 Pa. Code § 275.4 (relating to procedures); 55 Pa. Code § 275.32 (relating to finding of an intentional program violation); and 55 Pa. Code § 275.33 (relating to finding that no intentional program violation occurred).

**MA RESTITUTION PROVISIONS FOR THE
CATEGORICALLY NEEDY****§ 255.71. Policy.**

The restitution regulations applying to categorically needy persons who meet the requirements of Subparts C and D (relating to eligibility requirements; and determination of need and amount of assistance) will be the same as for medically needy persons and are contained in §§ 255.81—255.84 (relating to MA restitution provisions for the medically needy). The regulations will apply to overpayments resulting from client or provider error, fraudulent or nonfraudulent.

Source

The provisions of this § 255.71 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

Cross References

This section cited in 55 Pa. Code § 255.2 (relating to definitions).

**MA RESTITUTION PROVISIONS FOR THE
MEDICALLY NEEDY****§ 255.81. Policy.**

(a) *General.* The restitution regulations contained in §§ 255.81—255.84 (relating to MA restitution provisions for the medically needy), will apply to medically needy and categorically needy persons who meet the requirements of MA. The regulations will apply to overpayments resulting from error of client or provider, fraudulent or nonfraudulent.

(b) *Client error and fraud.* Overpayments caused by client action or failure to act may include, but will not be limited to, the following:

- (1) Withholding of information at time of application which would make the applicant ineligible for Medical Assistance.
- (2) Failure to report changes which would affect eligibility for Medical Assistance.
- (3) Use of medical identification card after notice of ineligibility or after expiration date.
- (4) Securing forged prescriptions for drugs.
- (5) “Shopping.” Getting the same prescription from different doctors.
- (6) Allowing other persons to use the identification card.

(c) *Provider error and fraud.* Overpayments caused by provider action or failure to act may include, but will not be limited to, the following:

- (1) Billing for services which were not rendered to or used for the patient.
- (2) Billing for services, medicine, and the like which are clearly unsuitable for the needs of the patient or so lacking in quality or sufficiency as to be virtually worthless.

- (3) Billing for noncovered or nonchargeable services or supplies disguised as covered items.
 - (4) Flagrant and persistent overutilization of services with little or no regard for results, no regard for the ailments of the patient or no regard for the orders of the physician.
 - (5) Overcharging or underfilling of prescriptions.
 - (6) Inattention to eligibility dates on the identification card.
 - (7) Failure to assure the correct identity of the patient.
- (d) *Computation and collection of claim.* The Bureau of Medical Assistance will be responsible for computing claims and collecting overpayments caused by provider error and fraud. In other cases the claim settlement area office will be responsible for computing the amount of the overpayment and for taking the action necessary to effect repayment.

Source

The provisions of this § 255.81 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

Cross References

This section cited in 55 Pa. Code § 255.71 (relating to policy); and 55 Pa. Code § 255.82 (relating to definitions).

§ 255.82. Definitions.

The following words and terms, when used in §§ 255.81—255.84, have the following meanings, unless the context clearly indicates otherwise:

Restitution—The recovery of medical assistance payments that are incorrectly paid. A Medical Assistance payment will be considered incorrectly paid when the person on whose behalf the payment was made was not eligible for the services and the amount of payment.

Source

The provisions of this § 255.82 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

Cross References

This section cited in 55 Pa. Code § 255.71 (relating to policy); and 55 Pa. Code § 255.81 (relating to policy).

§ 255.83. Requirements.

Restitution will be waived on client overpayments that meet the criteria specified in § 255.3 (relating to requirements). In addition restitution will be waived on client overpayments that are \$50 or less because of the cost of handling claims.

Source

The provisions of this § 255.83 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

Cross References

This section cited in 55 Pa. Code § 255.71 (relating to policy); 55 Pa. Code § 255.81 (relating to policy); and 55 Pa. Code § 255.82 (relating to definitions).

§ 255.84. Procedures.

(a) *Negligence action (third party liability).* If medical care is due to an accident or injury for which there is a negligence action or a potential one, the County Assistance Office, provided that the hospital or other provider has not taken an assignment, will approve payment, and refer the situation to claim settlement as specified in § 177.83 (reserved). If the hospital takes a subrogation or assignment for damages against the third party to the extent of the hospital bill, the client will not be eligible for Medical Assistance payment of the bill.

(b) *Administrative error.* Action taken regarding administrative error will be as follows:

(1) If the County Assistance Office erroneously authorizes payments on an invoice when the client is not eligible, and if the facts to determine eligibility were known to the CAO, it will be administrative error. The overpayment will be referred for collection action only if the client had been clearly notified of his ineligibility for Medical Assistance before making the application for coverage represented by the bill.

(2) If a patient was eligible for both Medicare and Medical Assistance and the former was not billed first, an administrative error will exist.

(3) In negligence cases, if the third party was billed on the interim *per diem* Medical Assistance rate and not the actual charge, an administrative error will exist.

(c) *Classification of overpayments.* Overpayments, for purposes of administrative action, will be classified either as suspected fraud or nonfraud. The decision as to whether or not the overpayment is suspected fraud or nonfraud will be made by relating the case facts to the definitions and criteria in § 3812.

(d) *Investigating overpayments.* Action taken regarding Medical Assistance overpayments will be as follows:

(1) The general principles contained in § 255.4 (relating to procedures) will be applicable to investigating overpayments in Medical Assistance.

(2) The County Assistance Office will be responsible for investigating possible overpayments in active and inactive categorically needy and medically needy cases. If the CAO discovers that an MA payment was made after the effective date of ineligibility, the county will submit the necessary information to the claim settlement by means of the Form PA 189.

(3) In considering whether or not an overpayment has occurred, the worker must consider that the person determined ineligible as categorically needy may be eligible as a medically needy person if he meets the eligibility requirements specified in Subparts C and D (relating to eligibility requirements; and determination of need and amount of assistance).

(4) If a person has any type of third party coverage, such as Blue Cross, Medicare, Commercial Hospital Insurance, V.A. Benefits, Workman's Compensation and the like, or personal funds that are available toward the cost of his medical care, and these resources were not used prior to the service, an overpayment will exist.

(5) In preparing the Form PA 93, Sample Data Report, for the 5% sampling of Medical Invoice payments, the County may discover data which indicate possible recipient or provider fraud. When the investigation of the county substantiates that an overpayment occurred, appropriate referral will be made to claim settlement or to the Bureau of Medical Assistance, as specified in subsection (e).

(6) Decedent estate lists received by the County Assistance Office from claim settlement area offices will be cleared through the master files of the county. Cases identified as having received Medical Assistance will be referred back to the area office to check the estate for undeclared assets at the time of application for MA. If an undeclared asset is discovered in the estate, the claim can then be presented to the estate for repayment of the MA received.

(e) *Referral for restitution or prosecution.* Referral for restitution or prosecution of overpayment claims will be as follows:

(1) The County Assistance Office will refer overpayment claims over \$50 resulting from client error or fraud to claim settlement by means of the Form PA 189, Referral for Restitution or Prosecution. The Form PA 189 will be submitted to claim settlement within 30 days from the date the county office receives the information establishing the overpayment.

(2) Supporting documents needed to substantiate the overpayment will be submitted with the Form PA 189.

(3) Overpayments due to provider error or fraud will be referred by memorandum to the Office of Medical Programs, Bureau of Medical Assistance, for appropriate action. The memorandum must contain a complete summary of the facts of the situation needed to substantiate the overpayment. Supporting documents will be submitted with the memorandum to the Bureau of Medical Assistance.

(4) Nonfraud overpayments within the control of the provider for medical care rendered to the medically needy only, or resulting from county administrative error, will be corrected by use of the Form PA 259-C, Request for Correction of Payment, or, if this is not possible, a referral will be made to claim settlement area office.

Source

The provisions of this § 255.84 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180.

Cross References

This section cited in 55 Pa. Code § 255.71 (relating to policy); 55 Pa. Code § 255.81 (relating to policy); and 55 Pa. Code § 255.82 (relating to definitions).

[Next page is 257-1.]