

Client Services Procedure Manual

Procedure: 5.00

Subject: Overpayment Recovery Follow-up

5.00 Overpayment Overview

Follow up recovery on overpayments for amounts \$100.00 or less on closed claims will not be actively initiated. However, for active claims, these overpayment amounts will be recovered in accordance with this procedure. The repayment period of overpayment recovery will be determined based on the nature and amount of the overpayment. However, the repayment period will generally not exceed 36 months.

5.01 Overpayment Recovery Follow-up

(i) No Response from Overpaid Individual - 30 days after the initial repayment request

Where the repayment schedule appears to have been disregarded, or there is no response to the initial request for repayment, the decision maker will send a follow-up letter to the overpaid person urging immediate repayment or negotiation of a repayment plan. If repayment begins, the decision maker will monitor the repayment until the full amount is recovered.

(ii) No Response from Overpaid Individual - 60 days after the initial repayment request

Where there is no response to the second written request for repayment, or the repayment schedule has been disregarded, the decision maker will send another letter asking the overpaid person to immediately repay, or explain and negotiate a repayment plan.

The decision maker will also advise that if repayment is not commenced immediately the matter may be referred to WorkplaceNL's Legal Counsel for legal action. If repayment begins, the decision maker will, as usual, monitor the repayment until the full amount is recovered.

(iii) No Response from Overpaid Individual - 90 days after the initial request for repayment

If there is no satisfactory response from the overpaid individual, or if there is a noticeable interruption of the repayment plan, after a 90 day follow-up period, the decision maker will:

- summarize the recovery efforts/results, and
- report them to his/her Manager/Regional Director.

(iv) Managerial Review

Based upon the decision maker's report, the Manager/Regional Director may direct the decision maker to take additional action to collect the overpayment, including referral to legal.

Or, if the Manager/Regional Director is satisfied that all recovery efforts have been exhausted and the outstanding balance is less than \$1,000, the overpayment may be removed from the record.

All outstanding overpayments greater than \$1,000 will be referred to WorkplaceNL's Legal Counsel for further review and action. Referrals from the Manager/Regional Director will include details of how the overpayment arose and a summary of recovery efforts.

5.02 Overpayment Referrals to WorkplaceNL's Legal Counsel

Once an overpayment recovery case has been referred to WorkplaceNL's Legal Counsel, all discussions or inquiries related to the matter by the overpaid person are to be directed to WorkplaceNL's Legal Counsel. Legal Counsel is responsible for the subject until legal interventions are exhausted.

(i) 60 Day Review Process

WorkplaceNL's Legal Counsel may send an initial letter to the overpaid individual demanding repayment or negotiated repayment plan within 30 days. If this attempt to collect the amount fails, a final demand letter may be sent, allowing another 30 days for settlement. Legal action may commence at any time once a referral to legal occurs.

(ii) Legal Action

For overpayment balances equal to or less than \$25,000 the action is commenced in Small Claims Court. For balances greater than \$25,000 the action, if commenced, will be in the Supreme Court Trial Division.

(iii) Legal Efforts Exhausted

Where WorkplaceNL's Legal Counsel is unable to recover the full amount of an overpayment and believes it is uncollectible, the Legal Counsel will:

- summarize the legal recovery efforts/results; and
- refer the case to the Manager/Regional Director.

(iv) Final Managerial Review and Disposition

Based on Legal Counsel's report, the Manager/Regional Director will either direct further recovery activity, where necessary, or recommend the overpayment be removed from the record.

Where all reasonable attempts to recover an overpayment through legal means have been exhausted, it may be removed from the record using the following approval levels:

Overpayment Balance	Authorization
Write-off Levels:	
\$1 - \$5,000	Manager
\$5,001 - \$35,000	Director
\$35,001 - \$100,000	Executive Director or Chief Financial and Information Officer
Over \$100,000	Chief Executive Officer

5.03 Financial Hardship

(i) *What is Financial Hardship and How is it Determined?*

There is no precise definition; it is a relative concept which is hard to quantify. It might be said that you know it when you see it.

The issue will most often arise naturally as the decision maker and overpaid individual negotiate a repayment plan. The overpaid person will declare an inability to repay because of no or low income based on current status or obligations.

Where an individual seeks special repayment consideration on the basis of financial hardship he or she must be willing to demonstrate its existence. For example, the individual must produce the following types of evidence to the satisfaction of the decision maker:

- monthly household/business income statement, i.e. fixed expenditures and incomes (accurate and authentic, but not necessarily a formal presentation),
- appropriate documentation from financial, governmental or other businesses or agencies of the person's debts and current payment structures.

When judging the amount an individual should be able to contribute towards the settlement of an overpayment, the decision maker must establish a level at which will not jeopardize the person's ability to maintain the expenses of essential daily living and necessary family or household responsibilities.

(ii) *Options Where Financial Hardship Exists*

Where financial hardship exists the overpayment recovery plan will be modified using one of the following options which are listed in order of priority:

1. Change the method of repayment;
2. Extend the period of time during which the debt will be repaid beyond the generally accepted 36 month repayment period;
3. Temporarily defer repayment until the worker's financial situation improves.

NOTE: Where benefits are terminated or suspended and an overpayment has occurred because of Fraud or Abuse, Financial Hardship will not be a consideration in the event of future entitlements. In these cases all future entitlement will be applied directly against the outstanding overpayment (see 5.04).

5.04 Fraud or Abuse

WorkplaceNL will collect overpayments in all cases of fraud or abuse.

Fraud is committed where a person knowingly and wilfully makes a false representation to WorkplaceNL, by act or omission that causes WorkplaceNL to make payments and/or provide services that would not otherwise be provided.

Fraud may exist through various means, including the following:

- Earnings-related fraud - in which a worker/employer fails to report, or takes active steps to conceal, income from employment during the period benefits are received.
- Disability-related fraud - in which a worker claims to be disabled when in fact he or she is capable of working. For example, a worker may not have suffered an injury at all or may have recovered from an injury, but misleads WorkplaceNL or his or her treating doctor into thinking that there is ongoing disability.

Abuse does not necessarily have the same level of intent as found in fraud cases, but is considered to occur when a person takes advantage of the system by unnecessarily prolonging or extending payments or services provided by WorkplaceNL above and beyond what should reasonably occur.

For example, there may be obvious carelessness or failure by a worker or employer to inform WorkplaceNL about important aspects of the claim (i.e. date of medical clearance or return to work). Even though the carelessness is obvious, it may be difficult to determine intent to defraud. However, clearly it may be considered abuse of the system.

Where fraud or abuse is suspected, the decision maker will:

1. refer the case to the Investigation Services Department to assist in obtaining the facts in accordance with the Investigations Policy EN-11; and
2. prepare and submit a summary of the potential fraud/abuse to WorkplaceNL's Legal Counsel.

WorkplaceNL's Legal Counsel will decide what action is to be taken and whether interest will be charged on any resulting overpayment.

WorkplaceNL's views with respect to penalty for violation of the Act (section 125) is reinforced by the following statement in Policy EN-11 - Investigations:

WorkplaceNL will not tolerate system abuse from any party, including employers, workers, service providers and its own staff. Investigative expertise is required to detect and, where necessary, enable appropriate action against any party who abuses, defrauds, or attempts to defraud the system.

NOTE: The Policy EN-11 also provides the individual protection from unsubstantiated allegations:

Allegations in the form of anonymous calls or letters will be assessed and investigated as warranted. Such evidence is neither noted nor placed on a claim file or any similar permanent WorkplaceNL record, unless a complete investigation substantiates the complaint.

All documentation related to substantiated accusations from anonymous sources will be placed on the permanent record; documentation associated with unsubstantiated allegations from anonymous sources will be destroyed.

5.05 Overpayment after the Death of a Person

Where an overpayment exists on a file, in accordance with Policy EL-04B, collection of an overpayment from a worker or a dependent shall be waived where death of the worker or the dependent occurs, except in the case of fraud, non-disclosure or misrepresentation.

Where no overpayment exists on a file, the follow guidelines will apply when payments are made beyond the date of death:

1. In cases where the payment of compensation for earnings loss capacity to a worker has been processed and WorkplaceNL subsequently receives notification that the worker has become deceased, WorkplaceNL may recover the compensation beyond the date of death. Most often these cases are resolved when the worker's spouse or a family member contacts the Case Manager to advise of the death. The overpaid portion of the benefit is determined and the money is returned to WorkplaceNL.
2. In cases where the payment of a monthly benefit (Permanent Partial Disability pension P.P.D. or a dependency benefit) to a worker or a dependent has been processed and WorkplaceNL subsequently receives notification that the worker or dependent has become deceased, no amount will be recovered for the month that the death occurred. These benefits are intended as *monthly benefits* - they are scheduled as long term payments at those specific intervals.

Where a Case Manager is unable to recover an overpayment in this category the matter will be referred for legal/managerial review subject to the processes outlined in this procedure.

Reference: *The Workplace Health, Safety and Compensation Act, Section 125*
Policy EL-04(B) Overpayments
Policy EN-11 Investigations

Amendment History

<i>Original Effective Date</i>	1996 04 17
<i>Revision #1</i>	2008 02 28
<i>Revision #2</i>	2008 12 05
<i>Revision #3</i>	2011 12 01