



Date: February 9, 2024

DMS Operations Memo 24-03

To: Income Maintenance Supervisors
Income Maintenance Lead Workers
Income Maintenance Staff

Affected Programs:

- | | |
|---|--|
| <input type="checkbox"/> BadgerCare Plus | <input type="checkbox"/> Caretaker Supplement |
| <input checked="" type="checkbox"/> FoodShare | <input type="checkbox"/> FoodShare Employment and Training |
| <input type="checkbox"/> Medicaid | |
| <input type="checkbox"/> SeniorCare | |

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Compromising FoodShare Overpayments

CROSS REFERENCE

- Process Help, [Section 31.3 Benefit Recovery \(BV\)](#)
- FoodShare Wisconsin Handbook, [Section 7.3.2 Repayment of Claims](#)
- 7 CFR [§ 273.18\(e\)\(7\)\(i\)](#)

EFFECTIVE DATE

February 24, 2024

PURPOSE

This memo announces a new policy and process. Individuals found liable for FoodShare overpayments can request to reduce the outstanding balance of their overpayment based on what they anticipate they are able to repay in a three-year period. This policy will provide FoodShare members an opportunity to minimize the burden of repaying overpayment claims when experiencing financial hardships.

BACKGROUND

An overpayment occurs when a household receives benefits for which they are not entitled. There are three different types of FoodShare overpayments: non-client error, client error, and Intentional Program Violation (IPV). Income Maintenance (IM) agencies and the Office of Inspector General (OIG) establish

claims against individuals with an overpayment, referred to as liable individuals, to repay the benefits they weren't entitled to receive. In cases where there are multiple liable individuals, each liable individual is considered responsible for the entire outstanding claim balance. Most overpayments generally remain as an unpaid debt until they are paid, or until the liable individual passes away.

Federal regulation allows for FoodShare overpayment claims to be compromised when that claim is not anticipated to be repaid fully within three years. The request to reduce, or compromise a claim is not related to other appeal processes. A request to compromise a claim has no fair hearing rights, nor the option to negotiate a monthly payment amount owed to an overpayment.

The policy described in this memo does not override any temporary policies in place during the COVID-19 public health emergency (PHE). This includes, but is not limited to, the prohibition of assessing overpayments during the federal PHE when the United States Department of Agriculture, Food and Nutrition Service, and the State of Wisconsin suspended most FoodShare overpayment claim establishment for benefit months that occurred during March 13, 2020, through May 11, 2023.

POLICY

Effective February 24, 2024, the Department of Health Services (DHS) will allow liable individuals with an outstanding balance on a FoodShare overpayment claim, due to client or non-client error, to request that the agency consider a compromise on the amount owed. Overpayment claims due to an IPV, trafficking, or duplicate participation, are not eligible for compromise. When a request to compromise is received, the individual is requesting to compromise all their FoodShare overpayment claims with an unpaid balance. Compromise requests will be denied if the fair hearing window of 90 days after overpayment claim establishment has not elapsed, or if a fair hearing or court case linked to any of the overpayments attached to the compromise has not yet been resolved.

Compromise Requests

Overpayment claims must be established before they can be evaluated for compromise. Liable individuals that wish to have their claim reviewed for a potential compromise must submit a formal request to the IM agency. Compromises must be requested in writing by liable individuals using the [Request to Lower a FoodShare Overpayment form, F-03266](#), either hand-delivered or mailed back directly to the agency. A liable individual may initiate the process by contacting the IM agency by phone and the compromise request form will be mailed to the individual for completion. Compromise requests and the related correspondence from the agency are sent to individuals, not households.

If the request is submitted to an agency who did not establish the claim, the request will be forwarded to the correct agency. Workers must take action on compromise requests received timely and attempt to make the compromise request determination within 30 days of receipt. Requesters are encouraged to contact the agency if they are not informed of a decision within 30 days.

At the time of the compromise request, all eligible FoodShare overpayment claims must be reviewed, and the current outstanding balances combined for the compromise evaluation. Prior repayments made toward a claim is money repaid toward the federal debt and will not be refunded nor replaced.

Requesting a compromise does not eliminate the obligation to repay the claim; it is expected that the

household continues to repay the claim balance. Delinquency and collections are not placed on hold during this process.

Collecting Information for a Compromise Request

The household's income, assets, and expenses will be used to calculate an amount that can be anticipated to be repaid in three years. This amount is compared against the total amount owed on overpayments eligible for compromise. If the amount that is anticipated to be repaid in three years is less than the overpayment amount, the overpayments are reduced to the amount that is anticipated to be repaid. As a part of completing the compromise request form, the requester must provide information needed to complete the compromise determination. This includes information about their current household members, monthly household income, and expenses. Requestors will also be asked to report the total amount of available liquid assets. Liquid assets may not exceed a combined total of \$100,000 or the compromise request will be denied. Liquid assets include money, accounts, or financial resources. Liquid assets and household composition do not require verification unless questionable.

Countable household income and expenses must be reported and verified, unless specified. Income types included for the compromise determination include, but are not limited to, earned income from employment and self-employment and unearned income such as Unemployment Compensation, Social Security, and Veteran's benefits. All income is counted, including income that would be excluded for FoodShare eligibility. Allowable household expenses for the compromise process are different than for FoodShare eligibility. In addition to the allowable FoodShare expenses, monthly transportation, medical, education, debt, and some other expenses may be allowed when determining the amount that can be repaid each month. Shelter and utility expenses must only be verified if questionable. Agencies must calculate compromises using the monthly payment amounts for expenses reported as a lump sum, such as a large medical bill that is paid through monthly installments. In claims with multiple liable individuals who are no longer residing in the same household, an attempt must be made to verify the other liable individuals' information.

Information used in the compromise request must be recent. A current snapshot of the household's composition, income, and expenses is required to determine what can be prospectively repaid in the next three years. Existing information in the case record will not be used unless it was verified within 30 days of the compromise request.

Liable Individuals

In claims with multiple liable individuals, only one individual, the primary requester, is required to request the compromise. If more household information is needed, 20 days must be given for the individual to provide information and verification documents. This requester will be asked to provide, if known, the address and phone number for any other liable individuals. In claims with multiple liable individuals who are no longer living in the same household, the calculation will be completed for each liable individual's household on the claim and use the outcome that provides the greater benefit to the liable individuals. If there are not multiple liable individuals (only one individual on the claim) or information is only collected or received for one of the liable individuals, the decision will be made to compromise based on the information received.

Approval or Denial of a Compromise Request

The household income and expense amounts reported by the requester are budgeted to a monthly value which will be multiplied by 36 months. The calculation includes income, deductions, and all other

allowable expenses which will be counted at the full value. This calculation will determine an amount the household is anticipated to be able to repay in a three-year period. If the requester is part of an active FoodShare household, the amount that can be recouped from their monthly FoodShare benefit will also be calculated. The larger amount between what could be repaid or what will be recouped will be compared to the outstanding balance of the claims. If the amount that can be repaid is less than the claim balance, the compromise is approved, the DCF “Write-Off and Adjustment Form” ([DCF-F-140-E](#)) will be sent to the Wisconsin Department of Children and Families, Public Assistance Collection Section (DCF PACS), and an approval notice will be sent notifying the liable individuals of the new payment amounts. Overpayment claims are only compromised once, unless the agency determines that a significant change in the household’s circumstances will result in the liable individual not paying off the claim in the three-year period calculated for the original compromise determination. When claims have been compromised, those must be paid to a \$0 balance before any future compromise requests can be considered. This applies to any new claims received after the compromise request is made, including those that did not qualify for a compromise.

A compromise request could contain multiple claims and each claim is evaluated separately. If the amount that can be repaid is equal to or greater than the claim balance, the compromise is denied by the worker, and a denial notice will be sent to the requester. In some cases, liable individuals will be notified of the denial. The liable individuals may reapply for a compromise if there is a significant change in the household that changes their ability to repay.

Example 1: On March 7, 2024, the agency received a compromise claim request from Matt for his three overpayment claims. After further review, the worker discovers that there are two liable individuals on the claims.

Matt and Rosalie are both liable for:

- Claim 1 from September 2018 for \$100
- Claim 2 from February 2019 for \$150
- Claim 3 from August 2023 for \$225

The agency requests to verify income, expenses, and assets of their households. After evaluating the information received, starting from the oldest claim, the worker determines:

- Claim 1 is approved for a compromise amount of \$0
 - The oldest claim must be brought to \$0 before other claims can be lowered to any amount
- Claim 2 is approved for a compromise amount of \$90
- Claim 3 is denied because the compromise amount did not change, remaining at \$225

The worker sends an approval notice to both Matt and Rosalie for their claim 1 and 2. A denial notice would not be issued for claim 3 because both individuals are attached to at least one approved claim.

Escalation Review

The requester can escalate a compromise determination with the agency if they disagree on a compromised amount or on a denied compromise. The agency will conduct an escalation review to determine if policy has been followed, if the compromise was calculated correctly, and if proper notices were provided. The results of the review will be sent to the requester. If the requester disagrees with the

agency escalation review, the agency may escalate it to DHS. DHS will perform a review similar to the agency review to validate that the correct policy and process were followed. The escalation review may result in a change to the compromise decision or amount, but if the denial was correct, there will be no change in the decision. The DHS review is considered final and may not be escalated further. There are no fair hearing rights for compromise requests.

Example 2: On May 22, 2024, Matt contacted the agency and requested to escalate the compromise decision for claim 2 and 3. The IM agency completed the first escalation and found the decision correct. A notice was sent out. Matt still did not agree with the outcome and contacted the IM agency again. The claim was escalated by the agency to DHS who then reviewed and evaluated the claims and concluded the actions taken on the compromise claims by the IM agency were correct. The DHS worker sends a denial notice to Matt and Rosalie for their escalation request. There is no further recourse for Matt as the DHS decision is final.

CONTACTS

DHS CARES Problem Resolution Team

DHS/DMS/BEEP/CH

DHS/DMS/BEOT/JL