

# How to Present an “Equitable Estoppel” Defense at a DSHS Hearing

---

## Introduction

If you get an overpayment notice from DSHS saying that you owe them money or food stamps because they gave you benefits they should not have given you, and the overpayment was through no fault of yours, you should ask for a fair hearing. You have a legal defense against the overpayment. You must ask for the fair hearing within 90 days of the date of the overpayment notice. The notice will say the overpayment was unintentionally caused. It will also say you are required to repay it. It will not tell you that there is a legal defense against it.

The legal defense is called “equitable estoppel.” This means that it is fair that DSHS be stopped from collecting the overpayment if it was not your fault you were overpaid and you will be financially harmed if you have to repay it. There are five parts to this defense. Your situation must meet all five elements. We describe them below with examples of how to prove you meet each one.

If you believe you meet all the elements, ask for a pre-hearing conference with the Fair Hearing Coordinator (FHC) in your local DSHS office. Tell the FHC you will ask the judge to apply equitable estoppel in your fair hearing. If the FHC agrees you are entitled to use this defense against collection of the overpayment, s/he can fill out a document called “Stipulation and Agreed Order of Dismissal” to present to the judge at your hearing.

If the FHC does not agree with you, go to your fair hearing. Tell the judge you are

presenting an equitable estoppel defense. In order to get the judge to stop DHS from collecting the overpayment you will need to go through each of the five elements to show the judge you meet each one. The elements are:

- A party’s admission, statement or act inconsistent with its later claim;
- Action by another party in reliance on the first party’s act;
- Injury that would result to the relying party from allowing the first party to contradict or refute the prior act, statement, or admission;
- Application of estoppel must be necessary to prevent a manifest injustice, and
- The exercise of governmental functions must not be impaired as a result of applying estoppel.

## **An act, admission or statement inconsistent with a later claim.**

It will probably be very easy to show you meet this requirement. DSHS sent you a letter saying that you were eligible for benefits. DSHS paid the benefits. DSHS then sent a letter (a later claim) stating that you either were not eligible or that you got too much. Show the FHC or the judge your letter from DSHS saying you were eligible for benefits. If DSHS did not send you a letter, tell the FHC or the judge that DSHS’s issuance to you of the check or stamps is the “act” in which DSHS said that you were eligible for benefits. Then point out that the letter saying that you were not eligible and

asking you to repay the benefits is the inconsistent act.

### **An action by another party in reliance on DSHS's act.**

You are the party (person) who relied on DSHS's act or statement. You believed you were eligible to receive the benefits DSHS sent you. You acted accordingly. Be sure to tell the FHC or judge the following:

- You gave DSHS all the information asked for.
- You did not know DSHS made a mistake.
- You thought you were eligible for the benefits you got, and you spent them.
- It was reasonable for you to rely on DSHS.

Your reliance must have been reasonable. In most cases it will have been. Eligibility rules and benefits computations are complicated, can be confusing, change often, and sometimes do not make much sense, especially if no one has explained them to you. So it is usually reasonable for a recipient to expect DSHS to do its job accurately and to give him/her the correct amount of benefits.

### **Injury to the party who relied on DSHS if DSHS is allowed to reject its prior action.**

You need to show you would be harmed if DSHS can now claim that you owe the money or food stamps. You need to show that you cannot afford to pay back the money or to have your benefits reduced. You also need to show that you planned your finances in the belief that you were

entitled to the extra benefits you got, or you can show that you used them to buy something that you would not have bought otherwise.

Some examples of injury are:

- You bought more nutritious food items. If you had not gotten the extra benefits, you either would have bought less expensive items or you would have gone to the food bank more often that month.
- You bought new shoes or clothing for your children instead of used, or you bought a birthday present for a household member, or you took the family to a special event. You would not have been able to spend money this way if you had known you were not eligible for the extra benefits you got.
- If DSHS gave you a medical card (or coupons) that it now says you were not eligible for, you may have gotten medical help that you would not otherwise have sought. Example: instead of going to the doctor, you might have chosen to go to a neighborhood clinic where the same service was free or cheaper.

You must give the FHC or the judge as many examples as possible of the ways in which you used the benefits which you would not have done if DSHS had not issued them to you by mistake.

## **Applying estoppel is necessary to prevent manifest injustice.**

You need to show two things to meet this element:

- (1) that you cannot afford to repay the overpayment, and
- (2) that you were not responsible in any way for the overpayment.

To show the first, you must tell the judge what your income and expenses are. Make a list of all your expenses to show that you need all of your income to maintain a very basic level of living. The list should show that you spent all your income on necessities such as shelter, food, clothing, toiletries, household maintenance and operations, and transportation. If your reasonable expenses use up all of your income, you cannot afford to repay the overpayment.

To prove the second part of this, you must show that you were totally without fault or knowledge that you were overpaid. Point out to the judge that you provided the

correct information to DSHS and that you had no reason to know that you were not eligible for the benefits you received.

## **The exercise of governmental functions will not be impaired by applying estoppel.**

You will not have to do much to meet this element. The judges know that it does not impair DSHS's functions to stop it from collecting overpayments. They have found that it can actually improve governmental function by encouraging DSHS to be more careful in awarding benefits. Similarly, the fair hearing coordinators have been instructed that collection of overpayments does not impair DSHS's function.

Point out that you reported everything to DSHS timely and accurately, and that DSHS should be expected to do its job timely and accurately. Tell the judge that it is DSHS's responsibility to determine eligibility and to see that errors do not occur, not yours. You did your part in reporting information, changes, and so on. DSHS should be expected to do its part.

7912EN

---

**This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, January 2012.**

**© 2012 Northwest Justice Project — 1-888-201-1014**

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)