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Initially, if the SHD has been notified that the claimant received CalWORKs in each county, both San Diego and Los Angeles will be parties. If the claimant does not dispute any action taken by Los Angeles County, San Diego County is the only party to the hearing. Los Angeles County should be available to participate in the hearing as a witness, if issues arise pertaining to that county.

If the claimant disputed any month from January 1998 through December 2000, then Los Angeles County will continue to be a party.

If SHD had only identified San Diego County as a party, the Administrative Law Judge would join Los Angeles County as a party, if necessary.

4. How should a non-moving county be prepared to participate during the hearing?

Answer: The non-moving county should be prepared to participate in the hearing by telephone and should forward all necessary documents to support its position to the moving county prior to the hearing date. The non-moving county must also make such evidence available to the claimant two working days in advance of the hearing.

5. How should the Administrative Law Judge proceed if there is more than one county involved in the hearing?

Answer: The Administrative Law Judge will contact the non-moving county by telephone to participate in the hearing.

If the identity of a non-moving county becomes known for the first time at the hearing and there is a dispute involving the claimant's month(s) of aid while in that county, the Administrative Law Judge may need to schedule a continued hearing, or, if necessary, postpone the hearing.

6. Why is it necessary, under the above circumstances to make the non-moving county a party to the hearing?

Answer: The county that puts information into WDTIP (the statewide computer program that tracks time on CalWORKs) is the only county that can correct such information. The moving county cannot correct a non-moving county's WDTIP records.

*California Department of Social Services - State Hearings Division  
Notes from the Training Bureau - January 23, 2002*

<b>Item 02-01-01A</b>
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Food Stamp Overissuances--Questions and Answers
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**May the County Recoup an Overissuance from Children?**

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Counties may only recoup a food stamp overissuance from an adult member of a food stamp household. The general rule is that the county is required to establish a claim against any household that has received more benefits than it was entitled to receive. All adult household members are jointly and individually liable for any overissuance to the household. (§63-801.1)

This means that a county may only recoup from adults and may not recoup from children. If there is a food stamp household with children that includes an adult member that received an overissuance, and the adult member is still in the household, the county may recoup the overissuance by allotment adjustment. The county may also recoup the overissuance by demanding the adult household member repay the overissuance.

If on the other hand there is no adult household member, the county may not recoup the overissuance by allotment adjustment. This is true regardless of whether the overissuance was caused by administrative error, household error or intentional program violation. (If the adult household member is still living in the household, but has been disqualified due to an Intentional Program Violation (IPV), the adult is considered to be an excluded household member per MPP § 63-402.223. The county may recoup an overissuance from this household.)

If the adult who was in the household at the time of the overissuance no longer lives with the children who are receiving food stamps, a county may not recoup the overissuance by allotment adjustment against the children's household. The county may recoup the overissuance by demanding repayment against the adult or, if such adult receives food stamps in another household, the county could allotment adjust against that household.

### **May a County Recoup an Overissuance from an SSI/SSP Recipient?**

An SSI/SSP recipient is considered an excluded household member per MPP §63-402.226. The SSI/SSP recipient is not eligible to receive food stamps in California.

However, per MPP §63-402.22, the SSI/SSP recipient who resides with a household shall be included as a member of the household for the purpose of defining the household. The food stamp policy bureau has interpreted this to mean that the SSI/SSP recipient is treated as a household member for purposes of recoupment of overissuances. Thus if the SSI/SSP recipient is an adult, the county may demand repayment from the adult SSI/SSP recipient.

Pursuant to *Louis v. McMahon*, an SSI/SSP recipient does not have to use his/her SSI/SSP income to repay the overissuance. Thus the county may only recoup an overissuance from an SSI/SSP recipient if he/she has other assets to repay the overissuance or if he/she voluntarily agrees to repay from SSI/SSP income.

### **May the County Recoup an Overissuance from Social Security Income?**

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*Louis* provided that persons did not have to use either Social Security or SSI/SSP benefits to repay an AFDC (or CalWORKs) overpayment or a food stamp overissuance. (See All County Information Notice (ACIN) I-27-90, April 19, 1990.) However, per ACIN I-109-00, November 17, 2000, the Food and Nutrition Service (FNS) has directed California to change its FS collection notices, to remove the language which states that Social Security does not have to be used to repay the FS overissuance. The FNS position is based on the Debt Collection Improvement Act, which according to the CDSS, authorizes the collection of SSA benefits to repay debts owed to the Federal Government, but exempts the collections from SSI but not SSA.

**May the County Recoup an Overissuance from Social Security Income of a Person Who Receives both Social Security and SSI/SSP?**

Yes, according to the food stamp policy bureau. ACIN I-109-00 applies to persons who receive both Social Security and SSI/SSP. The county may recoup from the Social Security income even though a person who receives Social Security and SSI/SSP would receive no more income than a person who receives only SSI/SSP.

**May the County Demand Repayment of an Administrative Error Overissuance from a Food Stamp Recipient Instead of Recouping by Allotment Adjustment?**

No. MPP §63-801.731 says that counties shall collect repayment for a claim from a household participating in the food stamp program by reducing the food stamp allotment in accordance with §63-801.44.

Per §63-801.732, prior to reduction, the county in addition to informing the household of the formula for determining the amount of food stamp allotment reduction must advise the household of other methods of repayment.

MPP §63-801.222 states that administrative error overissuances recouped on or after March 1, 2000, are automatically compromised and recouped pursuant to *Lomeli v. Saenz*. This agreement stipulates that administrative error overissuances are to be recouped by reducing the monthly allotment by five percent or \$10, whichever is greater for up to 36 consecutive months.

If the first county notice seeking to recoup the overissuance is sent on or after March 1, 2000, the county may not demand repayment from a current food stamp recipient. The county would be required to recoup by allotment adjustment unless the household chose to repay by lump sum and/or food stamp coupon repayment. The first month of adjustment would begin the 36-month recoupment period. The county may not circumvent this 36-month period by demanding repayment instead of reducing the food stamp allotment.

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If the county had issued a notice of action to recoup the overissuance prior to March 1, 2000, from a current food stamp recipient, *Lomeli* does not apply. The county would still be required to recoup by allotment adjustment unless the household chose to repay by lump sum and/or coupon payment as full or partial payment of the claim. However, the county would not be limited to recouping such overissuance for 36 consecutive calendar months.

**When Calculating a Food Stamp Overissuance, Do You Include the CalWORKs Grant That the Household Received, or the Grant the Household Should Have Received?**

MPP §§63-801.3 and .4 require counties to calculate and recoup food stamp overissuances regardless of whether the overissuance was caused by administrative error, inadvertent household error or intentional Program violation. When calculating the correct level of benefits, counties must include the income that the household actually received in the month at issue. (See MPP §63-503.212(a)) Therefore, when computing an overissuance, counties must include as income, the CalWORKs grant that the household actually received. Counties should not compute an overissuance based upon the amount of food stamps the household should have received.

The following example illustrates how to compute a food stamp overissuance:

A household received a CalWORKs grant of \$1000. The household reported no income. It is later discovered that the household had \$200 in unreported unearned income. When this income is taken into consideration, the CalWORKs assistance unit was entitled to receive only an \$800 CalWORKs grant.

When determining the amount of food stamps the household should have received, the county would use the \$1000 CalWORKs grant the household actually received plus the \$200 unreported income. The county would use the \$1000 CalWORKs grant for purposes of calculating any overissuance even if the household had reported the \$200 unearned income and the county failed to budget that income.

Note: In a state hearing involving a CalWORKs administrative error overpayment or a food stamp overissuance, an Administrative Law Judge may apply equitable estoppel and order the county to compute the food stamp allotment using the CalWORKs grant the household should have received instead of the CalWORKs grant actually received.

*California Department of Social Services - State Hearings Division  
Notes from the Training Bureau - December 10, 2002*

**Item 02-12-011**

CDSS ACWDLs 02-53 -- November 8, 2002 -- 2003 Medicare Catastrophic Coverage Act (MCCA) Spousal Impoverishment Caps