

**County of San Diego, Health and Human Services Agency (HHSA)  
Cash Assistance Program for Immigrants (CAPI) Program Guide**

**Waiver Determinations**

**Number**

**99-109.3**

**Page**

**1 of 3**

**Revision Date:**

September 1, 2019

**Background:**

This section provides information on how to complete a waiver determination for overpayment recovery in CAPI.

**Purpose:**

This section is updated for the sunset review. No Program rules have changed.

**Policy:**

An overpaid recipient may request a waiver of overpayment recovery at any time after receiving an overpayment notice.

- Suspend overpayment recovery while deciding on the waiver request
- Waive recovery if the overpaid recipient is “without fault” in connection with causing or accepting the overpayment and recovery or grant reduction would:
  - Defeat the purpose of CAPI
  - Be against equity and good conscience
  - Impede the effective or efficient administration of CAPI because of the small amount involved.

Note: Approve waivers up to \$1,000. Supervisors approve all waivers over \$1,000 and all denials.

**1. Determine “Without Fault:”**

To determine if a recipient is without fault, consider all available evidence and pertinent circumstances surrounding the overpayment, such as if the recipient:

- Understood the cause of the overpayment at the time it occurred
- Understood the reporting requirements
- Agreed to report events affecting payments
- Was aware of events that should have been reported
- Attempted to comply with the reporting requirements
- Had the ability and opportunity to comply with the reporting requirements
- Understood the obligation to return payments that were not due
- The extent of efforts made to instruct the recipient about reporting responsibilities and program eligibility rules in his/her native language.

In considering these factors, also consider the recipient’s:

- Age
- Comprehension
- Limitations (physical, mental, educational, linguistic, including any lack of facility with the English language).

**2. “Without Fault” Situations:**

Presume “without fault” for any overpayment that occurred prior to the worker’s receiving the recipient’s report. If incorrect payments continue, establish fault if the recipient accepts payments he/she knew were incorrect.

**County of San Diego, Health and Human Services Agency (HHSA)  
Cash Assistance Program for Immigrants (CAPI) Program Guide**

**Waiver Determinations**

**Number**

**99-109.3**

**Page**

**2 of 3**

Find “without fault” in the following situations:

- The recipient failed to report a change because of misinformation from an official source, such as a state or county employee
- When the sole cause of the overpayment was excess resources of \$50 or less. Waive recovery of the overpayment unless the recipient willfully and knowingly failed to report the value of resources accurately and timely. See the example in Desk Aid 99-109.3A.

Note: There is willful and knowing failure to report when the evidence clearly shows the recipient was fully aware of the eligibility requirements and the excess resources and chose to conceal them.

- When the sole cause of the overpayment was excess resources of over \$50, unless the recipient willfully and knowingly failed to report the excess resources accurately and timely. To allow a determination of “without fault” in this situation, follow the steps in the table below.

| <b>Step</b> | <b>Action</b>   |
|-------------|---|
| 1           | Subtract the applicable resource limit from the greatest countable resource amount during the overpayment period. |
| 2           | Recover the lesser of the difference or the overpayment.  |
| 3           | Waive recovery of any amount in excess of the difference as being against “equity and good conscience.”           |

**3. “With Fault:”**

Although findings depend on all the circumstances of a case, a recipient will be found to be at fault in connection with an overpayment when the incorrect payment resulted when the recipient:

- Failed to furnish information the recipient knew or should have known was material
- Made an incorrect statement which he/she knew or should have known was incorrect
- Did not return a payment which he/she know or could have been expected to know was incorrect
- Received and negotiated duplicate payments for the same period
- Had similar overpayments in the past.

**4. Defeat the Purpose of CAPI:**

This provision applies to any overpaid recipient who:

- Is still receiving CAPI or SSI/SSP
- Does not have earned income in excess of \$65 per month.

The provision does not apply if the overpaid individual has in his/her possession any of the incorrectly paid funds.

For “Defeat the Purpose” to apply in any other case (for example, when the recipient is no longer receiving CAPI or SSI/SSP), determine if:

- The recipient needs substantially all current income to meet current and necessary living expenses
- Recovery would reduce the total resources below \$3,000 for a recipient with no dependents or \$5,000 for a recipient with one dependent (allow an additional \$600 for each additional dependent).

**County of San Diego, Health and Human Services Agency (HHSA)  
Cash Assistance Program for Immigrants (CAPI) Program Guide**

**Waiver Determinations**

**Number**

**99-109.3**

**Page**

**3 of 3**

**5. Against Equity and Good Conscience:**

Adjustment or recovery is “against equity and good conscience” if the recipient:

- Changed his/her position for the worse
- Relinquished a valuable right because of reliance upon a notice that payment would be made or because of the incorrect payment itself.

**Example:**

1. *A recipient fails to take advantage of a private organization or charity, relying instead on the award of CAPI benefits*
2. *It was subsequently found that the CAPI benefits were improperly paid*
3. *Recovery would be “against equity and good conscience” if the recipient were also found to be “with fault.”*

**6. Impede Effective or Efficient Administration:**

Attempts to recover minor overpayments would “impede effective or efficient administration” of CAPI, due to the small amount involved. Therefore:

- Waive total overpayment amounts from \$.01 to \$30 without further action
- Presume the individual is without fault

**Procedure:**

Follow the actions in the policies above and Processing Guide 99-109.2A to collect on a CAPI overpayment.

**Program Impact/s:**

None.

**References:**

ACL 98-82, and 00-73  
ACIN 33-09

**Sunset Date:**

This policy will be reviewed for continuance on or by 09/30/2022

**Approval for Release:**



Rick Wanne, Director  
Eligibility Operations