

922 KAR 2:020. Child Care Assistance Program (CCAP) improper payments, claims, and penalties.

RELATES TO: KRS 13B, 23A.010, 45.237-45.241, 194A.060, 45 C.F.R. 98, 205.50, 42 U.S.C. 601-619, 9857-9858q

STATUTORY AUTHORITY: KRS 45.237(4), 194A.050(1), 199.8994, 45 C.F.R. 98.60(i)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. 45 C.F.R. 98.60(i) and KRS 45.237(4) require the cabinet, as the lead agency for Kentucky, to recover child care payments that are the result of fraud or improper payment. This administrative regulation establishes procedures for improper payments, claims, and penalties used by the cabinet in the administration of the Child Care Assistance Program (CCAP).

Section 1. Definitions. (1) "Agency error" means an error on the part of the cabinet or its designee.

(2) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(3) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of 922 KAR 2:160, with the financial resources to find and afford quality child care.

(4) "Child care provider" means the individual, business, or business proprietor who is receiving, or has received, payment for child care services under CCAP.

(5) "Claim" means an amount owed to the cabinet as a result of an overpayment of CCAP.

(6) "Claimant" means a current or former CCAP recipient or child care provider subject to a claim.

(7) "Compromise a claim" means accepting less than the full value of a claim.

(8) "Hearing officer" is defined by KRS 13B.010(7).

(9) "Improper payment" is defined by KRS 45.237(1)(f) or 45 C.F.R. 98.100(d).

(10) "Inadvertent error claim" means an overpayment resulting from a misunderstanding or unintended error on the part of a recipient or a child care provider.

(11) "Intentional program violation" or "IPV" means a CCAP recipient or child care provider having intentionally:

(a) Made a false or misleading statement; or

(b) Misrepresented, concealed, or withheld facts.

(12) "Overpayment" means a CCAP payment which exceeded the amount a CCAP recipient or a child care provider was eligible to receive.

(13) "Recipient" means a family who has been found eligible for CCAP.

(14) "Terminate a claim" means ceasing all collection actions on a claim.

(15) "Underpayment" means a payment which was less than the amount a recipient or a child care provider was eligible to receive.

Section 2. Responsibility for a Claim. (1) A parent of a recipient household or a child care provider shall be responsible for paying a claim which resulted from an:

(a) Overpayment due to an action or inaction on the part of the recipient or the child care provider, including failure to report a change in circumstance in accordance with 922 KAR

2:160, Section 11; or

(b) Agency error that provided the recipient or the child care provider with an overpayment.

(2) The cabinet shall make an exception to subsection 1(b) of this section if the recipient:

(a) Is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

(b) Complied with the requirements of the recipient's:

1. Case plan developed in accordance with 922 KAR 1:430; or

2. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

Section 3. Claim Category. (1) A claim shall be classified in one (1) of the following three (3) categories:

(a) A claim resulting from an IPV;

(b) Inadvertent error claim; or

(c) Agency error claim.

(2) The cabinet shall establish an IPV against a recipient or a child care provider if:

(a) A court of appropriate jurisdiction issues a conviction, or accepts an Alford or guilty plea, related to an IPV in CCAP against a parent of the recipient household or the child care provider;

(b) A parent of the recipient household or a child care provider completes, signs, and returns the:

1. DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing, 02/16; or

2. DCC-83, Deferred Adjudication Disqualification Consent Agreement, 02/16; or

(c) A hearing officer or an agency head makes a determination finding an IPV as a result of an administrative disqualification hearing.

Section 4. Action on an Improper Payment. (1) The cabinet shall investigate each:

(a) Instance of an improper payment; or

(b) Allegation of an IPV related to a:

1. Recipient; or

2. Child care provider.

(2) The cabinet shall initiate action to correct an improper payment in a CCAP case.

(3) If an overpayment has occurred, the cabinet shall:

(a) Determine the amount of overpayment in accordance with Section 5 of this administrative regulation; and

(b) Categorize and establish a claim to recover the amount of the overpayment.

(4) If the cabinet has sufficient documentary evidence to confirm that a recipient or child care provider has committed an IPV, the cabinet shall:

(a)1. Refer the case to the cabinet's Office of Inspector General (OIG) for investigation or referral for prosecution if warranted by the facts of the case;

2. Initiate an administrative disqualification hearing in accordance with Section 9 of this administrative regulation; or

3. Accept a parent of a recipient household or a child care provider's waiver of an administrative disqualification hearing through the parent or child care provider's completing, signing, and returning a DCC-84 Supplement A as specified in Section 3(2)(b) of this administrative regulation; and

(b) Take an action necessary to establish a claim to collect any overpayment resulting from the suspected IPV.

Section 5. Calculating a Claim. (1) The cabinet shall calculate the amount of an overpayment for an:

(a) Agency error back to the month that the error first occurred, but not more than twelve (12) months prior to the date that the cabinet became aware of the overpayment;

(b) Inadvertent error back to the month that the misunderstanding or error first occurred, but not more than three (3) years prior to date that the cabinet became aware of the overpayment; and

(c) IPV back to the month of the fraudulent act first occurred, but not more than five (5) years prior to the date that the cabinet became aware of the overpayment.

(2) If an overpayment occurred as a result of a change during the period of CCAP eligibility, the first day of the claim shall begin thirty-one (31) days from the date of the change.

(3) If the overpayment occurred due to the failure of a parent of a recipient household to report information at application or recertification for eligibility in accordance with 922 KAR 2:160, Section 2 or 8, the claim shall start the first day of the approval of the application or recertification.

(4)(a) The cabinet shall:

1. Calculate the amount of CCAP for each month that a recipient or a child care provider received the improper payment; and

2. Subtract the correct amount of CCAP from the CCAP actually received.

(b) The difference shall be the amount of the overpayment.

(5) If the overpayment exists for the entire period of CCAP eligibility, the cabinet shall calculate the full amount of benefits overpaid:

(a) On behalf of the recipient; or

(b) To the child care provider.

(6) If an overpayment and an underpayment exist for a recipient or a child care provider, the amounts of the overpayment and the underpayment shall be offset to determine the total amount of the claim.

(7) The amount of a claim may differ from a calculation obtained through the methods outlined in this section if a different claim amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with:

1. Until April 1, 2017, 922 KAR 1:320; or

2. Effective April 1, 2017, 922 KAR 2:260; or

(b) A court of appropriate jurisdiction.

Section 6. General Claim Notices. (1) A KCD-2, General Claims Notice, 02/16, shall serve many purposes in the administration of CCAP claims collections, including the use as:

(a) An appointment letter;

(b) A demand letter;

(c) A notification of benefit reduction;

(d) A past due notice;

(e) A repayment agreement;

(f) A claim adjustment notice;

(g) A claim termination notice;

(h) A payment receipt;

(i) Notice of a claim being paid in full; or

(j) Notice of a delinquent claim's referral for collection in accordance with Section 11(2) of this administrative regulation.

(2) The language on the KCD-2 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 7. Notification of a Claim. (1) The cabinet shall:

(a) Provide initial notice in accordance with Section 6 of this administrative regulation to a recipient or a child care provider suspected of having a claim;

(b) Provide notice of a suspected IPV, if applicable, with a:

1. DCC-84, Notice of Suspected Intentional Program Violation, 02/16; and
2. DCC-84 Supplement A, 02/16; and

(c) Offer the recipient or the child care provider an opportunity to meet with the cabinet to:

1. Discuss the potential claim;

2. Determine the category of the claim as specified in Section 3 of this administrative regulation; and

3. Sign the DCC-84 Supplement A, if an IPV is suspected.

(2) If a recipient or a child care provider requests to reschedule the meeting within ten (10) days of the date of the notice provided in accordance with subsection (1) of this section, the cabinet shall reschedule the meeting.

(3) The cabinet shall determine the claim's category in accordance with Section 3 of this administrative regulation and the amount of the claim based on the information available to the cabinet if the recipient or the child care provider:

(a) Fails to attend the meeting to discuss the claim; and

(b) Does not contact the cabinet to reschedule the meeting in accordance with subsection (2) of this section.

(4) If the cabinet determines the category and amount of a claim in accordance with subsections (1) through (3) of this section:

(a) Collection shall be initiated in accordance with Section 10 of this administrative regulation; and

(b) Subsequent notice pursuant to Section 6 of this administrative regulation shall be mailed to the recipient or the child care provider to give the claim:

1. Amount;

2. Time period;

3. Reason; and

4. Classification in accordance with Section 3 of this administrative regulation.

(5) A recipient or a child care provider shall return the notice made pursuant to subsection (4)(b) of this section within ten (10) days of receipt if the recipient or child care provider chooses to request an administrative hearing on the establishment of the claim in accordance with this administrative regulation.

Section 8. Disqualification Period. (1) A recipient or a child care provider determined to have committed an IPV in accordance with Section 3(2) of this administration regulation shall have a period of disqualification from CCAP pursuant to subsection (2) of this section.

(2)(a) A disqualification period from CCAP shall adhere to the following guidelines:

1. Twelve (12) months disqualification for a first occurrence of IPV;

2. Twenty-four (24) months disqualification for a second occurrence of IPV; and

3. Permanent disqualification for a third occurrence of IPV.

(b) The cabinet shall make an exception to paragraph (a) of this subsection if:

1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:

a. Case plan developed in accordance with 922 KAR 1:430; or

b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR

2:370.

(3) If a court of appropriate jurisdiction issues a disqualification period upon conviction of a charge, or acceptance of an Alford or guilty plea, related to the IPV, the cabinet:

(a) May make exception to a disqualification period specified in subsection (2) of this section; and

(b) Shall enforce the court-ordered disqualification period.

(4) Unless subsection (2)(b) of this section applies, the disqualification period shall continue uninterrupted until it is completed regardless of the eligibility of the recipient or the child care provider.

(5) Regardless of the disqualification period, the recipient or the child care provider shall continue to be responsible for the payment of a claim resulting from the IPV.

(6) Eligibility of a recipient or payment to a child care provider shall not be affected by a suspected IPV until a disqualification is established in accordance with subsection (1) of this section.

(7) If a court of appropriate jurisdiction fails to impose a disqualification period for an IPV, the cabinet shall impose a penalty in accordance with this section.

(8) The cabinet shall not separate the same act of IPV repeated over a period of time for the imposition of multiple, separate penalties.

Section 9. Administrative Disqualification Hearing. (1) The cabinet shall initiate an administrative disqualification hearing on the establishment of an IPV if the:

(a) Facts of the IPV do not warrant civil or criminal prosecution through a court of appropriate jurisdiction;

(b) Referral for prosecution is declined by prosecutorial authorities;

(c) Referral for prosecution is withdrawn by the cabinet; or

(d) Recipient or child care provider declines to sign the DCC-84 Supplement A.

(2) If the facts of the case arise out of the same or related circumstances, the cabinet shall not initiate an administrative disqualification hearing against a recipient or a child care provider:

(a) Whose case is currently referred for prosecution; or

(b) Subsequent to an action taken against the recipient or the child care provider by the prosecutor or a court of appropriate jurisdiction.

(3) Unless a different procedure is specified in this section, an administrative disqualification hearing shall:

(a) Be conducted in accordance with KRS Chapter 13B and:

1. Until April 1, 2017, 922 KAR 1:320; or

2. Effective April 1, 2017, 922 KAR 2:160; and

(b) Include:

1. The issuance of a recommended order;

2. Procedures for written exceptions; and

3. The issuance of a final order.

(4) The cabinet may initiate an administrative disqualification hearing regardless of the current eligibility of a recipient or the payment status of a child care provider.

(5)(a) In accordance with KRS 13B.050, an administrative disqualification hearing notice shall be sent by:

1. Certified mail, return receipt requested, to the individual; or

2. Another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050.

(b) An administrative disqualification hearing notice shall provide information in accordance with KRS 13B.050.

(6) Timeframes for an administrative disqualification hearing shall be in accordance with KRS 13B.110 and 13B.120.

(7)(a) The cabinet shall combine a request for an administrative hearing in accordance with Section 16 of this administrative regulation and an administrative disqualification hearing into a single hearing if the:

1. Factual issues arise out of the same or related circumstances; and
2. Recipient or the child care provider receives prior notice that the hearings are being combined.

(b) If the hearings are combined for the purpose of settling the amount of the claim concurrent with a determination of whether an IPV occurred, the recipient or the child care provider subject to the claim shall lose the right to a subsequent administrative hearing on the amount of the claim.

(8) During an administrative disqualification hearing, the hearing officer shall advise the recipient or child care provider accused of an IPV of the option to refuse to answer questions during the hearing.

(9)(a) If a recipient or child care provider does not appear for the administrative disqualification hearing, the hearing officer shall proceed in accordance with KRS 13B.080(6).

(b) The cabinet shall conduct a new administrative disqualification hearing if the:

1. Recipient or the child care provider was not represented at the hearing;
2. Recipient or the child care provider was determined to have committed an IPV; and
3. Hearing officer determined the household had good cause for not appearing, in accordance with:

- a. Until April 1, 2017, 922 KAR 1:320, Section 6(7); or
- b. Effective April 1, 2017, 922 KAR 2:260, Section 5(7).

(10)(a) The determination of an IPV made through an administrative disqualification hearing shall not be reversed by a subsequent administrative hearing decision.

(b) A recipient or child care provider shall be entitled to seek relief through a court of appropriate jurisdiction in accordance with:

1. KRS 13B.140 to 13B.160; or
2. KRS 23A.010.

Section 10. Collection of a Claim. (1) The cabinet shall collect a claim from a claimant through:

- (a) Voluntary payment arrangement, negotiated either orally or in writing, which includes a payment schedule;
- (b) Court-ordered repayment;
- (c) State tax refund interception in accordance with KRS 45.238;
- (d) Lottery offsets;
- (e) Wage garnishment; or
- (f) Referral to a collection agency.

(2)(a) The cabinet shall accept a lump sum payment on a claim from a recipient or a child care provider.

(b) The lump sum payment may be a full or partial payment.

(3)(a) If a claimant who is a child care provider submits a completed DCC-97 Supplement A, Voluntary Payment Reduction, indicating the amount the provider wishes to have applied to the claim, the child care provider currently receiving CCAP payment may choose to have an amount withheld from the provider's CCAP payment to be applied towards a claim.

(b) The amount indicated on the DCC-97 shall not be less than ten (10) percent of the total CCAP payment.

(4) The cabinet shall refund to a claimant any amount the claimant pays in excess of the amount of the claim.

Section 11. Delinquent Claims. (1) In accordance with KRS 45.237(4), a claim shall be considered delinquent if:

(a) A claimant has not made a payment or entered into a satisfactory payment arrangement with cabinet sixty (60) calendar days from the date on the notice provided in accordance with Section 7(4)(b) of this administrative regulation; or

(b) Sixty (60) days have lapsed since the claimant has missed a scheduled payment pursuant to the payment arrangement with the cabinet.

(2) The cabinet shall pursue collection on a delinquent claim through a collection method specified in Section 10(1)(b) through (f) of this administrative regulation.

(3)(a) If the cabinet determines that a claimant who is a recipient is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

1. Terminate the recipient's CCAP; and

2. Not reapprove the recipient for CCAP until the recipient has paid all delinquent payments.

(b) The cabinet shall make an exception to paragraph (a) of this subsection if:

1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:

a. Case plan developed in accordance with 922 KAR 1:430; or

b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

(4) If the cabinet determines that a claimant who is a child care provider is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

(a) Disallow any CCAP payments to the child care provider; and

(b) Not approve the child care provider for further CCAP payments until the provider has paid all delinquent payments.

(5) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation prior to an action specified in subsection (3) or (4) of this section.

(6) If the cabinet is unable to determine a claim's delinquency status because the claim collection is coordinated through the court system, the cabinet shall not subject a claim to the requirements for delinquent debts in accordance with this section.

(7) A claim shall not be considered delinquent if:

(a) Another claim for the same claimant is currently being paid through a repayment agreement or court order; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(8)(a) A claim awaiting an administrative hearing shall not be considered delinquent.

(b) If a hearing officer or agency head determines that a claim does exist as result of an administrative hearing, the cabinet shall:

1. Send subsequent notice of the claim in accordance with Section 6 of this administrative regulation; and

2. Base delinquency on the due date of the subsequent notice.

(c) If a hearing officer or agency head determines that a claim does not exist as a result of an administrative hearing, the cabinet shall terminate the claim in accordance with Section 12(2) of this administrative regulation.

Section 12. Compromising or Terminating a Claim. (1) Except for a claim that is established

by a court of appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

- (a) A request for a compromise is received from the claimant; and
 - (b) The cabinet makes a determination that the claimant will be unable to pay the claim within five (5) years.
- (2) The cabinet shall terminate a claim if the:
- (a) Claim:
 - 1. Is invalid, unless pursuing the overpayment as a different type of claim is appropriate;
 - 2. Balance is twenty-five (25) dollars or less, and the claim has been delinquent for ninety (90) days or more, unless another claim is pending against the same claimant resulting in an aggregate claim total of greater than twenty-five (25) dollars; or
 - 3. Has been delinquent for at least three (3) years;
 - (b) Claimant dies; or
 - (c) Cabinet is unable to locate the claimant.
- (3) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation if the cabinet:
- (a) Compromises or terminates a claim; and
 - (b) Has a mailing address for the claimant.

Section 13. Underpayments and CCAP Restoration. (1) If an underpayment has occurred, the cabinet shall issue a payment to the child care provider that includes the difference between the amount that the child care provider:

- (a) Was entitled to receive; and
 - (b) Actually received.
- (2) CCAP shall be restored for no more than twelve (12) months to a recipient or a child care provider if benefits were lost:
- (a) Due to an agency error; or
 - (b) By a disqualification period for an IPV that is subsequently reversed through an order of a court of appropriate jurisdiction.

Section 14. Disclosure of Information. The disclosure or the use of CCAP information shall be restricted in accordance with:

- (1) KRS 194A.060; and
- (2) 45 C.F.R. 205.50(a)(1)(i).

Section 15. Retention of Records. (1) Records for CCAP shall be retained in accordance with 45 C.F.R. 98.90(e).

- (2) The cabinet shall retain:
 - (a) The official records of an administrative disqualification hearing until all appeals have been exhausted; and
 - (b) A CCAP record with an IPV disqualification indefinitely.

Section 16. A parent in the recipient household or a child care provider may request an appeal of the establishment of a claim in accordance with:

- (1) Until April 1, 2017, 922 KAR 1:320, Section 2(10); or
- (2) Effective April 1, 2017, 922 KAR 2:260, Section 2(4).

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DCC-83, Deferred Adjudication Disqualification Consent Agreement", 02/16;
- (b) "DCC-84, Notice of Suspected Intentional Program Violation", 02/16;
- (c) "DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", 02/16;
- (d) "DCC-97 Supplement A, Voluntary Payment Reductions", 11/09; and
- (e) "KCD-2, General Claims Notice", 02/16.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am through 4:30 p.m. (36 Ky.R. 1416; eff. 3-5-2010; 39 Ky.R. 2236; 40 Ky.R. 561; eff. 9-18-2013; 42 Ky.R. 2668; 43 Ky.R. 50; 221; eff. 8-17-2016.)