Veterans Affairs Canada | Anciens Combattants Canada

Overpayments – Recovery, Remission and Write Off

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Purpose

This policy provides direction on what constitutes an overpayment for disability benefit programs under the *Veterans Well-being Act* (VWA) and the *Pension Act*, and provides a general description of the three methods which may be used to address the overpayment: recovery, remission and write off.

Policy

Definitions

1. For the purpose of this policy, the following terms are defined as:
    a. **Compensation:** Compensation means a payment that is made under Part 3 of the *Veterans Well-being Act* or the *Pension Act*.
    b. **Crown Debt**: A debt due to Her Majesty.
    c. **Overpayment**: Any compensation amount, or part of it, that is paid to a person, including their estate or succession, to which there is no entitlement, or which exceeds entitlement, is considered an overpayment.
    d. **Recovery**: Recovery, in this context, is a process whereby Veterans Affairs Canada (VAC) recoups monies paid out as overpayments, from recipients, including their estates or successions, from future

payments which would have been made.

e. **Remission:** Remission means to forgive an otherwise legally enforceable debt. In this context, it is an act of clemency on the part of the Minister and not a right. Once remission has been approved, the Department gives up its right to recover the overpayment at a later date.
f. **Undue Hardship:** Undue hardship is deemed to exist when repayment of the overpayment, in whole or in part, would cause the client suffering or deprivation due to the client's limited "household income" and assets. That is, the client is unable to repay any portion of the overpayment, however small, without being deprived of the necessities of life, such as food, shelter, medical attention, clothing and utilities (water, hydro, and heating).
g. **Write Off:** Write-off is an accounting action which removes the debt, in whole or in part, from the active accounts receivable records in the Public Accounts. Write-off does not mean that the debt is forgiven.

General

2. No part of an overpayment may be remitted if the person, or the executor of the estate, or the liquidator of the succession, has been convicted of an offence under the *Criminal Code* in connection with receiving or obtaining the overpayment.
3. All overpayment cases which involve suspected fraud or wilful misrepresentation should immediately be referred to the Director General, Finance, for appropriate action (see Financial Policy and Procedure Manual 4 -7 for additional details).
4. Any overpayment, regardless of the cause, is considered a Crown debt and may be addressed by:
    a. Recovery;
    b. Remission; or
    c. Write-off.
5. Regardless of whether the overpayment will be recovered, remitted or written-off, the total amount of the overpayment must be recorded on the recipient's account as soon after discovery as possible.
6. Centralized Operations Division is responsible for identifying and notifying the Financial Division of any overpayments with a balance of $5,000 or over. The Financial Division is responsible for administering all subsequent activities relating to recovery, remission or write off, including establishing the applicable effective date and, in the case of recovery, the amount to be released, if any. Overpayments with a balance of less than $5,000 are addressed in Centralized Operations Division.
7. The recipient must be advised, in writing, of the existence of the overpayment, the amount and proposed start date of recovery deductions, if applicable.

Recovery

8. All overpayments being considered for recovery over $5,000 must be forwarded to the Program Payments Section - Financial Division for administration.

Recipient Dies before Overpayment is Completely Recovered

9. In the event of the recipient's death, the remaining balance of the overpayment becomes recoverable from his/her estate or succession.

Notification of Recipients

10. All recipients should be advised in writing of the amount of recovery deductions and the future start date. The start date of recoveries should allow time for a recipient to respond, if they feel that the overpayment recovery will cause hardship or if they wish to make alternate repayment arrangements.

Recovery or Set-Off of Overpayments

11. The recipient should be given the option of repaying the overpayment in a lump sum.
12. When there are available disability benefit monies that have not been paid out, recovery should be made from that source.
13. In cases where the recipient has monies due under the *Pension Act*; or monies due under the *Veterans Well-being Act*, e.g. retroactive adjustments, a monthly pension, or pain and suffering compensation, either a voluntary or involuntary method of recovery should be set up to set-off the overpayment.
14. Where there are no available funds, and the recipient requests that the overpayment be handled through monthly payments, the recovery rate should allow that the overpayment be paid back in a maximum of five years, without interest. The overpayment recovery can be extended to 10 years if extenuating circumstances exist. The monthly amount of recovery should not exceed one-half the amount of the monthly pension/compensation/allowances to which the recipient is entitled under the *Pension Act* or *Veterans Well-being Act*.
15. Factors such as the age, financial situation, and individual circumstances (e.g. mental health) of the recipient should be taken into consideration, together with the amount of the overpayment.

Set-off from pension adjustment or monthly monies payable under the Pension Act or the Veterans Well-being Act

16. The Department will normally apply any retroactive pension adjustment, payable under the *Pension Act*, in order to set-off an overpayment with respect to a disability award payment.
17. The Department may also set-off overpayments from disability pensions, pain and suffering compensation and additional pain and suffering compensation payments, and allowances.

Recovery from other Benefits

18. Overpayments may also be recovered from benefits that are based on income, such as Income Replacement Benefit and Canadian Forces Income Support. The monthly amount of recovery should not exceed one-half the amount of the monthly benefit to which the recipient is entitled under the *Veterans Well-being Act*.
19. The Department will not normally recover or set-off disability benefit overpayments from special compensation packages (e.g. ex-gratia payments) made to Veterans.
20. Funeral and burial grants awarded under the *Veterans Burial Regulations, 2005* are based upon the actual funeral and burial expenses as set forth in the invoices. The award is made to reimburse a third party or is paid directly to the appropriate funeral director. The funds awarded do not form part of the estate of the deceased. Therefore, they cannot be set-off against an overpayment within the meaning of Section 155 of the *Financial Administration Act*.

Remission

21. Although recovery is normally the first consideration in the overpayment process, there may be instances where such action is not desirable. If a person, including their estate or succession, has received or obtained an overpayment, all, or a portion of the overpayment may be remitted in the following

circumstances:

a. the overpayment cannot be recovered within the reasonably foreseeable future: applicable in those situations where an overpayment is being recovered, but it has not been completely repaid five years after the date the overpayment recovery action began;
b. the administrative costs of recovering the overpayment are likely to equal or exceed the amount to be recovered: only applicable in those situations where the amount of the overpayment does not exceed $150;
c. the repayment of the overpayment would cause undue hardship to the person or a beneficiary: applicable in those situations where the recipient is in receipt of income-tested benefits, (i.e., Guaranteed Income Supplement, Canadian Forces Income Support benefit, etc.), and/or if emotional distress caused by the overpayment appears to pose a threat to the recipient's state of health;
d. the overpayment is the result of an administrative error, a delay or an oversight on the part of an officer or employee of the federal public administration: applicable in those situations where the overpayment is the result of:
    i. a payment system error;
    ii. a misinterpretation of legislation;
    iii. a misunderstanding of a decision;
    iv. a mistake concerning an effective date; or
    v. a procedural error.

Factors to be Considered for Remission of an Overpayment

22. The following factors should be considered for remission of an overpayment:
    a. health of the recipient (recipients who are very ill should be given special consideration);
    b. a financial statement should be completed to ascertain if hardship exists;
    c. other government pensions received, in particular, Guaranteed Income Supplement; and
    d. other facts pertinent to the case.

Delegation of Authority - Remission

23. There is a graduated scheme for authorizing remission where the level of departmental authority increases with respect to the amount of the debt. These levels are outlined in the Departmental Delegation of Authorities Manual.

Write Off Policy

24. The authority for debt write-off is found in the *Financial Administration Act* and the *Debt Write-off Regulations*, 1994.
25. An overpayment may only be written-off in accordance with the *Debt Write-off Regulations*, 1994, which list the criteria under which an overpayment is considered uncollectible.
26. Collection of the debt, presumably, could resume in future if information is received that would appear to make the prospect of recovery likely.
27. There is a graduated scheme for authorizing write-off where the level of departmental authority increases with respect to the amount of the debt. These levels are outlined in the departmental Delegation of Authorities Manual.

References

Pension Act, section 83

Veterans Well-being Act, section 88

Financial Administration Act

Debt Write-off Regulations, 1994

Veterans Burial Regulations, 2005

Criminal Code