

Title: Recovery from Employees of Amounts for Other Reasons	Number: IRM 6.1-2
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"Public Moneys" or "Other Moneys"

Where an overpayment occurs, consideration should be given as to whether the moneys are "public" or "other" within the meaning of the Financial Administration and Audit Act 1977, as recovery of each is quite different.

Salaries and wages paid by District Health Services are considered "public moneys" as defined in the Financial Administration and Audit Act 1977. Such "public money" is held for and behalf of the Crown in right of State, unless otherwise specified.

In relation to other funding sources, the accounts to which such funding is allocated will be decisive in determining whether the moneys are "public moneys". This is because various types of funds with different purposes are directed to be set up by the Financial Management Practice Manual issued by Queensland Health. Section 3.1.3.3 of the Financial Management Practice Manual states all moneys received must be paid into the fund for which the money was directed.

Both the General Fund (from which salaries and wages are paid) and the Special Purpose Fund will contain moneys appropriated from consolidated revenue. Moneys in the Trust Fund and any Patient's Trust Fund will not. The latter two funds should therefore not be considered to be holding "public moneys". The moneys in these latter funds are not collected, received or held for or on behalf of the Crown. The moneys are specifically set aside for the uses outlined in section 3.1.3.2 and section 3.1.3.5 respectively in the Financial Management Practice Manual.

The Collection Fund is the only other fund provided for in the manual. Section 3.1.3.4 states that payments on behalf of patients, other moneys received by the District Health Service that do not relate to any funds, and all moneys received by or on behalf of the District Health Service or interest of moneys invested by the District Health Service shall be paid into this account. It is further stated that the balance of moneys standing to the credit of this account are to be forwarded to Queensland Health. The moneys in this fund must therefore be considered "public moneys" because they are collected for and on behalf of the Crown in right of State.

Recovery of Moneys

i) Public Moneys -

In relation to the recovery of "public moneys", hence in the event of an overpayment of salaries and wages, the fact that the payment was made under a mistake of law or of fact resulting in the payment of "public moneys" is irrelevant. The principle that applies to recovery is that unauthorised payments made from consolidated revenue are always recoverable. (Section 34(A) Financial Administration and Audit Act 1977).

Unauthorised payments arise where the recipient is not entitled to the payment made.

ii) Other Moneys -

Where the moneys involved are "other moneys" recovery depends upon whether the overpayment was made as a result of a mistake of fact and not of law, and whether or not any representations have been made to the debtor concerning the entitlements to the moneys in question which in law would give rise to the defence of an estoppel. When it has been determined that the overpayment has been made through administrative error and is recoverable, all practical steps should be taken including where necessary seeking the advice or services of the District Health Service's solicitors.

RECOVERY ACTION

In taking recovery action the District Health Service should in the first instance request the employee to refund the overpayment and discuss the method of recovery most suitable to both parties. Where it is proposed to deduct moneys from salaries or wages it is suggested that this course of action should only be pursued with the consent of the employee.

Otherwise action should be taken to institute civil proceedings to recover the moneys as a debt due to the Crown.

If recovery action by way of civil process appears necessary the District Health Service should first give consideration to such matters as a plea by the recipient that:

- they had received the moneys in good faith; and
- they believed themselves entitled to the money; and
- they had spent the moneys so received; and
- repayment would entail hardship.

NOTE: Separate provisions exist in relation to the recovery of overpayments due to an employee's absence from work. IRM 6.1-1 details these arrangements.

GENERAL COMMENT:

Hardship must not be confused with inconvenience. To be required to pay back money to which there was no entitlement does not itself represent hardship if the overpayment was discovered without undue delay. The test of hardship should therefore be real. To be acceptable, a plea of hardship should be supported by reasonably strong evidence that the recovery action proposed by the District Health Service would be inequitable and would react adversely on the debtor or their family.

Where the District Health Service is unable to recover a debt with respect to the overpayment of "public moneys" and decides to reduce the debt or waive the claim altogether in the case of hardship, it should be aware that such write-off, reduction or waiver constitutes a "loss" for the purposes of the financial administration and audit law.