

**ALABAMA DEPARTMENT OF WORKFORCE  
ADMINISTRATIVE CODE**

**CHAPTER 480-4-4  
INVESTIGATION AND COLLECTION**

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**480-4-4-.01      Allegation Of Fraud.**

(1) The general procedures to be followed where an allegation of fraud has been made are:

(a) Upon receipt of an allegation of claimant or employer fraud, the Agency should ensure that there is sufficient information to proceed. The alleging party shall be advised that the Agency will make a full investigation of the allegation and that the party will be advised of the findings, if such investigation could affect the employer account of the alleging party or affect a claim for benefits of the alleging party.

(b) If the findings revealed through the Agency's investigation indicate that a disqualification would have resulted for the period benefits were paid, an informal fact-finding interview shall be scheduled to allow the party making the allegation and the claimant an opportunity to give testimony. The Agency will determine if separate fact-finding interviews are necessary for the claimant and party making the allegations and any other party with pertinent information.

**Author:** Harold Thomas

**Statutory Authority:** Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

**History:** Effective: 9/30/82. This rule is intended to implement Code of Ala. 1975, §25-4-145.

**480-4-4-.02      Investigation Of Fraud.**

- (1) All fraud investigation files will remain confidential.
- (2) Documented evidence will be obtained from claimants, employers, witnesses, law enforcement agencies, local, state and federal agencies and any other source as may be necessary.
- (3) The investigation shall include the gathering of pertinent evidence and statements regarding any suspected fraudulent activity, using standard investigatory practices.
- (4) A fraud investigator shall have the authority to request all pertinent books, papers, correspondence, memoranda and other records necessary in the investigation of any error, or potential fraudulent activity committed by a claimant, employer, or other party. Likewise, sworn testimony may be taken from any person who has relevant information or records concerning the matter or events under investigation. Any person, when requested by a fraud investigator to produce records or give testimony, shall make himself or herself or the records available within and at a reasonable time to the investigator. If any person does not comply with the investigator's request to give testimony to the Department or produce records, a subpoena will be issued summoning the individual to appear before the investigator to give testimony or present the records. If the investigator determines any request for the voluntary production of pertinent records might endanger the existence of such records, the Agency may immediately issue a subpoena duces tecum which orders an individual to produce before the Department some document or paper that is pertinent to a pending investigation in order to secure the production of such records.
- (5) If it is determined that there is fraudulent activity, appropriate corrective action shall be initiated, and the case prepared for prosecution if prosecution is warranted.

**Author:** Harold Thomas

**Statutory Authority:** Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

**History:** Effective: 9/30/82. This rule is intended to implement Code of Ala. 1975, §25-4-145.

**480-4-4-.03      Determination And Collection Of Overpayments.**

- (1) A determination that a claimant, by reason of claimant's own fault, fraud, misrepresentation, failure to report or disclose a material fact, departmental error or payment of benefits pending appeal that finally results in disqualification, has received

benefits to which the claimant was not entitled, shall be made by the Director on the basis of such facts as are obtained.

(2) Whenever it is found that a claimant has received benefits, and has been assessed with an overpayment, no further benefits shall be paid to such claimant until the total amount of overpayment has been reimbursed by cash or offset, or liquidated in a manner provided for in these rules.

(3) The account of an employer who is required, or elects, to make payments in lieu of contributions, upon recovery either by cash or offset shall be credited in the amount of the recovered overpayment that is attributable to wages paid such employer.

(4) The cancellation of benefits, by penalty or reduction Code of Ala. 1975, §§525-4-78 and 25-4-145, will not affect the amount of the overpayment or the balance due.

(5) Credit against the overpayment by offset shall be made only when a payable week of benefits is claimed and has been offset against the overpayment. Once a week of benefits has been used to offset an overpayment, the offset is final. However, if the week used to offset is later determined to be invalid an overpayment will be established for that week and an adjustment will be made to the previous offset.

(a) Overpayments of benefits shall be recovered by offset from benefits otherwise payable under the unemployment compensation law of another state, and overpayments of benefits as determined under the unemployment law of the other state shall be recovered by offset from benefits otherwise payable in a manner provided for in these rules.

1. A request to appeal the request from another state to offset an overpayment of benefits must be received within fifteen (15) days of the date the notice of offset recovery was mailed by the department. Appeal rights to Alabama are limited to the department's authority to offset the overpayment. Matters in defense to the offset including but not limited to the accuracy may be presented at the hearing, however, issues that have been adjudicated in that state and have become final will not be reconsidered. Any questions concerning the overpayment should be directed to the state in which the overpayment exists. If a written request for a hearing is not received from the claimant within fifteen (15) days of the mailing of such notices, such individual will have waived his/her opportunity for appeal.

(b) Overpayment of benefits shall be recovered by setoff of Alabama Income Tax Refund due any individual taxpayer who has an outstanding overpayment account as provided by these rules.

Setoff of an Alabama Income Tax Refund may not be used to offset an overpayment in another state.

1. A request to protest a setoff must be received in writing from the claimant within thirty (30) days from the date the setoff notification letter is mailed by the Department of Revenue. The claimant must provide a copy of the setoff notification letter and provide in writing his/her correct address of record and telephone number.

(i) If a claimant and his/her spouse have filed a joint Alabama State Income Tax return, the spouse may be entitled to his/her share of the joint refund. If the spouse was employed, received income, paid withholding and/or estimated tax payments, and had no legal obligation to repay the overpayment, the spouse may request an administrative review of the setoff to receive his/her share of the joint refund. The request must be received in writing from the spouse within thirty (30) days from the date the offset notification letter was mailed by the Department of Revenue. If such a request is not received within thirty (30) days, the individual will have waived the opportunity for an administrative review and/or an appeal hearing. A clear legible copy of his/her Alabama State Income Tax Form 40 or 40A, all W-2 Forms, and other supporting documents that were filed with the return must be forwarded to the department with the request.

(ii) In a case where the spouse has no legal obligation to repay the overpayment, a calculation will be made to determine the spouse's share of the joint return. Both spouses' gross wages appearing on their Alabama State Income Tax Form will be added together to obtain the total gross amount. The taxpayer's gross wages listed on the state tax form, for whom no debt is claimed, will be divided by the total gross wages to obtain a percentage. This percentage will be applied to the setoff amount owned on the setoff notification letter mailed by the Department of Revenue. If the amount thus derived is not a multiple of \$1.00, fractional parts of \$1.00 in excess of \$.50 shall be rounded to the next higher multiple of \$1.00 and fractional parts of \$1.00 which are \$.50 or less shall be dropped to the next lower multiple of \$1.00. The spouse who has no legal obligation to repay the overpayment will receive his/her prorated share of the refund. If the taxpayer is dissatisfied with this administrative review, he/she may request an appeal hearing before the referee. The request for a hearing must be in written and received by the Alabama Department of Industrial Relations

within fifteen (15) days of the date of the administrative review refund determination is mailed to the taxpayer's address of record. If the written request for a hearing is not received within fifteen (15) days following the date the administrative review refund determination is mailed, the taxpayer will have waived his/her opportunity for an appeal hearing.

2. Appeal rights are limited to the department's right to receive a setoff of an Alabama Income Tax refund from the Department of Revenue, the accuracy of the amount of the setoff, and/or the right of the spouse against whom no debt is claimed to receive a prorated refund on a joint return. Matters in defense of the setoff to the accuracy of the setoff may be presented at the hearing. Any questions concerning the overpayment should be directed to the Benefit Payment Control Section within the department.

3. If the individual(s) is dissatisfied with the final determination resulting from the appeal, the individual may appeal the final determination to the circuit court in the county in which the debtor resides by filing a notice of appeal with the clerk or register of the circuit court within thirty (30) days from the date the appeal's decision was mailed by the department.

4. When all appeal rights have expired, the amount of the setoff shall be credited to the outstanding overpayment balance. A departmental receipt will be forwarded to the individual's address of record.

**Author:** Harold Thomas

**Statutory Authority:** Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

**History:** Effective: 9/30/82. Amendment Effective: 2/27/84. This rule is intended to implement Code of Ala. 1975, §§25-4-91, 25-4-92, 25-4-134 and 24-4-143. **Amended:** Filed September 10, 1998; effective October 15, 1998.

#### **480-4-4-.04      Administrative Penalties.**

(1) When it has been determined that within the preceding thirty-six calendar months the claimant fraudulently reported or failed to report wages earned during a week, or failed to disclose a material fact upon separation from employment from such claimant's most recent employer, with intent to obtain benefits, or failed to disclose a material fact concerning any claimant's ability to work, availability for work, or any other eligibility requirements with intent to obtain benefits, such claimant shall be subject to

penalties authorized in Code of Ala. 1975, §25-4-145(a)(3) of the Code.

(2) Any penalties imposed by this rule shall be in addition to any other.

(3) Sources of information concerning the application of an administrative penalty shall include but not be limited to:

(a) Employer report of wages, with comparative analysis of same with concurrent benefit payments.

(b) Area claims centers obtaining late reports by claimant of deductible income items or potentially disqualifying circumstances.

(c) Tips and leads from other sources of a claimant being employed while claiming benefits or that such claimant did not otherwise meet the eligibility requirements.

(4) The claimant shall be notified of the application of the administrative penalty.

(5) The claimant shall be afforded an opportunity to give testimony, either refuting or affirming the allegation of intent to defraud.

(6) The fraud determination shall be based on the facts obtained and shall become final within 15 days after the decision is mailed to the claimant's last known address, unless an appeal is made to the department by filing a notice of appeal at any claims office or at the Central office of the Alabama Department of Industrial Relations.

(8) In the event any claimant is aggrieved by the representative's determination assessing an administrative penalty, or by the severity of the penalty assessed, such claimant shall have the same protest and appeal rights as provided for any other determination involving a denial of benefits.

**Author:** Harold Thomas

**Statutory Authority:** Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

**History:** Effective: 9/30/82 This rule is intended to implement Code of Ala. 1975, §25-4-145.

#### **480-4-4-.05      Prosecution.**

(1) If prosecution is warranted, supportive documentation and all evidence will be thoroughly reviewed by the Director.

(2) A summary of the case will be prepared and the case taken to the appropriate district attorney for filing of criminal charges.

**Author:** Harold Thomas

**Statutory Authority:** Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

**History:** Effective: 9/30/82. This rule is intended to implement Code of Ala. 1975, §25-4-145.

#### **480-4-4-.06      Wage Cross-Match Audit Procedure.**

(1) Each quarter, Wage Cross-Match audit forms are mailed to employers requesting wage information on specific claimants as it concerns benefit payments. The employer shall complete the audit form and return to the Agency within 15 calendar days.

(2) The forms, upon completion and return to the Agency are reviewed for the purpose of detecting possible fraud and/or overpayments.

**Author:** Harold Thomas

**Statutory Authority:** Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

**History:** Effective: 9/30/82. This rule is intended to implement Code of Ala. 1975, §25-4-145.

#### **480-4-4-.07      Waiver Of Requirement To Repay Overpayments.**

(1) An individual shall be required to repay an overpayment of unemployment compensation unless a written waiver application is filed with the department and approved by the Secretary or the Secretary's designee.

(2) The requirement for an individual to repay a final determination of overpayment may be waived by the Secretary, at his or her discretion using the criteria listed in paragraphs (2) through (13) of this Rule, when it has been determined that the payment of such benefits occurred without fault on the part of the individual, and collection of such overpayment would be contrary to equity and good conscience. The Secretary shall not waive overpayments due to back pay awards pursuant to Code of Ala. 1975, §25-4-78(6).

(3) In determining whether the individual was without fault, the following factors shall be considered:

(a) Whether an inaccurate statement or representation of a material nature was made by the individual in connection with the application for unemployment compensation that resulted in the overpayments, and whether the individual knew or should

have known that the statement or representation was inaccurate.

(b) Whether the individual failed, or caused another to fail, to disclose a material fact in connection with an application for unemployment compensation that resulted in an overpayment, and whether the individual knew or should have known that the fact was material.

(c) Whether the individual knew, or should have been expected to know, that the individual was not entitled to the receipt of such benefit payments.

(d) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any other action, commission or omission, of the individual or of which the individual had knowledge, and which the individual knew to be erroneous, inaccurate, or otherwise incorrect.

(e) Whether the overpayment was the result of a decision on appeal, and whether the Secretary had given notice to the individual that the case had been further appealed and the individual may be required to repay the overpayment in the event of the reversal of the appeals decision.

(f) Whether the Agency's decision resulting in the overpayment was incorrect, and whether the U.S. Department of Labor has issued guidance advising that waiver is appropriate in the circumstances leading to the establishment of the overpayment.

(4) In the event of an affirmative finding on any of the factors contained in (3) (a)-(d) of this rule, recovery of the overpayment shall not be waived, and further determination of any factors will not be necessary.

(5) When an overpayment results from payment of benefits based on exempt or non-covered wages erroneously reported by an employer, such overpayment may be waived by the Secretary without application of the foregoing criteria.

(6) The decision of the Secretary as to a waiver of overpayment is an appealable decision. However, the only issue to be considered on such an appeal is whether the Secretary abused his or her discretion in denying the waiver in accordance with the other provisions of this rule.

(7) This rule will apply equally to regular state unemployment compensation benefits, extended benefits, and any other special programs of benefits where there are no separate and distinct waiver provisions.

(8) A waiver of overpayment under the provisions of this rule that affects the account of a reimbursing employer will not result in a



credit to their account unless such credit is specifically provided for by statute.

(9) The amount of any overpayment, repayment of which is waived in accordance with this rule, will not be restored to the individual's maximum benefit amount.

(10) Applications for waiver by an individual shall be in writing or electronically as provided by the Agency, and shall set forth the facts constituting grounds for waiver, including why the individual was without fault in the cause of the overpayment, and why repayment would be contrary to equity or good conscience, including supporting documentation.

(11) The Secretary may, acting upon his or her own motion, and without application by the individual, waive recovery of any overpayment upon discovery of information found to constitute grounds for waiver as set forth in this rule. When authorized by federal law and regulations, and when it would not create a federal conformity issue, the Department may approve blanket waivers for groups of similarly situated individuals.

(12) COVID-19 Pandemic Overpayment Provision

(a) Any waiver applications by individuals with eligible overpayments of CARES Act Programs that were denied prior to the effective date of this rule will be subject to a redetermination in light of this rule; provided, however, that only overpayment weeks ending February 2, 2020, through June 16, 2021, shall be eligible for redetermination.

(b) Benefits overpaid under any CARES Act Program, including those such determinations created by a reversal on appeal pursuant to §25-4-91(d)(1)a, may be waived pursuant to the provisions of this rule.

(13) The provisions of this rule shall apply to all overpayments existing on or after the effective date of this rule that were established on or after January 27, 2020.

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**Statutory Authority:** Code of Ala. 1975, §§25-2-7, 25-2-8, 25-4-111.

**History:** Emergency Rule Effective: November 8, 1983. Permanent Rule Effective: February 27, 1984. This rule is intended to implement Code of Ala. 1975, §25-4-145 as amended through February 24, 1983. Emergency Amendment Effective: February 12, 1993, Permanent Amendment Effective May 17, 1993. **Amended:** Published November 30, 2022; effective January 14, 2023.