

Overpayment of Claims

In General

The general question is this: plan (TPA, insurer, or similar) mispays a claim; upon discovery, it seeks a refund, or restitution. What are the conditions under which such restitution is legally proper?

In the discussion, ancillary issues are ignored. These would include: subrogation, definitions, questions of claim process, etc.

General Rule

At the heart of the matter rests the theory of *unjust enrichment*.

- Where the misplayment was due to a mistake of fact the plan would be eligible for recovery from the provider. This is the case even if the mistake were due to lack of care.
- If the provider has changed its position so as to make it unfair to repay, such repayment is not required.
- If not having the facts was due to the plan's error, recovery will be denied.
- Generally, a misplayment cannot be recovered if any or all of these conditions are met:
 1. Money was voluntarily paid.
 2. No duress, fraud or compulsion was exerted.
 3. Plan had full knowledge of all facts.
 4. Beneficiary did not act improperly.
 5. Unjust enrichment was not present.
 6. Beneficiary would be hurt unfairly if repayment were made.

Repayment Rules

Basic Rule

If plan makes a payment in the erroneous belief, induced by mistake of fact, that the terms of the insurance contract required such payment, it is entitled to recovery.

Plans Lack of Care Will Not Prevent Recovery

If the plan made the error set forth above due to its lack of care, it is still entitled to recovery.

Provider Had a Chance of Position

Recovery is not permitted if the provider has relied upon the correctness of the payment and the refund would place it in an unfair position. The refund must not be inequitable or unjust to the provider.

Mistake v. Uncertainty

Plan is uncertain as to the payment but made the payment anyway and which later developed to be a mistake. Because the plan did not *do its homework*, it is denied recovery. Plan pays benefit to provider hospital believing it to be the assignee. It is not but since it is owed the money by the participant, it may keep the money and refuse to refund it to the plan. Plan's recovery must be from participant.

Particular Errors Considered

Unspecified. Arithmetic errors would be correctible, if other conditions are met.

Extent of Overpayment. Hospital bill was \$20,000 to be covered by plan's assigned benefits of \$14,000. Plan in error paid \$23,000. Hospital refunded \$3,000 on ground of unjust enrichment, but the \$6,000 overpayment could be kept by the hospital on ground of change of position.

Nature of Accident or Illness. Where the true nature of the illness, accident, etc. was an honest mistake, recovery is not predictable because the case law is widely divergent.

Relevant Court Decisions

Plan, in error, overpaid the hospital. Since the hospital was due the money anyway, the error was totally that of the plan, hospital received the money in good faith and without the knowledge of the error, the Court held that the hospital did not have to return the money.

Plan paid his benefit checks which were intercepted, forged and cashed by the Participant's estranged wife. Court said that plan would have to pay Participant again, thereby having to pay twice. The only course open to the plan was to seek recovery from his estranged spouse.

Plan paid money to provider in error. Provider refunded the overpayment error. Estate, representing the deceased participant, sued the plan for such error and overpayment. Their argument was that the plan's inexcusable error constituted a waiver of its rights to the denial due to preexisting; their interest in the matter arose from the fact that if the plan did not pay, it would have to pay. Court held that the principles of waiver and estoppel may not be applied to expand the plan's benefits. The estate may not be unjustly enriched by the plan's error.

Plan, in error, paid a hospital for a preexisting condition. Upon discovery, hospital refunded the money and sought payment from the participant. Participant sued claiming that plan's payment constituted a waiver of its known right which would estop it from denying liability. Court held otherwise stating that plan's benefits could not be expended it could not permit the participant to be unjustly enriched.

Plan, in error, overpaid a hospital. Hospital refused to refund the overpayment claiming that the one causing the loss must bear the loss. Offsetting this rule against unjust enrichment.

Several questions need to be addressed:

- Did the hospital materially change its position as a result of the overpayment? That is, did the overpayment cause hospital to act in any manner differently than it otherwise might have? If so restitution by the plan would be denied.
- Did the mistake occur 100% at the hand of the insurer? If so restitution may be denied.

The court held against restitution.

Any overpayments will be deducted from future benefits.