**Section 165.40 Determination of Food Stamp Overpayments**

The Department determines the amount of a food stamp overpayment claim by comparing the correct amount of food stamp benefits, if any, the household was entitled to receive, based on actual income and expenses, to the amount actually received, beginning with the month of overpayment. The amount received which is in excess of the correct amount is the amount of the overpayment, except as described in subsection (d) of this Section. The earned income deduction is not allowed when the amount of an overpayment is calculated, if the household failed to report the earned income.

a) The determination of an intentional program violation, an inadvertent household error, or an administrative error overpayment shall not include any amount of overpayment for any month that is more than six years before the discovery date of the overpayment.

b) Where an intentional failure to report a change in circumstances constitutes the intentional program violation, the first month of overpayment is the month the change would have been effective if it had been reported.

c) For an inadvertent household error and an administrative error overpayment, where the overpayment resulted from an unreported change or the Department's inaction on a reported change, the first month of overpayment is the month the change would have been effective had it been reported or acted on in a timely manner.

d) As provided for in the 2009 American Recovery and Reinvestment Act, the amount of any overpayment cannot include the amount of the temporary benefit increase granted under that Act.

(Source: Peremptory amendment at 33 Ill. Reg. 5549, effective April 1, 2009)