

# **RIGHTS AND OBLIGATIONS OF SOCIAL WELFARE BENEFICIARIES AND ACKNOWLEDGEMENT OF THE OBLIGATION TO REIMBURSE**

English translation for information purposes only, with no legal value: if in doubt, the original French and German versions of the document prevail.

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## **1. Essential legal points**

- Constitution fédérale (RS 101) / Federal Constitution
- Code pénal suisse (CP) du 21 décembre 1937 (RS 311.0) / "Swiss Criminal Code" (CP) of 21 December 1937
- Loi fédérale sur la compétence en matière d'assistance des personnes dans le besoin (LAS) du 24 juin 1977 (RS 851.1) / "Federal Law on the Jurisdiction regarding support for those in need" (LAS) of 24 June 1977
- Loi cantonale sur l'intégration et l'aide sociale (LIAS), du 10 septembre 2020 (RSV 850.1) / "Cantonal Act on Integration and Social Welfare" (LIAS) of 10 September 2020
- Ordonnance cantonale sur l'intégration et l'aide sociale (OLIAS) du 21 avril 2021 (RSV 850.100) / "Cantonal Ordinance on Integration and Social Welfare" (OLIAS) of 21 April 2021
- Loi cantonale sur la procédure et la juridiction administratives (LPJA) du 6 octobre 1976 (RSV 172.6) / "Cantonal Act on Administrative Procedures and Jurisdiction" (LPJA) of 6 October 1976
- Directives du Département en charge des affaires sociales ([www.vs.ch/web/sas](http://www.vs.ch/web/sas)) / Guidelines of the Department of Social Affairs
- Recommandations de la Conférence suisse des institutions d'action sociale (CSIAS) (<http://skos.ch/fr/>) à titre subsidiaire / Recommendations from the Swiss Conference for Social Welfare (CSIAS) in the alternative

## **2. The social welfare applicant's/beneficiary's main rights**

### 2.1 The right to an irreducible minimum income (Art. 12 Federal Constitution, 42 LIAS, 49 OLIAS)

- All individuals in distress, who are unable to provide for themselves by their own means, are entitled to emergency welfare support even though they are personally responsible for their situation (Art. 12 Federal Constitution and 42 LIAS).

### 2.2 Applying for social welfare (Art. 45 LIAS, 51ss OLIAS)

- The request can be made by the person him/herself or by a representative (whose charges are exempt).
- It is addressed verbally or in writing either to the municipality of residence providing the assistance (place where the applicant actually lives) or to the medico-social centre ('Centre Médico-Social – CMS').

### 2.3 The right to receive a verdict (Art. 7 and 47 LIAS, 9 OLIAS, 29 LPJA)

- The municipality (hereinafter referred to as 'welfare support authority') is responsible for making decisions on social welfare. It may, however, delegate this task to the 'CMS' (Art. 7 LIAS).
- All the decisions of welfare support authorities (the right to social welfare, a basic budget change, an entitlement withdrawal, the reimbursement of financial aid, etc.) must be reasoned and notified to the person concerned with an indication of the possibilities and deadlines for appeal.
- The decision must be given within **30 days** of the request being submitted. It specifies whether or not support has been granted and the amount thereof. A budget is attached if one has been established.

- If the individual expressly requests it, the welfare support authority can give them a decision on urgent measures, within **5 days** of the request for support being submitted, pending the final decision.

#### 2.4 The right of appeal (Art. 49 LIAS, 57 OLIAS, 5, 34 and 41ss LPJA)

- The individual concerned by the decision of welfare support authority can contest it at the "Conseil d'Etat, Palais du Gouvernement, 1950 Sion" ('Council of State, Palace of the Government, 1950 Sion'). (S)he addresses their appeal by signed letter, specifying their reason for contesting it. A copy of the challenged decision must be attached to the file. The individual can request for urgent measures to be granted.
- The deadline for appeal is 30 days as of the day that the individual receives the decision. If the social welfare authority has not made a decision within the legal deadline (see point 2.3), their decision is considered as negative (Art. 5 LPJA). In this case, the individual can, within a reasonable amount of time, lodge an appeal for 'denial of justice'. Social Welfare Services, Avenue de la Gare 23, 1950 Sion, are in charge of setting up appeals against a social welfare authority's decision.

#### 2.5 The right to consult their file and to be heard (Art. 19 and 25 LPJA, 72 OLIAS)

- Upon request, the individual concerned has the right to consult their social welfare file.
- The individual can express themselves on all points which concern them.
- The individual is entitled to a copy of documents that they sign.

#### 2.6 The start of the social welfare entitlement (Art. 45 LIAS and 52 OLIAS)

- If the individual is entitled to social welfare, the assessment of their right generally begins on the first day of the month in which they applied for it (see point 2.2).
- The medico-social centre notifies members of the assistance unit in writing, of the documents necessary to assess the situation, and sets a deadline in which the documents must be provided, taking into account the 30-day deadline in which the social welfare authority must make a decision.
- If, for a good reason, certain documents cannot be obtained within the deadline of 30 days for the decision to be made, the social welfare authority will decide on temporary support, based on the documents that have been provided.
- The social welfare authority may temporarily refuse to grant social welfare, if the situation of destitution cannot be established within the deadline for the decision to be made due to the individual not providing the information/documents within the agreed time limit, without a good reason. If the individual subsequently provides the information/documents, the entitlement to social welfare will be analysed from the day that the information/documents are provided and not retroactively to when the support was applied for.

#### 2.7 Payment of social welfare (Art. 60 OLIAS)

- The individual has the right to receive social welfare during the first days of the current month. Depending on the situation, the welfare can be paid in instalments.
- It is possible for the social welfare authority to pay certain bills directly to the creditors (eg. rent, medical expenses, civil liability and household insurance).

### 3. **The social welfare applicant's/beneficiary's main obligations**

#### 3.1 Subsidiarity of social welfare (Art. 30 LIAS, 2 and 40 OLIAS)

- Social welfare is subsidiary to any other source of income and personal wealth.
- The individual must undertake all possibilities which could lead to providing them with a financial resource (salary, private or social insurance, alimony, family allowance, alimony debt, inheritance, etc.) and must accept any suitable employment proposal. If they do not comply, or if they divest an asset, the social welfare authority will include a hypothetical income in the budget (if necessary, over a period of several months) which corresponds to the amount renounced or divested by the individual. The principle of proportionality must be respected.
- If the individual owns a property, they must accept to mortgage it in order to ensure the reimbursement of the material welfare benefits they receive.

#### 3.2 Obligation to provide information (Art. 34 LIAS, 42 OLIAS)

- The individual applying for social welfare must prove their destitution by disclosing their detailed financial situation (income, wealth, property assets, etc.). They must explain their professional, social and personal situations (in particular by stating all persons living in their household) and their medical situation (enforced by a medical certificate, if required).
- The information must be provided within the time limit indicated by social services (see point 2.6) for all members of the family (or live-in partners) forming part of the same household, as well as any dependent children, even if they live elsewhere.

- The social welfare beneficiary must inform the social welfare authorities immediately of any change to their situation. If they do not do this, and the social welfare authority has any doubt regarding their right to welfare, it can decide to temporarily suspend the material welfare benefits and set a deadline by when the relevant information/documents must be provided.

### 3.3 Cooperating towards reintegration (Art. 33 LIAS, 41 OLIAS)

- The beneficiary must undertake everything that can reasonably be expected of them in favour of their social reintegration and to get their financial independence back.
- (S)he must cooperate with the authorities and organisations helping them to get this independence back, notably private and social insurances (AI / "invalidity insurance", AC/ "unemployment insurance", SUVA / "accident insurance", etc.), and accept the various measures that are offered to them. If the beneficiary is fit to work, even if only partially, (s)he must register as an unemployed job seeker (regardless of a potential entitlement to a daily allowance), be supervised by a Regional Employment Office advisor (Office Régional de Placement – 'ORP') whom (s)he must provide with proof of their job search.

### 3.4 Housing

- Each region or municipality establishes rent price ceilings permitted within their territory. If a beneficiary's rent is above the scale set by the municipality, the social welfare authority may send them a letter requesting them to relocate within a reasonable time limit.
- If the individual refuses to relocate within the agreed time limit, or if (s)he does not prove that (s)he has been looking for suitable housing, the social welfare authority may refuse to pay the part of the rent that exceeds the established scale.
- If the individual pays their rent themselves, (s)he must provide the social welfare authorities with proof of the payment every month.

### 3.5 Reimbursement of social welfare (Art. 52 to 58 LIAS, 61 to 68 OLIAS)

- Any individual over the age of 18 who receives social welfare is required to pay it back if the benefits were obtained falsely; if they come into the possession of considerable wealth; if the benefits have been paid in the form of advances or of a loan; and if waiving the reimbursement would be unfair. Falsely obtained benefits are to be paid back at any time with interest.
- The social welfare authority's claim for reimbursement is barred at the end of 10 years after the last material welfare benefit was paid. Should considerable wealth be received, the limitation period is 20 years after the last material welfare benefit was paid.
- If the social welfare authority and the beneficiary cannot agree on the reimbursement terms, the social welfare authority makes a formal decision that the individual can contest at the Council of State ('Conseil d'Etat') (see point 2.4).
- If a person under the age of 18 receives considerable wealth or if equity so requires (gainful occupation or other cases), they are not required to reimburse the welfare benefits received before reaching the age of majority. The same applies to welfare benefits reimbursement of a young person under 25 years of age during their basic training. The allocated amounts do not constitute a social welfare debt for these individuals.
- Should considerable wealth be received, the reimbursement is not required from a young adult for the benefits allocated to his/her parents; from a live-in partner for the benefits allocated to the other live-in partner and his/her children; or from a separated or divorced parent for the benefits allocated to the children who are solely in his/her custody.
- In the event of social welfare being paid in the form of advances based on provisions due to be received from a third party or from a private or social insurance, the beneficiary signs a concession contract in favour of the social welfare authority. The reimbursement is payable as soon as the benefits have been received, up to the amount of welfare granted during the retroactive payment period. The concession contract enables the authorities to be paid directly by the insurance company or third party. If the retroactive payment is nevertheless paid to the welfare beneficiary, the latter commits to informing the social welfare authorities and to paying back immediately the amounts owed.

## 4. **Suspicious of illicit social welfare benefit claims (Art. 65 to 69 LIAS, 73 to 75 OLIAS)**

- If there is a reason to suspect an individual of claiming, having claimed or trying to claim benefits illicitly, the social welfare authorities can call on specialized inspectors to investigate.
- The beneficiary and all members of the assistance unit must allow social workers and inspectors carrying out the investigation to enter their home and, if applicable, their vehicles, as well as their place of work, in their presence and at appropriate times.
- If requested, the beneficiary of social welfare must provide the investigating authority with any information which might be necessary to establish the facts. This obligation also applies to relatives and close friends, in accordance with the provisions in Art. 110 al. 1 and 2 of the Swiss Criminal Code.

- In the event of an offence being discovered, the social welfare authorities inform the individual involved of the outcome of the investigation.
- The investigating authority reports the facts of all offences that are prosecuted ex officio to the competent authorities, such as the Office of Attorney General ('Ministère public'). The social welfare authorities communicate the penalties prescribed by the law for all other offences and inform the Social Welfare Services.

## 5. Reduced welfare benefits in case of non-compliance

### 5.1 Administrative penalties (Art. 37 to 43 LIAS, 47 to 50 OLIAS)

- The social welfare authority can temporarily suspend the provided material welfare benefits if an individual does not provide proof of their destitution.
- The social welfare beneficiary is liable to being penalised if they fail to comply with one of their legal obligations.
- The penalty imposed is decided by the social welfare authority or, upon delegation, by the medico-social centre ('CMS') and is reasoned and communicated in writing to the social welfare beneficiary. It specifies what penalty is being applied and why, how long it will be applied for (the months concerned) and the behaviour expected. The decision can be contested at the Council of State ('Conseil d'Etat') (see point 2.4).
- There are three possible kinds of penalties:
  - 1) Reductions made according to the principle of proportionality:
    - a 5-30% reduction of maintenance benefits;
    - suspension of rights to regular welfare benefits with extended emergency support being granted: monthly maintenance benefits amounting to: Fr. 500.- per adult; Fr. 300.- per child over the age of 12; Fr. 220.- per child under the age of 12;
    - suspension of rights to regular welfare benefits with emergency support being granted: daily maintenance benefits amounting to: Fr. 10.- per adult and Fr. 6.- per child;
  - 2) a hypothetical income / wealth taken into account;
  - 3) withdrawal of material welfare benefits in the event of repeated abuse of rights.

### 5.2 Criminal penalties (70 LIAS, 76 OLIAS and 66a, 146 and 148a CP)

- False acquisition of social welfare benefits can lead to a fine of up to Fr. 10'000.-, depending on the Cantonal Act in force, if the Federal Law has not foreseen a stiffer penalty.
- According to the Federal Law, an individual can be condemned to a custodial sentence (prison) for up to one year, or be fined, for illicit acquisition of social welfare benefits and/or, in the case of fraud, be condemned to a custodial sentence (prison) for up to five years, or be fined.
- If the social welfare beneficiary is foreign and is condemned for social welfare fraud or illicit acquisition of social welfare benefits, the judge will also order the individual to be evicted from Switzerland for a period of time between five and fifteen years.

**By signing, the undersigned confirm(s) their request for material welfare support from the social welfare authority of:**

.....

**and declare(s) having taken note of the above-mentioned legal provisions regarding the beneficiaries' main rights and obligations, particularly social welfare's subsidiarity, and being aware of their obligation to reimburse the amounts paid to them as a welfare measure (see point 3.5 above).**

*(Surnames, first names and signatures)*

**Applicant:** .....

**Spouse/partner:** .....

**Children over 18:** .....

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**Place and date:** .....