

OVERPAYMENTS

**Basic Benefits Training
Disability Law Center
November 2024**

OVERPAYMENT NOTICE

- Mailed (with [SSA-3105](#)) at least 30 days before recoupment starts.
- Info on why and when the OP happened
- Repayment Options and Appeal Rights
20 CFR §§ [404.502a](#), [416.558](#); GN [02201.009](#), [GN 02201.010](#). [SI 02220.010](#) An overpayment does not exist until the initial notice of overpayment is released. [SI 02201.025](#)

AVAILABLE OPTIONS

-Repayment

-Appeal - Reconsideration Request (Form [SSA-561-U2](#))

-Waiver (Form [SSA-632-BK](#)) or

-Both (Recon will be processed first) [GN 02201.010\(C\)\(3\)](#))

RECONSIDERATION

Challenges the fact/amount of the overpayment.

- Must be in writing & filed within **60 days** of receipt of the notice (+ 5 days for mailing).
Good cause for late filing provisions apply. 20 CFR §§ [404.909](#); [416.1409](#); [GN 03101.020](#)
- May be filed online at
<https://secure.ssa.gov/iAppINMD/start>

“GOOD CAUSE” FOR FILING RECONSIDERATION LATE

- SSA or CMS actions were confusing or misleading;
- Did not understand the legal requirements;
- Physical, mental, educational, or linguistic limitations prevented timely filing.
- “Unusual or unavoidable circumstances.”

20 CFR [404.911](#); [416.1411](#); [GN 03101.020](#)

NO RECOUPMENT DURING RECONSIDERATION

- SSA can not start recoupment if a Recon Request is filed within **30 days**.
Recoupment **must stop** once a Recon Request has been filed and must not start again until the initial decision. SSA should refund improperly recouped benefits. 20 CFR §§ [404.502a \(h\)](#); [416.575\(b\)](#); [GN 02201.025](#), [SI 02220.017](#)

WAIVER REQUEST

- An overpaid individual agrees with the fact/amount of the overpayment but asks to waive repayment.
- No deadline for filing. If filed within **30 days** of receipt of notice, recoupment can't begin until **initial** waiver decision. 20 CFR §§ [404.506](#); [416.575\(d\)](#)
- If SSA started recoupment when a waiver is filed, the waiver will **NOT** cover benefits already repaid unless the waiver specifically covers the entire overpayment (the person must show that s/he went into debt to repay part of the overpayment).

NO RECOUPMENT WHILE WAIVER IS PENDING

- Recoupment must stop once a waiver request is filed and cannot resume until the initial waiver decision. SSA should refund improperly recouped benefits.
- Pre-recoupment review. Right to a personal conference (face-to-face, by telephone, or video conference). 20 CFR §§ [404.506](#); [416.557\(a\)](#); [GN 02201.011](#), [SI 02260.001](#), [SI 02260.006](#).

PERSONAL CONFERENCE

- File (“folder”) review *at any time* in the waiver process (no later than 5 business days before the conference). [GN 02250.002](#) [GN 02270.009](#)
- Must be able to get a copy of the OP file without a fee. [SI 02260.006](#)
- Personal appearance with or without a representative to testify, cross-examine and submit documents; *De novo* review. 20 CFR §§ [404.506](#); [416.557](#); [GN 02270.005](#)

PROCESSING A WAIVER REQUEST

- **SSDI cases:** An ALJ hearing is the next level of appeal after a personal conference. If there was no personal conference, a Reconsideration is the next level of appeal. 20 CFR §§ [404.506 \(h\)](#), [404.907](#), [404.930\(a\)\(6\)](#). [GN 02250.380](#)
- **SSI cases:** Reconsideration is the next level of appeal whether or not there is personal conference. SSI recipient is entitled to a personal conference before a waiver is denied. 20 CFR [416.557 \(f\)](#), [416.1413](#); [SI 02260.006B.7](#)

WAIVER-WHEN APPLICABLE

- Recipient is **without fault** in causing OP, **AND**
- Adjustment or recovery would either:
 - **“Defeat the purpose”** of the Social Security Act, **OR**
 - Be **“against equity and good conscience,”** or
 - **“Impede effective administration of Social Security Act”** because of the amount involved.
20 CFR §§ [404.506 \(a\)](#), [416.550](#). [GN 02250.001](#); [SI 02260.001](#).

WHEN SSA WILL FIND FAULT

An overpaid SSI/SSDI recipient:

- **Failed to provide information** which s/he knew or *should have known* was material; or
- **Made incorrect statements** which s/he knew or *should have known* were incorrect, or
- **Did not return a payment** which s/he knew or *could have been expected to know* was incorrect. 20 CFR §§ [404.507](#), [416.552](#)

WHAT SSA MUST CONSIDER WHEN DETERMINING “WITHOUT FAULT”

- Any physical, mental, educational or linguistic limitations,
- understanding of the reporting requirements and efforts to report,
- understanding of the obligation to return payments not due,
- ability to recognize inconsistencies and evaluate the reasonableness of SSA's actions,
- experience in dealing with government agencies.
- understanding of the language used by SSA,
- misleading information from SSA. 20 CFR §§ [404.507](#), [416.552](#)

“WITHOUT FAULT” WHEN SSA MADE A MISTAKE

- SSA’s fault in causing the overpayment, alone, does **NOT** relieve an overpaid beneficiary of fault. If the evidence clearly shows the individual did not understand and comply with reporting responsibilities, that individual can usually be found without fault. Resolve any doubt in favor of the individual. [GN 02250.005](#) 20 CFR §§ [404.507](#); [416.552](#); [SI 02260.010](#), [SI 02260.015](#)

HOW TO EVALUATE “FAULT”

- The evidence shows a lack of good faith or failure to exercise a high degree of care in determining whether to report an event that might cause deductions or termination of entitlement.
- The degree of care varies with the complexity of the circumstances giving rise to the overpayment and the capacity of the beneficiary to realize that s/he is being overpaid. 20 CFR § [404.510](#)

PRESUMED “NO FAULT”

- *Reasonable* belief that only take-home (net) pay is included to determine SGA; [GN 02250.060](#)
- Relied upon erroneous information from SSA.
[GN 02250.061](#)
- Unaware that earnings were above SGA due to retroactive pay increase, work at a higher rate than realized. [GN 02250.065](#)
- *Good faith* belief that benefits were paid properly after SSA was informed of the SGA earnings. [GN 02250.066](#)
20 CFR [404.510](#)

HOW TO PROVE “NO FAULT”?

- Education and work history
- Mental/physical capacity, ability to understand/comply with SSA rules
- Ability to understand/respond to SSA notices
- What does the individual recall being told about reporting responsibilities during the application, redeterminations and prior requests for reconsideration or waiver of an overpayment?

HOW TO PROVE “NO FAULT”?

- Did the individual receive any reporting instructions?
- Were there any other OP on the person’s record?
- Is the change that caused the OP the one that normally would have been covered during a discussion of reporting requirements or is it a unique occurrence?
- Could a reasonable person conclude that the change was so insignificant as not to affect payment amount or eligibility?

“DEFEAT THE PURPOSE OF THE ACT”

- The issue is ability to repay.
- If SSI or other public assistance benefits involved, SSA presumes that recovery of the overpayment will “defeat the purposes of the Act.” 20 CFR §§ [416.553](#) Food stamps, State medical assistance, unemployment benefits and workers' compensation are **not** public assistance. [GN 02250.110](#)
- SSA must consider a monthly budget, all household finances. 20 CFR §§ [404.508](#)

INABILITY TO REPAY THE OVERPAYMENT

- Needs substantially all of monthly income to meet “ordinary and necessary living expenses” (food, clothing, rent, utilities, medical bills, expenses for support of others) [GN 02250.100](#)
- Assets cannot exceed **\$3,000** for an individual or **\$5,000** for an individual and one dependent (+\$600 for each additional dependent) [GN 02250.100](#)
- If any of the overpaid funds are retained recovery will not defeat the purposes of the act. 20 CFR §§ [404.508](#); [416.553](#); [GN 02250.105](#).

OVERPAYMENT COLLECTION WILL “DEFEAT THE PURPOSE OF THE SS ACT”

Current total income does not exceed:

- The Federal Benefit Rate (FBR); plus
- The \$20 general income exclusion; plus
- The \$65 earned income exclusion; plus
- The federally administered State supplementary level.

“AGAINST EQUITY AND GOOD CONSCIENCE”

- An overpaid beneficiary relinquished a valuable right or changed position for the worse in reliance on SSDI/SSI payments or an overpaid beneficiary lived in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment. [GN 02250.150](#)
- Against equity is presumed if there was:
- Misunderstanding about gross vs. take-home pay. [GN 02250.060](#)
- Reliance on misinformation from an official source. [GN 02250.061](#)

ADMINISTRATIVE TOLERANCE

- An overpaid individual who *requested a waiver* is without fault and has an overpayment **\$2,000 or less** – recoupment waived. Can be applied to subsequent overpayments (each overpayment counted separately). 20 CFR § [416.555](#); [SI 02260.030](#)
- If an overpayment results from excess resources of **\$50 or less**, and *no indications of fault*, waiver granted, even if not requested. 20 CFR § [416.555](#); [SI 02260.035](#)

OVERPAYMENT RECOVERY

- **Refund**-overpayment is paid in one or several monthly installments. 20 CFR [416.560](#)
- **Adjustment**- SSA deducts money from the monthly benefit check until the overpayment is repaid. 20 CFR §§ [404.515](#); [416.570](#), [GN 02210.008](#)

OVERPAYMENT RECOVERY FROM SSI RECIPIENTS

Recoupment is limited to the *lesser* of total monthly **SSI** or **10 % of the total monthly income** (SSI with state supplement and countable income) 20 CFR § [416.571](#)

- Where the overpaid beneficiary cannot meet “current ordinary and necessary living expenses” recoupment may be reduced to less than 10 % up to \$1/month. 20 C.F.R. § [416.571](#)

OVERPAYMENT RECOVERY FROM SSDI RECIPIENTS

- An initial notice of overpayment should generally propose withholding **10% of the monthly benefit** amount (excluding SMI premiums) as an alternative to full refund.
- Proposing **10% monthly benefit** withholding in the initial notice applies even if partial withholding (or repayment by installments) is in effect for a prior overpayment. In such case, propose withholding 10% of the monthly benefit amount for the total outstanding amount (new overpayment plus prior one).
- If eligibility to benefits is reestablished and there is a prior overpayment for which waiver (including personal conference) rights were offered, **10% benefit withholding** is appropriate **regardless of any existing repayment** schedule. GN 02210.010

DEFAULT RECOVERY RATE – SSDI OVERPAYMENT

- When SSA establishes an SSDI overpayment on an individual's record the automated system will begin benefit withholding after the 60-day due process period expires.
- SSA recovers the overpayment by withholding **10% of the individual's monthly benefit** amount until SSA fully recovers the overpayment.
- If an individual is unable to meet their ordinary and necessary living expenses because SSA is withholding 10% of their monthly payment, the individual may request a lower rate of recovery. GN 02210.030

OVERPAYMENT RECOVERY FROM SSDI RECIPIENTS

- Recovery within 12 months or 60 months
- SSA will grant, **without financial development**, any request that is **at least \$10/month and would permit recovery within 12 months.**
- SSA will grant, after requesting information about the individual's resources, income, and living expenses (verbally), any request that is at least \$10/month and would permit full recovery within 60 months.
- If the debtor is receiving another type of cash public assistance (VA service benefits, TANF) SSA should withhold at the rate requested **but no less than \$10.**
- GN 02210.030

RECOVERY WITHIN 60 MONTHS – SSDI OVERPAYMENT

If the negotiated rate (lower than 10%) would not permit recovery within **60 months**, the individual must complete the SSA-634 form. SSA must evaluate the individual's income, expenses and resources as follows:

1. Compare the monthly household expenses and the total monthly income to determine if the individual's income exceeds their expenses.
2. Review the individual's financial information to determine if resources are below \$3,000.00.

GN 02210.030

RECOVERY RATE AND MEDICARE PART D SUBSIDY

If the individual has a 100% Medicare Part D subsidy, take SSA must grant grant any request that is at a minimum **\$10.00/month** without requesting the Form SSA-634. GN 02210.030

OVERPAYMENT RECOVERY FROM SSDI+SSI RECIPIENTS

- When a person receives SSDI and SSI, only **10 % of the SSDI monthly benefit** will be withheld to recover the title II overpayment. The 10% withholding rate will apply in concurrent claims **unless** the overpaid person specifically requests a greater (or lesser) rate of withholding. [GN 02210.045](#)

OTHER RECOVERY OPTIONS

- **Offset of Federal Tax Refunds.** 20 CFR [404.526](#); [416.580](#) - .586; [GN 02201.030](#) -.031, [SI 02220.012](#).
- **Administrative Wage Garnishment.** 20 C.F.R. [404.527](#); [416.590](#), [422.401](#) - .445, [GN 02201.042](#)
- **Administrative Offset through the Treasury Offset Program (TOP)** 20 CFR [422.310](#). [GN 02201.029](#), [GN 02201.031](#)
- Private collection agencies
- **Credit Reporting** 20 CFR [422.305](#)