

# Social Security Reconsideration Appeals

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## Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

## Key Lessons

1. Filing a Request for Reconsideration is the first step in the administrative appeal process, across the different benefit programs that the Social Security Administration (SSA) administers.
2. Those receiving Supplemental Security Income (SSI) benefits have stronger protections in the reconsideration process.
3. The different benefit programs that SSA administers have different issues that may result in benefits being reduced or terminated.
4. Pursuing a reconsideration appeal can be a complex process, and SSA often makes mistakes in handling reconsiderations.

## The First Step in SSA's Administrative Appeal Process: Request for Reconsideration

The Social Security Administration has a four-step administrative decision and appeals process:

- initial determination,
- Reconsideration,
- Administrative Law Judge hearing, and
- Appeals Council.

If an individual receives an adverse Appeals Council decision, or if the Appeals Council declines to review the case, they may file an appeal in federal court.<sup>1</sup>

The four steps listed above are the steps to appeal decisions SSA makes in the cash benefit programs it administers, both Social Security (OASDI, or retirement (“old age”)), survivors, and disability insurance benefits) and Supplemental Security Income (SSI).<sup>2</sup> The process is the same when appealing a denial after an application for benefits and when appealing a decision to reduce, suspend or terminate benefits after they are approved.

At all stages of the appeal process, the individual has 60 days after they receive a determination notice to file an appeal of an adverse decision.<sup>3</sup> Each stage has an opportunity to excuse a missed deadline for good cause.<sup>4</sup>

1 [20 C.F.R. § 404.981](#).

2 [Id. §§ 404.902, 416.1402](#).

3 [Id. §§ 404.909, 404.933, 404.968, 416.1409, 416.1433, 416.1468](#). SSA presumes the date that the individual received the notice is 5 days after the date on the notice, unless the individual can prove that they did not receive the notice within the 5 days.

4 [Id. §§ 404.911, 416.1411](#).

## The reconsideration process

A Request for Reconsideration must be made in writing, and generally individuals should use the form SSA has for this purpose, Form 561.<sup>5</sup> The request can be filed in person at the local SSA office, or by sending via fax or certified mail return receipt requested to the local SSA office. In addition, both disability appeals and non-disability appeals can now be filed online using SSA's iAppeals system.<sup>6</sup>

### PRACTICE TIP

#### Keeping proof of filing

No matter which method is used to file the Request for Reconsideration, confirmation that the appeal was filed should be received and kept as proof of filing.

Reconsideration involves a thorough reexamination of all evidence on record. The person reviewing the case will make the reconsideration determination based on all evidence used in the initial determination and any additional evidence or information submitted with the appeal. The reviewer must not have been involved in the initial determination.

The review takes place at the local SSA office or a regional program center. In the case of disability determinations, reconsideration takes place at the state disability determination service.<sup>7</sup> The form of the reconsideration differs depending on whether the case involves a disability determination, an appeal of an initial denial of eligibility, or an adverse action (e.g. reduction, suspension, or termination) for someone already receiving benefits.

In most cases, reconsideration comes in the form of a "case review," a paper-record review not involving a personal appearance or an opportunity to present witnesses.<sup>8</sup> In SSI post-eligibility suspension or reduction cases, an individual can choose from one of three options: having (1) a case review, (2) an in-person informal conference (involves face-to-face appearance before a decision-maker where a written summary of the conference becomes part of the case record), or (3) an in-person formal conference (same as the informal conference and includes the opportunity to request that documents and witnesses be subpoenaed).<sup>9</sup> Individuals with limited English proficiency or who are deaf or hard of hearing can ask SSA to provide an interpreter for the conference if they need that assistance.

#### Review Options and Rights

Review Option	Review Rights
Case review <i>All OASDI and SSI issues</i>	Paper review only POMS GN 02201.025, SI 04020.040
Informal conference, or formal conference <i>Only SSI post-eligibility</i>	Informal = may present witnesses Formal = may also subpoena adverse witnesses/documents and cross-examine adverse witnesses POMS SI 04020.050
In-person hearing at state Disability Determination Services <i>Only medical cessation for SSDI or SSI disability in Continuing Disability Review</i>	Similar to formal conference POMS DI 12026.001

5 [www.ssa.gov/forms/ssa-561.pdf](http://www.ssa.gov/forms/ssa-561.pdf)

6 [www.ssa.gov/benefits/disability/appeal.html](http://www.ssa.gov/benefits/disability/appeal.html)

7 20 C.F.R. § 416.1414.

8 *Id.* §§ 404.913, 416.1413.

9 *Id.* § 416.1413.

If the reconsideration is denied, the individual should receive a written reconsideration decision, with the right to request a hearing before an Administrative Law Judge.

## Due Process Protections for SSI Post-Eligibility Appeals

In *Goldberg v. Kelly*, the Supreme Court ruled in 1970 that recipients of means-tested public benefits must be afforded the “opportunity to be heard” before their benefits can be suspended.<sup>10</sup> SSI benefits, as a means-tested program for extremely low-income recipients, are subject to the same due process protections as in *Goldberg*. SSA has promulgated regulations concerning the SSI program that conform to the requirements of *Goldberg* and constitutional due process. Social Security regulations establish an administrative appeal process that, on paper, protects the due process rights of SSI recipients who face a reduction or loss of benefits.<sup>11</sup>

The regulations provide that the SSI recipient will continue receiving benefits “at the previously established payment level” until a decision on the reconsideration is issued, if the individual files an appeal within 10 days of receiving the initial notice. SSI recipients may choose among three methods of reconsideration at the first level of appeal: case review, informal conference, or formal conference, as described above in Section 1. Of these, only the formal conference meets the requirements prescribed by *Goldberg* for means-tested public benefits, by giving the opportunity to cross-examine adverse witnesses and request that SSA issue a subpoena for adverse witnesses and relevant documents.

### CASE EXAMPLE

Mr. A is 68 years old and receives SSI benefits based on age. After his mother passed away, Mr. A and his siblings inherited her house. SSA suspended Mr. A's SSI benefit because the alleged value of his share of the house puts him over the \$2,000 resource limit. Mr. A believes that the house is not worth much, and that his share will be minimal if or once the house is sold. He also does not know if the house can be sold, because his siblings do not agree on what to do with the house.

Mr. A should file a Request for Reconsideration within 60 days of receiving the initial determination notice from SSA. Because this is an SSI post-eligibility action, Mr. A will continue to receive his SSI benefits if he files his appeal within 10 days of receiving the notice, and he can choose to have an informal conference or a formal conference at the local SSA office, rather than a case review.

Some people are “concurrent beneficiaries,” who receive a small amount of Social Security benefits and also receive SSI benefits in an amount that brings their total benefits up to the SSI benefit maximum. *Goldberg* protections also apply to concurrent beneficiaries.

## Different Issues in Different Benefit Programs

Due to the different eligibility requirements for the various SSA benefit programs, certain problems are more likely to come up for some beneficiaries. For example, there are many complicated financial eligibility rules that apply only to SSI recipients. Issues with these rules often arise for SSI recipients when SSA conducts routine, non-medical reviews of their eligibility.

### SSI

SSI recipients may receive a determination notice from SSA that their benefits are going to be suspended because they are over the resource limit, over the income limit, or have been outside of the United States for more than 30 days. Or they may receive a notice that their benefits are going to be reduced because they have received a fluctuating amount of income, they are receiving “in-kind support and maintenance,” or they have been institutionalized in a nursing home.

<sup>10</sup> *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

<sup>11</sup> 20 C.F.R. § 416.1400 et seq.

## PRACTICE TIP

### Filing a Request for Reconsideration for each notice

Individuals may also receive a notice from SSA saying they were overpaid in the past due to the same issue. However, these are two separate issues, one looking forward and one looking backward. File a separate Request for Reconsideration to appeal from each notice.

### SSDI: work incentive rules

A common problem for SSDI beneficiaries is notices of termination and overpayment due to SSA's application of the work incentive rules. SSA may allege that an individual has worked above the Substantial Gainful Activity (SGA) level, after the individual has exhausted the Trial Work Period (TWP) and Extended Period of Eligibility (EPE). SSA may have failed to correctly calculate the permitted deductions from work income, such as Impairment Related Work Expenses (IRWE), or subsidies.

### SSI Disability and SSDI: change in medical condition

Both SSDI beneficiaries and those receiving SSI on the basis of disability face Continuing Disability Reviews (CDR). SSA will periodically review whether their disability continues. If SSA makes an initial determination that their condition has medically improved, they can file a Request for Reconsideration challenging this decision, which will be handled by the state Disability Determination Service (DDS), with an in-person hearing. This is different than an appeal of a denial of an initial disability application, where the Request for Reconsideration is handled by the DDS as a paper-only review.

When individuals file a Request for Reconsideration within 10 days of receiving the notice about the allegations that their medical condition has improved, they can include a written statement that they want to continue receiving benefits while this appeal is pending, and they will receive statutory benefit continuation.<sup>12</sup> Benefits can also continue through receiving the ALJ hearing decision, if the reconsideration on the CDR is denied and they file a request for an ALJ hearing along with another written statement that they want to continue receiving benefits.

### Social Security and SSI: overpayments

Individuals receiving Social Security and SSI benefits from SSA may receive overpayment notices. An overpayment is the total amount an individual received from SSA for any period which exceeded the amount which should have been paid for that period. Once a final determination on the overpayment is made, the amount is a debt the individual owes to the federal government. An individual can challenge the fact and/or the amount of the overpayment by filing a Request for Reconsideration.<sup>13</sup>

The burden is on SSA to provide a coherent explanation of how an overpayment occurred and how it was calculated. Always consider asking for reconsideration if it is not clear that the overpayment is correct. Errors in overpayment computations are frequent, and a Request for Reconsideration forces SSA to double-check its calculations and explain how they were done. SSA should not be collecting the overpayment while the reconsideration is pending. More information about overpayments is available on Justice in Aging's website.<sup>14</sup>

12 POMS DI 12095.171 (<https://secure.ssa.gov/poms.nsf/lnx/0412095171>), Dec. 13, 2017.

13 POMS GN 02201.025 (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0202201025>), March 14, 2014; SI 02220.017(A)(4) (<https://secure.ssa.gov/poms.nsf/lnx/0502220017>), July 17, 2015.

14 "I Can't Pay That!": Social Security Overpayments and Low-Income Clients, <http://www.justiceinaging.org/wp-content/uploads/2017/02/I-Cant-Pay-That-Social-Security-Overpayments-and-Low-Income-Clients.pdf>

## Common Problems with the Reconsideration Process

Frequently, the SSA's initial determination notices do not provide enough information for the individual to understand the proposed action. For SSI recipients, the notice must include the reasons for the determination, and an explanation of the right to file a Request for Reconsideration.<sup>15</sup> Overpayment notices must include details including the monthly amount the person was paid, the monthly amount the person should have been paid, why a different amount was due, and a list of the months involved.<sup>16</sup>

### PRACTICE TIP

#### Utilizing “good cause” for late filing

Inability to understand the notice may be “good cause” for extending the deadline to file a Request for Reconsideration.

SSA often loses reconsideration requests and supporting material. This seems to occur regularly, even when requests are sent via certified mail and an SSA employee signs the return receipt. Also, SSA often does not enter the appeal into their system until months after the Request for Reconsideration was filed.

SSA employees are required to help individuals file an appeal anytime the individual disagrees with a determination.<sup>17</sup> However, SSA employees do not always provide that help, and sometimes even tell individuals that they are not allowed to appeal a determination.

### PRACTICE TIP

#### Using alternative methods if unable to file in person at local office

Individuals may need assistance with filing a Request for Reconsideration by mail or fax, or using iAppeals, if they are discouraged from filing in person at the local office. Being told by an SSA employee that an individual cannot file an appeal may be good cause for receiving an extension of the deadline to file the Request for Reconsideration.

Frequently, individuals face lengthy delays waiting for SSA to schedule and hold in-person conferences. Occasionally, SSA simply issues a decision affirming the initial determination after the Request for Reconsideration is filed, without explaining the evidence relied upon, let alone making sure the individual has an opportunity for a conference. Unfortunately, even when appeals are processed and conferences are held, there are delays in receiving a written determination.

If the SSA employee agrees to reverse the earlier determination, it is essential to have that decision in writing. Individuals are left vulnerable to SSA repeating the same error in the future if they do not have a written reconsideration decision. SSA may propose to take the same action again at a later date, apparently with no record kept that the previous effort was reversed on appeal. If the initial determination is upheld by the reconsideration decision, the individual must receive that decision in writing so they can pursue their claim to the next level of appeal, a Request for an Administrative Law Judge hearing, as needed.

Individuals and their representatives should be able to review the information in their file at SSA, regardless of the program or issue being appealed. For Social Security Disability Insurance (SSDI) work incentive issues, the work review may have been done in the regional program center rather than in the local office, so it may be more difficult to review that information.

15 Program Operations Manual System (POMS) SI 04010.020 (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0504010020>), Nov. 28, 2014.

16 POMS GN 02201.009 (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0202201009>), Oct. 26, 2017.

17 POMS GN 03102.200 (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0203102200>), Feb. 7, 2017.

## PRACTICE TIP

### Reporting changes to SSA

- SSI applicants and recipients must report changes to SSA within 10 days after the end of the month in which change occurred.<sup>18</sup> They must report changes in address, living arrangements, marital status, death of spouse or other household member, changes in household composition, admission to nursing home or hospital, incarceration in prison or jail, income, resources or trips outside the US for more than 30 days.
- SSDI applicants and beneficiaries must report when they start or stop working, changes in work duties, hours, or pay, or when they pay for items or services need for work.<sup>19</sup> It is important to keep documentation regarding work, since SSA often alleges work issues years after the fact.
- Those receiving SSDI and SSI on the basis of disability must report any medical improvement in their condition to SSA.

## PRACTICE TIP

### Resolving problems with Request for Reconsideration

- Persistence pays off. Put everything in writing and provide support with documentation. Expect you will have to follow up with phone calls.
- Develop a good working relationship with local SSA office staff and supervisors.

**Note:** This Issue Brief does not include a discussion of issues for those receiving Social Security survivors benefits or retirement benefits and their dependents. Problems for those applying for or receiving these benefits are relatively rare, but should they receive a notice from SSA, they can also file a Request for Reconsideration to dispute that decision.

## Glossary

### Concurrent beneficiary

An individual who is entitled to receive both OASDI and SSI benefits at the same time.

### Continuing Disability Review (CDR)

SSA periodically reviews the medical impairments of those receiving Social Security Disability Insurance benefits or SSI based on disability or blindness, to determine if they continue to have a disabling condition.

### Disability Determination Services (DDS)

State agencies, funded by SSA, responsible for developing medical evidence and making a determination on whether or not a claimant for SSDI or SSI based on disability meets the statutory definition for “disabled” or “blind.”

### OASDI

Old Age (retirement), Survivors, and Disability Insurance. Also known as “Social Security” or “Title II.”

### POMS

Program Operations Manual System. SSA’s primary manual of policy and procedures for the agency’s personnel in its local offices.

### Reconsideration

The first step in the appeals process for an individual who is dissatisfied with SSA’s initial determination.

18 POMS SI 02301.005 (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301005>), Sept. 30, 2016.

19 POMS DI 13010.020 (<https://secure.ssa.gov/apps10/poms.nsf/lnx/0413010020>), August 1, 2016.

## Social Security

A social insurance program with benefits based on an individual's work history, which can also provide auxiliary benefits for a wage earner's spouse and children.

## SSI

Supplemental Security Income is a means-tested program based on financial need. It provides cash assistance to people who are blind, disabled, or age 65 and older, and who have very low income and limited assets. Also known as "Title XVI."

## Conclusion

The Social Security Administration has a four-step administrative appeals process; filing a Request for Reconsideration is the first level of appeal in that process. Pursuing a reconsideration appeal can be difficult for many individuals, and SSA often makes mistakes in handling reconsiderations. The different benefit programs that SSA administers have different issues that may result in benefits being reduced or terminated. Those receiving Supplemental Security Income (SSI) benefits have stronger protections in the reconsideration process.

## Additional Resources

- Regulations
  - » 20 C.F.R. §§ 404.907 – 922 (OASDI)
  - » 20 C.F.R. §§ 416.1407 – 1422 (SSI)
- Program Operations Manual System (POMS)
  - » GN 03102.000 et seq. (OASDI)
  - » SI 04020.000 et seq. (SSI)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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