

SSI Overpayment: Walk Through a Case

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Community Legal Services

Since 1966, Community Legal Services (CLS) has provided free civil legal assistance to more than one million low-income Philadelphians. CLS assists clients when they face the threat of losing their homes, incomes, health care, and even their families. CLS attorneys and other staff provide a full range of legal services, from individual representation to administrative advocacy to class action litigation, as well as community education and social work. CLS is nationally recognized as a model legal services program.

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 fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBT individuals, and people with limited English proficiency.

Introduction

For Supplemental Security Income (SSI) recipients, receiving a notice that they have been overpaid by the Social Security Administration (SSA) often causes alarm and confusion, and great concern about how repayment will affect their ability to pay their ordinary living expenses. This Chapter Summary walks through three scenarios for SSI recipients who have received an overpayment notice from SSA, in order to better understand the options these individuals may have when confronting an overpayment.

An overpayment is the total amount an individual receives from the Social Security Administration (SSA), for any period, that exceeds the amount which should have been paid that period.¹ Once a final determination on the overpayment is made, the amount is a debt the individual owes to the federal government.²

An overpayment determination is, by definition, a backward-looking process, as the amount of the overpayment is the difference between the amount paid and the benefits actually due for a given **retroactive** period. SSA may send an overpayment notice around the same time as it sends a notice regarding current eligibility. However, the current eligibility information concerns **prospective** eligibility for SSI benefits. **Although sometimes co-occurring and related, these are two separate issues, and must be handled separately.** Importantly, an overpayment should never go unaddressed. The failure to take action regarding an overpayment can lead to collection activities, such as the reduction of monthly benefits, the garnishment of wages, and the withholding of tax refunds.

When an individual receives a notice of an alleged overpayment from SSA, they have three options (other than agreeing to pay back the full amount):

¹ 42 USC § 1383(b); 20 CFR § 416.537.

² POMS SI 02201.005.

1. The individual can use the SSA appeals process to challenge the fact or the amount of the overpayment determination.
2. The individual can agree with the overpayment determination, and seek a waiver of SSA's right to recover the overpayment.
3. The individual, facing repaying the overpayment through collection of their monthly benefits or other income, can seek to negotiate a lower monthly amount of repayment.

SCENARIO 1

Michael Smith and a request for reconsideration

Michael Smith is 60 years old and has been receiving SSI since he had a stroke at age 48. On February 11, 2019, he receives a notice from the Social Security Administration dated February 6, 2019, stating he has been overpaid \$45,689 in SSI benefits because he owns real property. Mr. Smith rents an apartment and has never purchased property. The overpayment notice is the first time Mr. Smith has been informed by SSA that he is ineligible for SSI because this property puts him over the \$2,000 resource limit.

The notice doesn't contain much information about the real property in question. On February 15th, Mr. Smith takes the notice to his local SSA office and tells the representative that he does not own the property in question. Despite his assertion, the SSA representative tells him his SSI benefits will stop and he must pay back the full overpayment. Mr. Smith does not in fact own the property.

What should Mr. Smith do?

Mr. Smith should challenge the overpayment by filing a **Request for Reconsideration**.³ SSA now uses data matching with LexisNexis to identify "non-home real property" owned by SSI recipients. Although SSA representatives are not supposed to rely solely on information obtained from LexisNexis to suspend SSI benefits without getting more information from the recipient,⁴ it is not unusual for individuals with common names, like Mr. Smith, to have their benefits suspended and receive an overpayment notice because of being matched with property owned by someone else.

A Request for Reconsideration can be filed only in the first 60 days after the notice of overpayment is received, absent a showing of good cause for late filing.⁵ Mr. Smith will lose his right to challenge the overpayment if he does not file the appeal on time, or if only a waiver application is filed upon receiving the notice of overpayment.⁶

Filing a Request for Reconsideration will stop the overpayment recoupment while the initial appeal is pending. SSA should not begin any recoupment if Mr. Smith files the appeal within 30 days of receiving the notice.⁷ In the request, an SSI recipient may choose between having a case review, an informal conference, or a formal conference.⁸

³ POMS SI 02220.017(A)(4).

⁴ POMS SI 01140.100.

⁵ 20 CFR § 416.1411.

⁶ If Mr. Smith also receives a Notice of Planned Action suspending his SSI benefits going forward for being over the resource limit, he will similarly have 60 days from receiving that notice to file a Request for Reconsideration on the determination. However, he is entitled to receive full benefit continuation pending a decision on the reconsideration if he files the appeal within 10 days of receiving the notice. 20 CFR § 416.1336(b).

⁷ POMS SI 02220.001 and 02220.017(A)(4).

⁸ POMS SI 02220.017.

The Request for Reconsideration must be in writing,⁹ and it is recommended that individuals and advocates use the SSA form ([Form SSA-561](#)) to file the appeal. It can be mailed to the address specified on the notice, it can be delivered in person to a local SSA office, or it can now be submitted online through SSA's iAppeals system.¹⁰ We do not suggest filing an appeal by calling SSA's 800 number. The appeal must be in writing, as when attempted by phone there is no documentation of if or when the call was made. We suggest delivering in-person, submitting online, or mailing the appeal.

If the appeal is mailed, it should be sent by certified mail with the return receipt requested, so that there is proof that it was sent within the 60-day limit. If the individual goes in-person to the local SSA office to file the appeal, they are required to have a face-to-face interview that same day. Since this means there will be no further opportunity to prepare for this interview before it is held, it may not be best for an individual to submit their Request for Reconsideration in person.

It is also likely that Mr. Smith would receive a Notice of Planned Action around the same time he receives the Notice of Overpayment, informing him that his SSI benefits will be suspended going forward because he is over the resource limit. These are two separate issues, however, one looking forward and one looking backward. A separate Request for Reconsideration should be filed to appeal each type of notice, even though they are based on the same dispute around whether Mr. Smith owns this property.

SCENARIO 2A

Jane Williams and filing a waiver application

Jane Williams is a 52-year-old SSI recipient who has recently started working. In June 2018, she reports to SSA that she has started working 10 hours a week as a home health aide. Each month, Ms. Williams brings her pay stubs from work to her local SSA office and gets a receipt that she has dropped them off. Despite submitting her pay stubs, Ms. Williams' SSI benefit stays the same. Because she has reported her income, she assumes that she is entitled to continue receiving the same amount of SSI benefits. Six months later, on January 8, 2019, Ms. Williams receives a notice that she was overpaid \$3,876 in SSI. The notice specifies that the overpayment is the result of her work.

What should Ms. Williams do?

Ms. Williams should consider filing a Request for Reconsideration within 60 days of receiving the notice of overpayment, especially if she is not certain that SSA has calculated the amount of the overpayment correctly. The burden is on SSA to provide a coherent explanation of how an overpayment occurred and how it was calculated. Always consider filing a Request for Reconsideration if it is not clear that the amount of 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.

If Ms. Williams is certain that the amount of the overpayment calculated by SSA is correct, she should file a waiver application. A waiver asks SSA not to require repayment of an overpayment. SSA will waive recovery of an overpayment if both of the following are true:

1. The individual must be without fault in causing the overpayment; **and**
2. Recovery would either “defeat the purpose of the Social Security Act” **or** “be against equity and good conscience.”¹¹

⁹ *Id.*

¹⁰ [Secure.ssa.gov/iApplNMD/start](https://secure.ssa.gov/iApplNMD/start).

¹¹ 42 USC § 1383(b)(1)(B); 20 CFR §§ 416.550 – 416.556.

“Without fault”: A finding regarding fault is a threshold matter in all waiver cases, and the individual must be found to be without fault in causing the overpayment before the second step is evaluated.¹² “Without fault” generally requires a showing that the individual was blameless in the creation of the overpayment. SSA must consider all circumstances, including the individual’s disability (if any), age, education, English language proficiency, and comprehension of reporting requirements when evaluating whether they were “without fault.”

Because Ms. Williams was diligent about reporting her wages and kept the receipts demonstrating that she reported to SSA, she should be able to meet the requirement of being found “without fault” in causing the overpayment.

“Defeat the purpose of the Act”: This is construed as whether recovery would cause financial hardship to the individual.¹³ It is presumed to be met for those currently receiving SSI benefits and other sources of public assistance.

“Against equity and good conscience”: This is an alternative to showing that repayment would be a financial hardship, for situations where it would be unfair to require repayment of the overpayment. In its policies, SSA defines “equity and good conscience” narrowly, as whether the individual, in relying on the overpayment, relinquished a valuable right or changed position for the worse.¹⁴ However, some federal courts have held that “equity and good conscience” should be defined more broadly.¹⁵

The individual has the burden of proof to demonstrate all aspects of the waiver test by a preponderance of evidence.¹⁶

An individual should use SSA’s form “Request for Waiver of Overpayment Recovery or Change in Repayment Rate” ([Form SSA-632](#)), as the completed form will provide SSA with the information necessary to process the waiver request.¹⁷ Those currently receiving SSI or other forms of public assistance, as well as those claiming it would be “against equity and good conscience” to repay the overpayment, should only complete the first three pages of this form and sign it.

A waiver may be requested **at any time**. This means that a waiver may be requested even after the overpayment has already been fully or partially repaid.¹⁸ Once a request for waiver is made, the recoupment should stop while a decision on the request is pending. If the waiver request is made within 30 days of receipt of the overpayment notice, recoupment should not begin while a decision on the request is pending.¹⁹

An individual can file a request for reconsideration and a waiver application at the same time on any overpayment; in that case, the appeal process should be completed before SSA considers the waiver application.²⁰ Alternatively, an individual can file the appeal first and complete that process, and then file the waiver application later. When in doubt, both should be filed. In some circumstances, SSA will treat a reconsideration request as an implied waiver request as well, however, it must still make a formal determination on the reconsideration before it considers the implied waiver request.²¹

12 POMS SI 02260.010.

13 POMS SI 02260.020.

14 POMS SI 02260.025.

15 See e.g., *Stoltzfus v. Astrue*, EDPA, Civil Action No. 11-6056, 2013 WL 1842237 paed.uscourts.gov/documents/opinions/13d0379p.pdf.

16 See e.g., *Sipp v. Astrue*, 641 F.3d 975, 981 (8th Cir.2011).

17 POMS SI 02260.005.

18 POMS SI 02201.005(H)(3) and SI 02260.001(A)(3).

19 20 CFR § 404.506(b).

20 POMS GN 02201.021(D).

21 POMS GN 02201.025(B)(4).

SCENARIO 2B

Jane Williams

Same scenario as 2A, but Ms. Williams has stopped receiving SSI. She is working full-time now and is not eligible for SSI. She is unable to afford paying the whole amount of the overpayment back at once. She wants to get on a payment plan to avoid garnishment of her federal income tax return and wages.

What should Ms. Williams do now?

Ms. Williams should use a new SSA form, [Form 634](#), to request a payment plan.²² Again, she can file this request at any time, especially now that her financial circumstances have changed. She must complete all of the income, assets, and expenses portions of the form, and attach documentation regarding her financial situation, including bills, rent receipts, etc. Careful and complete documentation of expenses is helpful to show how much of her current income is needed to meet her living expenses.

Generally, SSA attempts to negotiate a repayment rate that will permit the recovery of all outstanding amounts within 12 months, or at the most within 36 months.²³ However, if the financial information on Form 634 indicates that Ms. Williams cannot afford such an amount without financial hardship, the monthly amount should be limited to the difference between her income and expenses.

SCENARIO 3

James Johnson and change of repayment rate

James Johnson is 70 years old and receiving SSI. Mr. Johnson has been living with his brother rent free for one year. When he has his annual redetermination review with an SSA representative at his local office, he tells them about his living arrangement. Two weeks later, Mr. Johnson receives two notices, one a Notice of Planned Action stating that his SSI benefits are going to be reduced by a third, and the other a Notice of Overpayment stating that he owes \$2,752, because he has been receiving in-kind support and maintenance.²⁴ Although Mr. Johnson starts paying rent to his brother and his monthly benefit returns to the full SSI amount, SSA has started to reduce his benefit by 10% each month to recover the overpayment. He is having difficulty meeting his expenses due to this 10% reduction.

What should Mr. Johnson do?

Mr. Johnson should use [Form 634](#) to request a change in the repayment rate. Unless he applies to have the repayment rate adjusted, SSA will withhold 10% of his SSI benefits each month. For those receiving a Medicare Part D low-income subsidy (LIS) or “Extra Help,” the amount can be set as low as \$10 per month without further financial development.²⁵ All SSI recipients should automatically get “Extra Help” for Medicare Part D.

Any decision as to the amount of recoupment is an administrative action and not an initial determination; therefore it cannot be appealed.²⁶

²² POMS SI 02220.026.

²³ POMS GN 02210.030.

²⁴ POMS SI 00835.000 et seq.

²⁵ POMS GN 02210.030(B)(6)

²⁶ 20 CFR § 404.903(e)

Conclusion

Dealing with an SSI overpayment can be an overwhelming process, both for the individual receiving the notice and for the advocate helping the individual to navigate SSA's appeal and waiver process. Attention to the requirements of the particular path that an individual chooses to deal with the overpayment, collecting documentation relevant for that path, and persistent follow up with the local SSA office can increase the chances of a positive outcome for the individual.

Additional Resources

- Regulations
 - » 20 C.F.R. §§ 416.550 – 590
- Program Operations Manual System (POMS)
 - » SI 02220.000 et seq.
- Social Security Administration FAQ: [What can I do if I get an overpayment?](#)
- NCLER webinar: [“I Can’t Pay That!”: Social Security Overpayments and Low-Income Clients](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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