

SSI Overpayment: Walk Through a Case

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About 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.

About 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.

What We'll Cover

- SSI Overpayments Overview
- Scenario 1: Michael Smith (Appeal)
- Scenario 2: Jane Williams (Waiver)
- Scenario 3: James Johnson (Change of Repayment Rate)

Overpayments Overview

SSI Overpayments

- What is an overpayment?
- SSA usually withholds funds from current benefits to repay
 - up to 10% of monthly SSI benefits (\$77 in 2019)

Why Do SSI Recipients End Up with Overpayments?

- Over resource limit
- Over income limit/fluctuating income
- In-kind support and maintenance
- Outside U.S. for more than 30 days
- Institutionalized for more than 30 days (nursing home, prison)

Overpayment Options

- Appeal the overpayment
- Request a waiver
- Negotiate a lower repayment amount

Scenario 1: Michael Smith – Overpayment Appeal

Michael Smith

- 60 years old, receiving SSI for 12 years
- Feb 6, 2019 Notice of Overpayment
 - Overpaid \$45,689
 - Over the resource limit because he owns “non-home real property”

POLL: What Should Mr. Smith Do?

- A. Appeal the overpayment
- B. Request a waiver
- C. Both
- D. Neither

Appeal the Overpayment

- File Request for Reconsideration (Form 561)
- Appeal of merits (disputing fact or amount) of overpayment
- Deadline: 60 days (plus 5 for mailing)
- Appeal rights
 - case review, informal conference, formal conference
- Receive written notice of reconsideration determination

iAppeals

- Can now file overpayment appeals [online](#)
- Benefits of submitting appeal online
- Go to secure.ssa.gov/iAppINMD/start

Overpayment Appeal vs. Non-Disability Appeal

Looking Back –
Overpayment

VS.

Looking Forward –
Current Eligibility
(NDA)

Scenario 2: Jane Williams – Waiver

Jane Williams

- 52 years old, started working in June 2018
 - 10 hours per week as home health aide
- Submits copies of paystubs monthly in person, receives receipts from SSA
- Benefits stay the same for several months
- Jan 8, 2019 Notice of Overpayment
 - Overpaid \$3,876
 - As result of earned income

POLL: What Should Ms. Williams Do?

- A. Appeal the overpayment
- B. Request a waiver
- C. Both
- D. Neither

Appeal or Waiver?

- Can do either or BOTH
- Considerations:
 - Appeal – subject to 60 + 5 day deadline
 - Waiver – can file at any time
 - When in doubt – DO BOTH

Overpayment Waiver

- Separate from merits of overpayment –
 - Not making a statement on the correctness of the overpayment.
- Asking that overpayment be forgiven.
- File at any time (no deadline).
- New overpayment waiver form.
 - Much more detail oriented.
 - Section 12F specifies SSI/TANF/VA options – no longer “public assistance” option (GA/GR)
 - More confusing for clients?

Overpayment Waiver

- **Requirements:**
 - Without Fault **AND**
 - Defeat Purpose of the Act (Financial hardship); **OR**
Against Equity and Good Conscience.

Overpayment Waiver Requirements

“Without Fault”

- Term of art: “blameless in creation of overpayment.”
- Individualized, everyone’s situation is different.

Overpayment Waiver Requirements

“Defeat the Purpose of the Act”

- Construed as financial hardship.
- Presumed met for SSI recipients and recipients of other public assistance.

Overpayment Waiver Requirements

“Against Equity and Good Conscience”

- Alternative to showing financial hardship.
- For situations where it would be unfair to require repayment.
- Did the individual relinquish a valuable right or change position for the worse?

Overpayment Waiver

Procedural Steps:

1. File Request for [Waiver \(Form 632\) – new version](https://www.ssa.gov/forms/SSA-632-BK.pdf).
<https://www.ssa.gov/forms/SSA-632-BK.pdf>
2. Request that SSA cease recoupment pending waiver.
3. Right to personal conference before waiver denied.
4. Right to written decision.
5. Full appeal rights if denied.

Administrative Waiver

Administrative waiver of overpayments \$1,000.00 or less

- POMS SI 02260.030

Jane Williams

- Now working full time, no longer eligible for SSI
- Can't pay back full overpayment at once
- Wants to avoid garnishment of federal tax return or wages

POLL: What Should Ms. Williams Do Now?

- A. Request a waiver
- B. Request a repayment plan
- C. Nothing

Request Repayment Plan

- **Use new form:** Form 634, Request for Change in Overpayment Recovery Rate
- Provide financial documentation re: income, assets, and expenses

Scenario 3: James Johnson – Change of Repayment Rate

James Johnson

- 70 years old, living with brother rent free
- Notice of Planned Action
 - In-kind support and maintenance (1/3 reduction)
- Notice of Overpayment
 - Overpaid by \$2,752



POLL: What Should Mr. Johnson Do?

- A. Request a waiver
- B. Request change in repayment rate
- C. Nothing

Repayment Rate

- \$10/month withholding for those receiving Medicare Low-Income Subsidy (LIS).

POMS GN 02210.030 (B)(6)

Tips for Resolution

- Persistence pays off.
- Put requests in writing and provide support with documentation.
- Follow up with phone calls.
- Local office personnel have a lot of discretion in deciding “without fault” in waivers.
- Develop good working relationship with field office staff/supervisor.
- Get decisions in writing.

Additional Resources

- Regulations
 - 20 C.F.R. §§ 416.550 – 590
- Program Operations Manual System (POMS)
 - SI 02201.000 et seq.
- SSA FAQ: [What can I do if I get an overpayment?](#)
- NCLER Webcast: [“I Can’t Pay That!”: Social Security Overpayments and Low-Income Clients](#)

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Case Consultations

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