

SSI Self-Help for Overpayments: Administrative Waivers and More

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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 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.

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 populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

Options when SSI Recipient receives Notice of Overpayment:

- Appeal (Request for Reconsideration)
- Waiver Request
 - Administrative Waiver for Small Amount
- Make Payment Arrangement
 - Request \$10/month Payment Plan

Overpayment Overview

- What is an overpayment?
- SSA usually withholds funds from current benefits to repay
 - up to 10% of monthly SSI benefits (\$78 in 2020)

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)
- CDRs and 18 year old reviews
- Change in living arrangements

Overpayment Options

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

Appeal the Overpayment

- File Request for Reconsideration (Form 561)
- Appeal merits (disputing fact or amount) of overpayment
- Deadlines: 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:
 - Good if facing deadline
 - Provides receipt

Overpayment Appeal versus Non-Disability Appeal

Looking Back –
Overpayment

VS.

Looking Forward –
Current Eligibility
(NDA)

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 ([Form SSA-632](#)).
 - Much more detail oriented.
 - Section 12F specifies SSI/TANF/VA options – no longer “public assistance” option (GA/GR)
 - More confusing?

Overpayment Waiver: Requirements

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

Overpayment Waiver: Without Fault

“Without Fault”

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

Overpayment Waiver: Defeat the Purpose of the Act

“Defeat the Purpose of the Act”

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

Waiver Request Cover Letter

- Enclosed please find a waiver request for the overpayment recently assessed against NAME.
- The standards for a waiver are met – the overpayment was not his/her fault, and as a current SSI recipient, the criteria for hardship are met.
- Please immediately stop any recovery while this request is being considered, pursuant to POMS SI 02260.001.D. In the event that you are not inclined to grant the waiver, please schedule a personal conference pursuant to POMS SI 02260.006 to discuss this request. Please notify me of the proposed date and time for the conference.
- In the event that you deny this waiver, please limit recovery to \$10 a month. As NAME is an SSI recipient, collection should not exceed that amount. POMS GN 02210.030.

Administrative Waiver

- Administrative waiver of overpayments \$1,000.00 or less
 - POMS SI 02260.030

Administrative Waiver Request Letter

REQUEST FOR ADMINISTRATIVE WAIVER OF OVERPAYMENT:

Dear SSA Claims Representative:

I currently receive SSI benefits. I understand I have an overpayment on my record, the amount of which is less than \$1,000.00. I was without fault in the creation of this overpayment. I request that this overpayment be waived per POMS SI 02260.030.

Case Example

- James Johnson receives SSI benefits
- Mother passed away last year; he inherited \$12,000 on June 8, 2019
- Spent down under resource limit before July 1, 2019; promptly reported inheritance and spend down to SSA in June
- Should have received \$0 in August 2019 based on June income; but he continued to receive full benefits in August
- SSA later sends Notice of Overpayment for \$771

Request a Payment Plan

- Use new form: [Form 634](#), Request for Change in Overpayment Recovery Rate
- Provide financial documentation re: income, assets, and expenses

\$10 Per Month Repayment Rate

- \$10/month withholding for those receiving Medicare Low-Income Subsidy (LIS).
 - POMS GN 02210.030 (C)
- Exception: If the person has a 100% Medicare Part D subsidy, take the following actions:
 1. Grant any request that is at a minimum \$10.00.
 2. Do not request a completed Form SSA-634-BK.

\$10 Per Month Repayment Plan Letter

REQUEST FOR \$10/MONTH WITHHOLDING FOR OVERPAYMENT

Dear SSA Claims Representative:

I currently receive SSI benefits. I understand I have an overpayment on my record. Please limit withholding to \$10 per month, as I receive the Medicare Low-Income Subsidy (LIS), per the exception in POMS GN 02210.030 (C).

Case Example 2

- Dorothy Douglas is 70 years old, receives SSI benefits
- Living with brother rent free for one year
- Notice of Planned Action
 - In-kind support and maintenance (1/3 reduction)
- Notice of Overpayment
 - Overpaid by \$2,752

Additional Resources

- Regulations
 - 20 C.F.R. §§ 416.550 – 590
- Program Operations Manual System (POMS)
 - SI 02201.000 et seq.
- NCLER:
 - [“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.