

ND PROTECTION & ADVOCACY PROJECT

SSI OR SSDI OVERPAYMENTS

An overpayment happens because Social Security Administration (SSA) has determined that you have been paid more than you should have been. It can happen in any of the Social Security programs, including SSI, SSDI and Social Security retirement. There are numerous reasons as to why an overpayment can occur due to an error, mistake, or an oversight by you, your representative payee or an SSA employee.

Examples of things that can cause an overpayment are:

- your income or resources changed;
- you started working and you now have earned income;
- your living arrangement changed, including a change in your marital status;
- you received another disability payment, such as workers' compensation;
- you received other payments from other Social Security programs;
- you received a large payment, such as an insurance award or accident injury settlement;
- you earned more money than allowable while also receiving SSDI or SSI; and
- your medical condition improved and you are no longer considered to be disabled.

You are required to promptly report to SSA any such changes, and to do so no later than the 10th of the month following the month that the change occurred.

The overpayment notice will include the following:

- ✓ the reason for the overpayment;
- ✓ the amount of the overpayment;
- ✓ the period of time when the overpayments were made to you;
- ✓ how much SSA wants you to repay each month;
- ✓ explanations that you have a right to:
 - request to pay back a smaller amount each month;
 - appeal the overpayment; and
 - request a waiver of the overpayment;

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- ✓ deadline for your appeal;
- ✓ that SSA has the forms for an appeal or a request for a waiver; and
- ✓ that SSA will help you fill out the forms for your appeal or request for a waiver.

SSA will collect overpayments from your monthly benefits; this is called "recoupment." If your overpayment is SSI, the SSA can collect up to 10% of your benefits until the overpayment is paid. If your overpayment is SSDI or Social Security retirement, then SSA can collect an overpayment by taking your whole check each month until the overpayment is paid, unless you work out another arrangement with them.

If you:

- **disagree that you have been overpaid or**
- **disagree with the amount of the overpayment or**
- **believe that you are entitled to a waiver of the overpayment,**

then you should

- **appeal the claim (it's called a "Request for Reconsideration")**
or
- **request a waiver or**
- **do both.**

Whether you request reconsideration or a waiver or both will depend upon your situation.

You should file a Request for Reconsideration if you do not think you were overpaid, or if you agree that you have been overpaid, but you disagree with the amount.

You have 60 plus 5 days after date of the Notice in which to file your Request for Reconsideration, or you lose the right to appeal. The 60 days starts the day after you receive the Notice. SSA assumes that you received the Notice within five days of its mailing, and this accounts for the 60 plus 5 days that you have after the date of the Notice to file your Request for Reconsideration.

If you file a Request for Reconsideration or a request for waiver within 30 days of receiving the Notice (which is 35 days after the date of the Notice), SSA will not start recoupment. If you file between 31 and 65 days of the date of the Notice, SSA will stop recoupment.

SSA form SSA-561, Request for Reconsideration, is the same whether you are appealing an overpayment of SSDI or SSI. The Request for

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Reconsideration of an SSDI overpayment will be reviewed by an SSA employee who has not had any involvement with your case up to this time. You can give additional evidence to this individual. You will not meet with the individual.

The SSA form treats a Request for Reconsideration of an SSI overpayment differently. There is a section on the form that applies only to an appeal of an SSI overpayment. This section lists three choices for you on how your appeal of SSI overpayment will be handled. Your choice will depend upon the reasons you are appealing the Notice of SSI overpayment. The choices are:

- 1) **Case Review:** this lets you give more facts to add to your file. You do not meet with the person who decides your case.
- 2) **Informal Conference:** You will meet with the person who decides your case. You can give more facts and you can bring other people to help explain your case.
- 3) **Formal Conference:** This is more like a court hearing. You and SSA can each bring in other people to give more facts to the decision maker. You have the right to confront and cross examine SSA's witnesses.

If you do not use an SSA form, you must otherwise submit your Request for Reconsideration in writing.

If your overpayment is because SSA believes you have medically improved and are no longer disabled, but you kept receiving disability benefits, then SSA will in connection with this overpayment issue a Notice of Termination of your benefits. To appeal this "no disability" decision by SSA, you must file an appeal within 15 days of the date of the termination Notice to keep getting benefits while you appeal. However, if you lose the appeal, then any amounts paid to you pending the appeal will also be part of the total amount that you must pay back.

If the appeal is decided in your favor, either there will not be an overpayment or the overpayment will be less than what SSA claimed. If the final decision is not in your favor, then the overpayment will be collected from your monthly benefits. If you are no longer on benefits, then you should work out a written payment plan with SSA. You may be able to agree with SSA on a lesser total overpayment as part of your payment plan.

You may also ask for a waiver of your obligation to pay the overpayment. You can do this together with the Request for Reconsideration or you can do

this alone. You can also do this at any time, even after SSA has begun collecting the overpayment from you; there is no deadline to submit a request for a waiver. Asking SSA to waive the overpayment does not mean that you agree with SSA that you have been overpaid; it simply means that you are asking to be excused from any obligation to pay it. If you file for a waiver within 30 days of getting the overpayment notice (and 35 days from date of Notice), SSA cannot take money from your check until you have a meeting with them.

To qualify for a waiver, you must show that you are not at fault for the overpayment **and** that if you have to pay the overpayment, it would either "defeat the purpose of the Social Security Act" (meaning it would be a financial hardship to your household) or it would be "against equity and good conscience" (meaning it would be unfair and unjust). You have the right to a personal conference with an SSA worker to consider your waiver request.

If the overpayment is \$1,000 or less and the overpayment is not your fault, SSA may give you an "administrative waiver" *but you must ask for this in writing.*

If you lose the Request for Reconsideration, SSA will send you a letter that outlines what you can do next if you are not satisfied with their decision, and the time frames for taking action. This includes asking for a hearing before an Administrative Law Judge (ALJ). The ALJ will notify you of your hearing time and date; it can be several months after your request. The place of the hearing is usually within 75 miles of your residence. The ALJ decision letter will tell you what you can do if you are dissatisfied with the ALJ's decision-- you can appeal it to the SSA Appeals Council. Appealing the ALJ decision will not stop SSA from starting collection of the overpayment. A decision by the Appeals Council takes more than a year. If you have not yet requested a waiver, this would be a good time to do so. The Appeals Council is SSA's final administrative decision. If you are dissatisfied with the decision of the Appeals Council, your next option is to appeal the decision to federal district court within 60 days of the Appeals Council's decision.

If your request for a waiver is denied and there was no personal conference, you can request a reconsideration of this decision. If your request for a waiver is denied and there was a personal conference, then your next step is to ask for an ALJ hearing. You must submit either request (request for reconsideration or request for an ALJ hearing) within 65 days of the date of the written denial of your request for a waiver.

For Help:

See www.socialsecurity.gov Forms to Request a Reconsideration and for a Waiver are available at this website. Forms are available at the local Social Security Administration office. SSA staff will assist you with completing the forms.

Call Social Security Administration automated services telephone, 1-800-772-1213 or TTY 1-800-325-0778, available 24/7. Staff are available at these phone numbers from 7 a.m. to 7 p.m. Monday-- Friday, but be prepared to be on hold for a time.

Request assistance from "RSI," or "Rehab Services Inc.," located in Minot, ND, phone number: 1-800-258-8132; Eastern ND: 701-793-5238; Central and Western ND: 701-839-4240. See also RSI's website <http://rsiminot.com/rsi-programs#social-security-benefits-project>

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FOR MORE INFORMATION, CONTACT:

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