

How to Fight an SSI or Social Security Overpayment Notice

Introduction

If you are being charged with an overpayment, it is because Social Security believes that you received benefits when you were not eligible to receive them. Social Security must notify you in writing of the overpayment before it may take any money from your check. There are four actions you may take if you receive an overpayment notice. You may take all four actions if you wish.

May I appeal the overpayment?

When you don't agree that you were overpaid or you don't agree with the amount of overpayment you may appeal by filing SSA Form 561, "**Request Reconsideration.**" You have 60 days from the date of the overpayment notice to request reconsideration. If you request reconsideration within 10 days after receiving your notice, Social Security will not take any money out of your check until a decision on your request is made. You may request reconsideration at your Social Security office or call them and ask for the form to do so or you may get the form online at www.ssa.gov. When you turn the form in you should also give Social Security evidence to show that you were not overpaid. A different worker will make the reconsideration decision. The decision must be in writing.

May I ask for a waiver?

You may request that they **waive** the

overpaid amount by filing SSA Form 632, "**Request for Waiver of Overpayment Recovery** or Change in Repayment." You may request that an overpayment be waived at any time, even if Social Security has started collecting the overpayment from you. When you ask for a waiver you are asking Social Security not to collect the overpayment from you. A Social Security or SSI overpayment may be waived if the standards for waiver are met. You may apply for a waiver at the Social Security office or call them and ask for the form to do so. Or, you may get the form online at <http://www.ssa.gov>.

In order for a waiver to be granted two steps must be met. First, you must show that you are "**without fault**" in causing the overpayment. Secondly, you must show either that recovery would "**defeat the purpose**" of the Social Security Act **or** that recovery (making you pay it back) would "**be against equity and good conscience.**" If you meet both standards, SSA should grant your waiver request.

"**Fault**" means:

1. Failure to provide information that you knew or should have known was material; or
2. You made an incorrect statement that you knew or should have known was incorrect; or
3. You failed to return a payment that you knew or should have known was incorrect.

The "**Defeat the Purpose**" test is met if your income and resources are needed to meet your necessary and ordinary living

expenses. Social Security is more likely to grant your waiver request if you do not have extra money in the bank or extra income left over after paying your living expenses. Ordinary and necessary living expenses include food, clothing, housing costs (house or rent payments, utilities, insurance, taxes, maintenance), medical expenses, support obligations, and other miscellaneous expenses which can reasonably be considered a part of your standard of living.

“Against Equity and Good Conscience” means that you have given up a valuable right or changed your position for the worse.

If your waiver request is denied you may request that Social Security reconsider their decision by filing SSA Form 561, **“Request Reconsideration.”** You can do this at your local Social Security office or call them and ask for the proper form. SSA must receive your request for reconsideration within 60 days of the date of Social Security’s written denial of waiver. A different worker will review your request and make a decision.

Further Appeal Rights

If your request for reconsideration is denied you may request a hearing before an Administrative Law Judge (ALJ). Your request for a hearing must be received by SSA within 60 days of SSA’s written reconsideration denial. You may make your request for a hearing before an ALJ by filing SSA Form HA501 “Request for Hearing before an ALJ.” You can do this at the Social Security office or call them and ask for the form. Or, you may get the form online at www.ssa.gov.

The ALJ will notify you of the time and date of your hearing. This is usually at least several months after you’ve requested the hearing. You may have a lawyer or a non-lawyer represent you at the hearing. If you have a lawyer represent you, be sure to get an explanation of the fee from the lawyer.

Before the hearing you have the right to review and copy your file at the Social Security Administration’s hearing office. You may call them and make an appointment to copy your file.

At the hearing, the ALJ will have only the information that is in your file and any information you provide. You may testify and you may have witnesses testify. Also, you may give the judge additional documents. Your testimony and your witnesses’ testimony is evidence and so are any additional documents that you provide to the judge. **It’s a good idea to make a list before the hearing of the things that you want to tell the judge.**

After the hearing, the ALJ will make a written decision, and mail it to you. This will usually be within a few months after the hearing.

If you do not agree with the ALJ’s decision you may appeal further to the Social Security Administration’s Appeals Council by filing SSA Form HA520, “Request for Review of Decision/Order of Administrative Law Judge.” SSA must receive your request within 60 days of the ALJ’s written denial notice. You may make the request at the SSA office or call and ask for the form to be sent to you. Or, you may get the form online at www.ssa.gov.

An adverse Appeals Council decision may be appealed to Federal District Court. An appeal to the Federal District Court must be filed within 60 days of the Appeals Council’s written decision.

What if my Appeal or Waiver is denied?

If your waiver request is denied and/or you lose your appeal, you may ask Social Security to reduce your rate of repayment based on your present financial circumstances. Decide how much money you can afford to have taken out of your check each month by weighing your income against your expenses. Then ask Social Security to take only that amount out of your check each month. Social Security will ask you for documentation of your income and expenses, and will then make a decision on your request for a reduction in the rate of

repayment.

May I pay back only part of the overpayment?

If you have an overpayment but are not currently receiving Social Security benefits, you may be able to compromise the overpayment amount. This means you may offer to pay less than the full amount of the overpayment. SSA will not compromise the overpayment if you still have the money or if you were found to be at fault in causing the overpayment. You should make your offer of compromise in writing to your Social Security office.

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