

Fighting an SSI or SSDI Overpayment Notice

Introduction

Is the Social Security Administration (“SSA”) charging you with an overpayment? If so, they believe you received benefits when you should not have. This can happen if you failed to report income to SSA, or if SSA didn’t take your income into account in determining if you were eligible for benefits.

❖ **Tip:** To help avoid an overpayment, remember to report changes that may affect your eligibility for benefits no later than 10 days after the end of month that the change happened.

For **SSI**, some changes include changes in income, resources, and/or household size. For **SSDI**, some changes include going back to work.

SSA must tell you in writing about the overpayment before they take any money from your check or try to recover (get back) the overpayment in other ways.

If you get an overpayment notice, you can:

1. Appeal the overpayment, and/or
2. Ask for a waiver

What is the difference between an appeal and a waiver?

An **appeal** is when you ask SSA to decide that the overpayment they are charging is wrong. You can ask for an appeal if one of these is true:

- You do not agree that you were overpaid at all, or

- You agree you were overpaid benefits, but you do not agree with the amount SSA says you were overpaid.

A **waiver** is when you ask SSA to decide that you should not have to pay back the overpayment. You can ask for a waiver even if you agree that you were overpaid and with how much the overpayment is.

❖ **Tip:** You can ask for both an appeal and a waiver. However, if you do not agree with the overpayment and want SSA to change its mind, you must ask for an appeal.

We talk about the steps for each option below.

➤ **Appealing the Overpayment**

How do I appeal the overpayment?

You must file SSA Form 561, “**Request for Reconsideration.**” You can get this form at your local SSA office, ask for one by phone, or download it online at www.ssa.gov/forms/ssa-561.pdf. You can also file a Request for Reconsideration online at www.ssa.gov/benefits/disability/appeal.html. You should turn the form in with evidence showing SSA did not overpay you. A different SSA worker makes the reconsideration decision than the one who decided you owe an overpayment. The reconsideration decision must be in writing.

On the form, you have three options for the reconsideration process:

- 1. Case Review** - SSA makes a decision based on the documentation alone,
- 2. Formal Conference** - a more formal meeting with an SSA representative where you can bring witnesses, or
- 3. Informal Conference** - a less formal meeting with an SSA representative.

In most cases, it is best to check the box for Informal Conference. That way you can meet with an SSA representative who will go over your case and explain the reasons for the overpayment.

Is there a deadline for filing my appeal?

Yes. You must file your Request for Reconsideration within 60 days of the date you get the overpayment notice. If you file within 30 days of getting your notice, SSA will not take any money out of your check until they decide on your request.

❖ **Tip:** Whenever you file an appeal or other documents with SSA, it is important to keep proof. If you submit a form or other document in person, bring a copy and ask an SSA representative to date stamp it. If you mail it in, keep a copy for yourself and try to send it using certified mail, return receipt, so you have proof of when SSA got it.

I missed the 60-day deadline to appeal.

You can still try to file for reconsideration. You will have to show a good reason for missing the filing deadline.

Example: you were in the hospital and did not find out about the overpayment notice in time to appeal within 60 days.

SSA denied my Request for Reconsideration.

You can ask for a hearing before an Administrative Law Judge (“ALJ”). You must fill out and file [SSA Form HA501 “Request for Hearing before an ALJ.”](#) You can do this at the SSA office, call them and ask for the form, or get it [online](#). You can also file a request for hearing online at www.ssa.gov/benefits/disability/appeal.html.

Is there a deadline for asking for a hearing with an ALJ?

Yes. You must file your hearing request within 60 days of the date you got the written reconsideration denial.

When will I have my hearing?

It will be several months after your request. SSA must send you notice of the hearing date at least 75 days beforehand.

❖ **Tip:** Make sure you tell SSA if your contact information changes before you get notice of your hearing.

Should I submit evidence before or during the hearing?

If you have evidence that helps show you were not overpaid, you should submit it to the ALJ or let the ALJ know about it at least five business days before your hearing (sooner if possible). The ALJ may not consider evidence you submit later unless you have a good reason for being late, such as

- A physical, mental, or educational limitation
- Circumstances beyond your control

Can I subpoena a witness to the ALJ hearing?

Yes. You should let the ALJ know at least 10 business days before the hearing that you want the ALJ to issue a subpoena.

Can I have someone represent me at the hearing?

Yes. A lawyer or non-lawyer can represent you. If you have a lawyer, you should ask them about their fees so you understand how much their services will cost.

I am representing myself. How do I get ready for the hearing?

Before the hearing, you have the right to review and copy your file at the SSA hearing office. You will get a letter telling you your file is ready for review. Call SSA at the number at the top of the letter to make an appointment to copy your file. You should review your file carefully to see if SSA has incorrect information or has made any mistakes in finding there was an overpayment.

What do I do at the hearing?

At the hearing, the ALJ will review the information already in your file, and any other documents or evidence you provide. You can give the judge more documents, but you should try to submit any documents before the hearing date, if possible. (See above.)

At the hearing, you can testify and have witnesses testify. **Make a list before the hearing of the most important things you want to tell the ALJ.** You may be nervous at the hearing and forget to say things if they are not written down. Your testimony and your witnesses' testimony is evidence that the ALJ will consider, just like any documents you submit.

When does the ALJ decide?

The ALJ should make a decision within a few months after the hearing. The ALJ will mail you the decision in writing.

What if I do not agree with the ALJ's decision?

You can appeal further to the SSA's Appeals Council. You must file [SSA Form HA520, "Request for Review of Decision/Order of Administrative Law Judge"](#) within 60 days of the date on the ALJ's written decision. You can make the request at the SSA office, call and ask them to send you the form, or get it online.

-
- ❖ You can appeal an Appeals Council decision to Federal District Court. You must file an appeal to the Federal District Court within 60 days of the Appeals Council's written decision.
-

➤ Asking for a Waiver

How do I ask for a waiver?

You can ask SSA to **waive** (excuse you from paying) the overpaid amount. To do this, you must file a Request for Waiver (SSA Form 632). You can get the form at an SSA office, call them and ask that they mail you the form, or get it [online](#).

Is there a deadline for asking for a waiver?

No. You can ask any time, even after SSA starts collecting the overpayment from you.

Am I eligible for a waiver?

Yes, if you can show both of these:

- You are "without fault" in causing the overpayment, and
- If SSA makes you pay the money back it would "defeat the purpose" of the Social Security Act or "be against equity and good conscience."

If both those are true, SSA should grant your waiver request.

How can I show I was “without fault” in causing the overpayment?

You should try to provide proof of one or more of these:

- 1.** You didn’t understand the reporting requirements for your benefits because of disabilities or limited ability to read or understand English (this will be harder to show if you have had other overpayments in the past);
- 2.** You gave information to SSA about your income or assets and any changes, or other important facts affecting your eligibility (for example, date stamped copies of documents, copies of letters with proof of receipt by SSA);
- 3.** You did not make any statements to SSA that you knew or should have known were incorrect;
- 4.** You returned any payment you knew or should have known you weren’t eligible to get.

How can I show that repaying the overpayment would “defeat the purpose” of the Social Security Act?

You must show that you need your income and resources to meet your **ordinary and necessary living expenses**.

Ordinary and necessary living expenses include food, clothing, housing costs (mortgage or rent, utilities, insurance, taxes, maintenance), medical expenses, child support, and other miscellaneous expenses you can reasonably consider a part of your standard of living.

SSA is more likely to grant your waiver request if you do not have extra money in the bank or extra income left over each month after paying your living expenses.

How can I show that it would be “Against Equity and Good Conscience” for me to have to repay the money?

You must show you have given up a valuable right or changed your position for the worse because you expected to get benefits.

Example: you signed a lease for an apartment that you thought you could afford based on the social security benefits you were getting, and now it will be hard to break your lease without paying a penalty.

SSA denied my waiver request.

You can ask SSA to reconsider their decision by filing [SSA Form 561, “Request For Reconsideration.”](#) You can get this form at your local Social Security office, call them and ask them to send you the form, download it online at www.ssa.gov/forms/ssa-561.pdf, or file an online appeal at www.ssa.gov/benefits/disability/appeal.html.

You must submit your Request for Reconsideration within 60 days of the date you get the written denial from SSA. A different worker will review your request and make a decision.

SSA denied my Request for Reconsideration of the waiver.

You can ask for an administrative hearing with an ALJ. See “SSA denied my Request for Reconsideration” in the previous section.

➤ When Both Appeal and Waiver Requests are Denied

I can’t appeal anymore.

SSA will try to recover the overpayment from you. It usually does this by reducing the amount you get each month.

If you get SSI, SSA can lower your benefits by up to 10% to recover the overpayment. The current SSI benefit is \$783 per month. The most SSA could lower your benefit by is \$78.30 per month. **If you get SSDI**, SSA will lower your monthly benefit to \$0 until the overpayment has been paid back.

How will SSA collect the overpayment if I don’t get benefits anymore?

SSA will ask you to repay the overpayment within 30 days. If you cannot afford to pay the full amount all at once, you can ask SSA to pay back the overpayment in installments.

If you do not repay the overpayment, SSA may do one or more of these:

- Garnish your wages
- Reduce the overpayment amount from your tax refund
- Reduce future SSA benefits may you receive, including retirement benefits
- Report your nonpayment to credit bureaus

I cannot afford the amount SSA is collecting from me.

You can ask SSA for a **compromise** or **change in repayment rate**.

Asking for a compromise means asking to pay SSA less than the full amount of the overpayment. SSA will not compromise the overpayment if you still have the money that was overpaid, or they found you were at fault in causing the overpayment. You can make an offer of compromise in writing and give it to your SSA office.

Asking for a **change in repayment rate** means asking SSA to collect the full overpayment but in smaller amounts at a time. You can ask for a change even if you agree that you were overpaid and with the amount of the overpayment.

You can ask SSA to lower your rate of repayment based on your present financial situation. Weigh your income against your expenses. Decide how much you can afford to pay each month. Ask that SSA only lower your benefit by that amount. SSA will ask for proof of your income and expenses before deciding. You can ask for a change in repayment rate using the form [here](http://www.ssa.gov/forms/ssa-634.pdf) (www.ssa.gov/forms/ssa-634.pdf).

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

© 2020 Northwest Justice Project — 1-888-201-1014.

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)