

# Fighting an SSI or SSDI Overpayment Notice

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## Intro

Is Social Security charging you with an overpayment? If so, they believe you received benefits when you should not have. They must notify you in writing of the overpayment before they take any money from your check. You can take any or all of four different actions if you get an overpayment notice.

## Can I appeal the overpayment?

Yes, if one of these is true: You do not agree

- That you were overpaid.
- With the amount of overpayment.

You appeal by filing SSA Form 561, "Request for Reconsideration." You have 60 days from the date of the overpayment notice to request reconsideration. If you do so within 30 days of getting your notice, Social Security will not take any money out of your check until they decide on your request.

## How do I request reconsideration?

You can get a Request for Reconsideration form at your local Social Security office, call them and ask them to send the form to you, download it online at [www.ssa.gov/forms/ssa-561.pdf](http://www.ssa.gov/forms/ssa-561.pdf), or file an online appeal at [www.ssa.gov/benefits/disability/appeal.html](http://www.ssa.gov/benefits/disability/appeal.html). You should turn the form in with evidence showing they did not overpay you. A different worker makes the

reconsideration decision, in writing. Can I ask for a waiver?

You can ask Social Security to **waive** (excuse you from paying) the overpaid amount by filing [SSA Form 632, "Request for Waiver of Overpayment Recovery or Change in Repayment Rate."](#) **You can ask for this any time**, even after Social Security starts collecting the overpayment from you.

Asking for a waiver is asking Social Security not to collect the overpayment from you. Social Security may waive your overpayment if you meet its standards for waiver. You can apply for a waiver at the Social Security office, call them and ask them to send the form to you, or get it [online](#).

## Am I eligible for a waiver?

Yes, if you can show both of these:

- You are "**without fault**" in causing the overpayment.
- Making you pay it back would "**defeat the purpose**" of the Social Security Act OR "**be against equity and good conscience.**"

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

## What do some of those terms mean?

“Fault” means one of these:

1. You did not provide info you knew or should have known was important.
2. You made an incorrect statement you knew or should have known was incorrect.
3. You did not return a payment you knew or should have known was incorrect.

You meet the **“Defeat the Purpose”** test if you need your income and resources 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 (mortgage or rent, utilities, insurance, taxes, maintenance), medical expenses, support obligations, and other miscellaneous expenses you can reasonably consider a part of your standard of living.

**“Against Equity and Good Conscience”** means you have given up a valuable right or changed your position for the worse, OR it would be unfair for the SSA to recover the overpayment.

## What if Social Security denies my waiver request?

You can request that they reconsider that decision by filing [SSA Form 561, “Request For Reconsideration.”](#) You can get a Request for Reconsideration 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](http://www.ssa.gov/forms/ssa-561.pdf), or file an online appeal at [www.ssa.gov/benefits/disability/appeal.html](http://www.ssa.gov/benefits/disability/appeal.html). SSA must get your request for reconsideration within 60 days of the date of the written denial of waiver. A different worker will review your request and make a decision.

## What if Social Security denies my request for reconsideration of the overpayment?

You can ask for a hearing before an Administrative Law Judge (ALJ). You fill out and file [SSA Form HA501 “Request for Hearing before an ALJ.”](#) You can do this at the Social Security 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](http://www.ssa.gov/benefits/disability/appeal.html). SSA must get your hearing request within 60 days of the written reconsideration denial.

The ALJ will notify you of your hearing time and date. The hearing will be several months after your request. Social Security must send you notice of the hearing date at least 75 days beforehand.

## Should I submit evidence before or during the hearing?

If you have more evidence, such as new medical records showing you are disabled, you should submit it to the ALJ or let the ALJ know about your evidence generally at least five business days before your hearing. If you do not do this in time, generally you must have a good reason for your lateness, such as

- A physical/mental/educational limitation
- Circumstances beyond your control

## Can I subpoena a witness to the ALJ hearing?

A. Yes. Generally, you must let the ALJ know at least ten 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, make sure they explain their fee.

## 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 Social Security hearing office. You will get a letter telling you your file is ready for review. Call them at the number at the top of the letter and make an appointment to copy your file.

## What do I do at the hearing?

At the hearing, the ALJ will have only the info already in your file and any info you provide at the hearing. You can testify and have witnesses testify. You can give the judge more documents. Your testimony and your witnesses' testimony is evidence. So are any other documents you give the judge. **Make a list before the hearing of what you want to tell the judge.**

## When does the ALJ decide?

The ALJ will mail you a written decision. This will usually be within a few months after the hearing.

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

You can 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."](#) You must submit your request 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.

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- ❖ 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.
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## What if they deny my Appeal or Waiver?

You can ask Social Security 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 have taken out of your check each month. Ask Social Security to take only that amount out of your check each month. Social Security will ask for proof of your income and expenses before making a decision.

## Can I pay back only part of the overpayment?

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

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