



# Fighting an SSI or SSDI overpayment notice

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- ❖ Read this *only* if you live in the state of Washington.
  - ❖ **If you get public benefits** like SSI, food stamps, or TANF, and you have gotten legal financial obligations (LFOs) refunded by the Court, you **may** need to follow “spend down requirements” to keep getting benefits. **You should tell Social Security about this refund as soon as possible.** If you have questions, call CLEAR at 1-888-201-1014 or see contact info below.
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## Introduction

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### Should I read this?

Yes, you should read this if the Social Security Administration is charging you with an overpayment. This is happening to you because Social Security believes you got benefits from them when you should not have.

You might have failed to report income to Social Security, or maybe Social Security didn't take your income into account in determining if you were eligible to get benefits in the first place.

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- ❖ **To help prevent an overpayment in the first place**, you should report changes that may affect your eligibility to get benefits no later than 10 days after the end of month that the change happened.
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For **SSI**, some changes include changes in income, resources, and/or household size. For **SSDI**, some changes include going back to work.

### How will I know if Social Security is charging me with an overpayment?

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

## I got an overpayment notice. What are my options?

You can:

- A. Fight (**appeal**) the overpayment, and/or
- B. Ask for a **waiver**

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

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### What is an appeal?

It is when you ask Social Security 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 how much Social Security says it overpaid you.

### What is a waiver?

It is when you ask Social Security 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.

We talk about the steps for each option below.

## Appealing the Overpayment

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### How do I appeal the overpayment?

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❖ To find your local Social Security office, go to [secure.ssa.gov/ICON/main.jsp](https://secure.ssa.gov/ICON/main.jsp). You can find your local office using your zip code.

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You must file [Social Security Form 561](#), “**Request for Reconsideration.**” You can get this form at your local Social Security office, ask for one by phone, or download it online at [ssa.gov/forms/ssa-561.pdf](https://ssa.gov/forms/ssa-561.pdf). You can also file a Request for Reconsideration online at [ssa.gov/benefits/disability/appeal.html](https://ssa.gov/benefits/disability/appeal.html).

You should turn the form in with evidence showing Social Security did not overpay you.

A different Social Security 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** - Social Security makes a decision based on the documentation alone,
2. **Formal Conference** - a more formal meeting with an Social Security representation where you can bring witnesses, or
3. **Informal Conference** - a less formal meeting with a Social Security representative.

In most cases, it is best to check the box for Informal Conference. That way you can meet with a Social Security 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, Social Security will not take any money out of your check until they decide on your request.

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❖ **Tip:** Whenever you file an appeal or other documents with Social Security, it is important to keep proof. If you submit a form or other document in person, bring a copy and ask a Social Security 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 Social Security got it.

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## I missed the 60-day deadline to appeal. What can I do?

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.

## Social Security 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 Social Security office, call them and ask for the form, or get it [online](#). You can also file a request for hearing online at: [ssa.gov/benefits/disability/appeal.html](https://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. Social Security must let you know what the hearing date is **at least 75 days** beforehand.

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❖ **Tip:** Make sure you tell Social Security if your contact info changes before you get notice of your hearing.

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

If you have evidence that helps show you were not overpaid, you should give 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 look at evidence you give the ALJ 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 Social Security hearing office.

You will get a letter telling you your file is ready for review. Call Social Security 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 Social Security has incorrect information or 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 give the ALJ. You can give the judge more documents, but you should try to submit any documents before the hearing date, if possible. (See above.)

You can also testify and have witnesses testify. **Make a list before the hearing of the most important things you want to tell the ALJ.**

You might be nervous at the hearing. You might forget to say things if you have not written them down. Your testimony and your witnesses' testimony is evidence that the ALJ will consider, just like any documents you give the ALJ.

## When does the ALJ decide?

You should get 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 Social Security'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 Social Security 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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## Asking for a Waiver

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### What does it mean to ask for a waiver?

When you ask Social Security to **waive** the overpaid amount, you are asking them to excuse you from paying it.

### How do I ask for a waiver?

You must file a Request for Waiver (SSA Form 632).

You can get the form at a Social Security office, call and ask that they mail you the form, or get it [online](https://ssa.gov/forms/ssa-632.pdf) at [ssa.gov/forms/ssa-632.pdf](https://ssa.gov/forms/ssa-632.pdf).

### Is there a deadline for asking for a waiver?

**No.** You can ask any time. You can ask even after Social Security starts collecting the overpayment from you.

### Am I eligible to get a waiver?

Yes, if you can show both of these:

- A. You are "without fault" in causing the overpayment, and

- B.** If Social Security 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, Social Security should grant your waiver request.

## How can I prove 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 Social Security 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 Social Security);
3. You did not make any statements to Social Security 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 prove that making me pay back the overpayment “defeats 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 expenses you can reasonably consider a part of your standard of living.

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 each month after paying your living expenses.

## How can I prove 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 you thought you could afford based on the social security benefits you were getting. Now it will be hard to break your lease without paying a penalty.

## Social Security denied my waiver request. Now what?

You can ask Social Security to reconsider their decision by filing [SSA Form 561](#), “Request for Reconsideration.” You can get this form at your local Social Security office, call and ask them to send you the form, get it online at [ssa.gov/forms/ssa-561.pdf](https://ssa.gov/forms/ssa-561.pdf), or file an online appeal at [ssa.gov/benefits/disability/appeal.html](https://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 Social Security. A different worker will review your request and make a decision.

## Social Security denied my Request for Reconsideration of the waiver. What can I do?

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

## Denied appeal and waiver requests

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### I can’t appeal anymore. What happens next?

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

**If you get SSI**, Social Security can lower your benefits by up to 10% to recover the overpayment. In 2022, the monthly SSI amount is \$841. The most Social Security could lower your benefit by is \$84.10 a month. **If you get SSDI**, Social Security will lower your monthly benefit to \$0 until the overpayment has been paid back.



## I don't get benefits anymore. How will Social Security collect the overpayment?

Social Security 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 Social Security to pay back the overpayment in installments.

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

- A. Take money from (garnish) your paycheck
- B. Take the overpayment amount from your tax refund
- C. Reduce future Social Security benefits you may get, including retirement benefits
- D. Report your nonpayment to credit bureaus

## What if I cannot afford the amount Social Security is collecting from me?

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

Asking for a compromise means asking to pay Social Security less than the full amount of the overpayment.

Social Security **will not** compromise the overpayment if:

1. You still have the money that was overpaid, or
2. They found you were at fault in causing the overpayment

You can make an offer of compromise in writing and give it to your Social Security office.

Asking for a **change in repayment rate** means asking Social Security 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 Social Security to lower your rate of repayment based on your current financial situation.

Weigh your income against your expenses. Decide how much you can afford to pay each month. Ask Social Security to only lower your benefit by that amount.

Social Security will ask for proof of your income and expenses before deciding. You can ask for a change in repayment rate using the form at [ssa.gov/forms/ssa-634.pdf](https://ssa.gov/forms/ssa-634.pdf).

## Get Legal Help

- **Apply online** with [CLEAR\\*Online](https://nwjustice.org/apply-online) - [nwjustice.org/apply-online](https://nwjustice.org/apply-online)
- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 2-1-1 (or toll-free 1-877-211-9274) weekdays 8:00 am - 6:00 pm. They will refer you to a legal aid provider.
- **Facing a legal issue outside of King County** (other than Eviction or Foreclosure)? Call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am - 12:15 pm or apply online at [nwjustice.org/apply-online](https://nwjustice.org/apply-online).
- **Facing Eviction?** Call 1-855-657-8387.
- **Facing Foreclosure?** Call 1-800-606-4819.
- **Seniors (age 60 and over)** with a legal issue outside of King County can also call CLEAR\*Sr at 1-888-387-7111.
- **Deaf, hard of hearing or speech impaired callers** can call any of these numbers using the relay service of your choice.

CLEAR and 2-1-1 will provide interpreters.

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