

# Legal Basics: Social Security Overpayments

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# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

# About Community Legal Aid Society

Community Legal Aid Society, Inc. (CLASI) (Delaware) is a statewide, nonprofit law firm in Delaware whose mission is to combat injustice through creative and persistent advocacy on behalf of vulnerable and underserved Delawareans. CLASI is also Delaware's designated Protection and Advocacy agency for individuals with disabilities.

# Today

- Overpayments overview
- Appealing an overpayment
- Requesting waiver of an overpayment
- Requesting a change in repayment rate
- Common problems

# POMS

## Program Operations Manual System (POMS) Table of Contents

- [RM - Records Maintenance](#)
- [\*\*GN - General\*\*](#)
- [RS - Retirement and Survivors Insurance](#)
- [DI - Disability Insurance](#)
- [\*\*SI - Supplemental Security Income\*\*](#)
- [HI - Health Insurance](#)
- [NL - Notices, Letters and Paragraphs](#)
- [VB - Special Veterans Benefits](#)
- [PR - Title II Regional Chief Counsel Precedents](#)
- [PS - Title XVI Regional Chief Counsel Precedents](#)
- [SL - State and Local Coverage Handbook](#)
- [DX - Data Exchange](#)

# Overpayments Overview

# Overpayments

- What is an overpayment?
- If currently receiving SSA benefits, SSA will withhold funds from current benefits to repay

TITLE II (RSDI)	TITLE XVI (SSI)
No limit on withholding – Default is to withhold full monthly benefit	Up to 10% of monthly benefit – \$94.30 maximum for 2024



# Why Do Overpayments Happen?

- Over income limit/fluctuating income
- Over resource limit
- In-kind support and maintenance
- Marriage
- Outside U.S. for more than 30 days
- Institutionalized for more than 30 days (nursing home, prison)
- Work income, SSDI work incentive rules
- Workers' Comp offsets, Government Pension Offset, Windfall Elimination Provision

# Overpayment Options

- Appeal the overpayment
- Request a waiver
- Negotiate a lower repayment amount
- Do nothing
- Outside of SSA administrative process: bankruptcy

# Overpayment Appeal

# Actions That Can Be Appealed

## Notice of Overpayment

- Looking Backward – Overpayment

## Notice of Planned Action

- Looking Forward – Current Eligibility (Suspension/Reduction)

# Requesting Reconsideration

- Appeal of merits (disputing fact or amount) of overpayment
- Form 561: Request for Reconsideration
- Deadline: 60 days (plus 5 for mailing) from date on notice
- Appeal rights

# iAppeals

- Can file an overpayment appeal **online**
- Benefits of submitting appeal online
- Go to [SSA Website: Non-Medical Appeal](#)

# Stopping Recoupment

Effect of filing request for reconsideration:

- If filed within 30 days of notice, recoupment will not start
- If filed between 31 and 60 days of notice, recoupment will stop
- POMS:
  - GN 02201.011 (RSDI)
  - SI 02220.017(A)(1)(a) (SSI)

# Reconsideration Process

- RSDI: case review
  - POMS GN 02201.025
- SSI: case review, informal conference, formal conference
  - POMS SI 04020.010, SI 04020.030
- Written notice of reconsideration determination



# Appeal or Waiver?

- Can do either or BOTH
- Considerations:
  - Appeal – subject to 65-day deadline
  - Waiver – can file at any time
  - When in doubt – DO BOTH

# Overpayment Waiver

# Waiver vs. Appeal

- Separate from merits of overpayment –
  - not making a statement on the correctness of the overpayment
- Asking that overpayment be forgiven
- File at any time (**no deadline**)
  - GN 02201.019 (RSDI)
  - SI 02201.005(H)(3), SI 02260.001(A)(3) (SSI)

# Steps to Request Waiver

1. File Request for Waiver of Overpayment Recovery (Form 632 – Sept. 2023)
2. Follow up with SSA to make sure they stop recoupment while waiver pending
3. Right to personal conference before waiver denied
4. Right to written decision
5. Full appeal rights if denied

# Requirements for Waiver

- Without Fault **AND**
  - Defeat the purpose of the Act (financial hardship) **OR**
  - Be against equity and good conscience

# “Without Fault”

- Term of art: “blameless in creation of overpayment”
- Individualized, every situation is different
- For example, an individual’s ability to understand and comply with the reporting requirements may be affected by age, comprehension, education, memory, physical and mental condition, linguistic limitations, etc.
- POMS:
  - GN 02250.005 – 02250.072 (RSDI)
  - SI 02260.010, 02260.015 (SSI)

# “Defeat the Purpose of the Act”

- Construed as financial hardship. Need “substantially all” of their current income to meet ordinary and necessary living expenses
  - “If the overpaid individual has more than \$55.00 in income after paying the monthly household expenses, the overpaid individual **does not** meet the defeats the purpose provision” POMS SI 02260.020 D.
- RSDI beneficiaries must complete financial development
  - Required to document income, expenses and assets thoroughly

# “Defeat the Purpose of the Act” (cont.)

- Presumed met for current SSI recipients and recipients of TANF and needs-based VA pensions
  - Stop after page 2 of Form 632 - DO NOT need to complete financial development portion of pages 3 - 7



# “Against Equity and Good Conscience”

- Alternative to showing financial hardship
- For situations where it would be unfair to require repayment
  - For example, misled by SSA
- POMS:
  - GN 02250.150 (RSDI)
  - SI 02260.025 (SSI)

# Administrative Waiver

- Waiver of overpayments \$1,000.00 or less
- POMS
  - GN 02250.350 (RSDI)
  - SI 02260.030 (SSI)

# Overpayments Due to Excess Resources

- Streamlined rule to allow waiver of some SSI overpayments due to excess resources.
- Applies where:
  - Overpayment is due to exceeding the resource limit by \$50 or less, or
  - Total overpayment is more than the amount by which resources exceeded the resource limit
    - POMS SI 02260.035

# Change in Repayment Rate

# Repayment Rate

- Generally, SSA expects recovery of RSDI overpayments within 12 months if possible, or 36 months at most.
- File Request for Change in Overpayment Recovery Rate (Form 634) to request a lower rate. Must demonstrate financial hardship.
- Decision on amount of recoupment cannot be appealed.

# Medicare Low-Income Subsidy

- Individuals receiving a Medicare Low-Income Subsidy can get a \$10/month repayment rate
- Does not require financial development
- Can be as simple as a written statement asking for a \$10 per month payment plan, and stating that the person receives the Medicare Part D low-income subsidy.
- POMS GN 02210.030 (C) Exception

# Common Problems

# Overpayment Problems

- Collection starts before notice sent, or within 60 days of notice
- Individual disputes fact or amount, SSA directs to file waiver
- Even when request for reconsideration is filed, treated as waiver or as request for payment plan
- Request for reconsideration or waiver not logged into system, not processed in timely fashion



# Overpayment Problems (cont.)

- Collection continues after reconsideration/waiver filed
- Cannot reach staff at Payment Center (RSDI)
- No personal conference held before waiver denial
- Personal conference conducted improperly—  
focused on setting up payment plan instead of  
waiver
- No written decision on request for reconsideration  
or waiver

# Pandemic-Related Disaster Assistance

- [Emergency Message 20014 REV 9](#): Effect of COVID-19-Related Financial Assistance on SSI Income and Resources - End of Presidentially Declared Disaster
- [Emergency Message 21050 REV 5](#): Special Processing Instructions Applying SSI Income and Resource Exclusions to Pandemic-related Disaster Assistance

# Tips for Resolution

- Persistence pays off
- Put requests in writing and provide support with documentation
- Follow up with phone calls
- Local office personnel have a lot of discretion in deciding “without fault” in waivers
- Develop good working relationship with field office supervisors and managers
- Get decisions in writing – must have written notice to file appeal

# What You Can Do

- Represent individuals on overpayment appeals and waivers
- Request formal conferences for SSI recipients on request for reconsideration
- Do not accept improper recoupment while reconsideration or waiver pending
- Let us know about systemic problems you encounter

# Additional Resources

- Regulations
  - 20 C.F.R. §§ 404.502 – 545 (Title II)
  - 20 C.F.R. §§ 416.550 – 590 (Title XVI)
- Program Operations Manual System (POMS)
  - GN 02201.000 et seq. (Title II)
  - SI 02201.000 et seq. (Title XVI)
- SSA website: [Understanding SSI Overpayments, Request For Waiver Of Overpayment Recovery](#)
- SSA Publication: [Overpayments](#)

Questions?

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# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).