

# SSI Self-Help for Overpayments: Administrative Waivers and More

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Kate Lang, Justice in Aging

Richard Weishaupt, Community Legal Services

## 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 fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBT individuals, and people with limited English proficiency.

## Community Legal Services

Since 1966, Community Legal Services (CLS) has provided free civil legal assistance to more than one million low-income Philadelphians. CLS assists clients when they face the threat of losing their homes, incomes, health care, and even their families. CLS attorneys and other staff provide a full range of legal services, from individual representation to administrative advocacy to class action litigation, as well as community education and social work. CLS is nationally recognized as a model legal services program.

## Introduction to SSI Overpayments

An overpayment is the amount Social Security Administration (SSA) distributes to an individual for any period that exceeds the amount SSA should have paid for that period.<sup>1</sup> Once a final determination on the overpayment is made, the amount is a debt the individual owes to the federal government.<sup>2</sup>

SSA sends out thousands of overpayment notices to Supplemental Security Income (SSI) recipients every year. For SSI recipients, receiving a notice that they have been overpaid by SSA often causes alarm, confusion, and great concern about how repayment will affect their ability to pay their ordinary living expenses. An advocate may not be able to represent all of the SSI recipients who come in for assistance after they receive a notice of an overpayment from SSA. This Chapter Summary reviews the options SSI recipients have when they receive an overpayment notice from SSA, including some strategies individual SSI recipients may be able to pursue on their own with some assistance from an advocate, rather than full representation in the matter.

### Practice Tip:

An overpayment determination is, by definition, a backward-looking process, as the amount of the overpayment is the difference between the amount paid and the benefits actually due for a given **retroactive** period. SSA may send an overpayment notice around the same time as it sends a notice regarding current eligibility (“Notice of Planned Action”). However, the current eligibility information concerns **prospective** eligibility for SSI benefits. **Although sometimes co-occurring and related, these are two separate issues, and must be handled separately.**

<sup>1</sup> 42 USC § 1383(b); 20 CFR § 416.537.

<sup>2</sup> POMS SI 02201.005.

## Receiving an Overpayment Notice

An overpayment notice should not be ignored. The failure to take action regarding an overpayment can lead to collection activities, such as the reduction of monthly benefits, the garnishment of wages, and the withholding of tax refunds. It can also adversely affect an individual's credit rating.

When an individual receives a notice of an alleged overpayment from SSA, they have three options (other than agreeing to pay back the full amount):

1. Use the SSA appeals process to challenge the fact or the amount of the overpayment determination.
2. Agree with the overpayment determination, and seek a waiver of SSA's right to recover the overpayment.
3. Seek to negotiate a lower monthly amount of repayment if facing repaying the overpayment through collection of monthly benefits or other income.

If an individual wants to challenge the fact or amount of the overpayment, the first step in SSA's appeals process is to file a **Request for Reconsideration**.<sup>3</sup> A Request for Reconsideration can be filed only in the first **60 days** after the notice of overpayment is received, absent a showing of good cause for late filing.<sup>4</sup>

The Request for Reconsideration must be in writing,<sup>5</sup> and it is recommended that individuals and advocates use the SSA form ([Form SSA-561](#)) to file the appeal. It can be mailed to the address specified on the notice, it can be delivered in person to a local SSA office, or it can now be submitted online through SSA's iAppeals system.<sup>6</sup>

You can read more about challenging an overpayment through the appeals process in the NCLER trainings [SSI Overpayment: Walk Through a Case](#) and ["I Can't Pay That!": Social Security Overpayments and Low-Income Clients](#).

## Requesting a Waiver of an Overpayment

If the fact and the amount of the overpayment calculated by SSA is correct, an individual may want to file a waiver application. If the overpayment was not the person's fault **and** they cannot afford to pay it back, they can ask for a waiver. A waiver means that even though they were overpaid, SSA will not ask them to pay the money back.

### Without Fault

A finding regarding fault is a threshold matter in all waiver cases, and the individual must be found to be without fault in causing the overpayment before the second step is evaluated.<sup>7</sup> "Without fault" generally requires a showing that the individual was blameless in the creation of the overpayment. SSA must consider all circumstances, including the individual's disability (if any), age, education, English language proficiency, and comprehension of reporting requirements when evaluating whether they were "without fault."<sup>8</sup>

<sup>3</sup> POMS SI 02220.017.

<sup>4</sup> 20 CFR § 416.1411.

<sup>5</sup> POMS SI 02220.017.

<sup>6</sup> [secure.ssa.gov/iApp/NMD/start](https://secure.ssa.gov/iApp/NMD/start).

<sup>7</sup> POMS SI 02260.010.

<sup>8</sup> POMS SI 02260.015.

At the second step of the waiver, SSA considers whether the individual can afford to pay back the overpayment. It is presumed that those currently receiving SSI benefits and other means-tested benefits cannot afford to pay back an overpayment.

An individual should use SSA's form "Request for Waiver of Overpayment Recovery" ([Form SSA-632](#)), as the completed form will provide SSA with the information necessary to process the waiver request.<sup>9</sup> There is only a paper form available; there is no way to submit this information electronically to SSA. Those currently receiving SSI should only complete through Section 4 at the top of page 5 of this form and then sign it. Other individuals, who are not getting SSI or other means-tested benefits, should fill out the entire form.

An advocate may want to help an individual submitting a waiver request pro se to use the "Remarks" box at the end of the form or to prepare a cover letter, to explain why their particular circumstances should result in a finding that they were "without fault" in causing the overpayment.

A waiver may be requested **at any time**. This means that a waiver may be requested even after the overpayment has already been fully or partially repaid.<sup>10</sup> Once a request for waiver is made, the recoupment should stop while a decision on the request is pending.<sup>11</sup> If SSA is not convinced that an individual should get a waiver, they must offer a conference to discuss the case and allow the individual to explain their case. If SSA does not agree after the conference, they can deny the waiver request.

Recoupment begins if a waiver application is denied. After a waiver request is denied, an individual can file a request for reconsideration and, if the reconsideration is denied, the individual can appeal again and get a hearing on the waiver denial. At each step the individual has 60 days after receipt of the written denial. However, recoupment of the overpayment will happen while the appeal is pending.

## Administrative Waivers of Small Overpayments

SSA will grant an administrative waiver of an overpayment without further development if:

- The original amount of the overpayment is \$1,000.00 or less;
- The individual was without fault in the creation of the overpayment;<sup>12</sup> and
- The individual or their representative makes a specific written or oral request for waiver or reconsideration.<sup>13</sup>

SSA will not grant an administrative waiver when the individual is liable for one or more overpayments that total more than \$1,000.00. SSA will not grant a waiver of an overpayment of \$1,000.00 or less automatically – it must be requested, but the individual making the request does not need to complete waiver request Form 632. Normally SSA will assume the individual is without fault unless there is evidence to the contrary.

<sup>9</sup> POMS SI 02260.005. SSA released a new version of this form in April 2019.

<sup>10</sup> POMS SI 02201.005(H)(3) and SI 02260.001(A)(3).

<sup>11</sup> POMS SI 02260.001(A)(4).

<sup>12</sup> In administrative waiver cases, the overpayment can be waived without development of whether the individual was at fault in causing the overpayment if there is no indication of fault on the face of the request. POMS SI 02260.030.

<sup>13</sup> POMS SI 02260.030 (B)(2).

**SAMPLE REQUEST LETTER**

NAME

SSN

DATE

**REQUEST FOR ADMINISTRATIVE WAIVER OF OVERPAYMENT**

Dear SSA Claims Representative:

I currently receive SSI benefits. I understand I have an overpayment on my record, the amount of which is less than \$1,000.00. I was without fault in the creation of this overpayment. I request that this overpayment be waived per POMS SI 02260.030.

Thank you for your attention to this matter.

(Signature)

## Making a Payment Arrangement

If an individual has had their waiver request denied, lost their appeal, or has decided not to appeal any further, they must pay the overpayment back. For those currently receiving SSI benefits, SSA is limited to recouping just 10% of the monthly benefits.<sup>14</sup>

Individuals with an overpayment can use a new SSA form, [Form 634](#), to request a payment plan.<sup>15</sup> This request can be filed at any time, especially when their financial circumstances have changed. They must complete all of the income, assets, and expenses portions of the form, and attach documentation regarding their financial situation, including bills, rent receipts, etc. Careful and complete documentation of expenses is helpful to show how much of current income is needed to meet living expenses.

Generally, SSA attempts to negotiate a repayment rate that will permit the recovery of all outstanding amounts within 12 months, or at the most within 36 months.<sup>16</sup> However, if the financial information on Form 634 indicates that the individual cannot afford such an amount without financial hardship, the monthly amount should be limited to the difference between their income and expenses.

## Requesting \$10/month Payment Plan

For those receiving a Medicare Part D low-income subsidy (LIS) or “Extra Help,” the amount of monthly withholding can be set as low as \$10 per month without the further financial development required by Form 634.<sup>17</sup> All SSI recipients should automatically get “Extra Help” for Medicare Part D. Instead of completing Form 634, these individuals can submit a simple written request, such as in the following sample letter.

<sup>14</sup> 42 USC § 1383(b)(1)(B); 20 CFR § 416.571; POMS SI 02220.016

<sup>15</sup> POMS SI 02220.026.

<sup>16</sup> POMS GN 02210.030.

<sup>17</sup> POMS GN 02210.030 (C)

**SAMPLE REQUEST LETTER**

NAME

SSN

DATE

**REQUEST FOR \$10/MONTH WITHHOLDING FOR OVERPAYMENT**

Dear SSA Claims Representative:

I currently receive SSI benefits. I understand I have an overpayment on my record. Please limit withholding to \$10 per month, as I receive the Medicare Low-Income Subsidy (LIS), per the exception in POMS GN 02210.030 (C).

Thank you for your attention to this matter.

(Signature)

**Conclusion:**

Dealing with an SSI overpayment can be an overwhelming process for individuals who receive such a notice from SSA. SSA sends out thousands of these notices every year. For those who do not have a basis for challenging the fact or amount of the overpayment on appeal, there are still remedies that advocates can assist individuals with pursuing, such as filing a waiver application, requesting an administrative waiver of small overpayments, and asking for a \$10/month repayment plan.

**Additional Resources:**

- NCLER Trainings:
  - » [SSI Overpayment: Walk Through a Case](#)
  - » [“I Can’t Pay That!”: Social Security Overpayments and Low-Income Clients](#)

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**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).**

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