

## SSA Non-Disability Appeals of Terminations & Overpayments

### Common Reasons for a Social Security Disability (SSD) Termination or Overpayment

Wages (unreported), wages (reported but not properly put into SSA's system); worker's compensation (unreported); and worker's compensation (reported but not properly put into SSA's system).

### Common Reasons for a Supplemental Security Income (SSI) Termination or Overpayment

Excess resources over \$2000 for an individual or \$3000 for a couple (make sure to check and see if your life insurance has a *cash surrender value* – this money is counted by SSA), wages (unreported), wages (reported but not properly put into SSA's system); assistance from friends and family members to pay for food or rent or utilities; property that you own but do not live in (in the US or in another country); joint bank accounts with other people (even if you do not consider it your money); leaving the country; transfer of resources to family members; incorrectly worded trusts; failure to exclude exempt income and/or resources; unreported foreign pensions; and unreported marriages or deaths.

### What do I do if I have received a Notice of Termination of benefits?

#### Request for Reconsideration of Termination

If you receive a Notice of Termination, then you should file a Request for Reconsideration to appeal the termination **IMMEDIATELY**. You should file a reconsideration if you think that the action SSA took was wrong AND you should ask for continuing benefits while you are waiting for SSI to make a determination on the reconsideration.

For SSI benefits, you **MUST FILE WITHIN 10 DAYS** (plus 5 days for mailing) of the date on the termination of benefits notice if you want your benefits to continue unchanged.

You can file the reconsideration after the 10 days, and within 60 days, from the date on the notice and it will still be reviewed but it will be much more difficult for you to keep your SSI benefits active while you wait. You should file the reconsideration at your local Social Security office (in person or by mail) or online. You should request a formal conference on the reconsideration form. Make sure you keep a copy of anything that you submit and (1) get a receipt at the office or (2) keep proof of mailing if you mail it.

### What do I do if I have received a Notice of Overpayment of benefits?

#### Request for Reconsideration of Overpayment

If it is still within 60 days from the date on your Notice of Overpayment, then you can file a Request for Reconsideration to appeal the overpayment. You should file a reconsideration if you think that the action SSA took was wrong or if you think the amount of alleged overpayment is not correct. You can file the reconsideration at your local Social Security office (in person or by mail) or online. You should request a formal conference on the reconsideration form. If you file within 60 days of the notice date, then recoupment should stop pending a written decision from the local SSA office.

#### Request for Waiver of Overpayment Recovery

If your reconsideration is denied or it is too late for you to ask for a reconsideration, you can file for a Request for Waiver of Overpayment Recovery at your local Social Security office. You should also file a waiver if you know that the action SSA took was correct but you don't think that you should have to pay back the money because the problem was not your fault (eg. you reported your wages timely but SSA did not reduce your monthly check until many months later).

To be eligible for waiver, you must prove that (1) the overpayment was not your fault and (2) it would be a hardship for you to repay the money. To prove the overpayment was not your fault, you must prove that you reported your work income and all of your money and living arrangements to Social Security. If you did not report all of the required information to SSA, you must provide a good explanation (eg. mental health condition, language barrier, intellectual disability, or some other circumstance that prevented you from understanding the requirements). To show that repayment is a hardship, you must show that you

cannot pay your monthly expenses if you have to repay the overpayment. A waiver can be filed at any time. If you file a waiver, then recoupment should stop pending a written decision from SSA.

### **Should I request a Case Review, an Informal Conference or a Formal Conference?**

Personal conferences (meetings) with SSA staff can be helpful. You will have the opportunity to review SSA's records and you can present proof to SSA that SSA is wrong and you were not overpaid or that the overpayment is not your fault. If you file a SSI reconsideration, then you have the choice to do a file review, an informal conference or a formal conference. If you file a SSI or SSD waiver, then you only get a "personal conference". If you file a SSD reconsideration, then you only have a "case review".

Case Review: You have the right to review the claims file and applicable law and regulations with a SSA representative who is prepared to answer questions. SSA is required to provide copies of material related to the overpayment from the paper or computer file or from relevant laws or regulations.

Informal Conference: In addition to following the case review procedures, you may present evidence and witnesses. A summary record of the conference becomes part of the record. The SSA representative who conducts the conference will make the reconsidered determination. You can bring bank and other account statements, letters and other evidence to show SSA and prove your case.

Formal Conference: In addition to informal conference procedures, you may ask SSA to subpoena adverse witnesses and documents and cross-examine adverse witnesses. The summary record of the conference becomes part of the case record. The official who conducts the conference will render the reconsidered determination. You should choose a formal conference; it gives you the most protection.

### **What do I do if my Reconsideration or Waiver is denied?**

You can request a hearing before an Administrative Law Judge within 60 days of the date on the reconsideration or the waiver denial. The Request for Hearing by Administrative Law Judge should be filed with your local Social Security office (in person or by mail). Make sure it gets put in the system! Also make sure you keep a copy and (1) get a receipt at the office or (2) keep proof of mailing. While you are waiting for the hearing to be scheduled, SSA can start recouping from your benefits again. If you have a SSD overpayment, you should make sure to file a Request for Change in Repayment Rate with the hearing request so that SSA will not take 100% of your SSD check while you wait for the hearing.

NOTE: One technical difference in procedure happens with SSI waivers. If your SSI waiver is denied, you have to file a "Reconsideration (of the Waiver Denial)" before you can file a Request for Hearing.

### Request for Change in Repayment Rate

SSI overpayments are generally recouped at a 10% recovery rate. SSD overpayments are generally recouped at a 100% recovery rate. Therefore, if you are receiving SSD and you get an overpayment notice, you should act quickly otherwise SSA will take your whole SSD check. If you do not think that you have a good argument for a waiver (eg. it is your fault because you knew the work rules but you did not report your wages to SSA), then you can still file a Request for Change in Repayment Rate so that SSA will not take 100% of your SSD check. You will have to provide proof of income and expenses.

You can also submit a Request for Change in Repayment Rate if your waiver is denied. A Request for Change in Repayment Rate uses the same form as the Request for Waiver form. On page one of the waiver form, under question #2B you can state that you cannot afford to use all of your monthly benefits to pay back the overpayment and you can ask to repay at a reduced rate and include the amount that you think you can pay per month. You will have to provide proof of income and expenses.

If you receive public assistance or Medicare Part D Extra Help, you should tell the local SSA office that you receive such a benefit and you can request a reduced repayment rate (of at least \$10 per month). If you do this, make sure to attach proof that you receive public assistance or Medicare Part D Extra Help to the Request for Change in Repayment Rate form. You should also attach POMS GN 02210.030.

## USEFUL FORMS AND REGULATIONS

Request for Reconsideration Or, file online (“Appeal Other Decision”)	<a href="http://www.ssa.gov/forms/ssa-561.pdf">http://www.ssa.gov/forms/ssa-561.pdf</a> <a href="https://www.ssa.gov/benefits/disability/appeal.html">https://www.ssa.gov/benefits/disability/appeal.html</a>
Request for Waiver of Overpayment Recovery	<a href="http://www.ssa.gov/forms/ssa-632.pdf">http://www.ssa.gov/forms/ssa-632.pdf</a>
Request for Change in Repayment Rate	<a href="http://www.ssa.gov/forms/ssa-632.pdf">http://www.ssa.gov/forms/ssa-632.pdf</a>
Request for Hearing by Admin. Law Judge Or, file online (“Appeal Other Decision”)	<a href="http://www.ssa.gov/forms/ha-501.pdf">http://www.ssa.gov/forms/ha-501.pdf</a> <a href="https://www.ssa.gov/benefits/disability/appeal.html">https://www.ssa.gov/benefits/disability/appeal.html</a>
Local SSA Office Locator (by zip code)	<a href="https://secure.ssa.gov/ICON/main.jsp">https://secure.ssa.gov/ICON/main.jsp</a>

POMS SI 02260.030 – Impede Effective or Efficient Administration of Title XVI of the Act  
<https://secure.ssa.gov/poms.nsf/lrx/0502260030>

SSA should waive an overpayment if you are not at fault and it is less than \$1000 because processing such overpayment impedes effective or efficient administration of the act.

POMS SI 02220.001 – Recovery Procedures for SSI Overpayments – General  
<https://secure.ssa.gov/poms.nsf/lrx/0502220001>

The check adjustment (or recoupment) proposed in the notice must stop in the month a request for reconsideration, or waiver is filed, or a request for a different rate of repayment is received. Recovery may begin again only after the determination is made on the request for a waiver, reconsideration, or different rate of repayment.

POMS GN 02201.011 – Overpayment Pre-Recovery Review  
<https://secure.ssa.gov/poms.nsf/lrx/0202201011>

Stop recovery of SSD payments effective with the month you request reconsideration or waiver.

POMS SI 02260.035D – SSI Overpayment Waiver When Recipient’s Countable Resources Exceed Limit  
<https://secure.ssa.gov/poms.nsf/lrx/0502260035>

When you are over resource you should only be found at fault if you willfully and knowingly failed to report the value of your resources accurately and timely and evidence clearly shows that you were aware of the excess resources and of your reporting responsibilities. Additional possible fault findings can be made if there were duplicate payments, conditional payments, or if similar overpayments occurred in the past.

Use this POMS if you are not at fault and the total overpayment amount is greater than the amount you were over resource. For example, if you get \$750 SSI and you were overpaid for 10 months, you would have an overpayment of \$7500. However, if your bank account was **at most**

over the resource limit by \$500, then SSA should find that it is against equity and good conscience to charge you with more than the \$500 by which you were over the limit.

If you are a current SSI recipient and are found not at fault, you should not have to use this POMS because an inability to repay the overpayment will be presumed. POMS SI 02260.020.

POMS GN 02210.030B5 & 02210.030B6 – Considering Different Rate of Adjustment

<https://secure.ssa.gov/poms.nsf/lnx/0202210030>

If you receive another type of cash public assistance (e.g. TANF, VA service or nonservice disability pensions, etc.) or have a 100% Medicare Part D Extra Help, SSA is supposed to grant, without financial development, any requested rate of withholding as long as it is at least \$10.