Social Security Overpayments

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Social Security Overpayments

- What is an overpayment?
  - Who can be overpaid?
- How is it generated?
- How can it be resolved?
  - What if the Social Security beneficiary disputes the overpayment?
  - What if the Social Security beneficiary cannot afford to pay it back?
What is an Overpayment?

“An overpayment is the total amount [a Social Security Beneficiary] received for any period which exceeds the total amount which should have been paid for that period. Once a determination of overpayment is made, the overpaid amount is a debt owed to the United States Government.” POMS GN 02201.001
Who is a Social Security Beneficiary?

• **Supplemental Security Income (SSI) beneficiaries**
  1. Minors (birth-18) who are (1) disabled according to SSA’s children’s disability rules & (2) live in a household that meets SSA’s SSI financial requirements.
  2. Adults (18-64) who are (1) disabled according to SSA’s adult disability rules & (2) meet SSA’s SSI financial requirements.
  3. Adults (65+) who meet SSA’s SSI financial requirements.
Who is a Social Security Beneficiary?

- **Social Security Disability Insurance (SSDI) beneficiaries**
  1. Adults (18-64) who are (1) insured for the purposes of the disability insurance program & (2) meet SSA’s adult disability rules.
How is an Overpayment Generated?

SSI
• Excess income (earned or unearned).
• Excess resources.
• Benefits paid due to miscalculation.
• Change in living arrangements.
  • Incarceration
  • Institutionalization

SSI/SSDI
• SSA calculated benefits incorrectly.
• For cessation cases: continuing benefits granted but the appeal was ultimately denied.
• SSA fails to consider Impairment Related Work Expenses or Unsuccessful Work Attempt (UWA).
• Changes not timely reported to SSA or not reported at all.
• Changes were timely reported but SSA failed to act.
How is an Overpayment Generated?

SSI/SSDI
• Performing Substantial Gainful Activity (SGA) after Trial Work Period (TWP).

SSDI
• Benefits paid due to miscalculation of allotment or date last insured.
• Disabled Adult Child (DAC) status changes.
• Changes in status of auxiliary beneficiaries.
What isn’t an Overpayment?

- *Presumptive* disability or blindness benefits granted pending disability determination.
  - Payments only need to be returned if denied for non-disability reasons (SGA, etc.)
- Benefits *incorrectly* paid for the current year based on current year work and estimated earnings.
- Benefits issued for the month of death or later.
  - GN 02201.001
How is an Overpayment resolved?

1. Full or partial recovery
   - Refund
   - Installment payments
   - Adjustment of benefit payments – 10% or some negotiated amount

2. Waiver
   - Debt is found to be owed to SSA but the agency waives the debt and forgives payment

3. A finding that the debt either does not exist or is uncollectable.
SSA can seek recovery from...

<table>
<thead>
<tr>
<th>SSI</th>
<th>SSDI</th>
</tr>
</thead>
<tbody>
<tr>
<td>The overpaid recipient;</td>
<td>The overpaid recipient;</td>
</tr>
<tr>
<td>The representative payee;</td>
<td>The representative payee;</td>
</tr>
<tr>
<td>Alien sponsor;</td>
<td>Any beneficiary on the</td>
</tr>
<tr>
<td>Estate (or distributees)</td>
<td>same record;</td>
</tr>
<tr>
<td>Spouse</td>
<td>Alien sponsor</td>
</tr>
<tr>
<td>• Only if married at time of overpayment</td>
<td>Estate (or distributees)</td>
</tr>
<tr>
<td>• Will accept payment from a third party.</td>
<td>Spouse</td>
</tr>
<tr>
<td>• SI 02201.005</td>
<td>• Auxiliary children</td>
</tr>
<tr>
<td></td>
<td>• GN 02205.003</td>
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</tbody>
</table>
How does SSA collect an overpayment?

**SSI**

- Monthly benefits reduced by 10% if SSI is only income.
- If there is other income, 10% of total countable income is reduced from SSI benefit.
  - 20 C.F.R. § 416.571.
- Can negotiate with SSA to request a lower repayment rate due to hardship but it has to be at least $10/month.
  - GN 02210.030
- Compromise settlement.
  - GN 02220.030

**SSDI**

- May seize entire monthly benefit until paid off.
  - 20 C.F.R. § 404.515
- If beneficiary is receiving both SSI and SSDI, can ask that only 10% of SSDI benefits be adjusted.
  - GN 02210.045
- Can negotiate with SSA to request a lower repayment rate due to hardship but it has to be at least $10/month.
  - GN 02210.030
How does SSA collect an overpayment?

SSI/SSDI

- SSA may seize the entire monthly benefit if there was fraud. 20 C.F.R. § 416.570.
- Cross-program recovery.
- SSA can report to credit bureaus. GN 02201.032.
What can we do about it?

1. Appeal the determination of the overpayment and/or determination of liability for the overpayment.
2. Request Waiver or rate change.
3. File review and conference is scheduled with the local field office.
4. If appeal denied, can request reconsideration:
   1. Of the overpayment itself; or
   2. File an appeal of the waiver denial.
5. Request a hearing rearing before an Administrative Law Judge.
6. Request Review by the Appeals Council of the unfavorable ALJ Decision.
7. Federal District Court...
Reconsideration

• Request reconsideration if the individual questions the existence of and/or the amount of the overpayment.

• Reconsideration can be filed within 60 days of the date of the initial overpayment notice.

• Can be filed after 60 days with a showing of “good cause” for late filing.
  • GN 03102.100.

• Timely filing for reconsideration stops collection efforts and may refund some monies to beneficiary.
  • 20 C.F.R. §§ 404.907, 416.1407
Reconsideration

- Different deadlines and procedures apply for SSI and SSDI for continuing benefits and/or stay of collection.
- Some conflict in the regulations
  - SSI – 10 day deadline (plus 5 day grace period) after date on notice to file for reconsideration. 20 C.F.R. § 416.1336. But POMS SI 02220.017 states beneficiary has 60 days to stay payment.
  - SSDI – 30 days after date on notice all efforts are stopped. If filed after 30 days but request was still timely, collection efforts and benefit reduction will then stop.
- To be safe, request continuing benefits ASAP.
Personal Conference

• SSI beneficiaries can seek an in-person or telephone formal or informal conference before a reconsideration or recoupment decision is made.
  • Witnesses are allowed.
  • Right to review the case file 10 days before the meeting.
  • Can submit more evidence.
  • Formal appeal includes more protections for beneficiaries, including the ability to subpoena documents and witnesses. SI 04020.050.
• SSDI beneficiaries can request a conference for waiver if SSA plans recoupment. 20 C.F.R. § 404.506.
ALJ Hearing & Appeals Council

**ALJ Hearing**

- File request for hearing with Request for Hearing HA – 501 form
- The ALJ hearing is a good forum for explaining issues like lack of fault.
- Do not make the ALJ do complex math. Make calculations and arguments very clear in a pre-hearing memo.

**Appeals Council**

- File request for Review of ALJ decision with HA-520 form.
- Make argument clear and concise.
Good Cause for Late Filing

• **Must give reason why not timely filed**, e.g.,
  • Too sick
  • Limited English proficiency
  • Mental incapacity
  • Illiterate
  • Misinformation (20 C.F.R. §§ 404.911, 416.1411)
    • 20 C.F.R. §§ 404.909(a), 416.1409(a)
• **Can seek continuing benefits if good cause prevented filing within the deadline.**
• **Also consider reopening**
  • Differing deadlines on reopening for SSDI and SSI; often need good cause.
  • However, a case can be reopened anytime within 12 months of an initial determination for any reason for both programs at SSA’s discretion.
  • Request good cause first, and then in the alternative, reopening.
  • 20 C.F.R. §§ 404.987-8, 416.1487-8
What they don’t tell you...

- SSA only reveals that waiver exists, if asked.
  - POMS GN 02260.030 states “Reminder: Regardless of the amount of the overpayment, never solicit a request for waiver of overpayment.”
- Good cause for late filing is often overlooked.
  - But SSA is supposed to “develop good cause for extending the time limit[s].” GN 03101.020
Waiver

• A request for waiver is a request to be released from the liability for repayment.
  • Beneficiary can seek reconsideration and waiver at the same time.
• **No time limit on request for waiver.** Can request after complete repayment.
• If waiver not granted, can submit another request based on inability to pay if there is a change in circumstances in the ability to repay and the beneficiary is not “at fault.”
Waiver

• To get a waiver the liable individual must be (1) without fault in causing the overpayment and (2) recovery or adjustment would:
  • Defeat the purpose of the Social Security Act; or
  • Be against “equity and good conscience”; or
  • Impede effective or efficient administration of the SSI program (SSI only).
  • SI 02201.005; SI 02260.000.
Waiver – Prong 1

• “Without fault in causing the overpayment”
  • Fault may be shown when a beneficiary:
  • Makes incorrect statement(s) that s/he knew or should have known was/were false.
  • Fails to furnish information that s/he knew or should have known was material.
  • Accepts payment that s/he knew or should have known was incorrect.
  • 20 C.F.R. §§ 404.506, 416.550
Waiver – Prong 1

- Burden is usually on beneficiary
  - But SSA must look at all pertinent circumstances such as age, intelligence, etc.
- Representative Payee’s actions
  - There is no fault if there is an absence of evidence that the beneficiary knew the benefits were incorrect or deliberately concealed or misrepresented material facts
  - SSR 65-7
- Minor children or those lacking mental capacity are presumed without fault
- Spouses living together at the time of the overpayment are presumed to be at fault
Waiver – Prong 2 (SSDI)

• **Recovery defeats the Act’s purpose:**
  • Individual needs substantially all current income for ordinary and necessary living expenses. 20 C.F.R. § 404.508.
  • Individual receives cash public benefits.
    • If recovery causes a person to qualify for public assistance, recovery defeats the purpose beginning with the month public assistance begins.
  • Includes VA disability pension
  • Does not include unemployment or workers’ compensation benefits.
    • GN 02250.110
Waiver – Prong 2 (SSI)

- **Recovery defeats the Act’s purpose:**
  - The individual needs substantially all of his or her current income to meet his or her current ordinary and necessary living expenses; and
  - Recovery would reduce the individual’s total resources below $3,000 for a person without dependents or $5,000 for a person with one dependent (add additional $600 for each additional dependent).
- **OR - If the overpaid individual is currently eligible for SSI payments:**
  - Purpose of the act is defeated if individual’s current total income does not exceed:
    - The Federal Benefit Rate (FBR); plus
    - The $20 general income exclusion; plus
    - The $65 earned income exclusion; plus
    - The federally administered State supplementary level.
  - SI 02260.020.
Waiver – Prong 2 (SSDI/SSI)

- **Recovery is against equity and good conscience**
  - Individual changed his/her position for the worse or relinquished a valuable right because of reliance upon a notice that a payment would be made or because of the overpayment itself; or
  - Was living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment.
- Financial circumstances are not material for a finding of against equity and good conscience.
- See 20 C.F.R. § 404.509 for examples.
Waiver – Prong 2 (SSI)

- Recovery of an overpayment “impedes effective or efficient administration of title XVI of the Act”
  - The nation-wide average cost of recovering the overpayment equals or exceeds the amount of the overpayment. SI 02260.030.
  - No collection of overpayments under $30.
  - Administrative tolerances. See GN 02201.013.
Waivers for Small Amounts

• SSA will automatically waive (without development) (**IF DIRECTLY ASKED**):
  • Overpayments of $1000 or less.
    • GN 02201.013
  • SSI Overpayments caused by having excess resources of $50 or less.
    • 20 C.F.R. § 416.556
Old Overpayments

• Overpayments can be collected even from those who are not currently receiving benefits.
• Multiple overpayments can be accrued together for SSDI.
• Multiple overpayment are viewed individually for SSI. 20 C.F.R. § 416.555.
  **Important because overpayments of $1000 or less will be automatically waived (upon request) without full development.
• If not granted, one can submit another request, even if recovery is complete. GN 02201.019, SI 02260.001.
Continuing Benefits During Appeals

- If request for reconsideration or waiver is made within 30 days (+5 for mailing) of notice of overpayment, recovery actions stop.
- Adjustment resumes only after 30 days (+5 for mailing) from the date of the notice of waiver if no appeal. POMS SI 02220.017.
- If waiver denial is appealed within 30 days (+5 for mailing) and good cause for late filing exists, SSA stops recovery.
- Recovery is not stopped when the overpaid person pursues further level of appeals (hearing, AC, FDC, etc.)
Garnishment for Other Debts

- **Child Support, Alimony, Restitution:**
  - SSA can withhold benefits to enforce a legal obligation to pay child support, alimony or restitution.
  - Can garnish current and continuing monthly benefits. SSA does not make retroactive adjustments.
  - Beneficiary cannot appeal to Social Security for implementing garnishment orders.
Garnishment for Other Debts

- **Delinquent taxes:**
  - The Department of the Treasury can withhold Social Security benefits to collect overdue federal tax debts.
  - Cannot appeal the reduction of a Social Security benefit to Social Security. Contact the IRS at 1-800-829-7650 to discuss any appeal rights.
Garnishment for Other Debts

- **Delinquent non-tax debts:**
  - The Department of the Treasury can withhold Social Security benefits to collect delinquent non-tax debts owed to other federal agencies under the Debt Collection Improvement Act of 1996 (Public Law 104-134).
    - Student loans
  - SSA has no control over this reduction and there is no appeal available under the Social Security Act. Call Treasury at 1-800-304-3107.
Questions?

- Social Security Administration
  - [http://socialsecurity.gov/](http://socialsecurity.gov/)
- CFR
  - [http://www.ssa.gov/OP_Home/cfr20/cfrdoc.htm](http://www.ssa.gov/OP_Home/cfr20/cfrdoc.htm)
- POMS
  - [https://secure.ssa.gov/apps10/](https://secure.ssa.gov/apps10/)
- National Organization of Social Security Claimants’ Representatives (NOSSCR)
  - [http://www.nosscr.org/legal-resources](http://www.nosscr.org/legal-resources)
- Illinois Legal Advocate Online
  - [http://www.illinoislegaladvocate.org/index.cfm?fuseaction=home.dsp_content&contentID=334](http://www.illinoislegaladvocate.org/index.cfm?fuseaction=home.dsp_content&contentID=334)