

Overpayment Awareness: Advocacy Tips For Protecting Benefits

It can take years to receive a favorable decision on a Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) claim, but the impact of that award on a beneficiary is thwarted if the benefit is later withheld. Once approved, Social Security attorneys must educate and counsel clients about reporting obligations and what factors may affect their benefits. One common obstacle beneficiaries encounter in managing their disability benefits is Social Security's assessment of overpayments and resulting recovery actions.

An overpayment occurs anytime Social Security awards more in benefits than the beneficiary was eligible to receive. For instance, SSDI beneficiaries who received Workers' Compensation or other public disability benefits for a time that they were retroactively eligible for SSDI will have a resulting overpayment.¹ As their eligibility continues, SSDI beneficiaries also risk losing their monthly award and facing a sizable overpayment upon testing their ability to work. Employment earnings following the completion of a nine-month trial work period that exceed the monthly substantial gainful activity limit result in ineligibility for SSDI. Usually, this ineligibility is determined retroactively, resulting in a large SSDI overpayment.

There are even more factors that could cause an overpayment for SSI beneficiaries. SSI is a means tested benefit program with an income and resource limit. The income and resources of spouses and parents (when the SSI beneficiary is a minor child) and work earnings from a beneficiary's test of their ability to work can all affect the amount of SSI that is awarded. Therefore, SSI beneficiaries must report any change in the make-up of their household (including changes in marital status), any increase or decrease in income and resources, as well as any increase or decrease in the income and resources of a spouse, parent or child.²

It cannot be overstated that SSI and SSDI beneficiaries need to be aware of their reporting duties to ensure Social Security has the necessary information to determine their monthly benefit to avoid overpayments. Changes should be reported as soon as they happen; beneficiaries risk the imposition of a penalty and overpayment if the change is not reported within 10 days after the close of the month in which the change occurred.³ However, even if required changes are reported timely, overpayments can occur if Social Security does not process the changes in real time. Beneficiaries should be advised to report changes timely and often (e.g., monthly) and to obtain and maintain date-stamped copies of reported changes. The importance of keeping a record of what change was reported, when it was reported and to whom it was reported is vitally important to avoid future overpayment adjustment or recovery.

SSDI and SSI beneficiaries are entitled to due process when Social Security assesses an overpayment. Any reduction in monthly benefits when on a fixed income can be devastating, and receiving a notice of overpayment can be daunting and overwhelming. The notice identifies the amount of the overpayment, when and how it occurred, and requests a full, immediate refund within 30 days if the overpayment cannot be withheld from the next month's benefit.⁴ Because

¹ 20 C.F.R. § 404.408

² 20 C.F.R. § 416.708

³ 20 C.F.R. § 416.714

⁴ 20 C.F.R. § 404.502a

overpayment amounts range from several hundred to several thousand dollars, the odds are limited that a beneficiary can repay the overpayment within 30 days. In acknowledgement of that fact, the overpayment notice also states that Social Security will seek repayment utilizing ongoing benefit reduction measures at the lesser of the total monthly benefit award or ten percent of the monthly award for SSI beneficiaries⁵, and will withhold the entire monthly benefit award for SSDI beneficiaries, unless doing so creates a financial hardship in which case at least \$10 of the monthly award will be withheld.⁶ Beneficiaries should exercise their appeal rights when they disagree that an overpayment occurred or with the amount claimed to be overpaid. The appeal must be submitted within 65 days of the notice date.

Another remedy for overcoming an overpayment is a request that Social Security waive adjustment or recovery of the overpaid benefits via the “Request For Waiver Of Overpayment Recovery Or Change in Repayment Rate” application (Form SSA-632). Federal regulations direct that waiver of adjustment or recovery of an overpayment may be granted when the beneficiary was (1) without fault and (2) adjustment or recovery would deprive the beneficiary of income required for ordinary and necessary living expenses, be against equity and good conscience, or impede the effective administration of the program due to the small amount involved.⁷ Beneficiaries may submit a waiver request at any time, and adjustment or recovery efforts stop while the request is processed.⁸

In determining whether a beneficiary is without fault, Social Security considers the individual's understanding, ability and efforts to comply with the reporting requirements, and knowledge of the occurrence of events that should have been reported, taking into account limitations of age, comprehension, memory, and physical and mental conditions.⁹ With this in mind, beneficiaries must complete the overpayment waiver request in great detail when asked to identify when and how they reported to Social Security the information that caused the overpayment. Due diligence must be exercised by beneficiaries in meeting their reporting responsibilities to be adequately positioned to qualify for an overpayment waiver should an assessment be made and attaching date-stamped copies of the reported changes will prove beneficial in establishing they were without fault. The overpayment waiver request also provides an opportunity to detail their limited income and monthly expenses to prove that adjustment or recovery would deprive the beneficiary of income required for necessary living expenses.

Even in those instances when beneficiaries did not timely report changes, they can and should still utilize Form SSA-632 to request a different repayment rate if the proposed amount to be withheld will render the beneficiary incapable of meeting basic needs. This proposal should be reasonable considering their financial circumstances.

As advocates for disabled beneficiaries, attorneys should educate clients on potential causes of SSDI and SSI overpayments, advise clients on how to fulfill their reporting responsibilities, and encourage clients to utilize appeal rights and waiver requests to ensure they maintain their disability benefits.

⁵ 20 C.F.R. § 416.571

⁶ 20 C.F.R. § 404.502

⁷ 20 C.F.R. § 416.550; 404.506

⁸ 20 C.F.R. § 404.506

⁹ 20 C.F.R. § 416.552