

# Frequently Asked Questions: SSI Overpayments

FAQ Sheet • February 2020

Kate Lang, Justice in Aging

## What is the link to the site where you can appeal a Social Security Administration (SSA) overpayment online?

You can appeal an SSA overpayment online here: <https://secure.ssa.gov/iApp/NMD/start>.

## Do you need to have established a *my Social Security* account at SSA.gov in order to file an appeal online?

No, you do not need to have a *my Social Security* account to file an overpayment appeal online. You do need to have the notice you received from the SSA to complete the online form.

## Can you explain the 15 day vs. the 65 day deadline to file an appeal?

Generally, at all stages of the administrative appeal process at SSA, an individual has 60 days after they receive a notice to file an appeal of an adverse decision, including a notice of overpayment.

In *Goldberg v. Kelly*, the Supreme Court ruled in 1970 that recipients of means-tested public benefits must be afforded the “opportunity to be heard” before their benefits can be suspended.<sup>1</sup> Supplemental Security Income (SSI), as a means-tested benefit for extremely low-income recipients, is subject to the same due process protections as in *Goldberg*. The regulations provide that the SSI recipient will continue receiving benefits “at the previously established payment level” until a decision on the reconsideration is issued, if the individual files a request for reconsideration within 10 days of receiving the initial notice (“Notice of Planned Action”) that their benefits are going to be reduced or suspended.<sup>2</sup>

SSA presumes the date that the individual received any notice is 5 days after the date on the notice, unless the individual can prove that they did not receive the notice within the 5 days.<sup>3</sup> Additionally, an individual always has an opportunity to argue that a missed deadline to appeal should be excused for good cause.<sup>4</sup>

## What is the difference between an informal and a formal conference? Are there advantages or disadvantages to asking for a formal conference over an informal conference?

The main difference between an informal and a formal conference is that a formal conference provides for all of the due process protections required by *Goldberg v. Kelly*, but an informal conference does not.<sup>5</sup>

1 397 U.S. 254 (1970).

2 20 CFR § 416.1336.

3 POMS GN 03101.010, Time Limit for Filing Administrative Appeals ([secure.ssa.gov/apps10/poms.nsf/lnx/0203101010](https://secure.ssa.gov/apps10/poms.nsf/lnx/0203101010)), April 21, 2011.

4 20 CFR § 416.1411.

5 20 CFR § 416.1413; POMS SI 04020.050, SSI Reconsideration Conferences ([secure.ssa.gov/poms.nsf/lnx/0504020050](https://secure.ssa.gov/poms.nsf/lnx/0504020050)), April 8, 2014.

Both types of conferences give you an opportunity to present your case face-to-face to the person who will make the determination on the reconsideration. This person should not have been involved in making the initial decision. You will have the opportunity to review the information in SSA's file, and then present oral and written evidence, including witness testimony, at an informal conference.

The additional protections at a formal conference are that you can ask SSA to subpoena adverse witnesses and documents, and you can cross-examine adverse witnesses at the conference. If those are not relevant to your case, and you just want to present testimony from your own witnesses and documents that you already have at the conference, then asking for an informal conference is fine.

For both types of conference, a summary record of the proceeding becomes part of the case file, and the person who conducted the conference will issue a written decision.

## **Is it recommended to file the Request for Reconsideration first, wait to receive SSA's decision, and then ask for a waiver if the decision is unfavorable? Or can someone file reconsideration and waiver paperwork at the same time?**

Many advocates recommend filing the Request for Reconsideration<sup>6</sup> first and waiting to file the waiver application,<sup>7</sup> rather than filing both at the same time, to make sure that SSA actually makes a decision on the reconsideration first. Otherwise, SSA is quick to jump to the waiver application without fully considering the appeal on the fact or amount of the overpayment first.

## **How long does SSA have to respond with a decision?**

There is no deadline by which SSA must send a decision.

## **While a request for reconsideration or waiver is pending, do other charges continue to grow?**

No, SSA never charges any interest or fees on overpayments. So SSA's delays in processing requests for reconsideration or waiver applications don't cause financial harm to the individual who received the notice of overpayment.

## **How do you know when someone is receiving the Medicare Part D Low-Income Subsidy?**

For those who receive the Medicare Part D Low-Income Subsidy (LIS or "Extra Help"), SSA will limit the amount of benefits that are withheld each month towards an overpayment to \$10, according to the exception in POMS GN 02210.030 (C).<sup>8</sup>

Unfortunately, there isn't an easy way to be certain that someone has LIS for Medicare Part D. You could ask to see any notices they have received from Medicare or SSA about Medicare Part D, such as a purple, yellow, or green automatic enrollment notice from Medicare,<sup>9</sup> or an "Extra Help" Notice of Award from SSA. You

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6 [ssa.gov/forms/ssa-561.pdf](https://www.ssa.gov/forms/ssa-561.pdf).

7 [ssa.gov/forms/ssa-632-bk.pdf](https://www.ssa.gov/forms/ssa-632-bk.pdf).

8 [secure.ssa.gov/poms.nsf/lnx/0202210030](https://secure.ssa.gov/poms.nsf/lnx/0202210030).

9 [cms.gov/Medicare/Prescription-Drug-Coverage/LimitedIncomeandResources/downloads/11166.pdf](https://www.cms.gov/Medicare/Prescription-Drug-Coverage/LimitedIncomeandResources/downloads/11166.pdf); [cms.gov/Medicare/Prescription-Drug-Coverage/LimitedIncomeandResources/downloads/11154.pdf](https://www.cms.gov/Medicare/Prescription-Drug-Coverage/LimitedIncomeandResources/downloads/11154.pdf).

could try to contact their prescription drug plan to see if they have LIS, or ask about their co-pays for their prescription drugs—they would be paying \$3.60 for each generic drug and \$8.95 for each name-brand drug in 2020; those receiving Medicaid Home and Community Based Services (HCBS) or in institutional settings will have \$0 copays.<sup>10</sup>

Enrollment in the LIS is automatic for Medicare beneficiaries (people age 65 and over, or people who have received SSDI for twenty-four months) who also receive SSI benefits or Medicaid benefits, including those who are only in Medicare Saving Programs (QMB, SLMB and QI) for help with Medicare Parts A and B premiums, deductibles, coinsurance, and copayments. Others can apply to SSA for the LIS based on their income and resources. The LIS is available for individuals with incomes up to 150% of the Federal Poverty Level and up to \$13,110 (\$26,160 for a couple) in assets.<sup>11</sup>

If an individual is under age 65 and receiving SSI (not SSDI), then they are not on Medicare, they are just on Medicaid (in most states), so they aren't receiving LIS.

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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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<sup>10</sup> [medicare.gov/your-medicare-costs/get-help-paying-costs/lower-prescription-costs](https://www.medicare.gov/your-medicare-costs/get-help-paying-costs/lower-prescription-costs)

<sup>11</sup> POMS HI 03030.025, Resource Limits for Subsidy Eligibility ([secure.ssa.gov/poms.nsf/lnx/0603030025](https://secure.ssa.gov/poms.nsf/lnx/0603030025)), Dec. 20, 2017.