



# LEGAL AID SOCIETY OF HAWAI'I



## SOCIAL SECURITY:

### SSI/SSDI APPEALS PROCESS

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Use this brochure if:

- You receive SSI or SSDI from the Social Security Administration, and
- You received a notice that your Social Security benefits are being denied, reduced, or terminated.

If you received a notice of overpayment, see Legal Aid's brochure, "SSI/SSDI Overpayments".

#### **IMPORTANT NOTICE:**

If you got a notice about your benefits from the Department of Human Services (DHS), this brochure is not appropriate for your situation. DHS benefit programs include TANF, GA, AABD, SNAP (food stamps), and Quest. The DHS appeals process is different. Call Legal Aid for more assistance.



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# Process of Social Security Appeals

\* Receive notice from Social Security Administration (SSA) that your benefits are being denied, terminated, or reduced.

If your benefits are being terminated or reduced, and you appeal within 15 days of the date of the letter, you can continue to get the same amount of benefits while you are in the appeals process.

*See page 3 for more info.*

## Request for Reconsideration

You have 60 + 5 calendar days from the mailing date of the SSA notice to file your 'Request for Reconsideration' forms.

### Reconsideration Denied

Fill out a request for a fair hearing within 60+5 calendar days of the mailing date of the reconsideration denial notice. Turn in your request earlier to get "Payment Continuance"

### Reconsideration Approved

You either start receiving your SSA benefits or you continue your old benefit amount.

## Administrative Hearing with Administrative Judge

You have 60 + 5 calendar days from the mailing date of the SSA notice to file your 'Request for Reconsideration' forms.

### You Lost

The judge decided that SSA's decision to deny, terminate, or reduce your benefits was correct. If you were getting "Payment Continuance," it will stop after you lose the hearing.

### You Won

You either start receiving your SSA benefits or you continue your old benefit amount.

Request an appeal from the Appeals Council in Falls Church, VA within 65 days of the mailing date of the hearing decision.

Appeal in Federal District Court within 65 days of the mailing date of the hearing notice.

Level 3 and 4 of Appeals

## I. Notice of Denial, Reduction, or Termination

- The Social Security Administration (“SSA”) is supposed to give you written notice before they deny, reduce, or terminate your benefits. If you only received a verbal warning from your worker, ask for a **written** notice of what was said and ask for a specific explanation of SSA’s decision.

### a. Read Your Notice Carefully

- SSA sends notices when benefits are about to be:
  - Denied (when you first apply);
  - Terminated;
  - Reduced; or
  - If there is an overpayment.

### b. Social Security Defines Disabled

- “Disability” under Social Security is based on your inability to work.
- SSA defines “disabled” as an individual who has a physical or mental condition that is expected to last 12 consecutive months or longer or result in death, AND the condition(s) prevent the individual from working, including past work and other work.

### c. Right to a Representative

- You can have someone, a “representative”, help you when you do business with Social Security.
- A Representative can be an attorney, friend, relative, or anyone who understands your condition well and is able to assist you.
- SSA has the right to deny a representative.
- If you decide on a representative, notify SSA in writing as soon as possible by filling out and submitting the *Appointment of Representative* (SSA-1696-U4) form.

### d. Payment Continuance

- Payment Continuance means you will continue to get your current benefit amount while you are in the appeal process until you receive a decision.
- If you lose, you will need to repay the Payment Continuance that you received. SSA will consider it an overpayment.
- Even though you may have to pay it back, requesting Payment Continuance may be a good idea if you have no other income to depend on while you are in the appeals process.
- To get Payment Continuance, SSA must **receive** your appeal paperwork **within 15 calendar days** from the date you receive the termination letter or reconsideration decision.
- If you miss the deadline for Payment Continuance, you can still submit your appeal within 60 calendar days but you will not get benefits paid to you during the appeals process.

## II. Starting Appeal Process

- The first step in the appeal process is to turn in a form called a “Request for Reconsideration” within 60+5 calendar days of the mailing date on your SSA notice.
  - SSA assumes that you will receive the notice 5 days after the mailing date. Therefore, you actually get 65 calendar days from the date on the notice to submit your appeal.
- **Where can I get appeal forms?**
  - Go online! If you were denied SSI/SSDI for medical reasons, or your benefits were reduced, you may request an appeal online and provide documents to support your appeal electronically.
    - [ssa.gov/disabilityssi/appeal.html](https://ssa.gov/disabilityssi/appeal.html)
  - If you are not comfortable completing the appeal online, you may call 1-800-772-1213 or go to your local SSA office to request an appeal packet.
  - On the “Request for Reconsideration” form, you must:
    1. Tell SSA why you disagree. You can simply write: “I disagree with the Social Security’s determination.”
    2. You must choose to appeal your case with a *Case Review*, an *Informal Conference*, or a *Formal Conference*, depending on your situation.
  - You **cannot** appeal online for disability termination cases. You will need to request a packet from Social Security.

### a. Denied or Reduced- Reconsideration

- There are three main forms that you want to turn in for the reconsideration:
  1. SSA-561-U2, **Request for Reconsideration**;
  2. SSA-3368-BK, **Disability Report**; and
  3. SSA-827, **Authorization to Disclose Information to SSA**.
- After telling SSA why you disagree in your reconsideration form, you will then update SSA on changes in your condition in the Disability Report.
- The Disability Report will ask for updated medical information since you last submitted your application or a previous report. It’s a good idea to inform Social Security about any:
  - New doctors, clinics, or hospital visits;
  - Changes in your treatment, including tests, medications, etc.
  - Changes in your condition, if it’s gotten better or worse.
- By signing the Authorization to Disclose Information form, you’re giving permission to SSA to contact your doctors and ask for medical records related to your disability. If you do not sign this, SSA will not be allowed to contact your doctors and you will be responsible for submitting your own medical evidence to SSA.
- If your application for benefits has been denied, choose the “**Case Review**” option on your reconsideration.

- If your benefits were reduced, choose the **“Formal Conference”** option on your reconsideration.

#### CASE REVIEW

A Social Security claims examiner (who was not involved in denying your original application) will review your papers again to see if you qualify for the SSA program you have applied for. If you have seen a doctor since your original application, the examiner may request information on your condition from your doctor. If there is insufficient evidence to make a decision or if you are diagnosed with additional impairments, the examiner may request you to attend a consultative examination.

#### FORMAL CONFERENCE

A Social Security claims examiner (who was not involved in reducing your original application) will schedule an in-person meeting with you so that you may explain why you disagree with Social Security’s determination. You can provide Social Security with more facts to help prove your case and/or you can bring other people to help explain your case. Social Security may also ask additional people to come to help prove your case; you would be able to question these people at your meeting.

### b. Terminated- Reconsideration

- If SSA says they are going to stop your benefits, meaning they are no longer going to send you monthly benefits, then you must fill out a form specifically for the termination.
- If your benefits are being stopped, you will not be able to submit your appeal online. Call SSA or go to your local office for the appeal packet.
- There are three main forms that you want to turn in for the reconsideration:
  1. SSA-789-U4, **Request for Reconsideration- Disability Cessation**;
  2. SSA-3368-BK, **Disability Report**; and
  3. SSA-827, **Authorization to Disclose Information to SSA**.
- If you want continued benefits, you will need to fill out additional forms. Ask Social Security for these forms.
- After telling SSA why you disagree in your reconsideration form, you will then update SSA on changes in your condition in the Disability Report.
- The Disability Report will ask for updated medical information since you last submitted your application or a previous report. It’s a good idea to inform Social Security about any:
  - New doctors, clinics, or hospital visits;
  - Changes in your treatment, including tests, medications, etc.
  - Changes in your condition, if it’s gotten better or worse.
- By signing the Authorization to Disclose Information form, you’re allowing SSA to contact your doctors and ask for medical records related to your disability. If you do not sign this, SSA will not be allowed to contact your doctors and you will be responsible for submitting your own medical evidence to SSA.
- If your application for benefits has been terminated, choose the **“Formal Conference”** option on your reconsideration. (See text box above for more info)

### c. What happens if I missed a deadline?

- If you are not able to submit your appeal within 65 calendar days from the date on the original notice, you must provide good cause for missing the deadline.
- To determine good cause, SSA will consider whether any SSA action misled you, and whether you understood what you needed to do.
- Examples of good cause include:
  - Serious illness
  - Severe weather
  - Improper notice
  - Illiteracy
  - Death or serious illness in the family, or
  - Severe mental illness

#### d. What happens after I've submitted my Reconsideration?

- Once you've submitted your appeal, the processing time can take anywhere from six to ten months. SSA does not have a deadline to make a decision on your appeal.
- A decision notice will be sent to you via mail, so make sure your mailing address on file with SSA is up to date.
- SSA may send additional forms to you in order to gather further information on your disability.

##### **RECONSIDERATION APPROVED**

This means you win. The action that SSA was going to take against you will be stopped. If you were being denied benefits, SSA will now pay you benefits. If you were getting Payment Continuation, you will continue getting the same amount of benefits. If you weren't receiving Payment Continuation, you should receive a lump sum amount for any retroactive benefits SSA owes you.

##### **RECONSIDERATION DENIED**

This means that SSA still believes that your benefits should be denied, terminated, or reduced. At this point, you can choose to:

1. Do nothing and let SSA take the action they were going to take, or
2. Continue the appeal process and request a hearing.



### III. Request for Administrative Hearing

- If you disagree with the reconsideration decision, you may ask for a hearing. The hearing will be conducted by an Administrative Law Judge who had no part in any of the previous decisions made on your claim.
- In order to continue the appeal process, file a "Request for a Hearing with an Administrative Law Judge" within 60+5 calendar days from the mailing date on your reconsideration denial notice. You can appeal online at [ssa.gov/disabilityssi/appeal.html](https://ssa.gov/disabilityssi/appeal.html).

- If you want to get Payment Continuance, Social Security must **receive** your request and payment continuance forms within 10 calendar days after you receive the decision notice (i.e. 15 days). You may need to request paper forms from Social Security.

## a. Preparing for your Hearing

- Once you turn in your request for a hearing, you should start collecting evidence to prove that SSA's decision to deny, terminate, or reduce your benefits is wrong.
- The way you prepare for your hearing will depend on what SSA is trying to do and why they are taking this action against you. Read your original denial/termination/reduction notice to plan how you will prove SSA wrong.
- SSA keeps a file of your documents; you may review this file before your hearing so that you know what records SSA has or does not have.
- You can add anything to your file at any time until the date of your hearing and sometimes even after the hearing with the judge's approval.
- A representative can go with you to help you at your hearing. This representative can be a friend, relative, lawyer, or you can represent yourself.

### THE HEARING

At the hearing you will get a chance to tell your side of the story to an administrative law judge.

When you go to the hearing, make sure you're on time and at the right place. Plan ahead so you know where it will be held.

At the hearing, the judge will question you and any witnesses you bring. Other witnesses such as medical or vocational experts also may give information to SSA. You or your representative may question the witnesses.

## b. After the Hearing

- The judge will decide if you win or lose and will mail you a written notice to explain the decision. *Sometimes* the judge will tell you the decision at the hearing but you must receive a written notice of the decision before it's final.
- If the decision notice says...

### YOU WIN

The judge can decide to do several things, depending on your situation. The judge can decide that:

- Your application for SSA benefits should be approved, or
- Your SSA benefits should not be terminated, or
- Your SSA benefits should not be reduced.

If you were not getting "Payment Continuance" your benefits will return to the old amount and you will get a lump sum check for any retroactive benefits you were entitled to during the appeal process.

### YOU LOSE

SSA will do what the original notice said. For example, if your original notice from SSA said that your application for benefits is denied, the judge will allow that decision to stand.

If you were getting "Payment Continuance" the payments will stop, and you will have to pay back any benefits that you were not entitled to during the appeal process.

**If you lost at your hearing, the decision notice should give you instructions on your appeal options.** If you disagree with the judge's decision, you can appeal to the Appeals Council.

## IV. Appealing to the Appeals Council

- The Appeals Council's job is to review the decision made by the Administrative Law Judge.
- To appeal the decision that the ALJ made, you must file a form called "Request for Review of Hearing Decision/Order" (HA-520-U5) within 65 days from the date on the hearing decision notice.
  - [www.socialsecurity.gov/forms/ha-520.html](http://www.socialsecurity.gov/forms/ha-520.html)
- The Appeals Council usually takes a long time to make their decision. The average time is about 2 years, but it can take longer and sometimes shorter.
- The Appeals Council can decide to not review your decision.
- You will **not** get any Payment Continuance after the judge's decision from the administrative hearing.

### YOU WIN

If the Appeals Council decides that SSA's action was wrong, they can reverse the judge's decision and award benefits or send the case back to the judge for further proceedings and a new decision.

### YOU LOSE

If the Appeals Council decides that SSA's action was correct, the judge's decision will stand. If you want to continue the appeal process, you can appeal the Appeals Council's decision in Federal District Court.

**If you decide to appeal in Federal District Court, you must turn in your appeal forms within 65 days of the mailing date on the Appeals Council decision notice.**

**This stage of the appeal process is the most difficult. You should seek assistance from a private attorney.**



## V. Definitions

❖ <b>Administrative Law Judge (ALJ)</b>	The Social Security employee who is responsible for evaluating the merit of a disability claim; ALJ will decide whether the decision made on the original application and/or reconsideration was appropriate or not.
❖ <b>Appeal</b>	To ask an agency or court to rethink their decision.
❖ <b>Appeals Council</b>	Headquartered in Virginia, it is responsible for determining if the ALJ made any error in his/her decision.
❖ <b>Consultative Examination</b>	A medical exam that SSA pays for when a claimant, who may have inadequate medical evidence, is applying for benefits or in the reconsideration or hearing level of appeal.
❖ <b>Disabled</b>	The status of a person who has a physical or mental disability (or a combination of both) which is expected to last 12 consecutive months, or longer, or result in death, AND the condition prevents the person from doing substantial work.
❖ <b>Overpayment</b>	The difference between the benefits you were paid and the benefits you were entitled to.
❖ <b>Retroactive Pay</b>	Benefits paid to a claimant, usually as a lump sum, taking effect from a date in the past, usually after a determination period. Also called “back pay”.
❖ <b>SSA</b>	The <u>S</u> ocial <u>S</u> ecurity <u>A</u> dministration is an independent agency of the U.S. federal government that administers “Social Security”, a social insurance program consisting of retirement, disability, and survivor’s benefits.
❖ <b>SSDI</b>	<u>S</u> ocial <u>S</u> ecurity <u>D</u> isability <u>I</u> nsurance is a federal financial assistance program for disabled adults (and their dependents) with work histories.
❖ <b>SSI</b>	<u>S</u> upplemental <u>S</u> ecurity <u>I</u> ncome is a federal financial assistance program for disabled individuals who have financial need.

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