



# Legal Aid Society of Hawai`i

## SSI/SSDI: Overpayments

Overpayments can happen in any of the Social Security programs, including: SSI and SSDI.

Use this brochure if:

- you receive SSI/SSDI or Social Security retirement or survivor's benefits,  
AND
- you got a notice about an overpayment of benefits.

### **IMPORTANT NOTE:**

Overpayments occur in other financial assistance programs. If your overpayment is from the Department of Human Services (DHS), stop reading this brochure. This brochure is not appropriate for your situation. See Legal Aid's brochure called "DHS Overpayments."

Receive notice from Social Security Administration (SSA) that you got an overpayment.

**Request Reconsideration** of the overpayment notice. You have 60 + 5 calendar days from the mailing date of the overpayment notice to file your "Request for Reconsideration"

If you would like to continue your current amount of benefits (Payment Continuation), you have an earlier deadline: 30 days.

**Request a Waiver** of the overpayment. You have no time limit to request a waiver of the overpayment decision.

Reconsideration Approved

Reconsideration Denied. You have 60 + 5 calendar days from the mailing date of the Reconsideration decision to request an administrative hearing.

Waiver Approved

Waiver Request Denied. You have 60 + 5 calendar days from the mailing date to file a Request for Reconsideration of SSA's denial of your waiver request.

File a Reconsideration of waiver denial.

If you would like to continue your current amount of benefits (Payment Continuation) you have an earlier deadline: 30 days.

Reconsideration Approved

Reconsideration Denied. You have 60 + 5 calendar days from the mailing date of the Reconsideration decision to request an administrative hearing.

Administrative Hearing with Administrative Judge

**You Won.**  
Judge decides that there was no overpayment, the overpayment amount was incorrect, AND/OR approves your waiver request.

**You Lost.**  
Judge decides that there is an overpayment, the overpayment amount was correct, AND/OR denies your waiver request.

You have 60 + 5 calendar days to request a review by the Appeals Council

You have 60 + 5 calendar days to file an appeal in Federal District Court

## I. What's an Overpayment?

An overpayment happens when you get more benefits than you are supposed to get. Overpayments can happen in any of the Social Security programs, including SSI, SSDI, and Social Security. It can happen because of a miscalculation by a SSA worker or by an error made by your household.

Overpayments usually happen when:

- your medical condition improves and you are no longer disabled, OR
- you get payments from more than one Social Security program, OR
- your income or resources change, OR
- your living arrangement changes.

If one of the above situations happen, your benefits can be terminated or reduced. If your benefit amount was not changed and you continued to get the same amount, you may receive an overpayment.

If you have an overpayment in any of the Social Security programs, the Social Security Administration (SSA) must give you a written notice about the overpayment.

The overpayment notice should include the following information:

- the reason for the overpayment,
- the amount of the overpayment,
- the period of time when you were getting the overpayment,
- how much SSA wants you to repay each month,
- you have a right to request to pay back a smaller amount each month,
- you have a right to appeal the overpayment,
- you have a right to request a waiver of the overpayment,
- the deadline for your appeal,
- SSA has the forms for your appeal or waiver, AND
- SSA will help you fill out the forms for appeal or waiver.

## II. I Got A Notice of Overpayment. What Should I Do?

Usually, if you actually did get an overpayment, you will have to repay SSA. You can pay it back by making monthly payments OR by having your benefits reduced until the overpayment is paid back.

### **How SSA Collects An Overpayment**

The way that SSA will collect your overpayment depends on what kind of benefits you receive AND if you still receive benefits now.

**If you get SSI**, SSA will take 10% of your benefits until the overpayment is paid back.

**If you get SSDI or Social Security**, SSA will take back your whole check each month until the overpayment is paid back, unless you work out another arrangement with them.

**If you are not getting benefits from SSA anymore**, SSA will send you bills for the overpayment and you will need to work out a payment plan with SSA.

However, you can request a waiver or an appeal of the overpayment. If the waiver or appeal is approved, you may not have to pay the overpayment back to the Social Security office, or may only have to pay a reduced amount.

When you receive an overpayment, you should ask yourself three (3) questions:

1. Did you really get an overpayment?
2. Has the overpayment amount been calculated correctly?
3. Are you entitled to a waiver for the overpayment so that the Social Security office cannot collect the overpayment from you?

### III. How Do I Appeal the Overpayment?

There are two (2) ways of appealing a claim of overpayment: (You can do both at the same time.)

1. Request a Reconsideration
2. Request a Waiver

Whether you request a reconsideration or a waiver, or both, depends on your situation.

#### REQUESTING RECONSIDERATION

You should file a "Request for Reconsideration" if:

- you do not think that you were overpaid, OR
- you realize that you got overpaid, but think that the amount of the overpayment is incorrect.

Remember, you can file a Request for Reconsideration AND a Request for Waiver of the Overpayment at the same time. *See page 5 for information on requesting a waiver.*

Requesting reconsideration means that you are asking SSA to have another SSA worker review your file and double-check to see if you really did receive an overpayment.

**YOU MUST TURN IN YOUR REQUEST FOR RECONSIDERATION WITHIN 60 + 5 CALENDAR DAYS FROM THE DATE YOU GET THE OVERPAYMENT NOTICE.**

(SSA assumes that you get the notice 5 days after the mailing date so you actually have a total of 65 calendar days from the mailing date on the notice)

If you turn in your Request for Reconsideration earlier (within 30 days), you can continue getting your current benefit amount. *See text box on the right for more information.*

If you miss this 30 calendar day deadline, you can still turn in your Request for Reconsideration form up until 60 + 5 calendar days, but your benefit amount may be reduced for a short time before returning to the original amount.

When you turn in your Request for Reconsideration, you can request one personal conference. This means that you will get to talk personally to the person who is making the decision in your case.

After you turn in your request for reconsideration, SSA will take some time to determine whether or not the overpayment occurred.

**If you win and SSA decides that there was no overpayment,** you do not have to repay the overpayment amount and you will continue to get the same benefit amount you were receiving before the overpayment notice.

#### How to Get Your Current Benefit Amount While in the Appeal Process: Payment Continuance (PC)

While you are in the reconsideration or waiver process, you can continue getting your current benefit amount.

You have 60 + 5 calendar days deadline to respond and continue the appeal process. *See the process chart on page 2 for more details.* Even though you have 60 + 5 calendar days to respond, your benefits will be changed to the new amount after 30 days.

If you want to keep your benefits at the same amount while you are at reconsideration or asking for a waiver, you may be able to do so; this is called "Payment Continuance (PC.)" In order to keep your benefits at the same amount, you must respond to SSA's action within 30 calendar days. Otherwise, your benefits will be reduced until a reconsideration request is made or waiver requested.

Payment Continuance is usually a good idea if you do not have any other sources of income and need extra time before the overpayment is taken out of your current benefit amount.

If you lose, you will need to pay back the PC like an overpayment. If you are still on benefits, it will be deducted from your benefit amount each month. If you are no longer on benefits, you can work out a payment plan with SSA.

**If you lose and SSA decides that you did receive an overpayment**, you have a couple of choices:

1. you can repay the overpayment amount; OR
2. appeal and request an administrative hearing. (A hearing request will not suspend Social Security Administration's recoupment of the overpayment.)

*Skip to page 7 for information on requesting an administrative hearing.*

## REQUESTING A WAIVER

Requesting a waiver means that you are asking SSA to waive the overpayment so that you do not have to pay it back. When you request a waiver, it does not mean that you admit that you owe the overpayment; it simply means that it doesn't matter whether or not the overpayment occurred, but you are asking SSA if it is okay that you do not pay.

To get a waiver, you must show that:

1. You did not cause the overpayment & it is not your fault, AND
2. If you had to pay the overpayment back, it would be:  
I be a financial hardship to your household; OR  
I against equity and good conscience.

## HOW TO REQUEST A WAIVER OF THE OVERPAYMENT

To request a waiver, you must fill out a form called a "Request for Waiver of Overpayment Recovery."

THERE IS NO DEADLINE TO TURN IN YOUR WAIVER REQUEST; you can even request a waiver after SSA begins to take the money back. When you request a waiver SSA will stop recovering the overpayment until they approve or deny the waiver. If you do not want SSA to start collecting the overpayment (by reducing your checks), then you must turn in the waiver within 30 days of receiving the overpayment notice.

## HOW TO PROVE YOU QUALIFY FOR A WAIVER

### **1. The Overpayment Was NOT Your Fault**

SSA office will decide whether you understood the rules for reporting changes in your income and living situation, whether you had knowledge of the events that should have been reported, and whether you tried to report changes but were unsuccessful.. They will consider the following things when they determine whether or not you were at fault:

- your age;
- your English skills;
- how much you comprehend or understand;
- your ability to read;
- your memory; AND
- your physical and mental condition.

### Example of "Without Fault"

Sally is a 67 year old chronic schizophrenic who is receiving SSI benefits. She suddenly inherits \$10,000 from a deceased brother. Her sister calls SSA with the information but SSA does not do anything. Later, Sally receives an overpayment notice for \$6,000. Because Sally is without fault, she may be eligible for a waiver.

### **2. Paying the Overpayment Back Would:**

- **be a financial hardship to your household; OR**
- **be against equity and good conscience.**

### A. HARDSHIP TO YOUR HOUSEHOLD

The overpayment may be waived if repayment will be difficult to do because your income and resources are needed by you for ordinary living expenses.

Living expenses include:

- food and clothing
- mortgage or rent
- utilities or taxes
- installment payments
- medical expenses
- support for dependants
- insurance payments
- other miscellaneous expenses which may reasonably be considered as part of the individual's standard of living.

If you are getting SSI, financial hardship is presumed and thus this requirement is automatically met if you are on SSI.

### B. AGAINST EQUITY AND GOOD CONSCIENCE

The overpayment may be waived if the collection of the overpayment would be unfair and unjust to you, whether or not you are able to repay the overpayment.

To decide if the collection would be unfair, the SSA office looks at:

- whether or not you relied upon the overpaid benefit amount, believing it was the correct benefit amount,

AND one of the following:

- you gave up a valuable right (e.g., you declined benefits from another program, believing that the benefit amount was accurate), OR
- you changed something in your living conditions, believing that the benefit amount was accurate (e.g., you moved into a more expensive apartment, believing that you could afford it with your benefit amount).

The overpayment may be automatically waived if the amount is so small that the cost of SSA collecting it would be more than the amount of the overpayment, as long as the face of the over waiver does not indicate that you were not at fault for causing the overpayment.

If your overpayment totals \$500 or less, it is strongly recommended that you request a waiver.

### Example of "Hardship"

Sally receives \$500 in benefits from SSA each month. She owns an apartment and pays a \$400 mortgage payment each month. SSA notifies her that they mistakenly paid her \$1000 too much in retroactive benefits, and they want her to pay it back.

IF SALLY GOT SSI, SSA would want to take back 10% of her benefits each month (\$50) for 20 months to pay back the overpayment.

IF SALLY GOT SSDI or SOCIAL SECURITY, SSA would want to take back her entire checks (\$500) for the next 2 months to pay back the overpayment.

If SSA were to do this, Sally would not be able to pay her bills and would go into debt. Sally may be eligible for a waiver based on financial hardship.

### Example of "Against Equity and Good Conscience"

Sally receives \$500 in benefits from SSA. Based on that, Sally moves out of her \$300/month rent rat-infested apartment, and into a nicer \$400/month rent apartment. Later SSA tells her that she is eligible only for \$450 of benefits, rather than \$500, and owes SSA \$1000.

IF SALLY GOT SSI, SSA would want to take back 10% of her benefits each month (\$50) for 20 months to pay back the overpayment.

IF SALLY GOT SSDI or SOCIAL SECURITY, SSA would want to take back her entire checks (\$450) for the next 2 months and \$100 of the 3rd month to pay back the overpayment.

Sally may be eligible for a waiver of the overpayment based on equity and fairness.

## WHAT TO DO AFTER YOU TURN IN YOUR WAIVER

Once you have completed your waiver request form, turn it in. SSA will take some time to decide whether or not to give you a waiver of the overpayment.

**If SSA approves your waiver**, you will not have to pay back SSA for the overpayment.

**If SSA does NOT approve your waiver**, you will have a couple of choices:

1. pay the overpayment amount, OR
2. request reconsideration of the waiver denial. (An appeal at this stage will not suspend Social Security Administration's recoupment of the overpayment.)

## REQUEST RECONSIDERATION OF THE WAIVER DENIAL

In order to appeal SSA's decision to NOT give you a waiver, you must file a "Request for Reconsideration" within 60 + 5 calendar days of the mailing date of the denial notice, or 30 days if you want your benefits to continue.

## AFTER YOU TURN IN YOUR REQUEST FOR RECONSIDERATION

After you turn in your request for reconsideration, SSA will decide again whether to give you a waiver of the overpayment.

**If SSA reconsiders and decides to give you a waiver**, you will not have to repay the overpayment amount.

**If SSA decides to deny your request for reconsideration**, you have a couple of options:

1. you can pay back the overpayment amount; OR
2. you can request an administrative hearing.

### **ADMINISTRATIVE HEARING (for both the denial of reconsideration of the overpayment and reconsideration of waiver request)**

If SSA denies your request for reconsideration, you can appeal their decision and request a hearing. If you both requested reconsideration of the overpayment notice AND requested reconsideration of the denial for waiver, you may have only ONE hearing.

## TO REQUEST A HEARING

You must fill out a "Fair Hearing Request" form to get an administrative hearing. This form is available at the SSA office. You must turn in this form within 60 + 5 calendar days from the date you received the denial of your request for reconsideration. Remember, the sooner you turn in your request, the sooner you will have your hearing.

An administrative hearing is an informal hearing with an administrative law judge. This is different from a hearing with a court judge. In administrative hearing, you do not need to have an attorney. You can represent yourself or have a friend or a family member represent you at the hearing.

At the hearing, you will have an opportunity to tell the judge why you think that:

- you did not receive an overpayment OR
- the overpayment amount in the notice is wrong OR
- the overpayment should be waived.

## PREPARING FOR YOUR HEARING See "SSI/Social Security: Preparing for Your Hearing"

To prepare for this hearing, you should take a look at your file. Submit records that are helpful to proving your case (e.g., doctor reports, pay stubs, etc.). You can bring witnesses to the hearing, if you need to. The documents and records you will need depend on your specific situation so if you need more information, call Legal Aid's hotline. See phone numbers at the back of this brochure.

## AFTER THE ADMINISTRATIVE HEARING

The judge will usually make his decision after the hearing and you will get a written decision in the mail. Sometimes, the judge will tell you his decision at the hearing, BUT the final decision is the one you receive in the mail.

**IF YOU WIN**, the judge can decide to do several things, depending on your situation. The judge can decide that:

- there was no overpayment, AND/OR
- you should get a waiver of the overpayment and you will not have to pay SSA back, AND/OR
- the overpayment amount was incorrect so the judge changes the amount.

You will get back any benefits that you were entitled to during the appeal process.

**IF YOU LOSE**, your benefits will continue to be reduced. If you get SSDI or Social Security, SSA will take back your entire checks until the overpayment is paid back, unless you work out a payment plan with them. If you get SSI, SSA will take back 10% of your total countable monthly income (including benefit amount, wages, pensions, etc.) until the overpayment is paid back.

When you get your hearing decision, you will also receive a notice telling you what your appeal options are. If you want to continue the appeal process, you can appeal the administrative judge's decision to the Appeals Council.

## APPEALING TO APPEALS COUNCIL

To appeal to the Appeals Council, fill out and turn in a "Request for Review of Hearing Decision/Order (HA 520-U5) form within 60 + 5 calendar days of the administrative hearing decision. The Appeals Council takes a long time to make their decision. The average time is about 2 years, but it can take longer and sometimes shorter.

**If you win**, and the Appeals Council decides that either there was no overpayment OR that the overpayment should be waived, you will not have to pay the overpayment amount. The Appeals Council may also decide the judge's decision was wrong but must send the case back to the judge for further proceedings before another decision can be made.

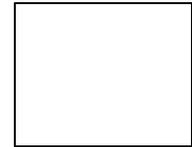
**If you lose**, and the Appeal Council decides that you received the overpayment AND decides not to waive the overpayment, you will have a couple of choices:

1. you can repay the overpayment OR
2. you can appeal to Federal District Court.

If you decide to appeal in Federal District Court, turn in your appeal forms within 60 + 5 calendar days of the mailing date of the Appeals Council decision. This is difficult to do on your own. Seek assistance from a private attorney.



Legal Aid Society of Hawai'i  
924 Bethel Street  
Honolulu, HI 96813



## USEFUL NAMES & NUMBERS

**Legal Aid Society of Hawai'i (LASH)**  
<http://www.legalaidhawaii.org>

Legal Hotline open Monday to Friday  
9-11:30am & 1-3:30pm  
O`ahu 536-4302 Maui 242-0724  
Kona 329-8331 Kaua`i 245-7580  
Hilo 934-0678 Moloka`i 553-3251  
Lana`i 565-6089

**Social Security Administration (SSA)**  
1-800-772-1213  
[www.socialsecurity.gov](http://www.socialsecurity.gov)

OAHU: 300 Ala Moana Blvd, Suite 1-114  
Honolulu, HI 96850  
OR  
Halekuai Center, Suite 201  
563 Farrington Highway  
Kapolei, HI 96707

MAUI, MOLOKA`I, & LANA`I:  
2200 Main Street, #125  
Wailuku, HI 96793

HAWAI`I:  
1178 Kinoole Street  
Hilo, HI 96720

KAUA`I:  
4334 Rice Street, Suite 105  
Lihue, HI 96766

## LEGAL TERMS

**appeal** to ask the court or an agency to rethink their decision.

**against equity and good conscience** this is one of the reasons why SSA may waive your overpayment. This means that it would be unfair for SSA to make you repay the amount.

**calendar days** every day, including weekends and holidays.

**hardship** this is one of the reasons why SSA may waive your overpayment. This means that it would be a hardship on your finances if you had to pay back the overpayment.

**PC or Payment Continuance** if you appeal by an earlier deadline, you can continue to get your same benefit amount during certain portions of the appeal process.

**personal conference** this is a meeting between you and the SSA worker who is making the decision in your case.

**Request for Reconsideration** this is the first step in your appeal process. When you turn in a Request for Reconsideration form, you are appealing and asking SSA to rethink their decision.

**SSA** Social Security Administration. This is the government agency that gives you your SSA benefits.

**waiver** if you file a waiver request, you are asking SSA if they will waive your overpayment. If you get a waiver, you will not have to repay the overpayment.