

Social Security Says They Overpaid Me



Dear ALRP,

I have disabling HIV and I've been receiving Social Security benefits for a few years. I recently got a notice from Social Security saying they overpaid me and that I have to pay them back. Are they going to take away my benefits? Is there any way I can appeal their decision?

- *Nervous*

Dear Nervous,

Understanding Social Security Administration (SSA) benefits can be very confusing. An overpayment can easily occur when SSA pays you more for a certain period than you are due. Overpayments can happen for a variety of reasons, including changes in your living or employment situation, incorrect calculations of income, and incorrect reporting. The notice you received of your overpayment should have information about why you were overpaid, how much money SSA wants returned, how it plans on collecting it, and how to file a waiver and appeal.

Filing a Waiver

If you receive notice of an overpayment and believe that the overpayment was not your fault, you may ask SSA to stop its attempts to collect the money from you. (If you agree with the SSA notice of an overpayment, you can follow their payment plan if your budget allows.) To keep SSA from collecting money from your benefits, you must file a waiver, which is a request that SSA waive the overpayment. A waiver may be filed at any time, but you should try to file it within 30 days after you receive the overpayment notice so that your benefits will not be reduced while SSA reviews your request.

For SSA to approve a waiver, you must show that (1) you are without fault in causing the overpayment and (2) you need all of your income to meet the expenses of your daily living. SSA will also consider other factors, such as whether the recovery of the overpayment isn't worth collecting because the amount owed is so small.

In order to prove that you are without fault, you must show that the overpayment did not result from your own wrongdoing. For example, SSA will look to see if you were careless in accepting the money, hid any important information, or actually committed fraud. If you can show that you furnished complete and accurate information to SSA, followed all the reporting requirements, and returned any checks you believed were overpaid, SSA may find that you are "without fault." In evaluating this requirement, SSA will look at your ability to understand the rules, and your efforts to comply with reporting requirements. SSA will also take into account any physical, mental, educational, and linguistic limitations that you may have.

The second waiver requirement - proving your need for the extra income - can be satisfied in one of three ways. First, you can show that recovery would defeat the purpose of the program, which could mean that you need all of your income to meet everyday living expenses, such as food, rent, and medical expenses. Second, you can show that recovery would prevent the efficient or effective administration of SSA. This is usually the case when the amount to be recovered is so small that it would not justify the administrative cost of recovery. The third way to meet this requirement is to show that recovery would be against equity and good conscience. This means that SSA will look to see if it is fair and right to collect the overpayment. You might satisfy this requirement by showing that you gave up a valuable right, like a lease on your old apartment, because you relied on the SSA money you received.

Review and Personal Conference

Once you submit the waiver, you then have the right to a file review and personal conference. After your file review and personal conference, SSA will make its decision on the waiver request. Should SSA determine that you are either at fault or able to pay, SSA will issue a notice stating that you must reimburse them for the overpayment. At this point, you have further rights, including filing a Request for Reconsideration, seeking review by an Administrative Law Judge and filing suit in federal district court.

In many cases, it may be advisable to request the assistance of an attorney to help with overpayment questions.

This Legal Q&A Guide was last revised in July 2011. It is intended to provide general legal information to people living with HIV/AIDS in California. However, because laws change frequently ALRP cannot ensure the complete accuracy of the information included. Please call ALRP at (415) 701-1100 to consult with an ALRP attorney about your legal rights in your particular situation.