



SOCIAL SECURITY LAW AND OVERPAYMENTS

1

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- The Seattle Community Law Center is a legal aid organization dedicated to providing high-quality Social Security and SSI representation to the people who need benefits the most and are least likely to secure representation due to barriers preventing them from accessing the justice system.
- We are committed to providing the accommodations and tailored services needed to overcome these barriers, help our clients keep their benefits claims on track, and secure the evidence needed to support a successful claim.

- **Disabled Homeless Advocacy Project**

- Proactively identify and assist disabled homeless individuals who have "slipped through the cracks" of the state and federal safety net programs to help them obtain benefits to which they are entitled and that will help them to move toward financial and medical stability.

- **Social Security Advocacy Project**

- Provides legal advice, advocacy, referral and direct legal representation to low-income individuals facing disputes with the Social Security Administration regarding their eligibility for benefits. SSAP prioritizes cases for which representation by a private attorney is not available.



SSAP in a Nutshell:

- **Who SSAP serves:** low-income recipients of disability-related benefits from Social Security
- **When SSAP can help:** a recipient has been assessed an overpayment, or her benefits have been reduced or terminated
- **What services SSAP provides:** referral, legal information, counsel and advice, direct representation, and legal clinics
- **Why SSAP?:** low-income disability benefit recipients already live on a fixed income. If that income is reduced or if their entitlement is found to have ended, they are at risk of losing their housing and/or their health insurance. Moreover, these recipients are generally unable to secure representation from the private bar because these types of cases do not generate an attorney's fee.

WHAT TYPES OF BENEFITS?

Title XVI

- Supplemental Security Income (SSI) is a needs-based program for disabled people who meet the Social Security medical and SGA disability rules and whose income and assets are below the eligibility levels.

Title II

- Social Security Disability Insurance is an insurance program that sends out monthly checks to disabled workers who have paid Social Security taxes (called "FICA" on your paycheck stubs).
 - Every quarter you work and earn \$1000 you earn one work credit and you need 40 credits to be eligible



RELEVANT LAW

- 20 C.F.R. §416, *et. seq.* – Title 16 SSI
- 20 C.F.R. §404, *et. seq.* – Title 2 SSDI
- SSA Program Operation’s Manual (POMS)*
- Social Security and Acquiescence Rulings
- Case law from 9th Circuit



DEFINITION OF DISABILITY

Social Security considers an adult to be disabled when the illness or condition prevents substantial work activity for 12 months or longer.

WHAT IS AN OVERPAYMENT?

- If a claimant is being charged with an overpayment, it is because the Social Security Administration (SSA) believes that he/she received benefits when he/she was not eligible to receive them.
- SSA must notify a claimant in writing of the overpayment before taking or withholding any money from the claimant.

OVERPAYMENTS

- ***Common reasons for overpayment***
 - Income exceeds eligibility requirement for SSI
 - Resources & SSI
 - Substantial Gainful Activity (SGA) & SSDI
- ***Appeals***
 - Waiver
 - Request for Reconsideration
 - Hearing Request (Administrative Hearing)

WHAT CAUSES AN OVERPAYMENT

➤ SSDI & SSI

- ***If SSA determines that disability ended***
 - Medical condition improved & claimant would now be able to work or because claimant actually returned to work.
 - Other reasons that eligibility is suspended or ends:
 - jail time, out of the country for longer than allowed, etc.
- ***If SSA believes that claimant committed fraud with regard to disability benefit***
 - SSA may charge an overpayment for the entire period claimant received benefits.

WHAT CAUSES AN OVERPAYMENT

➤ SSDI

➤ *If claimant returns to work, there are rules about working and receiving benefits:*

- Trial Work Period (TWP)
- Extended Period of Eligibility (EPE)
- Work Incentives
 - Impairment Related Work Expenses (IRWES)
 - Subsidy and/or Special Conditions
 - Unincurred Business Expenses (*Self Employment Only*)
 - Unsuccessful Work Attempt (UWA)

SSDI WORK ISSUES

- First, some definitions:
 - **Substantial Gainful activity (SGA)**
 - \$1,040 in 2013
 - **Trial Work Period (TWP)**
 - Service Month
 - \$750 in 2013
 - 9 TWP months within a rolling 60 month period. The nine TWPs do not have to be consecutive.
 - **Extended Period of Eligibility (EPE)**
 - Immediately following the 9th TWP month you enter the reentitlement period. This is a thirty sixth month consecutive period.

SGA UNPACKED

➤ Substantial

- Work is “substantial” if it involves doing significant physical or mental activities or a combination of both.
- For work activity to be substantial, it does not need to be performed on a full-time basis. Work activity performed on a part-time basis may also be substantial gainful activity.

➤ Gainful

- Work performed for pay or profit; or
- Work of a nature generally performed for pay or profit; or
- Work intended for profit, whether or not a profit is realized.

TWP UNPACKED

- ***TWP allows you to test your ability to work for at least 9 months.***
 - During your TWP, you will receive *full SSDI benefits*
- ***When does the TWP start?***
 - TWP starts when you begin working and performing “services”. In 2013, work is considered “services” if your gross earnings are more than \$750 a month, or if you work more than 80 hours in self-employment in a month.
- ***How long does the TWP last?***
 - TWP continues until you accumulate 9 TWP service months (not necessarily consecutive) within a rolling 60-month period.

EPE UNPACKED

- The EPE begins the month after the TWP ends, even if you are not working that month.
- The first 36 months of the EPE is the re-entitlement period.
- During the 36-month re-entitlement period, benefits are paid when earnings or work activities are below the substantial gainful activity (SGA) as long as you continue to have a disabling impairment.
- Benefits are suspended if work is above SGA, but can be reinstated if they fall below
- If you are working in the 37th month, when the EPE ends, SSA will cease SSDI.
 - Claimant will get benefits during the cessation month as well as the 2 following months (called the grace period)
 - Then the disability is found to have ceased due to working over SGA

WHAT CAUSES AN OVERPAYMENT

➤ SSI

➤ ***Because SSI is a needs-based program, there are many rules about income and resources.***

- Earned income (wages)
- Unearned income (settlement, inheritance, L&I benefits, Unemployment Insurance, cash gifts, child support)
- Changes in living situation, such as a change in address or change in composition of your household (a child moves out, or you move in with family and do not have to pay rent)
- Divorce, marriage, or separation
- Becoming a fleeing felon
- Incarceration/Institutionalization
- Traveling outside of the USA for more than one calendar month.

REPORTING WORK

- If you receive SSDI or SSI benefits, you or your representative payee must promptly report any changes in work activity.

- You must tell SSA right away if:
 - You start or stop work;
 - Your duties, hours, or pay have changed;
 - You start paying for expenses that you need work due to your disability (IREWS)

- You can report by phone or in person

WHO IS RESPONSIBLE FOR AN OVERPAYMENT?



- The overpaid person.
- The Representative Payee (“payee”)
- In certain circumstances, claimant’s sponsor, if claimant is an alien receiving SSI.
- Claimant’s spouse, if during the period of overpayment, claimant and spouse were living together and SSA cannot recover from claimant.
- Claimant's estate, and/or that of your payee, spouse, or sponsor.

WHAT HAPPENS TO THE MONTHLY BENEFIT?



- ***SSA will ask claimant to repay full amount within 30 days***
 - If claimant does not repay, SSA will start to recover
 - SSI, recovery or repayment starts as early as 60 days after the notice of overpayment
 - SSDI, recovery or repayment starts 30 days after the notice of overpayment.

- ***Claimant will likely want to appeal***
 - Look at notice to determine appeal rights
 - Termination/cessation notice + an overpayment notice, appeal within 10 days to continue receiving monthly benefit until a decision is made on appeal.
 - Overpayment notice, appeal within 30 days of receiving the notice to continue receiving monthly benefit amount until a decision is made on appeal.

WHAT TYPE OF APPEAL?

Request for Reconsideration

- Form 561
 - Challenge the amount of the overpayment
 - Challenge the fact of the overpayment
- 60 (+5) days from date on SSA notice
- Informal conference

Waiver Request

- Form 632
 - Without fault (AND)
 - Defeat the purpose (OR)
 - Against equity and good conscience
- SSI vs. SSDI
- No time limit to appeal
- Personal Conference

WHAT IF RECONSIDERATION OR WAIVER IS DENIED?



- SSA can begin recovering from the monthly benefit again, and can continue to do so even if claimant appeals again.
- Claimant can appeal again. The written denial will explain the option to appeal the denial.
 - In some cases, file SSA Form 561, and ask that SSA reconsider its denial of the waiver request.
 - In other cases, file SSA Form HA501, “Request for Hearing before an Administrative Law Judge.”

WHAT TO EXPECT AT A HEARING WITH ALJ?



- The file will be sent to SSA's hearing office. This is called the Office of Disability Adjudication and Review (ODAR).
- Once the hearing request is filed, it generally takes another 12-18 months for a hearing to be scheduled.
- SSA has the right to recover from your monthly benefit while claimant waits for the hearing.
- Claimant may have a lawyer or a non-lawyer represent you at the hearing.
- Before the hearing, claimant has the right to review and copy the file at ODAR. ODAR will send a notice when the file is ready to be reviewed. Claimant must make an appointment to copy file.



WHAT TO EXPECT CON'T

- Claimant will be notified of the date and time of your hearing at least 20 days before hearing.
- If claimant has more evidence, submit it to ODAAR as soon as possible.
- At the hearing, the ALJ will have only the information that is in the file and any information claimant provides. Administrative hearings are quite informal.
- Claimant may testify and claimant may have witnesses testify.
- After the hearing, the ALJ will make a written decision and mail it to claimant. This will usually be within a few months of the hearing.



QUESTIONS?

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