

# Fighting Overpayments

If you are on SSI or SSD, it is possible that the Social Security Administration (SSA) may pay you too much money for a period of time. Sooner or later – sometimes years later – SSA will ask you to repay that money. It also sometimes happens that SSA *thinks* it paid you too much money but has made a mistake.

## HOW DO I FIGHT AN OVERPAYMENT?

There are two ways to fight an overpayment: asking for reconsideration and asking for a waiver.

## WHAT IS RECONSIDERATION?

Reconsideration challenges the **facts** and/or **amount** of the overpayment.

## HOW DO I ASK FOR RECONSIDERATION?

Submit a [Request for Reconsideration \(Form SSA 561\)](https://www.socialsecurity.gov/forms/ssa-561.pdf) (a copy can be found at <https://www.socialsecurity.gov/forms/ssa-561.pdf>) to SSA within 60 days of receiving notice of the overpayment.

- If you file a Reconsideration after 60 days, you must show “good cause” why your request was late.
- **If you are on SSD** – You first have a case overview at your local SSA office. If that is unsuccessful, you can request a hearing in front of an Administrative Law Judge.
- **If you are on SSI** – You first have a personal conference at your local SSA office. If that is unsuccessful, you can request a hearing in front of an Administrative Law Judge.

## WHAT IS A WAIVER?

Whether you agree that you were overpaid or not, you can request that SSA waive collection of the overpayment. A waiver asks SSA to stop collecting the overpayment and “forgive” the amount you owe.

## HOW DO I ASK FOR A WAIVER?

Submit a [Request for Waiver of Overpayment \(SSA Form 632\)](https://www.socialsecurity.gov/forms/ssa-632.pdf) (a copy can be found at <https://www.socialsecurity.gov/forms/ssa-632.pdf>). You can ask for a waiver at any time, even after collection of the overpayment has begun.

## WHEN DOES SOCIAL SECURITY APPROVE A WAIVER?

For SSA to approve your waiver, you must demonstrate that you were **without fault** and that recovery of the overpayment will **either 1) be an undue hardship or 2) be against equity and good conscience**.

- You will be found “at fault” if you:
  - Failed to give information that you knew or should have known was important to the calculation of your benefits; OR
  - Made an incorrect statement that you knew or should have known was incorrect; OR
  - Did not return a payment that you knew or should have known was incorrect.
- For SSD recipients, SSA also considers lack of good faith or failure to exercise a high degree of care when determining fault.
- SSA also considers other circumstances such as age, disability and education.
- **Automatic Waiver** – if you request a waiver and your overpayment is \$1,000 or less, the waiver should be automatically granted.
- If your Request for Waiver is **denied**, you must file a Request for Reconsideration of that denial. If this is denied, you can request a hearing in front of an Administrative Law Judge.

### **CAN I ASK FOR RECONSIDERATION AND A WAIVER AT THE SAME TIME?**

Yes. You can file a Reconsideration and a Waiver request at the same time.

### **CAN I FILE A WAIVER IN THE FUTURE EVEN IF AN EARLIER WAIVER WAS DENIED?**

Yes. You may turn in a new waiver request if your financial situation changes over time.

### **HOW DOES SSA COLLECT (RECOUP) AN OVERPAYMENT?**

If you are currently getting benefits, SSA will take the money directly out of your monthly check.

- SSA should not begin collecting overpayment money if the Request for Reconsideration or Waiver is made within **30 days** of receiving notice.
- If you make the requests after 30 days, then SSA will likely have started taking money from your monthly check already. They should stop once you file the request.
- If SSA says that it will stop your benefits because it believes you are no longer disabled, you must appeal (use [SSA Form 789](#), a copy of which can be found at <https://www.socialsecurity.gov/forms/ssa-789.pdf>) within **10 days** for your benefits to continue during the appeal.

### **IS THERE A LIMIT TO HOW MUCH SSA CAN COLLECT FROM MY CHECK EACH MONTH?**

- **For SSI:** Collection is limited to 10% of your monthly income. However, if you find this to be a hardship, you can ask that less than 10% be collected.
- **For SSD:** Collection is not limited (therefore, your entire check amount may be kept by SSA). However, you can ask for a reduced rate of collection due to hardship.

### **WHO CAN I CONTACT IF I HAVE QUESTIONS?**

You may call MFY Legal Services, Inc.'s Government Benefits Project at 212-417-3732 on Mondays from 10:00 a.m. to 12:00 p.m. If you are a mental health consumer you may call MFY's Mental Health Law Project intake line at 212-417-3830 on Monday, Tuesday, and Thursday from 10:00 a.m. to 5:00 p.m.

**DISCLAIMER: This fact sheet gives general information for NYC residents; it is NOT legal advice.**