



How to Handle SSI Overpayments

By [Neal A. Winston, CELA](#)

[Supplemental Security Income \(SSI\)](#) is a monthly cash payment to qualifying individuals with disabilities, based on financial need. While it often forms the foundation of their financial security, its requirements are both strict and complex. Even attorneys who don't routinely deal with public benefits may get confused. So it's not surprising that mistakes get made and recipients may find themselves receiving notification from the Social Security Administration (SSA) [that an overpayment has been made](#).

There are two general reasons that SSI overpayments are caused: undisclosed countable "income" and excess countable "resources." Income is something of value in a particular month that the recipient receives that can be used for food- or shelter-related expenses. Resources are something of value that can be used for food- or shelter-related expenses that is owned or retained the month following the month that it is received.

Since the program is intended to cover expenses for food and shelter, any other assistance that an individual receives for those needs—free room and board from a relative or trust distributions used for that purpose—will be counted as income and reduce SSI payments. Beneficiaries cannot have more than \$2,000 in "countable resources," such as cash, investments and other valuables. On the other hand, a single vehicle for the beneficiary's use, a home they own and reside in, and personal belongings are not considered.

Changing Circumstances

An SSI beneficiary or [representative payee](#) is also responsible for reporting changes that could affect payments, such as:

- [Marriage](#)
- Increased income or resources
- New residential living arrangement
- No longer having a disability

Fluctuating earnings can present a special problem. Monthly pay in excess of prior earning levels known by the SSA must be reported by the 10th day of the month after it's received so that future SSI payments can be adjusted. If SSA isn't notified in a timely manner, an

overpayment and benefit recovery may occur. The SSA has just instituted [procedures for reporting income by telephone and online](#).

Placing funds in a [special needs trust \(SNT\)](#) or [ABLE account](#) can help prevent SSI reductions for excess resources, since resources protected in that manner aren't considered countable. In general, annual contributions to an ABLE account may not exceed \$15,000 (2018 limit). [However, that cap can be exceeded to accommodate beneficiary earnings below the federal poverty limit (\$12,060 for an unmarried individual in 2018) if the individual doesn't participate in an employer retirement plan.] This can be a convenient way of handling pay that might add up the following month to exceed the \$2,000 resource limit, since ABLE accounts can be managed by the beneficiary. SNTs, which don't have contribution limits, may be a good choice for inheritances or large financial gifts, but distributions are made at the trustee's sole discretion.

SSA Error and Avoiding Overpayments

Sometimes SSA is at fault due to flawed calculations or by failing to consider information that's been reported. So it's important to maintain proper documentation when communicating about changed circumstances. Beneficiaries should:

- Send a signed and dated letter to SSA that describes what has changed concerning their personal situation and keep a copy for their files.
- Enclose copies of substantiating materials (pay stubs, correspondence that includes your new home address, etc.) with the letter.
- Send the letter by certified mail, return receipt requested, and save both the P.O. receipt and the acknowledgment postcard from SSA.
- Use the new telephone, smartphone app, and online wage reporting procedures.

If SSA believes someone has been overpaid, they will send written notification and list several courses of action. If ongoing benefits will be eliminated due to the recipient's new circumstances, full repayment of the extra funds already paid will be requested. If benefits will continue at a reduced rate, SSA will propose partial withholding on a monthly basis until the sum is completely repaid. Recipients have the right to request reconsideration, apply for an overpayment waiver, apply for a hardship waiver, or ask for a different payment schedule. It's also okay to have a parent, SNT or other third party pay back the money on behalf of the beneficiary.

Request for Reconsideration

If it is believed that the overpayment decision is in error, a request for reconsideration must be filed within 60 days of receiving the notice, or within 10 days in order to continue receiving full SSI benefits during the reconsideration process. Options include asking for a case review, or an informal meeting or a formal conference. If SSA doesn't change its position as a result of these steps, the recipient can file a request for hearing, which will be overseen by an administrative law judge. Subsequent appeals involve filings with the Appeals Council and ultimately a petition in federal court. Appealing the legitimacy of a determination that an overpayment has occurred and requesting a waiver of a legitimate overpayment are separate processes, so both should be pursued as they apply.

Waivers

If the overpayment decision was not an error, it may be appropriate to file for a waiver of all or part of the amount in the following situations:

- Overpayment was not the “fault” of the recipient or their representative payee due to an SSA error or a misunderstanding on the recipient’s part due to medical, cognitive or language problems; and,
- Recipient relied to their detriment on improper administrative advice or actions; or
- Repayment would be contrary to the purpose of the SSI program because recovery would deprive the person of income required for ordinary and necessary living expenses.

The recipient can also file a hardship waiver to continue full benefits, regardless of the cause of the overpayment, if the recipient has very limited income or resources and would go without food or shelter due to suspension or reduction in benefits.

These waiver requests can be initially filed at any time after an overpayment determination has been made, but a denial of a waiver must be appealed within 60 days.

Alternate Payment Plan

At the recipient’s request, SSA may agree to stretch out repayment by withholding only 10 percent of each month’s benefit. If benefits have been eliminated altogether and the recipient has limited resources with which to pay, SSA may accept periodic payments or be open to further compromise.

SSI recipients or their representative payees should become familiar with agency guidelines and stay on top of overpayments. Timely responses can avoid serious financial problems.

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