

# LEGAL SERVICES OF NORTHERN VIRGINIA

6066 Leesburg Pike, Suite 500

Falls Church, Virginia 22041

Tel. (703) 778-6800

## Social Security Overpayment Manual

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**EDDIE DEDRICK**  
**PUBLIC BENEFITS PARALEGAL**

May 1, 2009

**How to assist individuals who received Social Security Overpayments**

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## COMMON ACRONYMS

EPE	Extended Period of Eligibility
IRWE	Impairment Related Work Expenses
POMS	Program Operations Manual System
RSDI	Retirement Survivors Disability Insurance
SGA	Substantial Gainful Activity
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
TWM	Trial Work Month
TWP	Trial Work Period

## WHAT IS AN OVERPAYMENT

An overpayment, simply stated, occurs when the Social Security Administration alleges that it (SSA) has paid the recipient more money than the SSA believes the recipient is entitled to receive for any given period of time. Overpayments occur for various reasons and can be from several hundred to thousands of dollars. Although the burden of most overpayments is on the recipient, the recipient has recourse to various means to address overpayments and resolve them.

By no means does the information provided here exhaust the types of situations claimants or recipients find themselves in with the SSA, nor does it exhaust the all the remedies for those situations. Every case is unique. Overpayment cases can often be resolved with brief services, but they can be very complex and may take months or years to resolve.

The purpose of this overview is to familiarize you with the basics of overpayments and defenses to them, and to provide you with references to resources to aid your further research, investigation, and advocacy of overpaid SSA recipients.

In this training we will focus on the two major programs in which overpayments normally occur. They are the:

1. Social Security Disability Insurance (SSDI) portion of the Retirement Survivors Disability Insurance (RSDI) program; and
2. The Supplemental Security Income (SSI) program.

## ***Regulations Regarding Overpayments***

The overpayment regulations are found at 20 CFR 404.501-527 for Retirement Survivors Disability Insurance (RSDI). We will deal only with the Social Security Disability Insurance (SSDI) portion of the RSDI program. The Regulations governing Supplemental Security Income (SSI) overpayments are found in 20 CFR 416.537-553. Also extremely helpful is the Program Operations Manual System (POMS) of the SSA. The POMS is the basic instruction and procedure manual for SSA agents and claims representatives.

POMS can be found at <https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>

Social Security Act 42 U.S. Code Title 42 chapter 7, Section 404 (overpayments) can be found at <http://www.gpoaccess.gov/uscode/browse.html>

20 CFR § 416 is at [http://www.socialsecurity.gov/OP\\_Home/cfr20/416/416-1487.htm](http://www.socialsecurity.gov/OP_Home/cfr20/416/416-1487.htm)

20 CFR § 404 is at [http://www.ssa.gov/OP\\_Home/cfr20/404/501-527.htm](http://www.ssa.gov/OP_Home/cfr20/404/501-527.htm)

## **PROGRAMS IN WHICH OVERPAYMENTS REGULARLY OCCUR**

### ***A. Supplemental Security Income Program***

Often referred to as the Federal Welfare Program--SSI is a means-tested program to provide income to persons who are: 65 or older with no access to sustainable income; or persons disabled at any age (including minors), who do not have enough credits of work to be insured for SSDI; or to supplement a monthly SSDI payment that does not reach the SSI monthly limit (approximately 72 to 74% of the Federal Poverty Guidelines).

### **SSI Resources and Maximum Monthly Payments**

To receive SSI one's resources must be below \$2000 for an individual and \$3000 for a couple. The maximum SSI benefit check for 2009 is \$674 for an individual and \$1,011 for a couple. (See chart of annual SSI figures from 1975 in attachments)

### **SSI and Work**

A recipient may work while receiving SSI and earn \$65 per month without any deductions; and may receive \$20 per month unearned income without any deductions. Thus a total monthly income of \$85 is disregarded for SSI payments. However, for every \$2 per month earned over the allowable \$65/month, one dollar is deducted from the monthly SSI check. The deduction for unearned income is one dollar deducted for every dollar over the \$20 per month allowable limit. When a recipient goes to work s/he is supposed to report the return to work to the SSA and to report to the SSA on a bi-monthly basis any earned income over \$65/month and any unearned income over \$20/month.

The amount of the SSI check for any given month is dependent upon the earned and unearned income received two months earlier. (The June SSI check is dependent upon the income received in April.) This is to assure timely processing of changes to prevent overpayment or underpayments.

For example I am receiving SSI for 2009. I have earnings of \$500 per month In April. How much SSI am I entitled to? SSI allows \$65/month earned income and \$20/month unearned income, so  $\$500 - \$85 (\$65 + \$20) = \$415$ . Taking back \$1.00 for every \$2.00 earned =  $\$415 / 2 = \$207.50 = \$208$  to be deducted from  $\$674 - \$208 = \$466$  the amount of my June SSI check). I do not work in June but I do inherit \$500 in June of 2009; that is unearned income. With a dollar for dollar deduction over the \$20 allowance, I would receive  $\$500 - \$20 = \$480$ ; so then  $\$674$  (max amount of SSI) minus  $\$480 = \$194$  SSI check for August. In August I work and earn \$450 and win \$300 in lotto. So  $\$450 - \$85 = \$365$  divide by 2 = \$183 deducted for earned income, and it is  $\$300 - \$20 = \$280$  deducted for unearned income. Total deductions of  $\$183 + \$280 = \$463$ ; my check for October then is  $\$231 (\$694 - \$463 = \$231)$ .

I have been found disabled for SSDI, but my payment would be \$500 per month. I am single and my resources are only \$1,200 in savings account and \$500 in checking account. I apply for SSI to supplement my monthly income by \$194, to the maximum SSI amount of \$694.

- (Note that whenever SSA is calculating income where no earned income is considered it uses the SSI maximum plus the \$20 disregard or \$694) Most often used when a person is dual eligible for SSI and SSDI.

## ***B. Social Security Disability Insurance Program***

SSDI (Social Security Disability Insurance) is not a means tested program, since it is funded by the FICA (Federal Income Contributions Act) taxes paid out of wage earners' monthly checks. Resources and unearned income are not usually at issue. A recipient may work and have earned income while receiving SSDI. The SSA regularly tells those entitled to SSDI that they can work and earn Substantial Gainful Activity (SGA). This can be a problem, as we will discuss below.

### **Substantial Gainful Activity**

Most of the overpayments on this program occur when the recipients work and earn over the Substantial Gainful Activity (SGA) amount during a special period of time which is discussed below. SGA is a dollar figure set by the SSA that indicates whether a person may be disabled or not. For 2008 the SGA figure was \$940/month (non-blind) and \$1,500 (blind persons). For 2009 the figures are \$980/month (non-blind) and \$1,640 (blind). It is the SGA figure that SSA regularly gives out to recipients as the amount one can earn per month while receiving SSDI. The SSA keeps track of the earnings of a working disabled individual through the FICA reporting by employers. (See Chart of SGA figures in Attachments)

## **The Trial Work Period**

The Social Security Disability program has a “work incentive” aspect built into it. It is called the Trial Work Period. It is a 9 month period in which a recipient can work without penalty of loss of disability, or overpayment of benefits. During any one period of disability a person is entitled to one Trial Work Period (TWP). A Trial Work Month (TWM) is any month in which a person earns enough income to produce something the SSA calls “services”. A “service” month or TWM for 2008 was \$670, for 2009 it is \$700. The amount for a TWM changes annually. (See Chart on Trial Work Periods) The 9 months do not have to be successive; they can be successive or scattered about over a rolling five year period.

## **Extended Period of Eligibility**

Following the TWP, however, there is a 36 month Extended Period of Eligibility (EPE). It is in this period that overpayments nearly always occur. During this 36 month period the recipient is not entitled to a check in any month in which s/he earns SGA, but is entitled to a check any month in which the recipient’s earnings fall below the SGA level. Overpayments regularly occur at the end of this 36 month extended period of eligibility. Although a recipient is not entitled to an SSDI payment in any month s/he earns SGA, the SSA normally pays recipients the full check each month, including the SGA months. Despite timely reporting of return to work, or even with returning checks by the recipient, it regularly takes the SSA nearly a year or two to catch up to the reporting. By the time the SSA has caught up with and recorded the recipient’s work history and earnings for the 36 month period there may be an overpayment reaching up to tens of thousands of dollars.

## **Cessation of Benefits**

After the 36 month period the recipient’s work record is evaluated and if the recipient is still earning SGA the SSA will notify the recipient that s/he is no longer considered disabled. There is a two month grace period before benefits are actually stopped. The recipient is entitled to keep any wages earned during the two month grace period. As in the EPE, here too the SSA may not catch up with the post-EPE earnings for months or years afterwards. This delay can cause an overpayment then for the EPE period and the post-EPE period causing an extremely large overpayment.

# **SOME COMMON REASONS FOR OVERPAYMENTS**

## ***A. For SSDI***

Recipient is in 36 month EPE, or post-EPE, and is earning SGA.

Third party over-payment: a child or spouse or widow(er) is receiving SSA benefits on the record of a deceased husband/wife/father/mother who died charged with an overpayment. This can also occur when a third party takes benefits on the overpaid record of living

disabled or retired beneficiary. (Over-payments are passed to any person entitled to benefits on a marked file.)

Change from SSI to SSDI benefits. Recipient was working while receiving SSI and in process earned enough credits to start receiving SSDI. This changeover may cause an overpayment depending on how much the SSDI will be and how far back the payments are to be made. (Especially true for survivors who were receiving SSI prior to death of parent/wife/husband and now are eligible for SSDI on the deceased's record.) These types of overpayments are usually waived upon request with statement of not at fault.

Recipient has been convicted of a felony or has conviction that results in incarceration of at least one year.

### ***B. For SSI***

Recipient has earned and/or unearned income that SSA alleges that it did not know about.

Recipient has over the \$2000 resource limit for an individual or \$3000 resource limit for a couple.

Recipient has been receiving a full check, but living in the home of another who provides recipient with food, and shelter. (SSI should have been deducted by 1/3 for in-kind income.) (See **Note #1**)

Recipient owns house or other real property s/he is not living in/on—sometimes in another city or state. More frequently we are seeing allegations that an SSI recipient has real resources in another country.

SSA alleges that recipient is a fleeing felon and has been overpaid since date of the issued warrant.

Recipient has been in a public institution for one month or longer without SSA's knowledge. (See **Note # 2**)

SSI recipient was out of the U.S. for more than one month without SSA's knowledge. (See **Note #2**)

Recipient is placed in supported employment with oversight by "job coach" or employee placement advisor. A disabled recipient begins to earn SGA (in the case of SSDI) or earns too much to receive the full SSI amount.

## Notes

**Note # 1** The SSI regulations state that if a person is living in the home of another person without paying his/her fair share of the household expenses, or without paying fair rental value, or if the recipient lives alone but recipient's rent or basic living expenses are paid by a third party, then the recipient's monthly SSI check is reduced by 1/3. The 1/3 reduction is considered an "in-kind" contribution. Of course this happens frequently, since people waiting for an SSI claim to be processed are generally not working and/or have spent down all their savings/income etc. and cannot afford to pay the "fair share" or rent.

One way to resolve this issue is to have a "loan agreement" written and signed by the recipient and third party. The loan agreement must state that the recipient is obligated to repay the third party, beginning immediately upon receipt of SSI funds, the amount of X dollars per month in repayment of the loan. A rental agreement is also effective, as long as the rental amount is in keeping with the rental values of the area. As long as the loan agreement or the rental agreement can be considered a valid contract in the State where the agreement is issued, the SSA should accept it ( See 20 CFR §416.1130-1145 )

If renting to relatives you can charge less than the fair market value as long as the relative is paying more than the "presumed maximum value" (the 1/3 reduction) there should be no reduction in SSI benefits. (See *Ragsdale v Apfel* 999 F. Supp.814; U.S. Dist E. VA. (3/30/1998))

**Note # 2** SSI benefits are suspended while the recipient resides in a public institution for one month or longer ; benefits are also suspended when a recipient is outside of the U.S. for one month or longer. Recipients are responsible for notifying the SSA office of changes of residency or plans for travel and return. See 20 CFR §§ 416.1324, 1325, 1327.

## RESOLUTION OF OVERPAYMENT

Recipients can address over-payments by means of an appeal, and/or by a request for waiver, or adjustment of overpayment.

### ***A. File A "Request for Reconsideration"***

The appeal, called a Request for Reconsideration, must be filed within **60 days** of notice of overpayment. This is SSA form SSA-561-U2 (See SSA-561-U2 in the attachments). The SSA has the burden of proof to show that an overpayment occurred. The SSA's notice of overpayment must contain a summary of the total monthly income (earned and unearned for SSI) used to calculate the benefits that were paid over against what was actually due. In cases of SSDI the SSA must indicate months of earnings of TWP, EPE and the earnings recorded for those months. Often, however, the SSA errs in failing to supply proper notice or to apply the proper deductions to income that could greatly reduce the recipient's income below the SGA level for SSDI and lower the earnings amounts for SSI.

If the recipient denies receiving the proper notices, or disputes the work history report and earnings alleged by the SSA, it is best to file a reconsideration, and attach a statement page to it setting forth the recipient's objections and reasons. This would also be the place to challenge the SSA's assertions by presenting copies of any deductions to income, such as IRWEs (See **Note # 3**) that would lower the overpayment amount or might completely

erase it. This is time also to attach copies of W-2 forms or wage stubs, tax statements, copies of recipient's reports made to the SSA, etc. to contradict the alleged overpayment.

A request for reconsideration will stop any recovery of the overpayment, and no recovery will begin if reconsideration is filed within 30 days of the overpayment notice. (See POMS GN 02201.011.C and SI 02220.001 B.4.b)

**Note # 3** One of the often overlooked deductions that might apply to working disabled individuals are the Impairment Related Work Expenses (IRWEs). An IRWE is any expense paid by a recipient that is related to her/his disability, and enables the recipient to work. (See 20 CFR 404.1576, 416.976) Example: Many disabled individuals find employment through sheltered employment programs. As such they are paid on the same schedule as non disabled workers, but unlike non-disabled workers, disabled workers may have work expenses without which they could not perform their required duties. These expenses may include, but not limited to, medication expenses that provide mental or physical stability, special transport expenses not required by non-disabled workers, and even the expense of the "job coach" or rehabilitation worker who regularly oversees the performance of the disabled worker. ( Example: I am receiving SSDI and for the past three years I have regularly earned SGA levels of income. SSA sends notice of cessation of benefits and overpayment of \$20,000. But each month I have had to pay a copayment of \$50 for anti-psychotic medication without which I could not work. Also my rehab counselor and I meet on the job site once a week for an hour for support and oversight. The job placement company values the counselor's hour expense at \$75 per hour. Thus I can deduct  $\$50 + \$300 (4 \times 75) = \$350$ /month directly from my earnings. Thus reducing the SGA penalty for SSDI and lowering the earnings amount for SSI)

### ***B. File a "Request for Waiver of Overpayment"***

If the recipient acknowledges that there is an overpayment and that the work history, dates and earnings appear to be accurate, but was confused about the reporting obligations, or did not notify SSA upon return to work, and obviously did not intend to defraud the SSA by intentionally withholding information, or providing false or misleading information; and it appears that to stop the recipient's check or to withhold even 10% of his/her benefits would cause the recipient a hard-ship, then a waiver request would be in order. (See 20 CFR 404.502a) and (POMS SI 02260.001 In Attachments)

### **The Recipient must be "Without Fault"**

#### **No Fault has to be shown:**

If the SSA has the burden of proof to show that an overpayment occurred, the recipient, however, has the burden of proof to show that s/he is "without fault" in causing the overpayment. The recipient is required to demonstrate:

1. That the recipient is in no way "at fault" in causing the overpayment; that the recipient did not provide false or inaccurate information to the SSA, that recipient did not with-hold information that he or she should have reported to the SSA. That recipient did not provide (i.e. withheld) information which recipient knew or should have known to be material.

2. That claimant did not receive a check which s/he could have, or should have, known s/he was not entitled to. (See 20 CFR 416.552 and 404.507) and (See POMS SI 02260.010 in the attachments)

“Although the Administration (SSA) may have been at fault in making the overpayment, that fact does not relieve the overpaid individual ....from liability for repayment if such individual is not without fault...” (20 CFR 404.507)

The POMS, however, offers relief for recipients to prove “without fault” by providing that:

- A recipient can be found without fault if s/he reported an event and the SSA took some action that recipient could reasonably believe was a correct response to the report (POMS GN 02250.042)
- For SSDI cases a recipient can be found “without fault” if s/he can show that s/he believed that the earnings test (SGA level test) was based on take-home pay rather than gross salary. The recipient has to show s/he restricted earnings so that the take-home pay would not exceed the SGA amount. (POMS GN 02250.160)
- A recipient is “without fault” if after reporting an event, SSA continued to issue checks and the recipient had a reasonable basis for believing that benefits should have kept coming after the reported event. (POMS GN 02250.066)

Moreover, the SSA has to take into consideration all the recipient’s circumstances when considering “without fault”; such as the recipient’s disability and ability to comprehend reporting requirements ( what is level of recipient’s cognitive function or dysfunction, pain level requiring sedation, anxiety, head injury, deaf, blind or other mental or physical impairment(s) that would limit ability to understand, remember and carry out instructions), age, education( is recipient functionally illiterate, did recipient need special education classes in school). (See 20 CFR 404.507) (POMS GN 02250.005.C.1)

Some credible and typical statements made by clients for not being at fault:

- I have trouble reading and/or understanding directions without them being repeated and written down; do not remember being told that I had to report income. I always sent back all the requests for information requested of me by SSA; I believed that the SSA was keeping track.
- I reported that I was going back to work. I called the 800 number and the person said that I could work and earn as much as \_\_\_\_ (The SGA amount).
- I told SSA that I received an inheritance won the lottery, received \$3000 from granddad. I trusted that once I reported it the SSA was going to take the appropriate action on my report. So I believed I was entitled to every check I received.

- I submitted my check stubs, copies of checks to SSA on a monthly, bi-monthly basis and have receipts to prove it.
- I never received any notice of overpayment; I had no idea I was being overpaid after I reported...(the event).

After establishing “without fault”, one or more of the following must also be substantiated:

### **Why Recovery of Overpayment May be Unjust**

1. It would defeat the purposes of the Title II (SSDI) or Title XVI (SSI) Act:

Recovery would be a hardship on the recipient, in that recipient would be deprived of income needed for ordinary and daily living expenses, thus defeating the basic “purposes of the Act”. (See 20 CFR 404.508 and 416.553) (See POMS SI 02260.020 in the attachments) For SSDI “defeats the purposes” is presumed if the recipient also receives SSI and/or other state welfare, or if a recipient shows that s/he uses substantially all income to meet his or her “ordinary and necessary living expenses” and if recovery would reduce assets below \$3,000 (for an individual) or \$5,000 (for a couple) plus \$600 for each additional dependent. (POMS GN 02250.115). For SSI the “defeats the purposes of the act” can be found if recipient currently is receiving SSI and other income does not exceed the federal benefit rate (\$674 for 2009) plus the general unearned income exclusion of \$20/mth. plus earned income exclusion of \$65/mth. (See 20 CFR 416.553 (b) and POMS SI 02260.020); or

2. It would be “against equity and good conscience”. This could be stated as having relied on SSA payments “to one’s detriment”. The SSA defines “equity and good conscience” as whether the recipient in relying on the overpayment, “relinquished a valuable right”, or changed his or her position for the worse.” (See 20 CFR 404.509, 416.554)

Example: Because you were receiving \$1000/month from SSDI you were able to get a loan to afford dental work, or needed home repairs; or you could afford community college tuition for computer training, dog grooming etc, and recovery of the overpayment would mean that you could not meet your loan or tuition obligations, or otherwise put you into a worse situation than before. (Your attempts to better your life style based on the SSDI received would actually turn out for the worse if the overpayment was recovered) The SSA will also waive an SSI overpayment caused by \$50 or less over the SSI resource limit as “against equity and good conscience” when the no fault condition is met as discussed above. (See 20 CFR 416.554 and 404.509 ) (See POMS SI 02260.025 in the attachments); or

3. It would impede efficient or effective administration of the Title II (RSDI) or Title XVI (SSI) act due to the small amount of the overpayment. This is often called an “Administrative Waiver”. Overpayments of \$1000.01 or less are generally waived administratively by requesting a waiver. All a recipient needs to do is show that s/he did not

intentionally provide false information or intentionally withhold information, and to ask for the waiver. (See 20 CFR 416.550.)

The Waiver Request (SSA form SSA-632-BK) may be filed at any time and more than once, since it is not an appeal. Thus it can be filed at any time that recipient's financial circumstances would alter and justify a change in repayments. (Copy of Waiver Attached). Any recovery must stop upon filing a request for either reconsideration or waiver. Generally SSA cites that the recipient must file the reconsideration and/or waiver within 30 days to stop recovery or to prevent the commencement of recovery. But in truth SSA has been instructed to stop and not start recovery upon the timely filing (within the 60 day period) of the reconsideration and at any time a waiver request is filed. See 20 CFR 404.506(b) (See SSA-632-BK in the attachments)

If the waiver cannot be approved upon review, SSA must provide the recipient with a personal conference prior to any final decision. At least 5 days prior to the conference, the recipient (and/or recipient's representative) must be provided with an opportunity to review the recipient's SSA file. The conference provides opportunity to the recipient to present any new evidence in support of his/her claim for waiver. After the waiver is formally denied in writing, the recipient has 60 days to file a reconsideration of the denial. (The Reconsideration Form and Waiver Form can be found together at <http://www.ssa.gov/online/ssa-632.html> )

If the reconsideration is denied a request (appeal) for a Hearing With An Administrative Law Judge must be filed within 60 days. (Form HA-501 can be retrieved from <http://www.ssa.gov/online/ha-501.pdf> ) Recovery of an overpayment will begin upon denial of the reconsideration and continue pending a hearing with an Administrative Law Judge.

At some period in the advocacy of a recipient you will most likely need to intervene on behalf of the recipient; receive copies of the earnings records, etc. The SSA will request that you complete a representation form, SSA-1696. This form is signed by you and the recipient and gives you the right to tend to all business with the SSA in the same manner as the recipient. On the SSA-1696 you also indicate if you are going to waive any fees for your service. The 1696 is for extended representation. If you just need a one time release for a very definite piece of data or information, you can provide SSA with form SSA-3288 "Consent For Release of Information". (Both of these can be found at [SSA.gov/forms](http://SSA.gov/forms).)

### ***C. Negotiate a Payment Plan***

The form "Request for Waiver", SSA-362BK can also be used to negotiate a payment plan or to request a change in payment amounts.

Even if the recipient cannot be found "without fault", the "defeat the purposes of the act" still must be considered when negotiating a repayment plan. Negotiating a repayment plan

is the best “last ditch” procedure to maintain one’s SSI or SSDI without losing the funds necessary for daily expenses.

Normally the SSA prefers to recover the overpayment by a monthly amount that can be paid off within a three year period. Experience has shown, however, that this can seldom be done without “defeating the purpose of the act”. Most SSI recipients would have difficulty paying even the 10%, (\$67/month. for 2009), recovery amount without a hardship. To that end a recipient can use the waiver form to list income and expenses to justify a requested recovery of less than 10%/mth over a longer period of time. This is usually granted if the recipient’s income is no more than the SSI monthly amounts plus the \$65 earned income, and \$20 unearned income amounts discussed above (\$759 for 2009).

For SSDI a negotiated settlement is usually accepted if the recipient’s income is only the SSDI monthly amount and the recipient’s assets (resources) are less than \$3,000. Again, the SSA will require an itemized statement of the recipient’s monthly income and expenses. The waiver form can be used to negotiate this as well. In SSDI cases the POMS directs a development of the record and that an appropriate rate be reviewed in such cases that would extend recovery beyond the three year limit or would be less than \$10.00 per month.(See POMS GN 02210.030 and 02250.250.A)

### **How the SSA Collects Overpayment Monies**

- By automatically taking 10% of SSI check or total SSDI check (as stated above).
- By interception of one’s federal tax refund. SSA has to provide 60 days notice of intent to take the money and provide opportunity for negotiation.
- By garnishing one’s wages, since January 2004. Garnishments are permitted under special circumstances—usually for persons no longer receiving SSI or SSDI who are working and not responding to requests for payments. Even in this circumstance the SSA has to provide 60 days notice of intent with option to negotiate payment.
- By reporting the owed overpayment as an outstanding unpaid debt on one’s credit report with all three credit reporting agencies.
- Overpayments are dischargeable in bankruptcy, if the overpayment was not caused by fraud.

Thus it bears repeating that one of the above responses needs to be made as soon as possible following the notice of an overpayment to avoid later problems.

## STEPS TO ASSIST THE RECIPIENT

As was stated above, when the SSA evaluates an overpayment case it must consider all the circumstances including the recipient's disability (did s/he not understand the notice(s) due to low I.Q, cognitive dysfunction, ADHD, visual impairment etc.), age, education (is s/he illiterate) and ability to understand reporting requirements (cognitive dysfunction, head injury, anxiety, side effects from pain medications, comprehension of English etc.)

When helping a recipient with filing an appeal or waiver, the following steps are important:

a. Review the overpayment notice(s) received by the recipient to check for the following:

That the notice has correctly stated the dates and amount of the overpayment; that the months of the overpayment are listed along with amounts paid each month and the amounts SSA claims should have been paid; in the case of TWP and EPE issues, that recipient has received notice of the dates of the TWP and the EPE with monthly earnings stated for each period. Be sure that the reason for the alleged overpayment is also stated clearly in the notice(s), i.e., unreported earnings, SGA in EPE, over resources etc.

b. Review with the recipient his/her knowledge of the overpayment causes. Does he or she believe the dates and earnings are correct? If not can s/he produce any evidence to the contrary such as W-2 statements for the periods involved, check stubs, 1040 Tax Income statements, statements from employers etc. Are there any IRWEs to be deducted that would lower or erase the overpayment—or other deductions as stated in 20 CFR 404.1112-1124?

c. Review with recipient her/his knowledge of the reporting process required by SSI or SSDI. Was s/he aware of the responsibility to report:

- a return to work?, or a cessation of work?;
- monthly income to SSA, for SSI?;
- absence from the country or of confinement to hospital etc.; and
- earnings during the EPE and to return any check for a month in which s/he earned SGA?

Does the client have memory problems or other physical or mental impairments that seem to affect recall, or ability to remember what was said to him/her in a meeting months or years ago at the SSA office? What does recipient remember about what s/he was told about working, earning and reporting?

## LAST WORD

Last, but not least, it has to be said that the SSA often does its part in setting up the environment for overpayments to happen. The SSA is notoriously slow in processing claims, updating information and responding to and recording contacts with claimants. Moreover, the SSA routinely loses or misplaces the documents and reports provided by recipients and claimants. Be that as it may, the burden is still on the recipient/claimant to be extremely careful, prudent and responsible (to exercise a “high degree of care” is the SSA language) in reporting to the SSA.

When all is said and done, the most important piece of advice is now given: Whatever you and/or your client send to the SSA field office, send it by *certified mail, return receipt requested*; and whatever you deliver to the SSA field office *make sure you receive a date stamped copy of the document(s) delivered*. It would also be in the recipient's best interest to take a witness with her/him whenever he or she deals in person with the SSA. Whenever you or a recipient speak in person, or by phone, with an SSA representative, keep a note of the time, place, with whom you spoke and what s/he told you. When recipients are diligent with the facts of their cases, overpayments are easier to resolve in their favor.

The author, Eddie Dedrick, Public Benefits Paralegal, LSNV, can be reached at [ededrick@lsnv.org](mailto:ededrick@lsnv.org).