



Neighborhood Legal Services
of Los Angeles County

Training on Social Security Overpayments, Waivers, and Change in Recovery Rate Requests

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Neighborhood Legal Services of Los Angeles

NLSLA is an LSC-funded legal aid organization located in the northern Los Angeles area, serving the communities all around LA. We provide a wide range of free legal services to low-income individuals for issues related to housing, education rights, immigration, public benefits, expungement, consumer rights, access to health care, and more.

Social Security Administration (SSA)

- Federal government agency
- Administers benefits under the Social Security Act of 1935: “To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.”

Categories of Eligibility for Benefits

- **Categorical eligibility:** Who can get benefits? When?
- **Financial eligibility:** Income & Resource requirements?
- **Conduct eligibility:** Any required behaviors or actions?
- **Procedural eligibility:** Applying, Reporting, etc.

Title II
Social Security
Benefits



Benefits Under Title II of the Act

Benefits	POMS
Social Security Disability Insurance (SSDI)	POMS DI
Retirement Benefits	POMS RS 00201.000
Survivor's Benefits	POMS RS 00202.000
Dependents' Benefits	POMS DI 10115.001; POMS RS 00203.001

Categorical Eligibility:

Must have “fully insured status:” the number holder (NH) must have worked for a certain length of time to meet insured status. i.e. “duration-of-work” test

SSDI	Retirement	Survivor's	Dependents'
Disabled according to SSA's definition, unable to work – must prove using medical evidence	<ul style="list-style-type: none">- Be fully insured- Age 62+	<p>Surviving spouse of deceased worker</p> <p>Surviving Disabled Child of deceased worker</p>	Dependent spouse, ex-spouse, or disabled child of the insured worker

Benefit Amount

- Funded through payroll (FICA) taxes that are paid into Social Security trust funds – you fund your own benefit
- Amount is Based on Earnings
 - Need 40-quarters(credits) of work or about 10 years

Survivors of Workers

- Widow(er)s
 - Spouse or divorced spouse of worker – at least 9 months of marriage
 - Over age 60
 - If disabled, over age 50 with disability that started within 7 years of worker's death
- Parents of worker's child
 - Widow(er) of deceased worker
 - Not married currently
 - Caring for disabled adult child or disabled child under 16
- Eligible dependents: unmarried under 18 or adult disabled child

Conduct or Procedural Eligibility?

- None – as long as you apply and you meet the categorical requirements, you can receive Title II benefits.

Title XVI
Supplemental
Security
Income (SSI)



Financial Eligibility



- “Means-tested” program
- Income: Must be Less than Aid
 - Ignore \$20 for all income
 - \$65 Deductions for earnings then divided by 2
- Resource:
 - \$2000/\$3000 (couples on SSI)
 - Exempt a home, personal belongings, one car

Categorical Eligibility

- Aged (65 or older)
- Disabled--Must Prove Disability to SSA using medical evidence
- Excluded Categories
 - Fleeing Felons
 - Non-Citizens
 - BUT California has CAPI



What do you get?

- Funded by general fund taxes
- Monthly Grant in California:

Category	Aged/Disabled	Blind
Single	\$1133.72	\$1211.00
Couple	\$1927.62	\$2134.14

- Medi-Cal/Medicare
- Can get CalFresh starting June 1, 2019

Procedural Eligibility

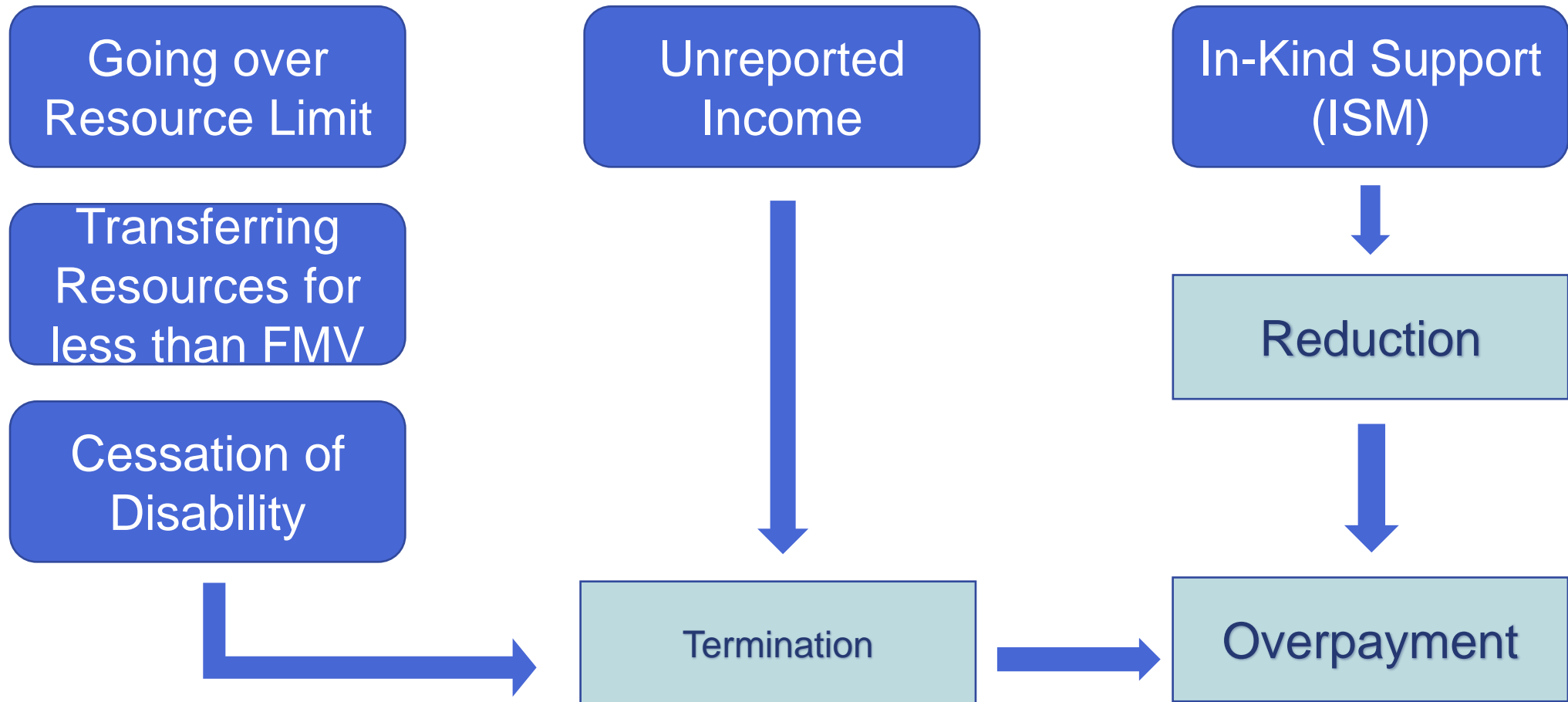
- Application
 - Requires verification/ personal interview
 - proof of disability (SSA standard)
- Report any Changes w/in 10 Days after month of change
 - Income change
 - New resources
- Redeterminations – every 1-6 years, SSA will review the recipient's eligibility and benefit amounts, usually by reviewing income, resources, and living arrangements.

Conduct Eligibility

- Residence:
 - Absence from the US for more than 30 days will cause loss of eligibility
 - Living in a public institution or medical facility of certain requirements will cause SSI termination
- Having an unsatisfied warrant of arrest may terminate SSI eligibility
- Working and Earning Income:
 - SSI: earned income can cause SSI benefits to decrease
 - SSI and SSDI: working can cause a finding that you are no longer disabled
 - Retirement: if you have not reached full retirement age, your income can reduce retirement benefits



Common Post-Eligibility Issues





Overpayments

What are overpayments?

- The total amount someone received from SSA for any time period which exceeded the amount they should have been paid for that period.
- Backward-looking process
- If you are found "ineligible" for benefits for any given month in the past, that entire month's benefits become an overpayment

Common Causes of Overpayments: Disability Cessation

- “You were no longer disabled” – For SSDI/SSI benefits, SSA conducts a disability review once every few years. If they decide your disability ended on a certain date, but you continued getting benefits, you will be charged an overpayment.
- Generally, beneficiaries who appeal this decision must undergo a new medical determination process.
- How to respond in a Waiver Request: "the client appealed in good faith"

Common Causes of Overpayment: Income

Title II

- Retirement – Earnings Test (ET): monthly benefits reduced by excess earnings if under or in the year of FRA
- SSDI – “You exceeded the Substantial Gainful Activity (SGA) Limit”

Title XVI

- SSI will be reduced based on how much income you earn
- Some income can be excluded from counting
 - i.e. IHSS income to care for SSI recipient in the same household

Common Causes of Overpayments: Resources

- Title XVI only
- If your total resource value exceeds \$2000 in any given month, you are terminated from SSI benefits for each month
- Some resources can be excluded from counting
 - Home you live in
 - One family vehicle
 - CalABLE accounts, up to \$100,000
 - [SSA - POMS: SI 01110.210 - Excluded Resources - 12/15/2008](#)

Common Causes of Overpayments: Resources cont.

- Resources that may cause an overpayment:
 - Joint Accounts / POA accounts
 - Stocks / Bonds
 - Life insurance policies with cash surrender value
 - Property you own other than the place you are living in
 - Trusts in which you are the beneficiary

Common Causes of Overpayments: In-Kind Support and Maintenance, SSI only

- “In-Kind Support and Maintenance” (ISM)
- If SSA believes you are receiving help from someone to pay for “food and/or shelter,” they will reduce your benefits.
- Examples:
 - someone helps pay for your groceries or buys you food regularly
 - Someone helps pay for your rent or utility bills
 - You live with family, or your landlord is family, and they charge you less rent than fair market value (FMV)
- Reduction amount: subject to change, but generally \$324.66 in 2023

Notice of Overpayment

- The first indication of an overpayment are two notices mailed to the client:
 - Notice of Overpayment
 - Notice of Change in Payment
- The Notice must include the following information:
 - The total amount of the overpayment
 - The monthly amount that was paid
 - The monthly amount that should have been paid
 - Why a different amount was due
 - Which months were involved

Sample Notice of Change in Payment

Social Security Administration Supplemental Security Income Notice of Change in Payment

SOCIAL SECURITY
1122 W WASHINGTON BLVD
STE 201
LOS ANGELES CA 90015
Date: April 26, 2022
BNC#: 22S1055J86395 AI



0010083 00015157 2 AB 0.461 SN6LNA T64 P4
SSI M02 04/19 253 22S1055J86395
TERESA YU
3100 S VERMONT AVE
APT 126
LOS ANGELES CA 90007-3097

We plan to increase your monthly Supplemental Security Income (SSI) payment from \$0.00 to \$1,040.21 beginning June 2022. The amount will change because you did not have countable resources worth more than \$2,000.00 for June 2022. You will continue to get the new amount each month unless there is a change in the information we use to figure your payment.

We are also changing the amounts you were due for November 2020 through January 2021, April 2021 through May 2021, August 2021, January 2022 and April 2022 through May 2022. Your amounts changed for the following reasons:

- You did not have countable resources worth more than \$2,000.00 for November 2020, January 2021, May 2021, August 2021, January 2022 and April 2022 through May 2022.
- You had countable resources worth more than \$2,000.00 for December 2020 and April 2021.

As a result, you are due \$1,040.21 more for May 2022.

We explain how we figured the monthly payment amount on the worksheets at the end of this letter. The explanation shows how your income, other than any SSI payments, affects your SSI payment. We include explanations only for months where payment amounts change.

When You Will Receive Your Payments

Your bank or other financial institution will receive a payment of \$1,040.21 by

22S1055J86395
04/26/2022

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HOW WE FIGURED YOUR PAYMENT FOR November 2020

Your Payment Amount

The most Federal SSI money the law allows us to pay	\$783.00
We didn't subtract (-) any income from Federal SSI money	- 0.00
Federal SSI money	\$783.00
Plus (+) the most State SSI money the law allows us to pay	+160.72
We didn't subtract (-) any income from State SSI money	- 0.00

Total SSI Payment for November 2020	\$943.72
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Sample Notice of Overpayment

Social Security Administration
Supplemental Security Income
Notice of Overpayment

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date: 4/29/2022

We are writing to let you know we have paid you \$14,447.78 too much in Supplemental Security Income (SSI) money. The overpayment happened in the months between 07/01/20 and 03/01/22.

You could not get SSI since the value of your resources was more than the SSI limit. As a result you were overpaid in the months between 07/20 and 03/22. For (Enter Year) the limit on the value of the things you owned which we included as your resources was \$(Enter Resources Limit). Resources may include cash, money in bank accounts, stocks, bonds, land or housing other than your home, certain kinds of life insurance and some other things. Your Social Security office can tell you which things we include as resources

Overpayment Collection

- Once SSA establishes an overpayment, SSA will take various actions to collect the overpayment from the recipient:
 - SSA sends a “Billing Statement” demanding that the beneficiary pay back the entire amount of the overpayment
 - If the beneficiary currently receives SSI, SSA will deduct 10% from each month’s benefit until the benefit is fully repaid
 - If the beneficiary currently receives Title II benefits (SSDI, SSR, etc.), SSA may deduct the **entire amount** of benefits in an effort to collect within 36 months
 - If the beneficiary does not currently receive Title II/XVI benefits and does not respond to the Billing Statement, SSA will collect from his or her tax returns



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How to Respond to Overpayments

Request for Reconsideration or Waiver?

Request for Reconsideration

- If the overpayment is **incorrect**, it is best to file a Request for Reconsideration (SSA-561)
- Deadline to file: 60 days from the date of notice (plus 5 days for mailing)
- Cases that may require Reconsideration:
 - SSA says the client held property or resources worth more than \$2000, but client denies owning any resources at this value
 - SSA says the client earned money for a certain time period, but client says he or she never worked there
 - The overpayment dates or total amount is incorrect

Request for Waiver of the Overpayment

- If the overpayment appears correct, then an alternate way to challenge an overpayment is by filing a Request for Waiver (SSA-632).
- A waiver request asks SSA to stop trying to collect the overpayment from the client, even though the client was overpaid.
- Two elements must be met:
 - The client is “not at fault” for causing the overpayment, and
 - The client cannot afford to pay this money back (“Collection would defeat the purpose of the Social Security Act”)

Request Change in Recovery Rate

- If neither a Reconsideration nor Waiver is feasible, or if both are denied, Request a change in recovery rate (SSA-634).
- In requesting change in recovery rate, the beneficiary asks SSA to only collect a small amount from the monthly benefits (i.e. only \$20 per month), due to financial hardship.



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Waiver Request

Step-by-Step Guide

www.nlsla.org

Assess the Facts of the Case

- Was the individual “at fault” for the overpayment?
 - “all of the circumstances” must be considered, including: the individual’s disability, age, education level, language proficiency, comprehension of reporting requirements, other circumstances at the time the OP occurred
 - i.e. Did the client report the changes that caused the OP and SSA failed to act on the report? If not, was there a good reason he or she did not report?
- Would collection of the OP “defeat the Purpose of the Act”? I.e. Would collection cause “financial hardship” for the client?
 - What is their current income?
 - What are their living expenses? (i.e. rent, utility bills, travel costs, food costs, cost of clothing or household items, credit card bills, loan repayments, etc)
 - What can they actually afford to pay?

Fill Out Waiver Request Form (SSA-632)

[Form SSA-632 | Request For Waiver Of Overpayment Recovery Or Change In Repayment Rate](#)

Form **SSA-632-BK** (04-2019) UF
Discontinue Prior Editions
Social Security Administration

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OMB No. 0960-0037

Request for Waiver of Overpayment Recovery

When To Complete This Form

Complete this form if any of the following applies:

- You think that you are not at fault for the overpayment and you cannot afford to pay the money back.
- You think that you are not at fault and you think the overpayment is unfair for some other reason.

We will use your answers to decide if you have to pay the money back. If we decide you do not have to pay the money back, we call it a waiver. If you also think we made a mistake when we decided that you were overpaid, or if you disagree with the amount of your overpayment, please also complete the **SSA-561**, Request for Reconsideration. We call this action an appeal.

When Not To Complete This Form

- If you do not wish to request a waiver, but you think we made a mistake when we decided that you were overpaid, or if you disagree with the amount of your overpayment. Instead, please complete the **SSA-561**, Request for Reconsideration.

Fill Out SSA-795 “Statement of Claimant or Other Person”

STATEMENT OF CLAIMANT OR OTHER
PERSON (ssa.gov)

It's best practice to draft a short statement on the client's behalf, describing the relevant facts in the client's own voice.

If there are other relatives, friends, or witnesses who can corroborate client's statement, draft a statement for them too.

Best practice: submit wet signature of client.

Form SSA-795 (06-2022) UF Discontinue Prior Editions Social Security Administration		Page 1 of 2 Form Approved OMB No. 0960-0045
STATEMENT OF CLAIMANT OR OTHER PERSON		
Name of Wage Earner, Self-employed Person, or SSI Claimant	Social Security Number	
Name of Person Making Statement (<i>If other than above wage earner, self-employed person, or SSI claimant</i>)	Relationship to Wage Earner, Self-Employed Person, or SSI Claimant	
Understanding that this statement is for the use of the Social Security Administration, I hereby certify that -		

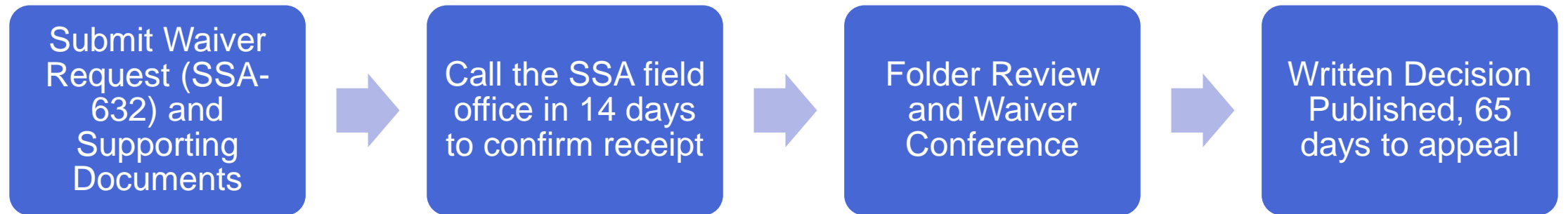
Documents as Evidence

- If the client has any documents to show he or she is “not at fault,” submit it as evidence. Such documents may include:
 - SSA documentation proving the client reported the changes on time
 - Medical evidence showing why the client had good reason for failing to report on time, such as incapacity, or an inability to understand the rules and reporting standards
- If the client has documents showing financial hardship, submit it as evidence. This may include:
 - Current bank statements
 - Monthly rent or mortgage payments
 - Monthly utility bills
 - Monthly insurance
 - Any other monthly bills
 - Records of any debts you have
 - Proof you are behind on bills or rent
 - Proof of high medical costs

Draft a Cover Letter

- Draft a letter addressed to the Social Security office assigned to the client, explaining the facts of the case and why this overpayment should be waived.
- Lay down all the arguments for 1) why the client is not at fault, and 2) collection would defeat the Purpose of the Act.

What Happens Next



Contact Us

- Legal Assistance Hotline:
 - **(800)-433-6251**
 - M-F 9am-12pm, 1pm-4pm
- Health Consumer Center Hotline:
 - **(800) 896-3202**
- Disaster Relief Hotline
 - **800-870-0732**

