

Beware of Social Security Overpayments

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on September, 2011.

The Social Security Agency provides supplemental income for nearly 60 million people. Taxes collected from workers go into Social Security and are used to pay benefits to retirees, people with disabilities, survivors of workers who have died and dependents of beneficiaries. Although it wasn't meant to be the sole source of income for people when they retire, many Americans depend on it as their only or largest source of monthly income.

Accordingly, when a claimant or the representative payee receives an overpayment notice from Social Security it can be shocking, especially when it is not the recipient's fault. It may be one month, one year or more before the error is discovered.

Whether an overpayment occurs because of simple error or outright fraud (i.e. not reporting assets or changes to living situations in the case of SSI or SSDI), the claimant is expected to repay the extra income. In fact, if you don't repay Social Security, your federal income tax refund or, if you are still working, your wages may be garnished until the amount is repaid. The amount of your overpayment is the difference between the amount you received and the amount due.

After providing notice of overpayment, Social Security must wait 60 days before taking any refund offset and give the claimant an opportunity to present proof showing why the notice is incorrect.

If you disagree with Social Security's overpayment amount, there are three options:

1. Request an appeal and provide documentation verifying that you weren't overpaid or that the overpayment amount is incorrect.

To appeal, visit your local Social Security office and complete a 561-U2 form. Keep a copy and quickly return the original to Social Security. This must be received within 60 days of the notice. If you disagree with the outcome of your first appeal, another appeal in the form of a hearing is allowed.

2. If you agree with the overpayment amount but don't think you should be required to repay it, it's possible to have the overpayment forgiven. You must show that the overpayment wasn't intentional and that you cannot pay it back.

In this case, you can request in person at your local Social Security office, or by mail, a waiver form 632BK which officially records your request. State on the form why you feel the overpayment wasn't your fault and why you can't pay it back.

It's important to file the waiver as soon as possible, but there's no deadline for doing so. If your first waiver is denied, schedule a personal meeting with Social Security. This conference is a good opportunity to get your overpayment forgiven. If you still disagree with Social Security's conclusion, request an appeal.

3. Repay the overpayment.

After 60 days, or when a waiver is denied, Social Security begins deducting the overpayment from the recipient's monthly benefit. This may present problems for someone living on a fixed income. Contact Social Security to arrange a payment plan. Alternatively, provide them with a completed appeal form.

If you believe Social Security's overpayment amount is incorrect or unwarranted, contact an Elder Law attorney to discuss your options and/or to represent you in your appeal.