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Overpayments

By Elaine Floyd, CFP®

Imagine getting a letter from SSA saying that they overpaid you, that you were not entitled to the benefits you've been receiving, and that you must now repay \$59,000 in benefits that should not have been paid to you.

This is what happened to the client of one of our financial advisors who had been happily receiving spousal benefits not knowing that once her husband suspended his benefit in January of 2019, she was no longer entitled to those benefits. This was new with the Budget Act of 2015. Under the new rules, which were intended to disallow the popular file-and-suspend strategy, spousal benefits cannot be paid if the worker suspended his benefit after April 29, 2016. But SSA has been paying them in some cases and is only now catching the error. Whenever SSA discovers that someone has been paid benefits they were not entitled to, they will send a Notice of Overpayment demanding repayment of those benefits.

My friend Barbara, who was retired and receiving a pension from a job in which she did not pay into Social Security, applied for—and received—divorced-spouse benefits. They were not reduced by two-thirds of her pension amount under the GPO as they should have been. When SSA discovered the error, it demanded repayment of some \$50,000. Barbara

says she told SSA about the pension and that it was their mistake. SSA says she was not entitled to those benefits, and she was obligated to pay them back.

Sometimes the overpayments are related to the earnings test. This can happen when a person under FRA who applied for early benefits fails to report projected earnings. When earnings are reported by the employer after the first of the year, SSA calculates the amount that should have been withheld for the earnings test and requests those benefits back.

WHAT IF YOU GET A NOTICE OF OVERPAYMENT?

If you get a Notice of Overpayment, your initial reaction may be that it's a mistake. Often the notice does not say how or why the overpayment was made, only that you received benefits you were not entitled to and now you have to pay them back. Sometimes the overpayment relates to arcane rules you could not be expected to know about. For example, how was our advisor's client supposed to know there was a rule prohibiting the wife from receiving spousal benefits when the husband's benefit is in suspension? People assume that if they are receiving benefits, they must be entitled to them.

The Notice of Overpayment bluntly asks that the amount be paid in full within 30 days. If the required payment isn't made, SSA will start withholding benefits until the debt is paid off.

REQUEST FOR RECONSIDERATION

If you ever get a Notice of Overpayment and if you believe the notice was in error – that is, you do not believe you were overpaid, or the amount is wrong – you can ask for Reconsideration. This is an appeal. It means you want SSA to look at your case again. You can file form SSA-561-U2 at your local office or submit an appeal online. The request must be filed within 60 days of receiving the notice of overpayment. But it really should be filed within 30 days in order to prevent benefits from being withheld. Once SSA receives the request for reconsideration, they will stop taking the overpayment out of current benefits until after they reach a decision.

During the Reconsideration an SSA worker will review the papers in the file and make a new decision based on this file review. You will have an opportunity to present any new documents you want SSA to see. After reconsideration, if SSA still says you were overpaid, you can appeal that decision by asking for an Administrative Hearing before an Administrative Law Judge. Here you can tell your side of the story and be represented by counsel if you wish.

APPLY FOR WAIVER

If the overpayment was not your fault AND you cannot afford to pay it back, you can request a waiver. A waiver means that even though you were overpaid, the SSA will not ask you to give the money back. SSA-632-BK is used to request a waiver. It asks for details about the overpayment and seeks in-depth financial information in an effort to determine your inability to repay.

Examples of “no fault” include things like:

- You didn't know you had to give SSA some information they claimed they needed
- You did report new information to SSA, but SSA did not reduce your benefits and you thought you were receiving the right amount
- You did not know that the information you gave SSA was incorrect
- You thought the payments you received were correct

If SSA believes you are without fault, then they decide whether or not you can afford to pay it back. This can be because:

- You receive some sort of public assistance like SSI
- Repaying the overpayment will put you into debt or make you unable to pay your ordinary living expenses
- Recovering the overpayment from you would be extremely unfair. For example, if you changed your positions for the worse or gave up a valuable right because you relied on what Social Security told

you, then that would be unjust. SSA says that this is “against equity and good conscience.”

The clients referenced above make the point that if they had known the wife wasn't entitled to spousal benefits while the husband's benefit was in suspension, they might have pursued a different strategy, such as the restricted application strategy where the wife files for her own benefit and the husband files for his spousal benefits based on her record. (They were grandfathered for this strategy under the Budget Act.) I suggested that the advisor run our Spousal Planning Calculator to see the results of that scenario and how it compares to the file-and-suspend strategy. Perhaps the overpayment could be reduced to that differential and may be offset entirely.

INSTALLMENT PLAN

If you believe the overpayment is accurate but you are unable or unwilling to pay it all at once, you can request to pay it off in installments or propose a lower amount. SSA will generally accept an offer to repay an overpayment in installments without question if the installments will repay the overpayment within 36 months. If an offer to repay in installments takes more than 36 months, SSA will ask the claimant to prove that a financial hardship exists. SSA will also generally accept a lump-sum compromise offer of 80% of the total overpayment. If a lump-sum offer is less than 80% of the total overpayment, SSA has discretion to consider the offer, depending on the circumstances.

COLLECTION METHODS

The most common way SSA collects overpayments is through the withholding of future benefits. My friend Barbara was receiving a WEP-adjusted benefit on her own record of about \$500 a month. When she applied for the divorced-spouse benefit, she got a spousal add-on of about \$700 per month. Once SSA determined she was not entitled to the spousal benefit, it stopped that benefit and started withholding her \$500 benefit. This withholding will continue until the debt is paid off, sometime in 2024.

If a person is not receiving any type of Social Security benefits, SSA will ask for repayment by check or credit card. If the debt is not paid, it can be recovered from the person's federal income tax refund or by garnishing wages. It may also be collected through the withholding of future Social Security benefits.

PAY ATTENTION TO YOUR MAIL

As you can see, overpayments are not to be taken lightly. Even if an overpayment is SSA's fault, those benefits must still be repaid.

The vast majority of SSA dealings come off without a hitch, but when there's a problem it needs to be dealt with immediately. Never underestimate the power of a government bureaucracy to collect monies it believes it is owed.

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