



SSI/SSDI Cessation and Overpayment

with

NASSAU SUFFOLK LAW SERVICES COMMITTEE, INC.

Presented by John Batanchiev, Esq.



Housekeeping



*Doing What's Legally
Possible to Create a Just
World Since 1966.*



Please keep your microphone muted.

Please put any questions in chat and we will address throughout presentation.

There will be polls throughout the presentation and a survey to complete at the end.

Thank you!

Who we are and what we do...



*Doing What's Legally
Possible to Create a Just
World Since 1966.*



- Over 6,000 legal cases each year
- Direct representation, phone consultations
- Brief service or referrals
- Offices in Hempstead, Islandia, Riverhead
- Case handling staff includes attorneys, paralegals and social workers
- Partnerships with Community Agencies



*Doing What's Legally
Possible to Create a Just
World Since 1966.*



Office Locations

Hempstead:

1 Helen Keller Way 5th Fl
Hempstead NY 11550

(516) 292-8100

Islandia (Western Suffolk) :

1757 Veterans Hwy Ste 50
Islandia NY 11749

(631) 232-2400

Riverhead (Eastern Suffolk) :

400 W. Main St Suite 200
Riverhead, NY 11901

(631) 369-1112

Nassau Suffolk Law Services

Programs

Family

- Domestic Violence Family Court Project (Suffolk)
- Child Support Project

Disability & Health-Related Projects

- HIV Unit
- Mental Health
- ICAN - Advocates in Managed Long-Term Care
- Education and Disability Rights (Special Education and Rights of Developmentally Disabled)
- Disability Advocacy Project (SSD/SSI Appeals)



Doing What's Legally Possible to Create a Just World Since 1966.



Nassau Suffolk Law Services

Programs ctd.



***Doing What's Legally
Possible to Create a Just
World Since 1966.***



Housing

- Civil Unit (Eviction Prevention)
- Adult Home Project
- Foreclosure Project

Other

- Consumer Debt
- Veterans Rights
- Re-Entry Project
- Public Benefits
- Senior Citizen Project (Nassau)
- Pro Bono Project (Suffolk)
- Volunteer Lawyers Project (Nassau)
- Community Legal Help Project (Suffolk)



*Doing What's Legally
Possible to Create a Just
World Since 1966.*



Legal Support Center for Advocates

Advocates call (631) 232-2400 for assistance:

Sharon Campo - x3368 Cathy Lucidi - x3324

- Provide Technical Support to Advocates
- “Advocates” include legislative staff, social workers, outreach workers, medical personnel, and guidance counselors
- Host Community Trainings
- Publish Newsletters



***Doing What's Legally
Possible to Create a Just
World Since 1966.***



Just a Note...

Nassau/Suffolk Law Services makes every effort to keep legal educational materials up to date. However, the situation is rapidly evolving. The information contained in this material is not legal advice. Legal Advice depends upon the specific facts of each situation. These materials cannot replace the advice of competent legal counsel.



*Doing What's Legally
Possible to Create a Just
World Since 1966.*



SSI/SSDI Cessation and Overpayment

SSDI Basics

- SSDI payments are based on a person's earnings
- Insurance that workers earn by paying Social Security taxes on their earnings
- Pays benefits to disabled individuals who are unable to work, regardless of their income and resources.



SSI Basics

- **Supplemental Security Income (SSI)** payments are not based on a person's earnings.
- Needs-based public assistance program that does not require a person to have a work history
- Who qualifies:
 - Disabled individuals who are unable to work and have limited income and resources
 - Individuals 65 and older with limited income and resources



2022 SSI and SSP Maximum Monthly Benefit Chart

2022 SSI and SSP Maximum Monthly Benefit Levels Chart (reflects the 5.9% federal COLA increase, effective January 1, 2022)

Fed L/A Code	State Supp Code	New York State Living Arrangement	Federal Benefit/ Individual	State Benefit/ Individual	Total Benefit/ Individual ¹	Federal Benefit/ Couple	State Benefit/ Couple	Total Benefit/ Couple ¹
A	A	Living Alone	\$841	\$87	\$928	\$1,261	\$104	\$1,365
A, C	B	Living with Others	\$841	\$23	\$864	\$1,261	\$46	\$1,307
B	F	Living in the Household of Another ²	\$560.67	\$23	\$583.67	\$840.67	\$46	\$886.67
A	C	Congregate Care Level 1- <i>Family Care</i> NYC, Nassau, Rockland, Suffolk and Westchester Counties	\$841	\$266.48	\$1,107.48	\$1,261	\$953.96	\$2,214.96
A	C	Congregate Care Level 1- <i>Family Care</i> Rest of State	\$841	\$228.48	\$1,069.48	\$1,261	\$877.96	\$2,138.96
A	D	Congregate Care Level 2- <i>Residential Care</i> NYC, Nassau, Rockland, Suffolk and Westchester Counties	\$841	\$435	\$1,276	\$1,261	\$1,291	\$2,552
A	D	Congregate Care Level 2- <i>Residential Care</i> Rest of State	\$841	\$405	\$1,246	\$1,261	\$1,231	\$2,492
A	E	Congregate Care Level 3- <i>Enhanced Residential Care</i>	\$841	\$694	\$1,535	\$1,261	\$1,809	\$3,070
D	Z	Title XIX (Medicaid Certified) Institutions ³	\$30	\$0 ⁴	\$30	N/A	N/A	N/A
A	Z	See Next Page ⁵	\$841	\$0	\$841	\$1,261	\$0	\$1,261




Doing What's Legally Possible to Create a Just World Since 1966.

2023 SSI & SSP Maximum Monthly Benefit Chart

2023 SSI and SSP Maximum Monthly Benefit Levels Chart (reflects the 8.7% federal COLA increase, effective January 1, 2023)

Fed L/A Code	State Supp Code	New York State Living Arrangement	Federal Benefit/ Individual	State Benefit/ Individual	Total Benefit/ Individual ¹	Federal Benefit/ Couple	State Benefit/ Couple	Total Benefit/ Couple ¹
A	A	Living Alone	\$914	\$87	\$1,001	\$1,371	\$104	\$1,475
A, C	B	Living with Others	\$914	\$23	\$937	\$1,371	\$46	\$1,417
B	F	Living in the Household of Another ²	\$609.34	\$23	\$632.34	\$914	\$46	\$960
A	C	Congregate Care Level 1- <i>Family Care</i> NYC, Nassau, Rockland, Suffolk and Westchester Counties	\$914	\$266.48	\$1,180.48	\$1,371	\$989.96	\$2,360.96
A	C	Congregate Care Level 1- <i>Family Care</i> Rest of State	\$914	\$228.48	\$1,142.48	\$1,371	\$913.96	\$2,284.96
A	D	Congregate Care Level 2- <i>Residential Care</i> NYC, Nassau, Rockland, Suffolk and Westchester Counties	\$914	\$435	\$1,349	\$1,371	\$1,327	\$2,698
A	D	Congregate Care Level 2- <i>Residential Care</i> Rest of State	\$914	\$405	\$1,319	\$1,371	\$1,267	\$2,638
A	E	Congregate Care Level 3- <i>Enhanced Residential Care</i>	\$914	\$694	\$1,608	\$1,371	\$1,845	\$3,216
D	Z	Title XIX (Medicaid Certified) Institutions ³	\$30	\$0 ⁴	\$30	N/A	N/A	N/A
A	Z	See Next Page ⁵	\$914	\$0	\$914	\$1,371	\$0	\$1,371



Doing What's Legally Possible to Create a Just World Since 1966.

Resource Limits

- There is no resource limit for SSDI claimants
- SSI has a resource limit
 - \$2,000 for an individual
 - \$3,000 for a couple
- **Supplemental Security Income Restoration Act of 2021** – Bi-partisan bill introduced in the U.S. Senate that if passed into law would increase the resource limits and adjust them to inflation as well as other reforms to the SSI program.



Resource Transfers

- When an SSI claimant gives away a resource or sells a resource for less than the fair market value, SSA will treat that as if the claimant did this for the purpose of becoming eligible or continuing eligibility for SSI. This is a rebuttable presumption.
- To be rebutted, must have convincing evidence that the resources were exclusively transferred for a reason other than to become or remain eligible for SSI



Resource Transfer Penalty Period

- If claimant transferred resources, they can be ineligible for SSI up to 36 months.
- To calculate period of ineligibility, take the total transferred amount and divide it by the Federal Benefits Rate based on the individual's living arrangement. Take that amount and round down to the nearest whole number for the number of months of ineligibility.
- Rosa Rooter transferred \$7,500 as a gift to her daughter after winning a personal injury settlement. Rosa's SSI monthly amount is \$841. Rosa will be ineligible for SSI for 8 months.



SSDI Income Rules

- Claimant's monthly earnings from work cannot be more than the substantial gainful activity amount (SGA)
- **2022 SGA Limit:**
 - \$1,350 for non-blind individuals.
 - \$2,260 for statutorily blind individuals.
- **2023 SGA Limit:**
 - \$1,470 for non-blind individuals.
 - \$2,460 for statutorily blind individuals.
- SSDI benefits are all or nothing if over SGA
- There are many work programs with their own specific rules such as Trial Work Period, Work Incentives Planning and Assistance (WIPA), and Ticket to Work



SSI Income Rules

- Generally, the more money a recipient makes the smaller their SSI check.
- SSI rules are designed to give the SSI recipient an incentive to try to work
- The number of hours or months worked does not matter, only how much the paycheck is.



Cont. on next slide...

SSI Income Rules

- **Unearned income:**
 - \$20 general income exclusion plus dollar-for-dollar reduction from unearned income towards SSI benefits
- **Earned income:**
 - \$20 general income exclusion if no unearned income plus \$65 earned income exclusion then 50% of remaining earned income excluded.



SSI Budget Example

- Susan receives \$420 in SSDI benefits and \$441 in SSI benefits
- Susan's job earns her \$1,085 gross monthly income

Step 1	Unearned income	\$420 (SSDI)	Step 3	Counted unearned income	\$420
Step 2	Earned income	\$1,085		Counted earned income	<u>+\$500</u>
	Earned income exclusions	<u>-\$85</u>		Total counted income	\$920
		\$1,000	Step 4	SSI Federal Benefit Rate	\$841
	Additional 50% exclusion	<u>-\$500</u>		Counted income	<u>-\$920</u>
	Counted earned income	\$500		SSI benefit	\$0

- Susan's total monthly income will be \$1,505 (SSDI, earnings). She will not get SSI.



Cessation Overview

- Look back period to suspend benefits
 - No more than 4 years for SSDI
 - No more than 2 years for SSI
 - Unless “fraud or similar fault” are found.
- SSA rules allow an additional 6 months, otherwise SSA must show “diligent pursuit”
- Why are benefits suspended?
 - Medical improvement – Continuing Disability Reviews
 - Working over SGA
 - Over resourced
 - Transfer of Resources
 - Other reasons for ineligibility



Cont. on next slide...

Cessation Overview

- **SSI:** 12 months of benefit suspension results in termination and claimant will need to reapply.
- **Expedited Reinstatement**
 - Benefits stopped because of earnings from work
 - Are now no longer able to work or perform SGA
 - Are still disabled due to the same impairments that allowed you qualify for SSDI/SSI
 - Request must be made within 5 years from the month the benefits stopped.



Overpayments

- The total amount of benefits an individual received which exceeds the total amount which should have been paid for that period.
- SSA withholds benefits to repay overpayment
- **SSDI:** Up to 100% of full monthly benefit
- **SSI:** Up to 10% of full monthly benefit (\$84 max for 2022)



Why Do Overpayments Happen?

Over income limit
(fluctuating income)

Over resource limit
(settlement, inheritance,
lottery, etc.)

Marriage

**In-kind support and
maintenance**
(food, shelter)

**Outside U.S. for more
than 30 days**
(SSI only)

**Institutionalized for
more than 30 days**
(nursing home, prison)

**Non-compliance with
work incentive rules**

**Workers' Compensation
offsets**



Doing What's Legally Possible to Create a Just World Since 1966.

Events to Report to SSA

1.) Change of address

2.) Change in living arrangements (SSI only), such as

- Change in marital status
- Death of spouse or member of household
- New person living in household
- Admission to nursing home or hospital
- Admission to/release from prison/jail

3.) Change in income, including

- New or any income
- New benefit payments to household
- Wages from work (SSI/SSD, early retirement situations)
- Increase in resources (such as savings accounts)

4.) Leaving the US for more than 30 days, including trips to Puerto Rico (SSI only)

5.) If the claimant is disabled, the following events must be reported: (SSI & SSD)

- Medical improvement
- Return to work (and wages earned)



Doing What's Legally Possible to Create a Just World Since 1966.

Reporting Tips to SSA

- Must be reported within 10 days after the end of the month in which the event occurred.
- Claimant should keep a notebook or a file to keep track of
 - Paystubs or other wage information
 - The date that they reported the event to SSA and the name of the SSA rep the client spoke with.



Overpayment Options

1. Appeal the overpayment
2. Request a waiver
3. Request a lower repayment amount
4. Do nothing

*Outside of SSA administrative process: bankruptcy



SSDI Notice of Overpayment

- Must include the following:
 - Overpayment amount and how and when it occurred
 - Right to request reconsideration of the overpayment
 - Right to request waiver of recovery and the automatic scheduling of a personal conference if a request for waiver cannot be approved
 - Request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit
 - Proposed adjustment if refund is not received within 30 days and adjustment is available
 - Availability of 1) a different rate of withholding; 2) installment payments and/or cross-program recovery
 - Need to notify the field office if any action is being taken in response to notice



SSI Notice of Overpayment

- Must include the following:
 - Overpayment amount and how and when it occurred
 - A monthly accounting of what was paid and what should have been paid out
 - A request for payment of the full overpayment amount
 - A 10% proposed adjustment of SSI benefits and state a date (month and year) at least 60 days in the future on which such adjustment will begin
 - The possibility of cross-program recovery
 - The right to request a reconsideration/waiver of the overpayment
 - How to request reconsideration/waiver



Notice of Planned Action

Notice of Planned Action

Looks forward to determine the client's current eligibility

- Suspension or a reduction of benefits.
- The new amount and the month it will be effective
- Must be received at least 10 days before SSA takes adverse action
- Information on the right to appeal and payment continuation



Scenario # 1

- Susan Smith, 45 years old, receiving SSI for 5 years
- Feb 8, 2022 Notice of Planned Action
- SSI benefits suspended for being over the resource limit

- Feb 25, 2022 Notice of Overpayment
- Overpaid \$15,689
- Over the resource limit because she received a personal injury settlement.



Appeals – General

- Request for Reconsideration (Form SSA-561)
- Can file appeals online through SSA website
 - www.secure.ssa.gov/iAppINMD/start
- Appeal is to challenge the merits of the notice
 - For example: disputing the fact or amount of the overpayment
- Late appeal
 - Any good reason why appeal not filed within ANY deadline
 - “Good cause” determination cannot be appealed



Overpayment Appeal

- Look for Notice of Overpayment
- File Request for Reconsideration (Form SSA-561)
 - Ask for a Formal Conference
- Deadline:
 - 60 days (plus 5 for mailing) for a timely appeal
- Once an appeal has been filed on an overpayment notice, SSA is prevented from collecting on the overpayment until there is a decision.



Cessation Appeal

- Look for Notice of Planned Action

- File Request for Reconsideration (Form SSA-561)
 - Ask for a formal conference and for continuation of benefits if filed timely

- Deadline to appeal:
 - 10 days (plus 5 for mailing) to get benefit continuation.
 - Benefit continuation only available through reconsideration and for SSI benefits
 - 60 days (plus 5 for mailing) for a timely appeal
 - SSA issued an emergency message in late 2021 allowing for the continuation of benefits if request for reconsideration is received within 65 days of the date of the notice. Effective till April 29, 2023.



Scenario # 2

- John Williams SSI recipient
- 52 years old, started working in March 2022
- 10 hours per week
- Submits copies of paystubs monthly in person, receives receipts from SSA
- Benefits stay the same for several months
- October 5, 2022 Notice of Overpayment
- Overpaid \$5,046
- As result of earned income



Overpayment Waiver

- Not challenging the merits of the overpayment
- Asking that the debt be forgiven
- No deadline. Can be filed at any time
- Collection of overpayment stops while pending
- Revised overpayment waiver form (Form SSA-632)
 - Only available as paper form
 - Can appeal and submit waiver request at the same time



Waiver Requirements:

- 1) Without Fault “blameless in creation of overpayment” AND
- 2) Defeat Purpose of the Act (Financial hardship);
 - a. Presumed met with SSI and other public benefit recipients

OR

- 3) Against Equity and Good Conscience
 - a. For situations where it would be unfair to require repayment.
 - b. Did the individual relinquish a valuable right or change position for the worse?



Examples of “Without Fault”

- Failure on the part of former representative payee to report change in income/resources
- Client was working and dutifully reported wages each month, but reports not processed timely by SSA
- Retroactive suspensions/termination resulting from work activity
- Client received SSI benefits while incarcerated or institutionalized
- Client received inheritance or other financial settlement



Overpayment Waiver Procedural Steps

1. File Request for Waiver (Form SSA-632)
2. Follow up to request that SSA cease recoupment while waiver pending.
3. Right to personal conference before waiver denied.
4. Right to written decision.
5. Full appeal rights if denied.



“Streamlined” Waiver

- If overpayment accrued between March 1, 2020 to September 30, 2020
- Resulting from SSA deferring workloads
- Notices sent by December 31, 2020
- Agency inaction caused overpayment
- No indication of fraud or similar fault, misuse by rep payee
- Verbal request over phone to local office
- Presumption: “Without Fault” + “Against Equity and Good Conscience”
- Can be requested any time; SSA must send written decision



Administrative Waiver

- For overpayments \$1,000.00 or less
- No indication of fault – less burden than proving “without fault”



Change Repayment Rate

- To adjust previous overpayment collection amount,
- Submit Form 634, Request for Change in Overpayment Recovery Rate
 - Provide financial documentation re: income, expenses, assets



\$10/Month Repayment Rate

- \$10/month withholding for those receiving Medicare Part D Low Income Subsidy (LIS)
- Receipt of any form of Medicaid qualifies for Full LIS
 - NOT required to complete Form 634 or document financial hardship



Thank you for attending!

If you have any questions,
please contact the Legal Support
Center for Advocates:
(631) 232-2400
ext. 3368 (Sharon Campo)
or 3324 (Cathy Lucidi).



*Doing What's Legally
Possible to Create a Just
World Since 1966.*



Check out our website at
www.nslawservices.org and
follow us on social media
[@nslawservices](https://www.instagram.com/nslawservices) or
[@nassausuffollawservices](https://www.instagram.com/nassausuffollawservices)