

When Social Security hurts the people it's meant to help

by Michelle Wrona Fox, managing attorney

A recent wave of Social Security overpayment determinations is garnering [national media attention](#) and causing devastating financial impact and stress for many. According to reports, over \$21 billion in overpayments are outstanding and unrecovered by the Social Security Administration nationwide. These payments - often relied on for years, and even decades - are being demanded back despite a lack of fault on the part of many disabled and/or elderly recipients. And yet another system meant to help is causing harm.

Experts think this wave of overpayment determinations could be a result of COVID-19, as the Social Security Administration halted many activities during the pandemic and are just now returning to full operation. Not only did instances of overpayment build up over this multi-year period, but so did amounts due. What might have been an extra \$900/ month for two months is now an extra \$900/ month for 18 months or more. Imagine living on a fixed income or with a disability and receiving a notice you owe tens of thousands of dollars you don't have and thought you were eligible to receive.

It's not every day the civil legal issues of low-income, disabled, and working poor Americans get a spot on [Good Morning America](#) and our advocates are seeing local upticks consistent with these national reports. What used to be a handful of cases per year is now more like at least five cases per month in our eight-county region in northeast Ohio. But legal aid advocates and other social service professionals know this problem has always haunted the recipients of social security benefits - most of whom have disabilities that impact their employment prospects. These are some of the saddest cases we see, with people who already carry heavy burdens shouldering additional undue stress and facing the possibility they will lose everything.

As the issue of social security overpayments comes to a head, community education and awareness are key.

Overpayment issues can arise in a variety of ways - but often they impact recipients of social security disability. These are individuals who worked in the past, paid into social security, and now qualify as disabled under SSA's guidelines. Most have been receiving benefits for years and believed their payment amounts were accurate. They spent the money on food, rent, mortgages, and daily living expenses.

Recipients could be a former construction worker who experienced a traumatic brain injury on the job and is unable to work at all; a former teacher who developed multiple sclerosis and can periodically work some smaller jobs depending on her current health status; or a young adult with an intellectual disability. Disability payments are meant to help these individuals make ends meet and support them until - in the perfect world - they are able to work again. Large SSA overpayments saddle those returning to the workforce with large debts that will offset future tax refunds for years to come.

Many disabled recipients who are receiving these overpayment notices are not at fault - with complications from the system and their personal circumstances compounding to create a perfect storm.

At a systems level, the social security rules that affect benefit amounts are vast, overly complicated, and often not well known. Recipients don't always receive notices explaining work rules and reporting requirements. Furthermore, they may not receive timely notification of their benefit status. The notices they do receive are often long and complex, rife with agency jargon and legalese, leaving them at a loss as to what to do. Even trained attorneys struggle to accurately interpret them and turn to tools like spreadsheets and formulas to keep information straight. Often, recipients approach the system with changing or fluctuating income, but the information isn't properly or timely processed. Or sometimes, recipients simply don't understand what information needs to be shared.

Further, the Social Security Administration's ongoing [staffing issues](#) and slow recovery from the pandemic exacerbates the problem. In the past, recipients could call SSA and speak to any representative for assistance with their call. Today, it can be hard to get anyone on the phone and many are told their case was assigned to a particular person and only that person can help them. Finally, the age of the overpayments makes defense against these overpayment notices very difficult. It's impractical to expect recipients to keep records like pay stubs or medical receipts from six or more years ago.

At an individual level, overpayment cases involving recipients of disability benefits are often especially complicated for a number of reasons. Recipients may have sporadic or diminished capacity to work, resulting in earned wages that fluctuate significantly, complicating calculations. Additionally, the nature of their disability may make it harder for them to participate in, access, or understand the benefits process. Finally, many may qualify for overlapping benefits (like worker's compensation) with tricky offset calculations or sudden unexpected lump sums. Often recipients may apply for SSDI and worker's compensation simultaneously. SSDI may be approved and paid regularly, then worker's compensation approved and paid in a retroactive lump sum that creates an overpayment in SSDI. The recipient is honestly reporting information to SSA but the overpayment is unavoidable.

In spite of all the layers of this complicated problem, solutions and remedies do exist. Individuals who receive overpayment notices do have the right to request an appeal within 60 days from the date on the notice to argue that the overpayment is incorrect. At any point thereafter, recipients may also request a waiver of overpayment if they can show no fault in creating the overpayment, inability to pay back the amount, and that the repayment is

against equity and good conscience. The agency will consider many factors around lack of fault, including age, education, disability, language issues, and literacy. Finally, recipients may work with the agency to develop a payment plan.

The bottom line is that disabled Americans, the very people who need the most help, are being harmed by an overly very complex system that seems designed to fail them.

This article is part of Legal Aid's ["Big Ideas" series](#).

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