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SOCIAL SECURITY BENEFITS (other than Disability)

Social Security is a federal program that pays monthly benefits to aged, blind and disabled people. In some cases, other family members may also be eligible to get benefits off your Social Security account. Social Security benefits are administered by the Social Security Administration (SSA).

Some of the kinds of benefits available from SSA, for those who qualify, are: Retirement, Survivors' benefits, Dependent's benefits, Disability benefits, and Supplemental Security Income (SSI).

In order to get most kinds of SSA benefits, you need to have worked enough and paid enough into Social Security to have earned it. One way of looking at it is that it's similar to an insurance plan, with your past earnings and Social Security deductions from your paychecks being like premiums that you've paid for that insurance coverage.

You do not need to have worked and paid into Social Security in order to be eligible for SSI. SSI is for those who are disabled, aged, or blind. To be eligible for SSI, you must be low-income and have limited resources. It is not like an insurance plan, but is based on need.

How much must I have worked to get Social Security benefits?

To get retirement (old age) benefits, you must have worked for 40 calendar quarters (a total of 10 years). A calendar quarter is 3 months. This is called "fully insured." To get disability benefits,

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you must have worked in at least 20 of the last 40 quarters before you apply. This is called “currently insured.”

How much are Social Security benefits?

This depends on how much you made while working. The more you made, the higher your benefit. This is called the “primary insurance amount.” SSA has a formula to set a minimum benefit.

SSA also sets a maximum family benefit, simply called the “family maximum.” You reach the family maximum when several people in your family are paid on your account. Generally, this happens when more than three people get benefits off your account.

What if I can’t get Social Security benefits?

If you did not work enough calendar quarters while paying into Social Security, you may be able to get Supplemental Security Income (SSI) benefits. To get SSI benefits, you must be blind, disabled, or aged 65 or older. In addition, the Social Security Administration sets income and asset limits in order to qualify you for SSI.

When can I start drawing RETIREMENT benefits?

You can start drawing “early retirement” benefits at age 62, but they will be less than what you would get if you wait until you reach “full retirement” age. The general rule is that if you decide to start drawing benefits before your full retirement age, you can’t file a new claim to get higher benefits once you reach full retirement. So plan your future financial needs wisely when deciding when to start drawing.

Full retirement age depends on what year you were born. If you were born in 1937 or earlier, you can draw full retirement at age 65. If you were born between 1943 and 1954, your full retirement age is 66. If you were born in 1960 or later, your full retirement is age 67. If you were born in a year between 1938 and 1943, or between 1955 and 1960, you should check with SSA to find out your exact full retirement age, in terms of years and months. You can also find this information at <http://www.socialsecurity.gov/pubs/ageincrease.htm>.

Who can get Social Security SURVIVORS’ benefits?

A deceased’s family members may be able to receive benefits on the deceased’s Social Security account if the deceased worked enough to qualify for Social Security. These are called survivor’s benefits, and may go to the following:

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- A one-time payment of \$255 will be paid to the surviving spouse if they were living with the deceased. If there is no surviving spouse, this payment may go to the deceased's children if those children were already receiving benefits on the deceased's account, or if they became eligible upon the deceased's death.
- A widow or widower who is 60 or older [or 50 or older if disabled].
- A widow or widower of any age who is caring for the deceased's child who is under 16 or disabled.
- An unmarried child of the deceased who is under 18, or under 19 if a full-time student in elementary or high school, or 18 or older with a disability that began before age 22.
- A stepchild, grandchild, stepgrandchild, or adopted child under certain circumstances.
- A surviving divorced spouse if they were married to the deceased for at least 10 years, are not remarried, and are 62 or older.

Who can get Social Security DEPENDENTS' benefits?

Dependents can get benefits if you're eligible or if you die. This includes these people.

- Your spouse, if 62 or older.
- Your spouse of any age, if caring for your minor or disabled child who is also receiving benefits.
- A minor child, under age 18 or under age 19 and attending 12th grade or below.
- An adult disabled child, over age 18 and under a disability that began before age 22.
- Your widow or widower, if 60 or older.
- Your widow or widower, if 50 or older and under a disability.
- Your divorced spouse, if you were married at least 10 years, is at least 62 years old, and is unmarried.
- Your parents, if they depended on you for at least half of their support.

Who can get Social Security DISABILITY benefits?

You can get disability benefits if you are disabled and currently insured. Your disability can be physical or mental or both. You must show with medical evidence that your impairment(s) keeps you from working at your old job or any other job. You also must show your disability has lasted or will last for at least 12 months in a row, or is likely to result in death. You can apply for disability benefits at any age. However, the younger you are, the more difficult it may be to prove you are disabled under SSA regulations.

How do I apply for Social Security benefits?

- You can go to your local SSA Office (you may need a picture ID), or call SSA at 1-800-772-1213, or apply online at www.ssa.gov/.

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- If you can't complete the forms and paperwork, the staff at SSA are required to help you fill them out. You should make an appointment for that. If you just walk into an SSA office, there may not be anyone available at that time, or you'll have to wait a long time.
- You have the right to apply. If you tell them you want to apply and they simply tell you that you wouldn't be eligible, you can still insist on completing an application. They are required to take your application and then give you a written decision, along with an explanation of your rights to appeal if you disagree with their decision.

How long do I have to wait for SSA to let me know if I will get benefits?

There is no set amount of time for SSA to make a decision on your application for benefits. It depends on how complicated your situation is, how heavy the workload is for the local office, etc.

Can I appeal if SSA denied me benefits?

You have the right to appeal any decision made by SSA, at any stage, that you disagree with. The appeal steps are:

1. Request for Reconsideration. This must be done within 60 days after you received the decision you are appealing from.
2. Request for Hearing before an Administrative Law Judge (ALJ). This must be done within 60 days after you received the decision on your Request for Reconsideration.
3. Request for review by the Appeals Council. This must be done within 60 days after you received the ALJ's decision.
4. Request for judicial review by the U.S. District Court. This must be done within 60 days after you received the Appeals Council's decision.

How do I file an Appeal?

You can go to the local SSA office and fill out the appeal forms, or you can file your appeal online at www.socialsecurity.gov/disability/appeal. If you cannot get to your local office and you are not able to complete the appeal request online, you may call your local office or the SSA toll-free number, 1-800-772-1213, and ask them to send you the forms to fill out.

If your deadline to appeal is coming up quickly, you should call the local office or the SSA toll-free number immediately and tell them you want to appeal. Ask them to make a note in your file that you called and requested an appeal. Ask them to mail you the forms right away. This

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should protect your deadline for appealing. The SSA office will send you the paperwork to fill out and send back by a certain deadline. Your request for appeal is not considered to be official until SSA gets your written request.

What happens if I miss my deadline for appealing SSA's decision?

You have 60 days to appeal a decision. It is important to not miss that deadline because, generally, you will lose your right to appeal and you'll have to start all over with a new application for benefits.

If you miss the deadline, you may be able to persuade SSA to accept your appeal if you have good cause for missing it. This means you will have to have a very good reason before they will accept your appeal.

What happens at each of the appeal steps?

1. Request for Reconsideration: Almost always, SSA is going to look only at the paperwork you've already submitted and make their new decision based on that alone. Sometimes, SSA will give you the chance to submit more information before deciding on your Request for Reconsideration. Most Requests for Reconsideration are denied.
2. ALJ Hearing: This is almost always the only opportunity at which you will have to actually present your evidence, give your own testimony, and maybe testimony from other people, before a judge. It is similar to a court trial, but not as long, and with not as many people involved. The ALJ will consider all the records that have been submitted to your SSA file so far, as well as any additional records you may have to present at the time of the hearing. You have a better chance of getting the denial of benefits overturned at this stage than at Reconsideration. Your chances improve if you have a lawyer or other qualified representative to represent you at the hearing.
3. Appeals Council review: This is a review of all the information that's been gathered in your file so far, including the ALJ's decision. This means that the Appeals Council looks only at the evidence that was considered at the ALJ hearing. That is why it is very important to get all your evidence into the record at, and before, the ALJ hearing stage. Sometimes it is possible to get in new evidence at this appeal stage, if you can show it's new evidence that wasn't available and couldn't have been discovered earlier. But this is rare.

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4. Judicial review by the U.S. District Court: This is also a review of what has been done so far. There is not a new trial, and no new evidence is presented. The Court will consider written legal arguments in briefs submitted by the attorneys.

How long will it take me to get a hearing before an administrative law judge (ALJ)?

The waiting time to actually get an ALJ hearing after you request it can be very long, sometimes up to a year or even more. Make sure you check the box on the Request for Hearing form saying that you want to appear at the hearing.

Do I need a lawyer to represent me in my appeal?

You do not need a lawyer to represent you in your appeals. But it's better if you can have a lawyer. There are many complicated issues and regulations to be dealt with. Statistics show that there is a better rate of success if you have someone assisting you.

Your representative does not have to be a lawyer. Paralegals and other non-lawyers are allowed to represent you in an appeal. But be careful who you have as a representative. Make sure they are qualified and experienced.

VLAS takes some Social Security cases, but we very rarely provide representation at the Appeals Council and Judicial Review stages if we were not involved in your case at the beginning stages of the appeal. If we are unable to take your case, we will provide you with a list of attorneys in our area who take Social Security cases. Or you may contact the National Organization of Social Security Claimants Representatives (NOSSCR) for a referral. Their number is 1-800-431-2804.

What can I do if SSA says I got benefits I should not have gotten?

SSA may decide that you were paid benefits that you were not entitled to. This is called an "overpayment." They may say that you got too much, or that you should not have been getting any benefits at all. They will send you a written notice telling you that you were overpaid, and they will tell you to make arrangements to pay it back. Here are some of the things you can do if you get such a notice:

First, if you disagree that you were overpaid, you should appeal SSA's decision. The first step is to make a written Request for Reconsideration. You must make that request within 60 days after you received the notice of overpayment. If you are again denied, you can continue with the usual appeal process, as described above.

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Second, even if it's finally determined that you were overpaid, after you've appealed and lost, you can request waiver of recoupment of the overpayment. By doing so, you are asking SSA to not make you repay the overpaid benefits.

Your request for waiver of recoupment must be in writing. You must be able to show that you were without fault in getting the overpayment and that it would be an undue hardship for you to have to repay it. To show an undue hardship you generally need to be able to show that you would be unable to meet your necessary living expenses if you had to repay.

There is no time limit within which you need to request a waiver of recoupment. You can request it at any time. But if you request it within 30 days after you got the notice of overpayment, then SSA will hold off on any attempt to recoup until the waiver is dealt with.

SSA must give you the opportunity for an in-person or telephone conference before they make a decision on your waiver. They can't proceed to recoup any money until they offer you that conference and rule on your waiver request.

Finally, if you've gone through the appeal and lost, and if you've requested and been denied a waiver, SSA will recover the money you owe. If you are still receiving Supplemental Security Income, they will withhold 10% of your ongoing monthly benefits until it's all repaid. However, you can request that the amount be lowered if you can show you can't meet your living expenses.

If you are receiving Social Security benefits other than SSI, then SSA is able to withhold your entire monthly check until the overpayment is repaid. But you can try to work out a plan with SSA to get that lowered so you would get at least part of your ongoing monthly benefits.

If you are no longer receiving benefits of any kind from SSA, then SSA will still try to recover the overpayment and will ask you to either pay it in full or make a plan for repayment. They may also intercept your federal income tax refund, or garnish your wages. If you go back on SSA benefits in the future and the overpayment has not been repaid, they may start withholding it from your benefits.

If the amount of the overpayment is \$1,000 or less, SSA may "administratively waive" repayment, but they're not required to. This means they may excuse repayment even if you don't request a waiver. Basically, SSA would be determining that "it's not worth the effort and expense" for them to pursue repayment.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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