Chapter 5

APPEALS PROCESS

Individuals have the right to appeal any “initial determination” made by the SSA. Individuals may also appeal denial of benefits, reduction of benefits, termination of benefits, and/or overpayments. There are four levels of the appeals process with certain time restrictions for each. Individuals generally have 60 days from the time they receive a notice from the SSA to file appeals. The SSA assumes that individuals receive the notice five days after the date shown, unless individuals can show that they received it later. Whenever the SSA sends a notice, they will indicate which step of the appeals process individuals may take. The four steps of the process must generally be taken in order. The levels of appeal are described below.

Level I: Reconsiderations

Reconsiderations are a complete review of the claims by someone who did not participate in the original decision. All the evidence originally submitted will be reviewed. Any additional evidence submitted will also be considered. Reconsideration can be requested by completing form-S61.

If individuals are appealing a decision of medical improvement, they will have the opportunity to meet with a disability hearing officer and explain in person why they believe they are still disabled. They may also ask for benefits to continue while the decision is being made. If requests for reconsideration are made within 10 days, any payments currently being made will continue until a decision is made. If recipients lose the appeal, benefits may have to be paid back.

Note: In some states the reconsideration step has been eliminated for individuals appealing a medical decision. In those states, the individual immediately can go to the next level of appeal, the hearing before an administered law judge.

Level II: Administrative Law Judge Hearing

If individuals disagree with the reconsideration decision, they may ask for a hearing by an administrative law judge. The administrative law judge has had no part in either the original or reconsidered decision. A hearing is requested by completing a form HA-501. Individuals may review their entire file prior to the hearing. The clerk of the ALJ records the hearings and copies of the tape may be requested. In a disability case, individuals may request further medical exams/tests be ordered if more medical information is necessary. The individuals and their representative(s), if any, will have the opportunity to attend the hearings and explain their case in person. They may question witnesses, give new information, submit a written statement about their case, and look at the information the ALJ will use to make the decision. Individuals will receive written notice of the hearing decision.
If individuals disagree with the hearing decision, they may request a review by the Appeals Council. A request for an Appeals Council Review can be made by completing form HA-520. The Appeals Council considers all requests for review, but it may deny requests if it believes the decision by the Administrative Law Judge was correct. If the Appeals Council decides to review the case, it will either decide the case or return it to an Administrative Law Judge for further review. Generally, the Appeals Council Review is a paper process. Individuals are sent written notice of the Appeals Council decision.

If individuals disagree with the Appeals Council decision or if the Appeals Council decides not to review their case, a lawsuit may be filed in a Federal District Court. The complaints must be filed in a U.S. District Court within 60 days of the date that the notice of the Appeals Council decision is received. The Federal Court will review the evidence and previously made decisions and will not conduct a new trial.

Advocates may provide major assistance with best results during the time between initial determination notices and the requests for reconsideration. At this time, documentation must be gathered to support the claims to disability. Individuals should be assisted when contacting local advocacy groups with expertise in Social Security appeals. In addition to local advocacy groups and legal aid, some congressional offices have disability benefits specialists who are experienced in appeals.

Remember, beneficiaries and recipients enrolled in SSA’s Ticket or VR Reimbursement Program has access to advocacy and support services through state protection and advocacy programs.

It is critical for BPA&O and PABSS programs to understand and recognize their roles during the appeals process. While both are excluded from representing a beneficiary negotiating the appeals process, they can play a supportive role that could include, but not be limited to:

- providing general information on the appeals process
- information and referral to individuals/agencies that have the skill and ability to help with appeal
- providing copies of forms need to appeal
- providing support in making choices and understanding the appeals process
Waivers

When an individual receives a written notice from SSA, which states that he or she has been overpaid, the individual can file an appeal and/or seek a waiver of overpayment recovery. Many overpayment determinations relate to work activity and wages.

The Request for Reconsideration is used to challenge the overpayment determination and must be filed within 60 days from the date of receiving the determination. By filing it, the individual is claiming either that he or she was not overpaid or that the overpayment amount claimed by SSA is too high. If the individual disagrees with the reconsideration determination, the individual may ask for a hearing before an Administrative Law Judge. Like all other appeals, appeals involving overpayments can eventually go to the Appeals Council and to the Federal District Court.

Even if an individual agrees with an overpayment determination (or if he or she only disputes the amount of the overpayment), the individual may seek a Waiver of Overpayment Recovery. The request for waiver asks SSA to waive its right to collect any overpaid amount. Generally, SSA will waive recovery if the individual can show that he or she was “without fault” in causing the overpayment and that recovery would either cause an “undue hardship” or be “against equity and good conscience.”

A denial of a request for waiver is treated like any other initial determination. SSA must provide the individual with a written notice of the determination. The individual will have 60 days from the date of receiving the determination to challenge it through a request for reconsideration. Like all other appeals, appeals involving a request for waiver can be appealed to an administrative law judge, to the Appeals Council, and to the federal District Court.
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<th>Form/No #</th>
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<td>SSA–1696–U4 Appointment of Representative</td>
<td>This authorizes a person, in the place of any applicant or recipient, to communicate with SSA, represent a person before SSA on any appeal, receive notices generated by SSA, and otherwise obtain information about the applicant or recipient that is contained in SSA’s website files.</td>
<td>Can be obtained from any SSA field office or by visiting SSA’s website.</td>
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<td>SSA–561–U2 Request for Reconsideration</td>
<td>An applicant or recipient or his/her authorized representative should use this to appeal any initial decision issued by SSA.</td>
<td>Can be obtained from any SSA field office or by visiting SSA’s website.</td>
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<td>HA–501–U5 Request for Hearing by Administrative Law Judge</td>
<td>An applicant or recipient or his/her authorized representative should use this to request a hearing before an administrative law judge. Generally, this would be used following an adverse decision on a request for reconsideration.</td>
<td>Can be obtained from any SSA field office or by visiting SSA’s website.</td>
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<td>HA–520 Request for Appeals Council Review</td>
<td>An applicant or recipient or his/her authorized representative should use this to request an appeals council review.</td>
<td>Can be obtained from any SSA field office or by visiting SSA’s website.</td>
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<td>SSA–632–BK Request for Waiver of Overpayment Recovery or Change in Repayment Rate</td>
<td>A recipient, or his/her authorized representative should use this to challenge SSA’s rights to collect an over-payment of benefits. Generally, this would be used when the individual concedes that he or she was overpaid but is asking SSA to waive their right to collect over-payment.</td>
<td>Can be obtained from any SSA field office or by visiting SSA’s website.</td>
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