

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

"I Can't Pay That!": Social Security Overpayments and Low-Income Clients



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JUSTICE IN AGING

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Today

- Overpayments overview
- Appealing an overpayment
- Requesting waiver of an overpayment
- Common problems



Overpayments Overview

Overpayments

- What is an overpayment?
- SSA withholds funds from benefits to repay

| <u>TITLE II (OASDI)</u> | <u>TITLE XVI (SSI)</u> |
|--|--|
| No limit on withholding (Full monthly benefit may be withheld) | Up to 10% of full check (\$73.50 max for 2017) |

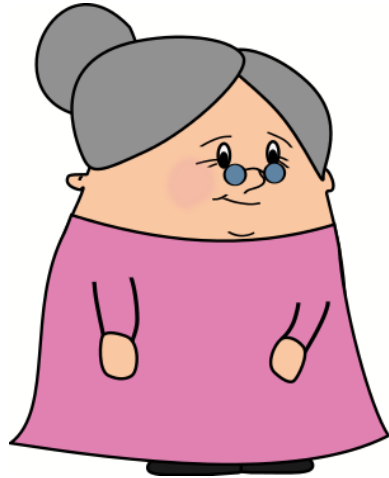
Why?

- Over income limit/fluctuating income
- Over resource limit
- In-kind support and maintenance
- Outside U.S. for more than 30 days
- Institutionalized for more than 30 days (nursing home, prison)
- Work income, SSDI work incentive rules

Non-disability appeal vs. overpayment appeal

The example of Mrs. B:

Looking Forward
- NDA



VS.

Looking Back -
Overpayment



Overpayment Options

- Appeal the overpayment
- Request a waiver
- Negotiate a lower repayment amount
- Do nothing

Appeal or Waiver?

- Can do either or BOTH
- Considerations:
 - Appeal - subject to 60 + 5 day deadline
 - Waiver - can file at any time
 - When in doubt - DO BOTH



Overpayment Appeal

Overpayment Appeals

- Appeal of merits (disputing fact or amount) of overpayment
- Form 561: Request for Reconsideration
- Deadline: 60 days (plus 5 for mailing)
- Appeal rights

iAppeals

- Can now file an overpayment appeal online
- Benefit of submitting appeal online
- Go to secure.ssa.gov/iAppINMD/start

Overpayment Appeals

Effect of filing appeal on recoupment:

- If filed within 30 days of notice, recoupment will not start
- If filed between 31 and 60 days of notice, recoupment will stop

POMS:

GN 02201.011

SI 02220.017.A.4.e

Overpayment Appeals

Title II: case review

POMS GN 02201.025

Title XVI: *Goldberg* protections

case review, informal conference, formal conference

POMS SI 02220.017, SI 04020.030

Written notice of reconsideration determination



Overpayment Waiver

Overpayment Waiver

- Separate from merits of overpayment -
not making a statement on the correctness
of the overpayment
- Asking that overpayment be forgiven
- File at any time (no deadline)

Overpayment Waiver

Requirements:

Without Fault

AND

Defeat purpose of
the Act
(Financial hardship)

OR

Against equity and
good conscience

Overpayment Waiver Requirements

“Without Fault”

- Term of art: “blameless in creation of overpayment”
- Individualized, everyone’s situation is different

POMS:
GN 02250.005
SI 02260.010

Overpayment Waiver Requirements

“Defeat the Purpose of the Act”

- Construed as financial hardship
- Presumed met for SSI recipients and recipients of other public assistance
- Title II beneficiaries must do financial development

Overpayment Waiver Requirements

“Against Equity and Good Conscience”

- Alternative to showing financial hardship
- For situations where it would be unfair to require repayment

POMS:
GN 02250.150
SI 02260.025

Overpayment Waiver

Held v. Colvin (Filed March 2015)

- EM-16013 REV 2: presume waiver has been requested
- Presume waiver should be granted on the basis of “without fault” and “against equity and good conscience”
- Local offices do not have authority to deny waiver; any denial must first be reviewed by SSA’s Central Office

Overpayment Waiver

Procedural Steps:

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

Administrative Waiver

Administrative waiver of overpayments
\$1,000.00 or less

- POMS SI 02260.030

Overpayment Waiver

POMS SI 02260.035. D – waiver rules that apply to SSI overpayments that result from excess resources. Must first be found without fault.

1. Overpayment is \$1,000 or less
2. Exceed resource limit by \$50 or less
3. Total overpayment is more than the amount by which resources exceeded the resource limit



Common Problems

Repayment Rate

- \$10/month withholding for those receiving Medicare Low-Income Subsidy (LIS)

POMS GN 02210.030. B. 6

Overpayment Problems

- Collection starts before notice sent, or within 60 days of notice
- Individual disputes fact or amount, SSA directs to file waiver
- Even when appeal is filed, treated as waiver or as request for payment plan
- Appeal or waiver not logged in, not processed in timely fashion

Overpayment Problems (cont.)

- Collection continues after appeal/waiver filed
- Cannot reach staff at Processing Center (Title II)
- No personal conference held before waiver denial
- Personal conference conducted improperly - focused on setting up payment plan instead of waiver
- No written decision on appeal or waiver

Overpayment Problems

2014 study of 55 overpayment cases in system:

- 35 Title II cases
- 20 Title XVI cases
- Not statistically significant

Tips for Resolution

- Persistence pays off
- Put requests in writing and provide support with documentation
- Follow up with phone calls
- Local office personnel have a lot of discretion in deciding “without fault” in waivers
- Develop good working relationship with field office staff/supervisor
- Get decisions in writing - must have written notice to file appeal

What You Can Do

- ✓ Represent claimants on overpayment appeals and waivers
- ✓ Request formal conferences
- ✓ Do not accept improper collection while appeal or waiver pending
- ✓ Spread word about systemic advocacy to networks

Additional Resources

Regulations

20 C.F.R. §§ 404.502 - 545 (Title II)

20 C.F.R. §§ 416.550 - 590 (Title XVI)

Program Operations Manual System (POMS)

GN 02201.000 et seq. (Title II)

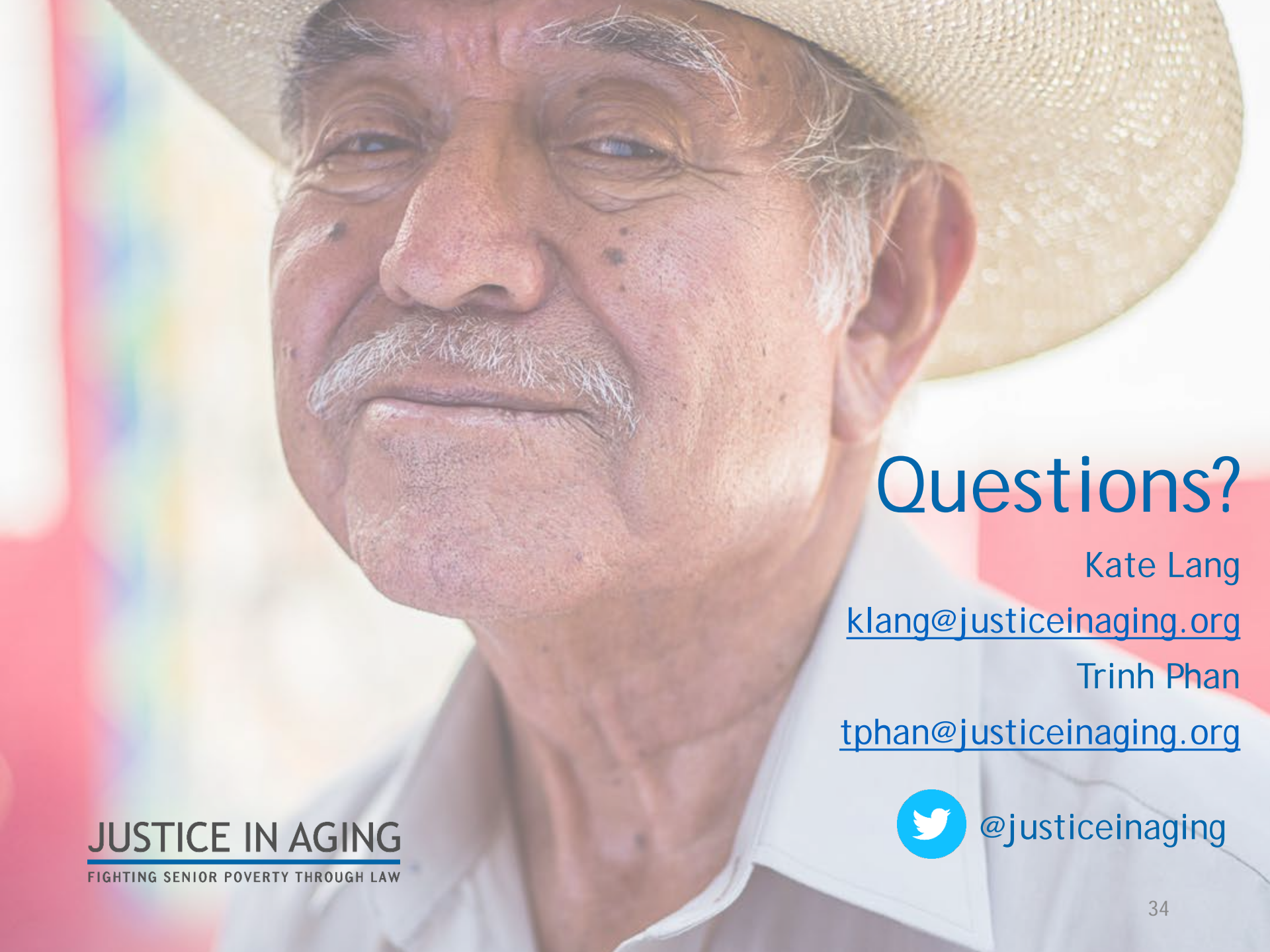
SI 02201.000 et seq. (Title XVI)

SSA FAQ: What can I do if I get an overpayment?

[https://faq.ssa.gov/link/portal/34011/34019/
Article/3810/What-can-I-do-if-I-get-an-overpayment](https://faq.ssa.gov/link/portal/34011/34019/Article/3810/What-can-I-do-if-I-get-an-overpayment)

Case Consultations

- Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at NCLER@justiceinaging.org



Questions?

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