

Social Security Part 3

February 9, 2010

University of Montana, Rural Institute

www.ruralinstitute.umt.edu/transition

What is Benefits Analysis?

- A **PROCESS** of examining the unique benefits status of an individual as it relates to paid employment
- Includes examination of ALL public benefits, not just SSA benefits
- Requires verification of benefits status from authoritative sources
- Includes specific advice and recommendations for future action

What is a Written Benefits Summary & Analysis or BS&A?

- Brief but comprehensive document summarizing information gained during the benefits analysis process.
- A BS&A provides a clear and concise explanation of:
 - the individual's current benefits status
 - impact of employment goal on all public benefits
 - use of work incentives to date with specific recommendations about using work incentives in the future
 - potential problem areas with possible solutions

What is the Purpose of the BS&A?

- Offers verified written documentation of current benefits status
- Explains how achieving the stated work goal will affect benefits
- Describes work incentives for future reference
- Provides basis of common understanding for beneficiary, parents, VR, other involved parties
- Documents information and advice given
- Provides a clear “snap-shot” of the person’s benefits at a point in time

When is a BS&A Written?

- Whenever individualized, case-specific information or advice is given
- Whenever “intensive” services are provided (not just generic information & referral)
- Whenever multiple public benefits are received
- Whenever specific work incentives like Subsidy, PASS, IRWE, BWE, SEIE may be applied
- Whenever written documentation of information and advice given is needed

Indicators of Need for Written BS&A

- SSI payments of less than FBR for uncertain cause
- DI beneficiary who has worked since entitlement
- Concurrent beneficiaries
- Eligible couples
- SSI recipient subject to any form of deeming
- Potential for specific work incentives exist (PASS, BWE, IRWE, etc.)
- Transition aged youth approaching 18th birthday
- Individual considering self-employment
- Individual receives multiple public benefits
- Medicaid waiver/HCBS/Spend-down participants also receiving SSA disability benefits

When a Written BS&A is NOT Indicated

- When only generic information & referral services are provided – no individualized analysis performed
- When an SSI recipient gets full FBR, is not currently working and has no imminent employment plans
- When title II disability beneficiary has no prior work history (has not yet used any work incentives such as TWP, etc.) and no imminent employment plans.

Updating Benefits Summaries

- BS&A reports have a very limited shelf life
- BS&A reports should include an explanation of when updates will be needed
- Updates are necessary whenever critical changes occur – this will vary for DI/SSI beneficiaries

Benefits Analysis & Transition Planning

- The benefits analysis can help to identify and proactively plan for the critical touch points that will occur as a youth transitions into adulthood.
- There are a variety of different areas that will need to be covered based on the different types of benefits received.

Issues for Transition Youth

SSI:

- Age 18 redetermination process
- Changes in deeming
- Changes in unearned income such as child support
- Potential resources accessible at age 18?
- Effect of earned income and work incentives
- Future marriage plans
- Has the student been working and established entitlement on own record?

Title II:

- Changes in Title II benefits – child's to CDB
- Is there eligibility for CDB?
- Has the parent's Social Security status changed?
- Future marriage plans
- Has the student been working and established entitlement on own record?
- Effect of earnings and use of work incentives.
- Impact of entitlement to Title II benefits on other public benefits, such as Medicaid waiver.

More Issues for SSI & Title II

- Rep-payeeship
 - Reporting requirements
 - Option of post-secondary education
 - Ticket to Work
 - Long term asset development strategies
 - Long term healthcare coverage
-
- **All of the issues on the last two slides should be part of a benefits analysis to discuss and plan for all the potential options.**

Overpayments and the CWIC Role

- Overpayments happen because most of the decisions that SSA makes about the impact of earned and unearned income has to happen based on past events.
- Proactive reporting to SSA can reduce the amount and severity of overpayments.
- CWICs cannot assist in appealing overpayments or represent beneficiaries who are appealing overpayments.

Overpayments and the CWIC Role

- What can CWICs assist with related to overpayments?
 - Explain the appeal process
 - Explain the beneficiary's rights and options
 - Help to develop and document work incentives that may not have been taken into consideration when the decision was made that caused the overpayment
 - Provide referral information to other agencies that can provide further assistance.

OVERPAYMENTS



**OVERPAYMENTS OCCUR
WHEN A BENEFICIARY
OWES THE SOCIAL
SECURITY
ADMINISTRATION MONEY
FOR OVERPAYMENT OF
CASH BENEFITS.**

Causes of Overpayment



- Lack of Awareness
- Unearned and/or Earned Income
- Change in Benefit and/or Employment Status
- In-kind Support

Lack of Awareness



- ✦ Many beneficiaries are not aware that they have an overpayment.
 - Many don't learn until the SSA sends them a letter informing them that they owe money back to the SSA.
 - Sometimes amount to thousands or tens of thousands of dollars with SSDI beneficiaries.
 - Payment will be demanded within 30 days.
 - Burden of responsibility is on the beneficiary.
 - SSI benefit amount can be reduced with no explanation.
 - 10% of benefit amount taken out as a rule of thumb for SSI beneficiaries with an overpayment.
- ✦ The SSA may not know you owe them money,
- ✦ AWARE's Benefits Planners will find overpayments with analysis.
 - Many times a benefits analysis will turn up an overpayment.

SSI Overpayments



- **Change in Benefit and/or Employment Status**
 - ✦ Earning an income
 - ✦ Transitioning from Childhood Disability Beneficiary to Adult
 - ✦ Transitioning from SSI to SSDI
 - ✦ Transitioning SSDI due to death in immediate family

- **In-Kind Support**
 - ✦ Change in marital status
 - ✦ Common law marriage
 - ✦ Living with parents or roommates

- **Unearned and/or Earned Income**
 - ✦ The best defense is a good offense!
 - ALWAYS report ALL income to SSA
 - ALWAYS complete an SSA Work Activity Form 820 or 821

SSDI Overpayments



- Earning over SGA during the Extended Period of Eligibility after Grace Period used.

- Your benefits will terminate:
 - When you have used all of the Extended Period of Eligibility *and*
 - When you earn over SGA.
 - ✦ 2010 \$1000 per month non blind
 - ✦ 2010 \$1640 per month blind

- * ***Many times beneficiaries do not know their benefits have terminated because they continue to receive a check!***

Beneficiaries who earn an income are higher risk for overpayments



1. Report your income!
2. Consult with a Benefits Planner.
3. File an SSA Work Activity Form 820 or 821.

If you have an overpayment



- **Contact an AWARE, Inc. Benefits Planner**
 - They will help you determine the best plan of action for your specific circumstance.
- **Legal Fault versus Moral Fault**
 - Every overpayment falls under one category
 - Depending upon circumstances different approaches are necessary
 - ✦ Request for Reconsideration
 - Can only be used when there is a **legal basis** to appeal
 - ✦ Negotiate a Repayment Plan
 - Can be used at **any time**
 - ✦ Waiver
 - Should only be used when there is a **moral basis**

Request for Reconsideration



- SSA Form 561-U2
 - Erroneous Overpayment
 - Overpayment amount is incorrect
 - ✦ Best Advocacy file 561-U2 – *when possible*
 - ✦ AWARE Benefits Planners can facilitate
 - ✦ Must be filed within 60 days
 - Unless good cause
 - 5 day mailing allowance

Erroneous SSDI Overpayment



- Were the TWP, GP and EPE calculated correctly?
 - ✦ Verify dates of employment and pay history with the employer and the SSA to make sure everyone has the same information and that it's accurate.
 - ✦ Payroll earnings from the employer are the most accurate.
 - May not be the same information that the SSA has.
 - Tax returns and income reporting to the IRS should correlate
 - ✦ Mistakes occur frequently.

Erroneous SSDI Overpayment , Continued



- Was an SSA Work Activity Report form 820 or 821 filed?
 - ✦ Were there applicable IRWE's documented on the form?
 - ✦ Does the beneficiary have an impairment that necessitates subsidized employment?
 - Was it documented in the WAR?
 - Is the employer willing to support the beneficiary filing for subsidized employment?
 - Retroactive Subsidy can be approached different ways
 - File an SSA Form 561-U2
 - Employer write a letter on behalf of the beneficiary
 - Benefits Planner write a letter on behalf of the beneficiary
 - Combination of SSA Form 561 and employer letter or BP letter
 - Pros and cons for each approach

Erroneous SSI Overpayment



- Are the SSI calculations correct?
 - ✦ Mistakes occur frequently
 - ✦ There is a right way and a wrong way to calculate earnings with SSI
 - Was In-Kind erroneously counted when the beneficiary paid rent?

- Did the beneficiary file an SSA Work Activity Form 820 or 821?
 - ✦ If so, it should be examined carefully
 - ✦ Were Work Incentives noted on the WAR, but not implemented?

- Is the beneficiary eligible for retroactive Work Incentives?
 - ✦ Was there an applicable Impairment Related Work Expense?
 - ✦ Was there an applicable Student Earned Income Exclusion?

REQUEST FOR RECONSIDERATION

(Do not write in this space)

NAME OF CLAIMANT		NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON (If different from claimant.)
CLAIMANT SSN	CLAIMANT CLAIM NUMBER (If different from SSN)	SUPPLEMENTAL SECURITY INCOME (SSI) OR SPECIAL VETERANS BENEFITS (SVB) CLAIM NUMBER
- -	- -	- -
SPOUSE'S NAME (Complete ONLY in SSI cases)		SPOUSE'S SOCIAL SECURITY NUMBER (Complete ONLY in SSI cases)
		- -

CLAIM FOR (Specify type, e.g., retirement, disability, hospital/medical, SSI, SVB, etc.)

I do not agree with the determination made on the above claim and request reconsideration. My reasons are:

SUPPLEMENTAL SECURITY INCOME OR SPECIAL VETERANS BENEFITS RECONSIDERATION ONLY
(See the three ways to appeal in the [How To Appeal Your Supplemental Security Income \(SSI\) Or Special Veterans Benefits \(SVB\) Decision](#) instructions.)
"I want to appeal your decision about my claim for Supplemental Security Income (SSI) or Special Veterans Benefits (SVB). I've read about the three ways to appeal. I've checked the box below."

Case Review
 Informal Conference
 Formal Conference

EITHER THE CLAIMANT OR REPRESENTATIVE SHOULD SIGN - ENTER ADDRESSES FOR BOTH

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

CLAIMANT SIGNATURE			SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE <input type="checkbox"/> NON-ATTORNEY <input type="checkbox"/> ATTORNEY		
MAILING ADDRESS			MAILING ADDRESS		
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
		-			-
TELEPHONE NUMBER (Include area code)		DATE	TELEPHONE NUMBER (Include area code)		DATE
() -			() -		

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

See list of initial determinations

1. HAS INITIAL DETERMINATION BEEN MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO	2. CLAIMANT INSISTS ON FILING <input type="checkbox"/> YES <input type="checkbox"/> NO
3. IS THIS REQUEST FILED TIMELY? (If "NO", attach claimant's explanation for delay and attach any pertinent letter, material, or information in Social Security office.) <input type="checkbox"/> YES <input type="checkbox"/> NO	

RETIREMENT AND SURVIVORS RECONSIDERATIONS ONLY (CHECK ONE) REFER TO (GN 03102.125)	SOCIAL SECURITY OFFICE ADDRESS
<input type="checkbox"/> NO FURTHER DEVELOPMENT REQUIRED (GN 03102.300) <input type="checkbox"/> REQUIRED DEVELOPMENT ATTACHED <input type="checkbox"/> REQUIRED DEVELOPMENT PENDING, WILL FORWARD OR ADVISE STATUS WITHIN 30 DAYS	
ROUTING INSTRUCTIONS (CHECK ONE)	<input type="checkbox"/> DISABILITY DETERMINATION SERVICES (ROUTE WITH DISABILITY FOLDER) <input type="checkbox"/> ODO, BALTIMORE <input type="checkbox"/> PROGRAM SERVICE CENTER <input type="checkbox"/> OIO, BALTIMORE <input type="checkbox"/> CEO, BALTIMORE <input type="checkbox"/> DISTRICT OFFICE RECONSIDERATION <input type="checkbox"/> CENTRAL PROCESSING SITE (SVB)

NOTE: Take or mail the signed original to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records.

Waiver



- Form SSA-632-BK:
“Request for Waiver of Overpayment Recovery or Change in Repayment Rate”
 - Beneficiary may claim
 - They are not at fault for the overpayment *and*
 - They cannot afford to repay the overpayment *and/or*
 - It is unfair *and/or*
 - Not worth it for the SSA to make beneficiary repay it
 - SSA will cease recoupment when filed.
 - Recoupment will not begin if filed within **30 days** of notice.
 - ✦ However, the waiver *can be filed at any time.*
- * *Once any “action” has been filed on a beneficiary account, no other actions can be filed until the pending action is determined.*

SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 0960-0037

Request For Waiver Of Overpayment Recovery Or Change In Repayment Rate

We will use your answers on this form to decide if we can waive collection of the overpayment or change the amount you must pay us back each month. If we can't waive collection, we may use this form to decide how you should repay the money.

Please answer the questions on this form as completely as you can. We will help you fill out the form if you want. If you are filling out this form for someone else, answer the questions as they apply to that person.

FOR SSA USE ONLY	
ROAR Input	<input type="checkbox"/> Yes <input type="checkbox"/> No
Input Date	
Waiver	<input type="checkbox"/> Approval <input type="checkbox"/> Denial
SSI	<input type="checkbox"/> Yes <input type="checkbox"/> No
AMT OF OP \$	
PERIOD (DATES) OF OP	

1. A. Name of person on whose record the overpayment occurred:

B. Social Security Number

— —

C. Name of overpaid person(s) making this request and his/her Social Security Number(s):

— —

— —

— —

— —

2. Check any of the following that apply. (Also, fill in the dollar amount in B, C, or D.)

- A. The overpayment was not my fault and I cannot afford to pay the money back and/or it is unfair for some other reasons.
- B. I cannot afford to use all of my monthly benefit to pay back the overpayment. However I can afford to have \$ _____ withheld each month
- C. I am no longer receiving Supplement Security Income (SSI) payments. I want to pay back \$ _____ each month instead of paying all of the money at once.
- D. I am receiving SSI payments. I want to pay back \$ _____ each month instead of paying 10% of my total income.

Factors Affecting Waiver Fault



- SSA will factor in a beneficiary's age and intelligence, along with physical, mental, educational, or linguistic limitations
- Income reporting builds beneficiary credibility
- “Individuals have affirmative obligations and if they do not meet them, or have good reason for not meeting them, they cannot pass the fault test.” LGW

Cases of Beneficiary Fault



- Beneficiary made an incorrect statement which they should have known to be incorrect.
- Beneficiary failed to provide information which they knew (or should have known) to be important.
- Beneficiary accepted payment which they knew (or could have expected to know) was incorrect.

Necessary Requirements for a Favorable Waiver Decision



- Would recovery defeat the purpose of the SSI/SSDI Program?
 - Would repayment cause the beneficiary an undue hardship
 - ✦ *Beneficiary must **prove** hardship*

- Would recovery be Against Equity and Good Conscience?
 - Would it be unfair to the beneficiary for the SSA to recover the overpayment?
 - ✦ *Very difficult to answer, so rarely the deciding factor*

- Would recovery Impede the Effective and Efficient Administration of the SSI Program?
 - Is it worth it to SSA to recover the overpayment from the beneficiary?
 - ✦ *Again, very difficult to determine, so waivers rarely granted on this basis*

SSDI Undue Hardship



- **SSDI Beneficiaries must prove hardship:**
 - Resources less than \$3000
 - All income is used to meet ordinary and necessary living expenses:
 - ✦ Food and clothing
 - ✦ Rent
 - ✦ Mortgage
 - ✦ Utilities
 - ✦ Maintenance
 - ✦ Insurance
 - ✦ Taxes
 - ✦ Medical expenses
 - ✦ Other reasonable expenses to maintain past standard of living
 - ✦ Expenses to support others
 - Legal responsibility for children

Negotiation



- Always an option at any stage in the process.
- Highly encouraged by SSA and they are very reasonable about repayment plans.
- Informed decision about waiving of rights.

Recoupment



- SSI – 10% or less of beneficiary amount taken.
- SSDI – All can and will be taken.
 - Hardship exception
- SSA will take tax returns
- ***SSA now has the authority to garnish beneficiaries' wages if they ignore collection attempts.***

Remember



- ALWAYS REPORT YOUR INCOME!!!
- An informed beneficiary is a beneficiary with ***choices***
- AWARE Benefits Planners
 - Advocate for beneficiaries
 - ✦ Identify Possible Retroactive Work Incentives
 - ✦ Assist Beneficiary with Request for Reconsideration
 - ✦ Help Beneficiaries with Waiver Filing
 - ✦ Negotiate reasonable repayment plans
 - ✦ Help beneficiaries prevent overpayments
 - Ensure beneficiaries file SSA Form 820 or 821
 - Facilitates exchange of information with SSA
 - Helps SSA to better monitor earned income and benefits

AWARE, Inc. Benefits Planners



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Disability Rights Montana

- Is a private non-profit organization that provides statewide legal-based advocacy services for people with disabilities. It is part of the nationwide federally-mandated protection and advocacy system.
- Has the authority to provide legal representation and other advocacy services, under all federal and state laws.
- Is governed by a Board of Directors.
- Executive Director oversees work groups comprised of 5 attorneys, 10 advocates and 3 other staff.

Disability Rights Montana

Establishes yearly priorities based on input from staff, the Board of Directors and focus groups. This ensures that most vulnerable populations are served and that our organization reaches out to unserved or underserved populations.

Eligibility for Services

To be eligible for services, an individual must:

- Be a resident of or need assistance in Montana.
- Have a disability
- Have an issue that is related to the disability.

DRM administers 8 grants

Some are disability specific, some are issue specific

- PADD -- Protection and Advocacy for persons with Developmental Disabilities
- PAIMI -- Protection and Advocacy for Individuals with Mental Illness
- PAIR -- Protection and Advocacy for Individuals Rights
- PAAT -- Protection and Advocacy for Assistive Technology
- PATBI -- Protection and advocacy for Individuals with Traumatic Brain Injury
- PAVA -- Protection and Advocacy for Voting Access
- CAP -- Client Assistance Program
- PABSS -- Protection and Advocacy for Beneficiaries of Social Security

Work Groups

- Abuse and Neglect Unit
- Core Services Unit
- Development Disability Services Unit
- Education Unit
- Employment/Voting/Access Unit
- Mental Health Services – TBI Unit
- Policy and Civil Rights Unit

DISABILITY RIGHTS MONTANA

PABSS

PROTECTION AND ADVOCACY FOR
BENEFICIARIES OF SOCIAL SECURITY

How PABSS can help:

- Access to and disputes with community service providers
- Special Education and transition
- Health Care
- Disability benefits and work incentives
- Rights and conditions of employment
- Disputes with Vocational Rehabilitation and other employment network providers
- Rights, responsibilities, and reasonable accommodations under the ADA
- Wage and hour issues
- Transportation
- Housing
- Assistance removing barriers to a beneficiary's return-to-work goal

PABSS cannot:

- Assist with determination of eligibility for benefits.
- Appeal or litigate against the Social Security Administration because of decisions on program issues rendered against current or former beneficiaries.
- Assist with non-work related overpayments, benefit cessation or other program issues.
- Assist with personal injury or worker's compensation issues.
- Assist with property, probate, estate planning.

Self Advocacy with Social Security

- Save Everything.
- Copy Everything.
- Don't look for logic.
- Report! Report! Report!
- Recognize the Bureaucracy/Educate yourself.
- Follow through.



Contact Information

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Questions?

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