

§ 404.504

20 CFR Ch. III (4-1-08 Edition)

§ 404.504 Relation to provisions for reductions and increases.

The amount of an overpayment or underpayment is the difference between the amount paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such payment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 202(j)(1), 202(k)(3), 203(a), or 224(a), or as increased under section 202(d)(2), 202(m), or 215 (f) and (g). In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so decreased.

[34 FR 14888, Sept. 27, 1969]

§ 404.505 Relationship to provisions requiring deductions.

Adjustments required by any of the provisions in this subpart F are made in addition to, but after, any deductions required by section 202(t), 203(b), 203(c), 203(d), and 222(b) of the Act, or section 907 of the Social Security Act Amendments of 1939, and before any deductions required by section 203(g) or 203(h)(2) of the Act.

[34 FR 14888, Sept. 27, 1969]

§ 404.506 When waiver may be applied and how to process the request.

(a) Section 204(b) of the Act provides that there shall be no adjustment or recovery in any case where an overpayment under title II has been made to an individual who is without fault if adjustment or recovery would either defeat the purpose of title II of the Act, or be against equity and good conscience.

(b) If an individual requests waiver of adjustment or recovery of a title II overpayment within 30 days after receiving a notice of overpayment that contains the information in § 404.502a, no adjustment or recovery action will be taken until after the initial waiver determination is made. If the individual requests waiver more than 30 days after receiving the notice of overpayment, SSA will stop any adjustment or recovery actions until after

the initial waiver determination is made.

(c) When waiver is requested, the individual gives SSA information to support his/her contention that he/she is without fault in causing the overpayment (see § 404.507) and that adjustment or recovery would either defeat the purpose of title II of the Act (see § 404.508) or be against equity and good conscience (see § 404.509). That information, along with supporting documentation, is reviewed to determine if waiver can be approved. If waiver cannot be approved after this review, the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference. We will offer to the individual the option of conducting the personal conference face-to-face at a place we designate, by telephone, or by video teleconference. The notice will advise the individual of the date and time of the personal conference.

(d) At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

(e) At the personal conference, the individual is given the opportunity to:

(1) Appear personally, testify, cross-examine any witnesses, and make arguments;

(2) Be represented by an attorney or other representative (see § 404.1700), although the individual must be present at the conference; and

(3) Submit documents for consideration by the decisionmaker.