

Program Operations Manual System (POMS)

Effective Dates: 08/02/2023 - Present

TN 45 (08-23)

GN 02250.005 Fault/Without Fault Findings - Waiver

A. Definition

1. At Fault

The individual caused or helped cause the overpayment.

2. Without Fault

The individual was blameless in the creation of the overpayment.

B. Policy

1. Fault of an Individual

Findings of fault must be made separately for each individual who requests a waiver. The fault of one individual is independent of the fault of any other individuals also liable for the overpayment.

When a deceased individual's estate is seeking a waiver, it is the fault of the deceased that must be determined. When the estate has been closed and the distributee is seeking a waiver, fault of the distributee must be determined.

Even though the overpayment may have been caused by SSA's error, the individual may still be at fault for the overpayment.

2. Fault Determination Depends on Degree of Care

An individual is expected to exercise a high degree of care in preventing an overpayment. Any individual who demonstrates either a lack of good faith or failure to exercise a high degree of care in reporting circumstances which may affect entitlement to or the amount of benefits will be found at fault for the overpayment. The degree of care expected varies with

the complexity of the circumstances giving rise to the overpayment and the capacity of the individual to realize that they are overpaid.

Lack of good faith in preventing an overpayment is evident when the facts show the overpayment resulted from:

- a. an incorrect statement by the individual which they knew or should have known was false,
- b. the individual's failure to furnish information which they knew or should have known was material, or
- c. the individual's acceptance of any payment that they knew or should have known was incorrect.

3. Presumptions About Fault

Certain presumptions can be made concerning the fault of individuals other than the overpaid individual:

- a. If the number holder is without fault in causing the overpayment, it will be presumed that any other beneficiary is also without fault if overpaid for the same event;
- b. If the overpaid individual is at fault, a spouse will be presumed at fault if living in the same household and overpaid for the same event;
- c. If the overpaid individual is at fault, a minor or an incompetent adult will be presumed without fault even though living in the same household and overpaid for the same event.

Any of these presumptions can be rebutted by clear and convincing evidence to the contrary.

4. Misuse and Fault

In the usual situation, if a misuse determination is upheld, the misuser cannot be found without fault.

C. Procedure

1. Fault Decided on an Individual Basis

Consider all of the circumstances surrounding the overpayment in each individual case taking into account any physical, mental, educational or linguistic limitations (including any lack of facility with the English language) the individual has. In evaluating the evidence, consider the individual's:

- a. understanding of and agreement to comply with reporting requirements,
- b. knowledge of the occurrence of events that should have been reported,
- c. efforts to comply with the reporting requirements,
- d. understanding of the obligation to return payments not due,
- e. ability (as determined by age, comprehension, education, memory, physical and mental condition, (which may include medical institutionalization during part or all of the overpayment period) linguistic limitations, etc.) to understand and comply with the reporting requirements,
- f. ability to recognize inconsistencies and evaluate the reasonableness of SSA's actions,
- g. experience in dealing with government agencies.
- h. understanding of the language used by SSA.

If the evidence clearly shows the individual did not understand and comply with reporting responsibilities, that individual can usually be found without fault. Resolve any doubt in favor of the individual.

2. Facts to Consider in Making Fault Determinations

In determining what an individual knew or should have known, remember that:

- The application contains an explanation of most reporting responsibilities on the tear off pages.
- Pamphlets and check stuffers are sent to beneficiaries at various times.
- The January check contains a stuffer about the new retirement test; for direct deposit beneficiaries, a separate notice is sent.
- The fact that there is a repay statement in file does not automatically preclude a without fault finding.

Generally, assume an individual received the appropriate information.

3. Example

In 7/89 Harry Finch reports a pending workers' compensation (WC) claim. Harry signs an SSA-546 and an SSA-795 repay statement. In 2/90, Harry reports that the WC claim was allowed in 2/90 with WC payments beginning 1/89. Since a timely report was made, the previously signed repayment statement would not preclude a finding of without fault.

4. Example

In August 2012, Harry Finch's benefits were ceased on medical review. The cessation decision included evidence from a Cooperative Disability Investigation report. The report refuted many of the statements Harry made on the SSA-454 regarding Harry's limitations. The report also provided evidence that Harry omitted material information. On appeal, Harry requests benefit continuation. In August 2013, the benefit cessation is upheld. Harry's inaccurate and misleading statements would preclude a finding of without fault.