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**EM-00007 INSTRUCTIONS FOR THE PROCESSING OF DENIALS OF
REQUESTS FOR WAIVERS OF SUPPLEMENTAL SECURITY INCOME (SSI)
OVERPAYMENTS--ACTION**

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FOR WAIVERS OF SUPPLEMENTAL SECURITY INCOME (SSI)
OVERPAYMENTS—ACTION

DATE: February 7, 2000

TO : All RCs/ALL ARC-MOS/ADs/FOs/BOs/TSCs/PSCs/DDSs/
FDDS/DQBs/OHACO/OCRO/DOCs/ODIO/OIO/DCO/DCS/
DCDISP/DCOMM/OGC/HCFAROs/OHAROs/OQA-DCFAM/
DCHR/OIG/DCLA/DHUs/OHAFOs/RPAOs

FROM : SSA, DCDISP, OPB

RETENTION DATE: OCTOBER 2000

In *Page v. Schweiker*, the Federal District Court for the Middle District of Pennsylvania held that an individual who requests waiver of SSI overpayment is entitled to an opportunity for a personal conference with a decisionmaker when the waiver cannot be approved on the basis of the initial waiver request.

On December 17, 1999, in EM 99138, we told you that SSA would implement *Page v. Schweiker* nationwide and to hold cases involving denials of waiver requests until further instructions were issued. Effective today, use the following instructions to process waiver requests you have been holding and any new requests that you receive from now on.

Note: The following instructions are already in place in the Pennsylvania field offices.

A. Background

Consistent with the decision in *Page v. Schweiker*, beginning December 17, 1999, an SSI recipient must be provided an opportunity for a personal conference before a request for waiver of recovery can be denied.

B. Policy

1. The position authorized to conduct the personal conference (decisionmaker) is the same as for making the overpayment disposition (signature requirement). Refer to SI 02220.005B.3.
2. The decisionmaker must NOT have participated in any prior part of the overpayment proceedings.

3. If all employees at the appropriate grade levels have already been involved in some way with the overpayment, arrange for a transfer of the case to a nearby field office. The recipient should be advised of the need for the transfer. In rare cases, because of the distance between offices or the recipient's and/or witness' financial circumstances, etc., it may be necessary to arrange for an authorized employee from another office to come to the servicing office to conduct the conference.

C. Procedures

1. Initial Notice for Proposed Denial of Waiver

If a request for waiver of recovery of an overpayment cannot be approved in full, do NOT send a waiver denial notice SSA-L8173-U3 or SSA-L8174-U3. Rather, prepare a notice on an SSA-L8052-U2, which includes:

- . The reason waiver cannot be approved (including the basis for findings as to fault and/or defeat the purpose, or against equity); and
- . The appropriate statutory and regulatory basis (i.e., section 1631(b)(1) and/or section 1621(e) of the Social Security Act, and sections 416.550 through 416.555 of title 20 of the Code of Federal Regulations; and
- . The date for the individual to have a personal conference and the date(s) to have the opportunity to review the folder, see GN 02270.OO5E.

Do not address recovery of the overpayment (i.e., neither request refund nor propose adjustment) or include the reconsideration paragraphs.

2. Person Declines Folder Review and/or Personal Conference or Does Not Appear for Personal conference

If the person declines folder review and/or personal conference or does not appear for the personal conference, process per GN 02270.007 or GN 02270.011 and make the appropriate systems input and prepare a notice on an SSA-L8052-U2 using the following language:

You (advised us that you did not want a personal conference to review the denial of your waiver request)(were notified that we had scheduled a personal conference for you on (date and time) to discuss the denial of your waiver request, but you did not come in for the conference or ask us to reschedule it.) Therefore, there is no basis for changing the decision to deny your request for waiver.

Please send us the \$ _____ overpayment right away. Make your check or money order out to the Social Administration and mail it in the enclosed envelope. Please write your Social Security Number on the check or money order.

If the individual is currently receiving SSI (i.e., current pay status) include this paragraph:

If within 30 days you do not refund the full amount or if we do not hear from you, we will withhold \$ _____ from your monthly payment beginning _____ to recover your overpayment.

Please get in touch with this office if you disagree with the proposed rate of repayment.

Your Right to Appeal

(Use the language on the back of an SSA-L8173-U3 when the individual is in current pay status. If the individual is no longer receiving SSI, use the appeal language on the back of an SSA-L8174-U3.)

3. Folder Review and/or Personal Conference

- a. Folder review by person, see GN 02270.009.

If, after the folder review, the person decides he/she does not want a personal conference, see 2. above.

- b. Selecting the conference site, see GN 02270.005A.3.
- c. Conducting the conference, see GN 02270.013.
- d. The personal conference decision, see GN 02270.015.

4. Notice and Distribution of Personal Conference Decision

In addition to preparing, signing, and dating the original of the personal conference decision (GN 02270.015), further action by the decisionmaker will depend on the decision.

- a. Full Waiver

If the decision is to grant full waiver of recovery of the repayment, follow the instructions in SM 01311.405 and SI 02260.001.

- b. Denial or Partial Waiver

If the decision is to affirm the original decision of waiver denial or to grant waiver of recovery of part of the overpayment, the decisionmaker will prepare a transmittal notice on an SSA-L8052-U2 using the following language:

The waiver determination reached as a result of your personal conference is enclosed. It has been that (the decision to deny your request for waiver of recovery of the overpayment was correct)(you will not have to repay the total \$ _____ which you incorrectly received for _____ but that repayment of \$ _____ is required.) The enclosed personal conference decision-special determination more fully explains the decision.

Please send us the \$_____ overpayment right away. Make your check or money order out to the Social Security Administration and mail it in the enclosed envelope. Please write your Social Security Number on the check or money order.

If the individual is currently receiving SSI (i.e., current pay status), include this paragraph:

If within 30 days you do not refund the full amount or if we do not hear from you, we will withhold \$_____ from your monthly payment beginning _____ to recover your overpayment.

Please get in touch with this office if you disagree with the proposed rate of repayment.

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Follow the instructions in SM 01310.145 to record the split decision. The systems-generated notice should be suppressed (NP1000).

Questions concerning this EM should be directed to your Regional Office. Regional office staff only may contact John Hailman via E:Mail at HQ-Exchange.

POMS Affected: SI 02260.009 (new)