



VETS HELPING VETS SINCE 1974

OVERPAYMENTS OF VA BENEFITS

You've been overpaid—or at least that's what the letter says. The VA wants its money back.

But you thought it was *your* money, and you've already spent it. You have \$20 in your pocket and \$10 in the bank. You're living from one VA check to the next. If your VA benefits are stopped—or even reduced—you'll be on the street.

*Don't wait!
File your waiver
request within 30 days.*

You need to ask the VA to cancel—or “waive”—the overpayment. This memo will guide you through the process.

If the VA decides that you weren't entitled to benefits you've already received, it “adjusts” your benefits retroactively, and sends you a letter saying that you've been overpaid. By how much? The letter doesn't say.

You learn the dollar amount a few weeks later, when you receive your first notice from the VA Debt Management Center (DMC). This notice tells you that the VA plans to withhold your monthly payments until it has recovered the entire overpayment. The notice also tells you when the withholding is set to begin.

The clock is now running.

Once you get the first DMC notice, you'll need to file a written waiver request—a request to cancel the overpayment. In effect, you'll be telling the VA that if it withholds your benefits to recover the overpayment, you won't have enough income to meet your basic needs, such as rent, food, and clothing.

Technically, you have 180 days from the date of the first DMC notice to request a waiver. **But don't wait! File your request as soon as possible—and no later than 30 days from the date on the notice.**

If you file before this deadline, the VA must continue to pay you your full monthly benefits while it's processing the waiver request, which usually takes several months.

If you file your waiver request after the 30-day deadline but before the 180-day deadline, the VA will still process your waiver request, but it will begin to withhold your monthly benefits on the date specified in the notice. You'll be without VA funds, at least until the VA makes a decision on your request. If the decision goes in your favor, the VA will then pay you all the money that's been withheld—but by then you're likely to be broke.

You can dispute the amount and existence of the debt, and request a hearing.

Once you get the first DMC notice, you can also dispute the amount—or even the existence—of the debt, and you can request a hearing. If you want to do any of these things, you should notify the VA in writing before the **30-day deadline**, at the same time you submit your waiver request.

Technically, there's no deadline for disputing the existence or amount of the debt. But if you do so before the 30-day deadline, the VA will continue to pay you in full until the dispute is resolved. Once that happens, the VA will proceed to process your waiver request—and it'll continue to pay you during the processing period.

If you request a hearing within 30 days of the date on the first DMC notice, the VA will not decide your waiver request until after the hearing has been held.

Ideally, your waiver request should include a statement telling the VA why you believe it should cancel the overpayment. (We'll give you pointers on writing your statement later in this memorandum.)

However, if a deadline is near, you can preserve your rights simply by filing a two-sentence waiver request, and submitting the statement as soon as possible afterward:

The Debt Management Center sent me a notice, dated _____, stating that the VA has overpaid me \$_____ in VA benefits. I dispute the existence and amount of the claimed overpayment, and I request a waiver of the full amount.

If possible, file your waiver request on VA Form 21-4138, Statement in Support

If a deadline is near, you can file a two-sentence waiver request.

of Claim. It's available at www.vba.va.gov/pubs/forms/VBA-21-4138-ARE.pdf. Otherwise, submit your request in a letter to the DMC. Either way, the request must be signed and dated, and must include your full name, social security number, and VA file number.

You may need to send your waiver request to the DMC by FedEx, UPS Next Day Air, or USPS Express Mail, to make certain it arrives before the 30-day or 180-day deadline. If you have more time, we recommend USPS Certified Mail, Return Receipt Requested. Using any of these services will give you proof that the DMC received your request on time.

The VA can't process your waiver request until you've also submitted a standard Financial Status Report, VA Form 5655, showing your income and expenses. You'll use this form to show the VA that you need all of your current VA income to pay for your basic needs. You'll find the form at www.va.gov/vaforms/va/pdf/VA5655.pdf.

If possible, submit this form with your waiver request. If not, be sure to submit it as soon as possible afterward. If the VA still hasn't received your Financial Status Report by the time it decides on your request, you're certain to be turned down.

HOW THE VA DECIDES

What does the VA look at when it decides whether an overpayment should be waived?

The regulations say that the VA is **not** allowed to waive a debt if there's "an indication of fraud, misrepresentation, or bad faith" on the part of the person who's requesting the waiver.

For example, let's say that you've been receiving VA pension benefits, and start receiving Social Security Disability Insurance (SSDI) benefits as well. You know you're supposed to report this new income to the VA right away, but you figure you'll wait a few weeks, until your finances are in better shape. The weeks turn into months. A year later, the VA does a "computer match" with the Social Security Administration, learns about the SSDI payments, and notifies you that you've been overpaid.

If you request a waiver of the overpayment, should you get one? The answer is no. You knowingly withheld information to keep money in your pocket. That's an "indication of fraud."

On the other hand, suppose you honestly didn't realize that you were supposed to tell the VA about the SSDI payments. Years ago, when you started to receive pension benefits, the VA told you to report any changes in your income right away, and it has sent out reminders from time to time since then. But you have early Alzheimer's disease. Your memory is spotty, and you have trouble thinking clearly.

In this case, you haven't *knowingly* done anything wrong. You haven't committed fraud. But you're still considered to be "at fault," because VA regulations required you to report the SSDI payments, and you didn't follow through.

What happens in this situation?

VA regulations **prohibit** collection of an overpayment when "collection would be against **equity** and **good conscience**."

"Equity" means about the same thing as "fairness" or "justice." Would it be unfair to you, the veteran, if the VA withheld your benefits to recover the overpayment?

"Good conscience" is a little harder to define, but it comes down to this: Would a reasonable person feel uneasy about withholding or reducing your VA benefits, considering all the facts and circumstances of your case?

To decide whether it would be "against equity and good conscience" to recover an overpayment, the VA considers six factors:

1. **Were you "at fault" in creating the overpayment?** Did the overpayment occur because of something you did or failed to do? In the example above, the veteran with early Alzheimer's didn't intend to do anything wrong, but he was still "at fault," because he didn't report his new SSDI income, as VA regulations required.
2. **Was the VA "at fault" in creating the overpayment? If both you and the VA were at fault, the VA considers who was *more* at fault.** Let's say that you promptly report your new income to the VA, but the VA takes six months to reduce your monthly payments. In the meantime, you continue to receive the full amount—and you spend it. In this case, you and the VA are both at fault, and the VA weighs who was more at fault.
3. **Would recovery of the overpayment cause "undue hardship" to you and your family by depriving you of basic necessities?**

If the VA stopped or reduced your monthly benefits, would you still have enough money to pay for food, clothing, shelter, and other essentials?

4. **Would recovery of the overpayment defeat the purpose for which the benefits were awarded?** This factor often comes into play if you're receiving VA pension. Pension is meant as a "safety net" for low-income veterans and their families, to ensure they can at least take care of their basic needs. For example, if a reduction in your pension benefits would cause you to go homeless, the reduction would defeat the purpose for which the VA awarded the benefit in the first place.
5. **Would failure to recover the overpayment leave you "unjustly enriched"?** In other words, would you be left with a windfall if the VA failed to stop or reduce your benefits?
6. **Have you "changed your position for the worse" because you were relying on the benefits the VA wants to recover?** For example, let's say that you're a renter with only a few minor debts. If you decide to put yourself heavily in debt by taking out a mortgage on a new home, you've "changed your position for the worse" in the expectation that your VA benefits would be sufficient to cover the payment. In these circumstances, the VA would consider whether it's fair to stop or reduce your benefits.

Think about *all six* factors when you write your statement telling the VA why you believe it should cancel the overpayment. The stronger your argument, the better your chances of success.

Consider this example: after years in a homeless shelter, you've finally managed to move into decent subsidized housing at a rent you can afford—\$450 per month. But your only income is \$1,021 in VA pension. That leaves only \$571 per month to pay for food, clothing, and all of your other expenses—as modest as those expenses are.

If your VA benefits are reduced or cut off entirely, you'll become homeless. Collection of the overpayment would cause "undue hardship" for you. It would also defeat the very purpose for which the VA awarded you the benefits. Remember, pension is meant as a "safety net," to ensure that you can at least pay for your basic needs. In these circumstances, you could certainly argue that it would be "against equity and good conscience" for the VA to withhold or reduce

your benefits.

WHAT IF YOU'RE TURNED DOWN?

Suppose you do your best, but the VA turns you down. What happens then?

The VA will increase the amount of the overpayment to include any benefits you received while the waiver request was being processed.

If you're turned down for a waiver, you can contact the VA and propose a plan for repayment of the debt. If your plan is accepted, the VA will reduce your benefits each month until the amount of the overpayment has been recovered. For example, you may be able to work out a repayment plan calling for a \$50 per month or \$100 per month reduction of your benefits until the overpayment has been paid back.

If you're turned down, you can also appeal the decision by filing a Notice of Disagreement, but doing so won't stop the VA from withholding your benefits. If you later win on appeal, the VA will pay you the benefits it has withheld.

In a relatively small number of cases, the VA will agree to “compromise” your debt—that is, to reduce the total amount you'll have to repay. This often involves a process of negotiation with the VA Debt Management Center, so it would be wise to seek assistance from a Veterans Service Organization (VSO). A VSO can also help you to prepare a waiver request or a Notice of Disagreement. You'll find a list of VSOs at www.stp-sf.org/guides/vsos.

Disclaimer

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