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Congress of the United States
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September 29, 2023

Dr. Kilolo Kijakazi
Acting Commissioner
Social Security Administration
1300 D. Street SW
Washington, D.C. 20024

Dear Commissioner Kijakazi,

I write to urge the Social Security Administration (SSA) to provide clarity for Americans receiving notices of overpayment from SSA, including those on Social Security Disability Insurance (SSDI). Millions of Americans rely on Social Security as a critical economic lifeline, and, through no fault of their own, many recipients find themselves devastated by overpayment claw-backs.

As you know, overpayments to Social Security recipients can be caused by a wide range of factors, including errors on the part of SSA in calculating the benefit, unintentional errors on the part of a recipient when reporting information to SSA, and changes in a recipient's income or medical status over time. Regardless of the cause of the overpayment, when SSA becomes aware of a potential overpayment issue they alert the recipient of the error and how much the recipient owes back to SSA. Many of these overpayment notices come as a complete surprise to SSA beneficiaries, leaving them confused, shocked, and scared that they cannot pay what SSA says they owe. And, because of an indefinite "look-back period", SSA can collect funds from a recipient for an error going back decades, resulting in collection notices totaling tens or even hundreds of thousands of dollars.

Some recipients may qualify for a waiver whereby they file and are granted a petition to be exempted from paying back some or all of what SSA says they owe. SSA allows for exceptions to overpayment claw-backs when it is found to be "against equity and good conscience." However, to a recipient, the process for determining if they qualify under this definition can seem arbitrary – to every Social Security recipient on a fixed-income, major financial disruptions can cause severe impacts to their quality of life and well-being.

Under 20 C.F.R. § 404.509 (a), recovery of an overpayment is against equity and good conscience (under title II and title XVIII) if an individual

- Changed his or her position for the worse, like buying a house, or relinquished a valuable right, like giving up part-time employment, because of reliance upon a notice that a payment would be made or because of the overpayment itself; or

- Was living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment.

Individuals may also be exempt if “the individual's financial circumstances are not material to a finding of against equity and good conscience.”

Recent reporting has shown the severe impacts inadvertent overpayments can have on the lives of people on social security, including seniors and people with disabilities, including to some of the 1.4 million social security recipients in Arizona. To that end, I request the following information:

- How many overpayments did SSA discover in FY23, versus past years, and how many of these recipients are in Arizona?
- How often are exceptions made in “equity and good conscience”, and are there particular instances, like a change in position or relinquishing a valuable right, where a recipient is more likely to be exempted from repayment?
- Internally, how is “equity and good conscience” defined for SSA employees, or is discretion left up to individual staff when they are reviewing waiver petitions?
- Does SSA track trends and patterns in waiver decisions for individual employees?
- Do employees take into account the amount of time that has passed from an initial overpayment when making a waiver determination?

Thank you in advance for your attention to this matter and I look forward to your response.

Sincerely,



Ruben Gallego
Member of Congress