

eral, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

(2) Limitation

The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) of this section may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(Aug. 14, 1935, ch. 531, title VIII, §807, as added Pub. L. 106-169, title II, §251(a), Dec. 14, 1999, 113 Stat. 1846; amended Pub. L. 108-203, title I, §§101(b), 102(b)(2), 103(b), 105(b), 106(b), Mar. 2, 2004, 118 Stat. 495, 499, 501, 504, 506.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(B), (3), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-203, §101(b)(3), substituted “for his or her use and benefit” for “for his or her benefit”.

Subsec. (b)(2)(D) to (F). Pub. L. 108-203, §103(b)(1), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (b)(3). Pub. L. 108-203, §103(b)(2), added par. (3).

Subsec. (d)(1)(D), (E). Pub. L. 108-203, §103(b)(3), added subpars. (D) and (E).

Subsec. (h)(3) to (5). Pub. L. 108-203, §106(b), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (i). Pub. L. 108-203, §101(b)(1), inserted second and third sentences.

Subsec. (j). Pub. L. 108-203, §101(b)(2), added subsec. (j).

Subsec. (k). Pub. L. 108-203, §102(b)(2), added subsec. (k).

Subsec. (l). Pub. L. 108-203, §105(b), added subsec. (l).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b) of Pub. L. 108-203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 103(b) of Pub. L. 108-203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 105(b) of Pub. L. 108-203 applicable to benefit misuse by a representative payee in

any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

Amendment by section 106(b) of Pub. L. 108-203 effective 180 days after Mar. 2, 2004, see section 106(d) of Pub. L. 108-203, set out as a note under section 405 of this title.

§ 1008. Overpayments and underpayments

(a) In general

Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, as follows:

(1) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which the overpaid person (if a qualified individual) is entitled, or shall require the overpaid person or his or her estate to refund the amount in excess of the correct amount, or, if recovery is not obtained under these two methods, shall seek or pursue recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury, as authorized under section 3720A of title 31.

(2) With respect to payment of less than the correct amount to a qualified individual who, at the time the Commissioner of Social Security is prepared to take action with respect to the underpayment—

(A) is living, the Commissioner of Social Security shall make payment to the qualified individual (or the qualified individual's representative payee designated under section 1007 of this title) of the balance of the amount due the underpaid qualified individual; or

(B) is deceased, the balance of the amount due shall revert to the general fund of the Treasury.

(b) Waiver of recovery of overpayment

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if the Commissioner of Social Security determines that the adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) Limited immunity for disbursing officers

A disbursing officer may not be held liable for any amount paid by the officer if the adjustment or recovery of the amount is waived under subsection (b) of this section, or adjustment under subsection (a) of this section is not completed before the death of the qualified individual against whose benefits deductions are authorized.

(d) Authorized collection practices

(1) In general

With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(e), 3716, and 3718 of title 31, as in effect on October 1, 1994.

(2) Definition

For purposes of paragraph (1), the term “delinquent amount” means an amount—

(A) in excess of the correct amount of the payment under this subchapter; and

(B) determined by the Commissioner of Social Security to be otherwise unrecoverable under this section from a person who is not a qualified individual under this subchapter.

(e) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b-17 of this title.

(Aug. 14, 1935, ch. 531, title VIII, §808, as added Pub. L. 106-169, title II, §251(a), Dec. 14, 1999, 113 Stat. 1850; amended Pub. L. 108-203, title II, §210(b)(2), Mar. 2, 2004, 118 Stat. 517.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-203, §210(b)(2)(A), substituted “any payment” for “any payment—”, struck out “(A)” before “under this subchapter”, substituted “section 3720A of title 31.” for “section 3720A of title 31; or”, and struck out subpar. (B) which read as follows: “under subchapter II of this chapter to recover the amount in excess of the correct amount, if the person is not currently eligible for payment under this subchapter.”

Subsec. (b) to (d). Pub. L. 108-203, §210(b)(2)(B), redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out heading and text of subsec. (b). Text read as follows: “In any case in which the Commissioner of Social Security takes action in accordance with subsection (a)(1)(B) of this section to recover an amount incorrectly paid to an individual, that individual shall not, as a result of such action—

“(1) become qualified for benefits under this subchapter; or

“(2) if such individual is otherwise so qualified, become qualified for increased benefits under this subchapter.”

Subsec. (e). Pub. L. 108-203, §210(b)(2)(B), (C), added subsec. (e) and redesignated former subsec. (e) as (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108-203, set out as a note under section 404 of this title.

§ 1009. Hearings and review**(a) Hearings****(1) In general**

The Commissioner of Social Security shall make findings of fact and decisions as to the rights of any individual applying for payment under this subchapter. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be a qualified individual and is in disagreement with any determination under this subchapter with respect to entitlement to, or the amount of, benefits under this subchapter, if the individual requests a hearing on the matter in disagree-

ment within 60 days after notice of the determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner of Social Security’s findings of fact and the decision. The Commissioner of Social Security may, on the Commissioner of Social Security’s own motion, hold such hearings and conduct such investigations and other proceedings as the Commissioner of Social Security deems necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of the individual (including any lack of facility with the English language) in determining, with respect to the entitlement of the individual for benefits under this subchapter, whether the individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(2) Effect of failure to timely request review

A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration.

(3) Notice requirements

In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(b) Judicial review

The final determination of the Commissioner of Social Security after a hearing under subsection (a)(1) of this section shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner of Social Security’s final determinations under section 405 of this title.

(Aug. 14, 1935, ch. 531, title VIII, §809, as added Pub. L. 106-169, title II, §251(a), Dec. 14, 1999, 113 Stat. 1851.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.