

Social Security Administration

§410.561e

§410.561d Against equity and good conscience; defined.

Against equity and good conscience means that adjustment or recovery of an incorrect payment will be considered inequitable if an individual, because of a notice that such payment would be made or by reason of the incorrect payment, relinquished a valuable right (example 1); or changed his position for the worse (example 2). In reaching such a determination, the individual's financial circumstances are irrelevant.

Example 1. After being awarded benefits, an individual resigned from employment on the assumption he would receive regular monthly benefit payments. It was discovered 3 years later than (due to Administration error) his award was erroneous because he did not have pneumoconiosis. Due to his age, the individual was unable to get his job back, and could not get any other employment. In this situation, recovery or adjustment of the incorrect payments would be against equity and good conscience because the individual gave up a valuable right.

Example 2. A widow, having been awarded benefits for herself and daughter, entered her daughter in college because the monthly benefits made this possible. After the widow and her daughter received payments for almost a year, the deceased worker was found not to have had pneumoconiosis and all payments to the widow and child were incorrect. The widow has no other funds with which to pay the daughter's college expenses. Having entered the daughter in college and thus incurred a financial obligation toward which the benefits had been applied, she was in a worse position financially than if she and her daughter had never been entitled to benefits. In this situation, the recovery of the incorrect payments would be inequitable.

[37 FR 20648, Sept. 30, 1972]

§410.561e When an individual is "without fault" in a reduction-overpayment.

Except as provided in §410.561g, or elsewhere in this subpart, an individual will be considered *without fault* in accepting a payment which is incorrect because he failed to report an event relating to excess earnings specified in section 203(b) of the Social Security Act, or which is incorrect because a reduction in his benefits equal to the amount of a deduction required under section 203(b) of the Social Security Act is necessary (see §410.530), if it is shown that such failure to report or

such acceptance of the overpayment was due to one of the following circumstances:

(a) Reasonable belief that only his net cash earnings ("take-home" pay) are included in determining the annual earnings limitation or the monthly earnings limitation under section 203(f) of the Social Security Act (see §410.530).

(b) Reliance upon erroneous information from an official source within the Social Security Administration (or other governmental agency which the individual had reasonable cause to believe was connected with the administration of benefits under part B of title IV of the Act) with respect to the interpretation of a pertinent provision of the Act or regulations pertaining thereto. For example, this circumstance could occur where the individual is misinformed by such source as to the interpretation of a provision in the Act or regulations relating to reductions.

(c) The beneficiary's death caused the earnings limit applicable to his earnings for purposes of reduction and the charging of excess earnings to be reduced below \$1,680 for a taxable year.

(d) Reasonable belief that in determining, for reduction purposes, his earnings from employment and/or net earnings from self-employment in the taxable year in which he became entitled to benefits, earnings in such year prior to such entitlement would be excluded. However, this provision does not apply if his earnings in the taxable year, beginning with the first month of entitlement, exceeded the earnings limitation amount for such year.

(e) Unawareness that his earnings were in excess of the earnings limitation applicable to the imposition of reductions and the charging of excess earnings or that he should have reported such excess where these earnings were greater than anticipated because of:

(1) Retroactive increases in pay, including backpay awards;

(2) Work at a higher pay rate than realized;

(3) Failure of the employer of an individual unable to keep accurate records to restrict the amount of earnings or

§ 410.561f

the number of hours worked in accordance with a previous agreement with such individual;

(4) The occurrence of five Saturdays (or other workdays, e.g., five Mondays) in a month and the earnings for the services on the fifth Saturday or other workday caused the reductions.

(f) The continued issuance of benefit checks to him after he sent notice to the Administration of the event which caused or should have caused the reductions provided that such continued issuance of checks led him to believe in good faith that he was entitled to checks subsequently received.

(g) Lack of knowledge that bonuses, vacation pay, or similar payments, constitute earnings for purposes of the annual earnings limitation.

(h) Reasonable belief that earnings in excess of the earnings limitation amount for the taxable year would subject him to reductions only for months beginning with the first month in which his earnings exceeded the earnings limitation amount. However, this provision is applicable only if he reported timely to the Administration during the taxable year when his earnings reached the applicable limitation amount for such year.

(i) Reasonable belief that earnings from employment and/or net earnings from self-employment after the attainment of age 72 in the taxable year in which he attained age 72 would not cause reductions with respect to benefits payable for months in that taxable year prior to the attainment of age 72.

(j) Reasonable belief by an individual entitled to benefits that earnings from employment and/or net earnings from self-employment after the termination of entitlement in the taxable year in which the termination event occurred would not cause reductions with respect to benefits payable for months in that taxable year prior to the month in which the termination event occurred.

(k) Failure to understand the deduction provisions of the Social Security Act or the occurrence of unusual or unavoidable circumstances the nature of which clearly shows that the individual was unaware of a violation of such reduction provisions. However, these provisions do not apply unless he made a bona fide attempt to restrict his an-

20 CFR Ch. III (4-1-01 Edition)

nual earnings or otherwise comply with the reduction provisions of the Act.

[37 FR 20648, Sept. 30, 1972]

§ 410.561f When an individual is “without fault” in an entitlement overpayment.

A benefit payment under part B of title IV of the Act to or on behalf of an individual who fails to meet one or more requirements for entitlement to such payment or the payment exceeds the amount to which he is entitled, constitutes an entitlement overpayment. Where an individual or other person on behalf of an individual accepts such overpayment because of reliance on erroneous information from an official source within the Administration (or other governmental agency which the individual had reasonable cause to believe was connected with the administration of benefits under part B of title IV of the Act) with respect to the interpretation of a pertinent provision of the Act or regulations pertaining thereto, such individual, in accepting such overpayment, will be deemed to be *without fault*.

[37 FR 20649, Sept. 30, 1972]

§ 410.561g When an individual is at “fault” in a reduction-overpayment.

(a) *Degree of care.* An individual will not be *without fault* if the Administration has evidence in its possession which shows either a lack of good faith or failure to exercise a high degree of care in determining whether circumstances which may cause reductions from his benefits should be brought to the attention of the Administration by an immediate report or by return of a benefit check. The high degree of care expected of an individual may vary with the complexity of the circumstances giving rise to the overpayment and the capacity of the particular payee to realize that he is being overpaid. Accordingly, variances in the personal circumstances and situations of individual payees are to be considered in determining whether the necessary degree of care has been exercised by an individual to warrant a finding that he was without fault in accepting a “reduction-overpayment.”