

of presumptive disability or presumptive blindness will not be considered overpayments where ineligibility is determined because the individual or eligible spouse is not disabled or blind. However, where it is determined that all or a portion of the presumptive payments made are incorrect for reasons other than disability or blindness, these incorrect payments are considered overpayments (as defined in paragraph (a) of this section). Overpayments may occur, for example, when the person who received payments on the basis of presumptive disability or presumptive blindness is determined to be ineligible for all or any part of the payments because of excess resources or is determined to have received excess payment for those months based on an incorrect estimate of income.

(2) *Penalty.* The imposition of a penalty pursuant to §416.724 is not an adjustment of an overpayment and is imposed only against any amount due the penalized recipient, or, after death, any amount due the deceased which otherwise would be paid to a survivor as defined in §416.542.

[40 FR 47763, Oct. 10, 1975, as amended at 43 FR 17354, Apr. 24, 1978; 50 FR 48572, Nov. 26, 1985; 55 FR 7313, Mar. 1, 1990; 58 FR 52912, Oct. 13, 1993; 62 FR 38454, July 18, 1997]

§416.538 Amount of underpayment or overpayment.

(a) *General.* The amount of an underpayment or overpayment is the difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period. An underpayment or overpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month the initial determination of overpayment or underpayment is made. With respect to the period established, there can be no underpayment to a recipient or his or her eligible spouse if more than the correct amount payable under title XVI of the Act has been paid, whether or not adjustment or recovery of any overpayment for that period to the recipient or his or her eligible spouse has been waived under the provisions of §§416.550 through 416.556. A subsequent

initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that the basis of the prior overpayment remains the same.

(b) *Limited delay in payment of underpaid amount to recipient or eligible surviving spouse.* Where an apparent overpayment has been detected but determination of the overpayment has not been made (see §416.558(a)), a determination of an underpayment and payment of an underpaid amount which is otherwise due cannot be delayed to a recipient or eligible surviving spouse unless a determination with respect to the apparent overpayment can be made before the close of the month following the month in which the underpaid amount was discovered.

(c) *Delay in payment of underpaid amount to ineligible individual or survivor.* A determination of an underpayment and payment of an underpaid amount which is otherwise due an individual who is no longer eligible for SSI or is payable to a survivor pursuant to §416.542(b) will be delayed for the resolution of all overpayments, incorrect payments, adjustments, and penalties.

(d) *Limited delay in payment of underpaid amount to eligible individual under age 18 who has a representative payee.* When the representative payee of an eligible individual under age 18 is required to establish a dedicated account pursuant to §§416.546 and 416.640(e), payment of past-due benefits which are otherwise due will be delayed until the representative payee has established the dedicated account as described in §416.640(e). Once the account is established, SSA will deposit the past-due benefits payable directly to the account.

(e) *Reduction of underpaid amount.* Any underpayment amount otherwise payable to a survivor on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient or survivor under section 1631(e) of the Act (see §416.537(b)(2)).

[58 FR 52912, Oct. 13, 1993, as amended at 61 FR 67205, Dec. 20, 1996]