§ 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 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 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