

INCARCERATION AND DISABILITY BENEFITS

WILL MY DISABILITY CHECKS STOP WHEN I AM IN JAIL OR PRISON?

SSI or SSDI payments are not payable in the months that you are imprisoned or in jail for committing a crime. The rules are different for when SSI or SSDI benefits are stopped.

Supplemental Security Income (SSI)

If you receive SSI and are convicted of a criminal offense and sent to prison or jail for more than 30 continuous days, your payments will be suspended while you are in prison and will be reinstated in the month you are released. However, if you are in prison for 12 consecutive months or longer, you are no longer eligible for SSI and will have to file for a new application.

Example 1: You went to jail or prison on March 1. Your payments should continue for the month of March. Your SSI would stop on April 1 because you were in jail or prison for the full month of March*

Example 2: You went to jail on March 2. Your SSI should continue during March and all of April because April was the first full calendar month you were in jail. Your payments should stop May 1*

Example 3: You went to jail on March 15 and were released April 16. Your SSI should not stop because you were not in jail for any full calendar months. You were only in jail for part of March and part of April.

Social Security Disability Insurance (SSDI)

Your SSDI payments should continue while you are in jail or prison until the 31st day after you have been convicted of a crime no matter what day you went to jail or prison.¹

Example 1: You were arrested March 2 and went to jail. You were convicted of a crime on June 10. You are eligible for benefits while you were in jail from March 2 through July 10. Your benefits should stop on July 11, because July 11 is 31 days after your June 10 conviction date.

Example 2: You were arrested May 10 and went to jail. You were convicted of a crime on June 10 and were sentenced to 45 days in jail. You were given credit for time served and were released from jail on June 24. Your benefits should continue the whole time you are in jail. Even though you served 45 days of a sentence, you were not in jail 31 days after you were convicted on June 10.²

¹ POMS GN 02607.160.

² POMS GN 02607.200 (A) (5).

SSI and SSDI

If you receive both SSI and SSDI each month, your SSDI payments will follow the rules in part 1(a) of this information sheet and your SSI will follow the rules in part 1(b).³

WHEN I AM RELEASED, HOW DO I GET MY DISABILITY BENEFITS BACK?

If you still meet the other eligibility requirements for SSI or SSDI, the Social Security Administration can restart your SSI or SSDI benefits after you are released from jail or prison.⁴

Restart Your SSI Payments

If your SSI benefits were suspended, you can request Social Security to reinstate your benefits. You will need to contact Social Security and provide a copy of release documents. If you were in jail for less than 12 months in-a-row, go to your local Social Security office with your photo I.D. and an official document from the jail or prison listing your incarceration dates.⁵ Social Security can restart your benefits starting with the day you were released from jail or prison.⁶

Restart Your SSDI Payments

Unlike SSI, if you receive SSDI, Social Security keeps your case open no matter how long you were in jail or prison, even if your payments stopped. To start getting SSDI again, you must request that Social Security restart (reinstate) your benefits.

Once you are released, go to your local Social Security office with your photo I.D. and an official document from the jail or court listing the dates you were in jail or prison, the date you were convicted, and the date you were released. Your benefits should restart the month after you were released.⁷

WHAT IF I AM IN JAIL OR PRISON FOR A PROBATION OR PAROLE VIOLATION?

SSI – Probation or Parole Violations

Generally, you are not eligible for SSI if you are in jail or prison because of a probation or parole violation.⁸ However, Social Security should not stop your payments until the parole board or a court makes an official decision that you violated parole or probation.⁹ Also, if a court later decides that either (1) you were not guilty of your original crime, or (2) your original crime was not violent or drug related and your parole or probation violation was not violent or drug related, the Social Security Administration has the right to choose to continue your payments or return payments that Social Security withheld.¹⁰

³ POMS SI 00520.001-9, POMS GN 02607.160

⁴ POMS SI 02310.093

⁵ POMS SI 02310.093

⁶ Id.

⁷ Id.

⁸ 42 U.S.C. § 402(x)(1)(A)(v)

⁹ POMS GN 02615.100 (B) (1).

¹⁰ 42 U.S.C. § 402(x)(1)(A)(v)

Example: You went to jail on March 2 for a probation or parole violation. The court or a parole board determined that you violated probation or parole on April 15. Your SSI should continue during March, April, and May. It should stop after May because May was the first full calendar month you were in jail. Your payments should stop June 1.***

SSDI – Probation or Parole Violations

Generally, if you violate probation or parole and are sent to jail or prison, your SSDI should continue until either the parole board or a court makes an official decision that you violated parole or probation *and* you have been in jail or prison for 31 days.¹¹

Example: You went to jail on March 2 for a probation or parole violation. The court or a parole board determined that you violated probation or parole on April 15. Your SSDI should continue until May 16 because this is the 31st day after the official decision that you violated probation or parole.

NOTE: Social Security often makes mistakes regarding these rules. If Social Security is not giving you benefits that you are eligible for, or you believe that Social Security made a mistake about an overpayment, please call us on our Health Intake Line at (408) 280-2420.

WARNING: This information sheet is intended to provide accurate, general information regarding legal rights. It is not legal advice. Because laws and legal processes are frequently change and can be interpreted differently, the Law Foundation of Silicon Valley cannot guarantee that the information in this sheet is current. The Law Foundation of Silicon Valley cannot be responsible for what anyone does with this information. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

¹¹ POMS GN 02607.200 (B).

*** However, it is possible that the Social Security Administration will bill you for an overpayment for the month of May.