

RCW 7.68.073 Reduction in disability compensation—Recovery of overpayments—Notice—Waiver—Application—Adjustments due to federal reductions. (1) For persons receiving compensation for temporary total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act. In the event of an overpayment of benefits, the department may not recover more than the overpayments for the six months immediately preceding the date on which the department notifies the victim that an overpayment has occurred. Upon determining that there has been an overpayment, the department shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 7.68.126.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this chapter. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the victim receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the victim may be eligible under this chapter or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Victims under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Victims under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Victims who will become sixty-five years of age on or after June 10, 2004.

(8) (a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a victim for periods of temporary total, temporary partial, or total permanent disability for which the department also reduced the victim's benefit amounts under this section, the department shall make adjustments in the calculation of benefits and pay the additional benefits to the victim as appropriate. However, the department shall not make changes in the calculation or pay additional benefits unless the victim submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the victim's claim under this chapter is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal. [2011 c 346 § 405.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.