

Legal Basics: Supplemental Security Income (SSI)

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Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972 we have focused our efforts on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

- Eligibility for SSI is based on financial need, in contrast to Social Security which is a social insurance program with eligibility based on work history.
- To be eligible for SSI, an individual must be age 65 or older, or meet the Social Security standard of disability.
- Many complicated financial eligibility rules relating to income and resources apply to SSI recipients.

Section 1: What is Supplemental Security Income?

Supplemental Security Income (SSI) is a means-tested program based on financial need for seniors and people with disabilities. It provides cash assistance to people who are at least 65 years old, blind, or meet the Social Security standard of disability, and who have very low income and limited assets. SSI benefits are an essential component of the economic security of many Americans and are especially important for vulnerable populations.

In 2017, the maximum federal benefit rate is \$735 per month for an individual and \$1,103 per month for an eligible couple, with some states providing a supplement to the federal benefits.¹ No work history is required to be eligible for SSI. In most states, anyone receiving SSI is automatically eligible for Medicaid.² SSI is also referred to as “Title XVI.”

Both SSI and Social Security are administered by the Social Security Administration (SSA), an independent agency of the federal government. In contrast to SSI, Social Security is a social insurance program with benefits based on an individual’s work history. Financial need is not a factor in eligibility determinations. Social Security is also referred to as “Title II” and “OASDI” (Old Age, Survivors and Disability Insurance).

Just under 8.3 million people were receiving SSI payments in February 2017.³ Approximately 2.8 million individuals receive both SSI benefits and Social Security benefits simultaneously; this occurs when their Social Security benefit is less than the SSI benefit, due to a limited work history or a history of low-wage work or both.

SSI applicants and recipients must meet several eligibility criteria: categorical eligibility, financial eligibility, and immigrant eligibility.

Section 2: Categorical Eligibility

The categories are age (65 years old or older), blindness, and disability. The applicant must satisfy one category. Whether an individual is 65 or older is usually a straightforward determination.

For an adult age 18 to 64, the Social Security Act defines disability as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.⁴ The combined effect of a person's impairments must be severe enough to prevent the individual from doing his or her previous work, or to engage in any other kind of substantial gainful work which exists in the national economy.⁵ Those under 18 years old follow a separate SSI disability determination process focused on impairments that cause severe functional limitations.⁶

Section 3: Financial Eligibility

Income

To be eligible for SSI, an individual cannot have more available countable income than the SSI payment level applicable to the individual's living arrangement. Income is counted on a monthly basis, and the current month's income is used to calculate the SSI benefit two months later.⁷

Income is defined as anything received in cash or in kind that can be used to meet an individual's needs for food and shelter.⁸ In other words, if it cannot be used to obtain food or shelter, it is not income for SSI purposes.

Even if something is income under the SSI definition, it still might not be "countable income." Only countable income affects SSI eligibility and the amount of benefits to be paid.⁹ Some items that are not considered to be income are: proceeds of a loan, income tax refunds, and bills paid directly to the supplier by someone else for goods or services other than food or shelter.¹⁰

The Social Security Act divides income into two categories for SSI purposes—earned and unearned income. Unearned income is defined in Social Security regulations by what it is not, i.e., it is not earned income. Of those SSI recipients who have other sources of income, the overwhelming majority have only unearned income, usually from Social Security benefits. For those who have only unearned income, determining the countable income for SSI is very simple: take the individual's or eligible couple's unearned income for the month and subtract the general income disregard of \$20.¹¹

A very small percentage, about 3 percent, of all SSI recipients have earned income.¹² The rules for counting earned income are more generous than those for counting unearned income: start with gross wages, disregard \$65 per month, and subtract any impairment-related work expenses for recipients with disabilities. If the recipient has not already used it, the \$20 general income disregard is also subtracted. Then divide the remainder by two to get to the countable income for SSI.¹³

In-kind support and maintenance

In-kind support and maintenance is food or shelter that someone else provides for an SSI recipient, which under SSI rules is counted as a type of unearned income that reduces the SSI benefit.¹⁴ Two rules determine the amount of the income reduction: the one-third rule resulting in an absolute reduction of \$245 (one-third of the SSI federal benefit rate) regardless of the actual market value of the food and shelter provided,¹⁵ and the presumed value rule resulting in a reduction of up to \$265 (one-third of the SSI federal benefit rate, plus \$20), with a lesser amount subtracted if the actual value of in-kind support is less than \$265.¹⁶

Not everything received in-kind is counted; only in-kind food and shelter, or that which can be used to obtain food and shelter, is counted. Also, items provided with the understanding that the individual will later repay, such as when a friend or relative provides food and shelter while the SSI application is pending, do not constitute in-kind support and maintenance.¹⁷

Resources

Resources of an SSI recipient may not exceed \$2,000 for an individual or \$3,000 for an eligible couple.¹⁸ A resource is defined as cash or other liquid assets or any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance.¹⁹ Nonliquid resources are generally counted on the basis of the equity an individual has in the resource, i.e., market value minus encumbrances.²⁰ Resources are counted only once a month on the first day of the month.²¹

Certain resources are excluded and do not count toward the resource limit.²² Some of the principal exclusions are: the home in which the SSI recipient resides and all contiguous land, regardless of value; one automobile regardless of value; personal or household goods; either set-aside burial funds of up to \$1,500, or life insurance with up to \$1,500 face value; a burial plot regardless of value; jointly owned property where the sale would cause undue hardship to the co-owner because of loss of housing; past-due Social Security and SSI payments, which are excluded from resources for nine months; and Earned Income Tax Credit and Child Tax Credit, which are excluded from resources for nine months.

Transfer of resources penalty

An SSI applicant or recipient who transfers resources to another person for less than fair market value could become ineligible for SSI benefits for up to 36 months.²³ Anything that fits within the SSI resource definition is a resource for purposes of the transfer penalty. A common scenario is where an SSI recipient is told her benefits are suspended because she is over the resource limit and is told nothing about the transfer penalty. She then gives away the excess resource under the impression this will help restore her SSI and related Medicaid benefits. Instead, she learns she will continue to be ineligible for an extended period because of the transfer penalty.

Exceptions to the transfer penalty include:²⁴ if the resource is returned, there is no period of ineligibility, even for the period prior to the return of the resource; if the individual provides convincing evidence that the transfer was exclusively for another purpose, to overcome the presumption that the transfer was for the purpose of obtaining SSI; if the resource transferred would have been excludable in the month of transfer, such as a home that the individual was residing in at the time of the transfer; if not receiving the SSI benefit would result in loss of food or shelter, and the individual's total available funds do not exceed the applicable monthly payment rate for the individual's living arrangement; or if the transferred amount, when combined with other resources, is less than the \$2,000 (\$3,000 for a couple) resource limit.

Refusal to accept money to which you have a legal right, such as refusal to accept a modest inheritance, can also result in imposition of a transfer penalty. Gifts of cash are considered transfers of resources and will incur a period of ineligibility if, when added to the individual's other resources, they exceed the resource limit. Repayment of a loan that one has a legal obligation to repay is not a transfer for less than fair market value. Individuals spending money on themselves never will create a period of ineligibility.

Deeming of income and resources

Deeming is when the income or resources of someone who is not eligible for SSI are considered available to the person applying for SSI benefits.²⁵ Deeming applies only to three relationships: income and resources of an ineligible spouse living in the same household is deemed to an SSI spouse;²⁶ income and resources of a parent living in the same household is deemed to an SSI child;²⁷ and income and resources of an immigrant sponsor is deemed to some SSI immigrants, which primarily affects sponsored immigrants whose sponsors signed affidavits of support

on or after December 1997.²⁸ The formula for determining the amount of the income and resources available to the individual is different in each of the three circumstances.

Marriage recognition for same-sex couples

SSA currently recognizes all marriages of same-sex couples for purposes of determining entitlement to benefits, including SSI, regardless of the jurisdiction in which the couple is living.²⁹

Section 4: Immigrant Eligibility and Other Status Considerations

Before 1996, immigrant eligibility for SSI was very simple: lawful immigrants were eligible for SSI on the same basis as citizens. The Personal Responsibility Work Opportunity and Reconciliation Act of 1996, coupled with the Balanced Budget Act of 1997, established complex special requirements that greatly restricted immigrant eligibility for SSI and other benefits.³⁰ SSA personnel are frequently unfamiliar with the details of these requirements, resulting in inappropriate denials. Any noncitizen who was receiving benefits on August 22, 1996, is grandfathered in, and the provisions of the 1996 legislation will not apply. Other noncitizens must look to their date of entry into the United States; one set of rules applies to those who entered before August 22, 1996, and another more restrictive set of rules applies to those who entered on or after that date.

Residence

Residence in the United States is required, even for U.S. citizens. All SSI recipients must reside in one of the 50 states, the District of Columbia, or the Northern Mariana Islands. An individual who is absent from the country for a full calendar month, or for 30 consecutive days or more, is no longer eligible until the individual has been back in the country for 30 consecutive days.³¹

Institutionalization

For SSI recipients who enter a nursing home or other medical facility where Medicaid pays for more than half of the care, the SSI benefit is reduced to \$30 per month.³² Those who will be in a medical facility for 90 days or less may be able to receive the regular SSI benefit for up to three months.³³

Section 5: The Decision and Appeals Process

The Social Security Administration has a four-step administrative decision and appeals process. At all stages of the appeal process, the individual has 60 days (plus five days for mailing) to file an appeal of an adverse decision.³⁴ Each stage excuses missed deadlines for good cause.³⁵

Initial determination

Initial determinations are made in the local SSA office, except disability determinations, which are made by the state Disability Determination Services.

Reconsideration

This first appeal step takes place at the local SSA office or at a regional program center. In the case of disability determinations, reconsideration takes place at the state Disability Determination Services.

Only for SSI proposed suspensions or reductions in benefits, the SSI recipient is entitled to receive full benefit continuation pending a decision on reconsideration, if the recipient files the appeal within 10 days (plus 5 days for mailing).³⁶ The individual has the option of having a case review, an in-person informal conference, or an in-person formal conference (which includes the right to request a subpoena for documents and witnesses).³⁷

Administrative Law Judge Hearing

If the claim is denied on reconsideration, the individual can further appeal for an evidentiary hearing before an Administrative Law Judge (ALJ). Unlike reconsideration, a high percentage of cases get reversed at this stage of the process. It is extremely important that all relevant issues be raised at the ALJ hearing, as it may not be possible to raise additional issues later in the process.

Appeals Council

A claimant can request Appeals Council review of an adverse ALJ decision. Review by the Appeals Council is discretionary, and in the overwhelming majority of cases, the Appeals Council simply denies review. Although it does not happen often, the Appeals Council can also take a case on “own motion” review to review an ALJ decision that was favorable to the claimant. A claimant can file an appeal in federal court from an adverse Appeals Council decision or from a denial of review by the Appeals Council.³⁸

Conclusion

It is vital for advocates to understand the complex rules in the SSI program, to ensure that the clients who rely on these benefits for their economic security are receiving and continue to receive the full amount to which they are entitled.

Additional Resources

- Trinh Phan, tphan@justiceinaging.org
- Jenny Chung Mejia, jchungmejia@justiceinaging.org
- Social Security Act: 42 U.S.C. §§ 1381-1383f
- SSI Regulations: 20 C.F.R. §§ 416.101 – 2227
- Program Operations Manual System (POMS): secure.ssa.gov/apps10/poms.nsf/partlist
- Social Security Administration: ssa.gov
- Understanding Supplemental Security Income Guide: ssa.gov/ssi/text-understanding-ssi.htm
- Kate Lang, *Social Security and Supplemental Security Income 101*, Clearinghouse Review Journal of Poverty Law and Policy, February 2017
- Justice in Aging SSI Resources: justiceinaging.org

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at NCLER@justiceinaging.org.

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Endnotes

- 1 [Social Security Administration, SSI Federal Payment Amounts for 2017](#), available at ssa.gov/OACT/COLA/SSI.html. See *id.*, [Program Operations Manual System \(POMS\), General Information About State Supplementation](#), SI 01401.001 (2016).
- 2 [42 U.S.C. § 1396a\(a\)\(10\)\(A\)\(i\)\(II\)](#). [Social Security Administration POMS, Medicaid and the Supplemental Security Income \(SSI\) Program](#), SI 01715.010
- 3 [Social Security Administration, SSI Monthly Statistics, February 2017, Table 1](#), available at ssa.gov/policy/docs/statcomps/ssi-monthly/2017-02/table01.html.
- 4 [42 U.S.C. § 423\(d\)\(1\)\(A\)](#).
- 5 [Id. § 423\(d\)\(2\)\(A\)](#).
- 6 See [20 C.F.R. § 416.924](#).
- 7 [Id. § 416.420](#).
- 8 [Id. § 416.1102](#).
- 9 [Id. § 416.1104](#).
- 10 [Id. § 416.1103](#).
- 11 [Id. § 416.1124\(c\)\(12\)](#).
- 12 See [Social Security Administration, Annual Statistical Supplement, 2016: Supplemental Security Income](#), Table 7.D1, available at ssa.gov/policy/docs/statcomps/supplement/2016/7d.html.
- 13 [20 C.F.R. § 416.1112](#).
- 14 [Id. § 416.1130](#).
- 15 [Id. § 416.1131](#).
- 16 [Id. §§ 416.1140–416.1145](#).
- 17 See [Social Security Administration POMS, Loans of In-Kind Support and Maintenance](#), SI 00835.482
- 18 [42 U.S.C. §§ 1382\(a\)\(1-3\)](#).
- 19 [20 C.F.R. § 416.1201\(a\)](#).
- 20 [Id. § 416.1201\(c\)](#).
- 21 [Id. § 416.1207](#).
- 22 [Id. § 416.1210](#). See [Social Security Administration POMS, Resources Exclusions](#), SI 01130.050–01130.740.
- 23 [42 U.S.C. § 1382b\(c\)](#); [20 C.F.R. § 416.1246](#); [Social Security Administration POMS, What Is a Resource Transfer](#), SI 01150.001.
- 24 [Social Security Administration POMS](#) SI 01150.120–SI 01150.127.
- 25 [20 C.F.R. §§ 416.1160](#) (income), [416.1202](#) (resources).
- 26 [Id. §§ 416.1161, 416.1163, 416.1202](#).
- 27 [Id. §§ 416.1161, 416.1165, 416.1202](#).
- 28 [Id. §§ 416.1166a](#) (income), [416.1204](#) (resources).
- 29 See [Obergefell v. Hodges](#), 135 S. Ct. 2584 (2015).
- 30 See [8 U.S.C § 1612\(a\)\(1\)](#) (2015). See also [Social Security Administration POMS, SSI Alien Eligibility](#), SI 00502.000–00502.550.
- 31 [20 C.F.R. § 416.1327](#).
- 32 [Id. § 416.211\(b\)](#).
- 33 [Id. § 416.212](#).
- 34 [Id. §§ 416.1409, 416.1433, 416.1468, 404.909, 404.933, 404.968](#).
- 35 [Id. §§ 416.1411, 404.911](#).
- 36 [Id. § 416.1336\(b\)](#). See [Goldberg v. Kelly](#), 397 U.S. 254 (1970).
- 37 [20 C.F.R. § 416.1413](#).
- 38 [Id. §§ 416.1481, 404.981](#).

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