

# In-Kind Support and Maintenance (ISM) in the Supplemental Security Income (SSI) Program

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# Glossary

- ALJ.....Administrative Law Judge
- CMV.....Current Market Value
- ISM.....In-Kind Support and Maintenance
- PMV.....Presumed Maximum Value
- POMS.....Social Security Program Operations Manual System
- SNAP.....Supplemental Nutrition Assistance Program
- SSA.....Social Security Administration
- SSI.....Supplemental Security Income
- TANF.....Temporary Assistance for Needy Families
- VTR.....Value of the One-Third Reduction

# Introduction to In-Kind Support and Maintenance (ISM)

The rules surrounding in-kind support and maintenance (ISM) in the Supplemental Security Income (SSI) program are confusing and often result in significant reductions in individuals' already meager benefits. If an SSI recipient is receiving "in-kind support and maintenance" in the form of free or subsidized food and/or shelter from others, the Social Security Administration (SSA) will treat that support as unearned income and reduce the individual's benefits by as much as one-third. ISM determinations are made on a monthly basis.

This guide is designed to help advocates understand common ISM issues. It includes explanations on how SSA evaluates ISM, case examples, advocacy strategies, and sample materials. This guide does not cover other issues regarding income and resources, such as gifts or overpayments.

In the majority of cases, ISM problems can be resolved at the field office level. Advocates should consult and cite SSA's Programs Operations Manual System (POMS) when working with field offices to resolve individuals' ISM issues. POMS SI 00835.000 ("Living Arrangements and In-Kind Support and Maintenance") is the subchapter containing all of the POMS sections relating to ISM.<sup>1</sup>

## Appealing ISM Decisions

ISM determinations are initial decisions by SSA that are subject to the full appeals process. Individuals must appeal decisions in writing by filing a Request for Reconsideration (Form 561) within 60 days (plus five days for mailing) from the date on the notice. However, those who are facing benefit reductions or suspensions should appeal within 10 days (plus 5 days for mailing), which is the deadline for requesting that benefits be continued at the current amount. SSA will continue benefits only through the first level of appeal, the reconsideration stage.<sup>2</sup>

When individuals request reconsideration, SSA will offer three options through which SSA will decide the appeal: a case review, an informal conference, or a formal conference.<sup>3</sup> An individual should always choose to have a formal conference with the field office. In addition to providing her with the best opportunity to argue her case,<sup>4</sup> a formal conference will take time to schedule – time that the individual can use to gather supporting documentation.

Advocates should make sure they submit an Appointment of Representative Form (Form 1696) and are on the client's record so that they can communicate with SSA on behalf of a client and receive notice of the formal conference. SSA may schedule a formal conference anywhere from within a few days to a few months. Further, be aware that although SSA must provide individuals and

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1 In addition to the POMS, this guide will also cite to the Code of Federal Regulations (C.F.R.). Advocates who take cases to hearings will need to cite the C.F.R. rather than the POMS. See generally C.F.R. §416.1130 through §416.1148 for information on ISM.

2 These benefit continuation rules only apply to non-disability determinations. See POMS, Due Process Protections, SI 02301.300 (August 2012) (explaining different benefit continuation rules for non-disability vs. disability determinations).

3 C.F.R. §416.1413; POMS, What Is SSI Reconsideration, POMS SI 04020.010 (March 2008).

4 See C.F.R. §416.1413(c); POMS, SSI Reconsideration Conferences, SI 04020.050 (Nov. 2017) (explaining that claimants in formal conferences have the additional right to subpoena adverse witnesses and documents and conduct cross-examinations).

representatives with at least 10 days notice before a conference,<sup>5</sup> SSA often fails to do so.<sup>6</sup> **Advocates should not, however, wait for the formal conference to attempt to resolve a client's case.** In many cases, informal advocacy with the field office can fix an issue and obviate the need for a conference.

Advocates should make every effort to win ISM cases at the initial or reconsideration levels. If individuals need to appeal beyond reconsideration, they will have to wait for a hearing with an administrative law judge (ALJ). Although the regulations state that an ALJ must issue a written decision no later than 90 days after an SSI recipient requests a hearing in these types of post-eligibility cases, a loophole exists (“unless there is good cause for extending the time period because of unavoidable circumstances. . .”) that makes this authorization for expedited action meaningless.<sup>7</sup> The wait for a hearing can currently take up to two years.

## What Counts as ISM

What is considered food and shelter for ISM purposes? SSA takes into account 10 items when determining ISM:

1. Food (excluding the value of food purchased with Supplemental Nutrition Assistance Program (SNAP) benefits)
2. Mortgage (including property insurance if required by the mortgage company)
3. Real property taxes (minus any tax rebate/credit)
4. Rent
5. Heating fuel
6. Gas
7. Electricity
8. Water
9. Sewer
10. Garbage removal<sup>8</sup>

If someone<sup>9</sup> is providing or helping an SSI recipient pay for any of the above, SSA may charge her

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5 POMS, SSI Reconsideration Conferences, SI 04020.050.B.1 (Nov. 2017).

6 SSA also sometimes neglects to schedule conferences altogether. Justice in Aging has produced a webinar and numerous resources on SSA's failure to properly process SSI non-disability appeals and observe claimants' due process rights. These resources are available at [www.justiceinaging.org/our-work/economic-security/non-disability-appeals/](http://www.justiceinaging.org/our-work/economic-security/non-disability-appeals/).

7 20 C.F.R. § 416.1453(c).

8 20 C.F.R. § 416.1130(b); POMS, ISM and Households – Household Costs, SI 00835.465 (Nov. 2013).

9 ISM includes payments for food and shelter made by trusts. POMS, General, Including Trusts Established Prior to 1/1/00, Trusts Established with the Assets of Third Parties and Trusts Not Subject to Section 1613(e) of the Social Security Act, 01120.200 (Dec. 2013).

with ISM and reduce her benefits. However, food and/or shelter provided by someone whose income can be deemed to the individual does not count as ISM (such as food/shelter provided by parents to a minor child receiving SSI).<sup>10</sup> Also excluded from ISM are subsidies from the Department of Housing and Urban Development (HUD),<sup>11</sup> and food or shelter that is provided by governmental medical or social service programs, or by non-profit organizations based on need.<sup>12</sup>

### Practice Tip

Consider whether the individual paying for an SSI recipient's food and/or shelter can instead pay for monthly costs that do **not** count as ISM. Examples of non-ISM items include car insurance, car payments, cable, clothes, medical bills, cell phone plans, and transportation costs.

**Friends or family members should never give cash directly to an SSI recipient.**<sup>13</sup> Doing so will result in the recipient being charged with unearned income and a dollar-for-dollar reduction in benefits.<sup>14</sup> This reduction can often be greater than the reduction that would occur if the recipient were charged with ISM.

## Living Arrangements

An individual's living arrangements are central to determining how SSA will value any ISM she may be receiving. Is she living in a non-household, the household of another, or living in her own household? The answer depends not only on where/with whom she lives, but also who pays for shelter costs.

### Living in a Non-Household

An SSI recipient is in a non-household if she is:

- A. Transient (i.e. homeless or "couch-surfing"); or
- B. Residing in an institution.<sup>15</sup>

ISM issues for these individuals will be discussed later in this guide.

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10 20 CFR §416.1161; POMS, Introduction to Living Arrangements and In-Kind Support and Maintenance, 00835.001.D (Dec. 2011).

11 POMS, Federal Housing Assistance, SI 00830.630 (August 2014).

12 See POMS SI 00835.001.D for the full list of ISM exclusions.

13 The one exception to this rule is if the cash is in the form of a bona fide loan. Loans are discussed later in this guide.

14 A \$20 unearned income disregard applies to this reduction. Social Security Administration, Understanding Supplemental Security Income SSI Income – 2017 Edition, *available at* [www.ssa.gov/ssi/text-income-ussi.htm](http://www.ssa.gov/ssi/text-income-ussi.htm).

15 POMS 00835.001.C.1; see also POMS, Transients, Homeless Individuals, and LA/ISM Determinations, SI 00835.060 (May 2014).

## Living in the Household of Another

If an SSI recipient is living with others and does not own the shelter, rent the shelter, or live in non-institutional care, SSA considers her to be living in the household of another.<sup>16</sup>

## Living in Own Household

In general, SSA considers an SSI recipient to be living in her own household if she lives alone, has an ownership interest in her home, is legally obligated to pay rent for her home, or lives in non-institutional care.<sup>17</sup>

**Note:** A recipient living in her own household does not necessarily mean she is a household of one. It simply means she is not living in the household of another.

### Home Ownership

An SSI recipient is living in her own household on the basis of home ownership in the following scenarios:

- She owns or has an ownership interest in the home she is living in;
- Her SSI-eligible spouse owns the home they are living in together; or
- A person whose income may be deemed to her owns the home.<sup>18</sup>

### Rental Liability

An SSI recipient is living in her own household on the basis of rental liability in the following scenarios:

- She has rental liability;
- Her SSI-eligible spouse whom she lives with has rental liability; or
- A person whose income may be deemed to her has rental liability.<sup>19</sup>

Rental liability refers to an oral or written agreement between an individual and a landlord that the landlord will provide shelter in return for rent that must be paid in money. Services that are provided

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16 20 C.F.R. §416.1132; POMS, Definitions of Terms Used in Living Arrangements (LA) and In-Kind Support and Maintenance (ISM), SI 00835.020.B.21 (Oct. 2005). The POMS notes that individuals paying for their pro rata share and living in a public assistance household can be considered as living in their own household. This guide will classify these situations as exceptions to living in the household of another (see this guide's section on the VTR rule). Both approaches lead to the same result when calculating ISM.

17 20 C.F.R. §416.1132(c) (see footnote 10 regarding individuals paying their pro rata share and living in their own household); POMS SI 00835.200.B.

18 20 C.F.R. §416.1132(c)(1); POMS, When Home Ownership is the Living Arrangement (LA) Basis, SI 00835.110.A.2 (May 2011).

19 20 C.F.R. §416.1132(c)(2); POMS, Rental Liability as LA Basis, SI 00835.120.A.1 (Sept. 2014).



in return for shelter do not count as rent.<sup>20</sup>

## Non-Institutional Care<sup>21</sup>

An SSI recipient is always in her own household if she is in non-institutional care.<sup>22</sup> Non-institutional care is more commonly referred to as foster care, adult foster care, or family care.<sup>23</sup> SSA considers an individual to be in non-institutional care when the following conditions are met:

- A public or private agency places the individual under protective placement.
- The placement is in a private household that is State-approved to provide protective placement.
- The placing agency retains responsibility for supervising the need for such placement and services.
- The individual, the placing agency, or some other third party pays for the food, shelter, and services provided.<sup>24</sup>

## Living Arrangements for Children

Minor children receiving SSI are usually living in the household of another or in a parent's household. As previously noted, an SSI recipient is living in her own household if a person whose income may be deemed to her owns or rents the home they are living in. When the SSI recipient is a minor child who lives with her parents and the parents own or rent the home, SSA considers the child to be living in her parents' household, which is distinguished from living in the household of another.<sup>25</sup> In terms of ISM calculations, this living arrangement is equivalent to the child living in her own household.<sup>26</sup>

## Key Points Regarding Living Arrangements

### First-of-the-Month Rule

SSA evaluates ISM based on an individual's permanent residence as of the first of the month. This rule is relevant when SSI recipients move during a month and change their living arrangements (although it does not apply to people who are homeless, including those who are "couch-surfing,"

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20 POMS SI 00835.020.B.28, 29; POMS SI 00835.120.B.2.

21 This guide will not discuss issues related to state supplementation for residents of personal care homes.

22 20 C.F.R. §416.1132(c)(3).

23 POMS, Non-institutional Care Situations, SI 00835.790.

24 20 C.F.R. §416.1143; POMS SI 00835.790.

25 See Social Security Bulletin Vol. 74, No. 3, 2014, Source, Form, and Amount of In-Kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients, *available at* <https://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html> (see Box 1); see also POMS, SSI RMA Payment Worksheet, SI 02005.090 (Nov. 2014); POMS, The One-Third Reduction Provision and Deeming, SI00835.210.B (Feb. 2014) (see example 1).

26 See POMS, SI 00835.210.B (example 1) and the section in this guide about children and young adults age 18+.

because they do not have a permanent residence).<sup>27</sup> For example, if on April 1 an SSI recipient is in a living arrangement where she receives ISM, but on April 2 she moves to a new residence and no longer gets ISM, SSA will still charge her with ISM for the entire month of April.<sup>28</sup>

## Practice Tip

If an individual is going to move into a living arrangement where she will receive less ISM, she should move before the first day of the next month.

## Temporary Absences

Temporary absences do not affect living arrangements or ISM calculations. A temporary absence is when someone who has been living in a permanent living arrangement for at least one full month leaves but returns by the next month. SSA will evaluate ISM as if the individual had always been physically present in her permanent living arrangement. Any additional ISM the individual may have received during the temporary absence is not counted.<sup>29</sup>

SSA allows certain exceptions to the length of temporary absences, such as when a child is away at school or when someone is confined in a medical facility where Medicaid pays more than half the cost of care.<sup>30</sup>

## Household Members

SSA defines household members as people sharing common living quarters and functioning as a single economic unit.<sup>31</sup> To be a household member, a person must reside in the household during the first of the month unless temporarily absent.<sup>32</sup>

## Moving to a New Address

Moving to a new address can alter living arrangements and ISM. Thus, SSI recipients should promptly inform SSA when they move. Individuals often forget to do so now that they receive electronic payments from SSA rather than paper checks sent to a mailing address. Reporting changes to SSA will be discussed in more detail later in this guide.

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27 POMS, First-of-the-Month (FOM) Residence and ISM Determinations, SI 00835.500 (Sept. 2014).

28 See POMS SI 00835.500 for more specific examples of first-of-the-month ISM determinations when clients move.

29 20 C.F.R. §416.1149; POMS, Temporary Absence from a Federal Living Arrangement (LA), SI 00835.040 (Jan. 2015).

30 20 C.F.R. §416.1149(c); POMS SI 00835.040.C.1.b; POMS, Temporary Absence from a Federal LA Due to Confinement in a Medicaid Facility, SI 00835.043.B.2 (Dec. 2012). Advocates should also consult POMS, Temporary Institutionalization (TI) Benefits, SI 00520.140.D (explaining a recipient of TI benefits is temporarily absent from the recipient's last permanent living arrangement).

31 POMS, Definitions of Terms Used in Living Arrangements (LA) and In-Kind Support and Maintenance (ISM) Instructions, SI 00835.020 (Oct. 2005).

32 SI 00835.340.B.3; see also POMS SI 00835.350.

## How SSA Values ISM

SSA uses two different rules to calculate the value of ISM:

1. The Value of the One-Third Reduction (VTR) Rule; or
2. The Presumed Maximum Value (PMV) Rule.

These rules are mutually exclusive – if one applies, the other does not.<sup>33</sup> In addition, a crucial difference between the rules is that the value of ISM is fixed under the VTR rule, but individuals can challenge the presumed value of ISM under the PMV rule.

### Value of the One-Third Reduction (VTR) Rule:

#### When the VTR Rule Applies

The VTR rule – which results in an automatic one-third reduction in benefits – is applied only under two conditions:

1. The SSI recipient resides in someone else's household for an entire month; **and**
2. The recipient receives free or subsidized food **and** shelter from others in the household.<sup>34</sup>

If the individual's situation meets both of these conditions, SSA will apply the VTR rule. SSA will reduce her SSI check by one-third of the federal benefit rate (\$250 in 2018). For an eligible couple, SSA will reduce the couple's benefits by one-third of the couple federal benefit rate (\$375 in 2018).<sup>35</sup> If the VTR rule applies, SSA will not count any additional ISM the individual may be receiving from outside the household. **The VTR rule applies in full or not at all.**<sup>36</sup>

### Exceptions to the VTR Rule

SSA provides for two exceptions to the VTR rule and will not apply the automatic one-third reduction in benefits when:

1. The SSI recipient lives in a public assistance household; or
2. The SSI recipient pays her fair share of household expenses.<sup>37</sup>

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33 POMS, Introduction to Living Arrangements and In-Kind Support and Maintenance, SI 00835.001.A (Dec. 2011).

34 This does not necessarily mean the client gets all of her food/shelter from within the household.

35 This guide will mostly present ISM issues as they relate to single SSI recipients, although advocates can generally assume that what is true for an SSI recipient is also true for an SSI-eligible couple. However, eligible couples can raise a complicated set of issues that will not be discussed in this guide. Note that eligible couples include those who are holding themselves out as married couples. See generally POMS, Determining Whether Two Individuals Are Holding Themselves Out as a Married Couple, SI 00501.152 (July 2017).

36 20 C.F.R. §416.1131; 416.1147; see also POMS, The One-Third Reduction Provision, SI 00835.200.A (Nov. 2016).

37 See 20 C.F.R. §416.113(a); 416.1142(b); POMS SI 00835.200.B.

## The SSI recipient lives in a public assistance household

If an SSI recipient is living in a household where **all** members receive means-tested cash benefits, she is living in a public assistance household. Consequently, SSA will disregard any ISM she may receive from other household members, and she will not be subject to the VTR rule.<sup>38</sup>

**Note:** Even if an individual is exempt from VTR under this exception, if she is receiving food and/or shelter from outside the household she may be receiving ISM that is subject to the PMV rule, which is discussed later in this guide.<sup>39</sup>

### Common Examples of Means-Tested Cash Benefits:

- SSI
- Temporary Assistance for Needy Families (TANF)
- General Assistance (GA)
- Veterans Administration (VA) payments based on need

### Common Examples of Public Benefits That Are *Not* Means-Tested Cash Benefits:

- Medicaid
- Supplemental Nutrition Assistance Program (SNAP)
- Social Security Retirement, Survivors, or Disability Insurance benefits
- Unemployment Benefits
- Low Income Home Energy Assistance Program (LIHEAP)
- Women, Infants, and Children Nutrition Program (WIC)

If a member of a household is receiving one or more of the above and no means-tested cash benefits, the household is **not** a public assistance household. **Further, if a member of a household has no income whatsoever, the household is also NOT a public assistance household.**

What if a household member is waiting to receive means-tested cash benefits? The answer will depend on what type of benefits the individual is waiting for. Household members with pending initial SSI claims who meet all non-disability requirements are considered to be receiving means-tested cash benefits. But household members waiting to receive non-SSI benefits like TANF are not.<sup>40</sup>

### Practice Tip

SSA often fails to ask whether other household members receive means-tested cash benefits, yet if they do, it is one of the simplest ways for an SSI recipient to avoid an ISM reduction. Advocates should look

38 20 C.F.R. §416.1142; POMS, Public Assistance Households, SI 00835.130.B (Sept. 2014).

39 20 C.F.R. §416.1142(b); SI 00835.130.B.2.

40 POMS SI 00835.130.C, D.

for cases where their clients are exempt from the VTR rule because they are living in public assistance households.

### The SSI recipient pays her fair share of household expenses

Another exception to the VTR rule is if an SSI recipient pays her fair share (also known as her “pro rata” share) of the total household operating expenses for food and shelter. In order to determine a recipient’s fair share, SSA divides the total household expenses by the number of individuals (including children) permanently residing in the household. If the SSI recipient is contributing this fair share, she is not charged with VTR.<sup>41</sup> For SSI couples, they are contributing their fair share if their total contribution equals their combined fair shares.<sup>42</sup>

**Note:** Even if an individual is exempt from VTR under this exception, if she is receiving food and/or shelter from outside the household she may be receiving ISM that is subject to the PMV rule, which is discussed later in this guide.<sup>43</sup>

How can an SSI recipient pay for household expenses? Individuals can contribute towards household expenses in various ways, but the contribution must be from their own income and resources.<sup>44</sup> They can:

- Pay a vendor directly for expenses.
- Provide cash to someone who pays for the expenses (common when households pool money).
- Repay expenses later under a bona fide loan agreement (discussed later in this guide).
- Pay for other expenses of the household aside from food and shelter costs (such as the personal expenses of the householder) if the head of the household agrees to accept these payments in lieu of contributions to household operating expenses<sup>45</sup> (if the recipient is the householder, these payments do not count).<sup>46</sup>

Even if individuals are not paying their fair share of total household operating expenses, they can try to pay their fair share of just food or just shelter to avoid the VTR reduction. Individuals can designate part or all of their contributions as food or shelter payments – for example, if an SSI recipient contributes \$150 each month, she can designate \$100 of that to be payment towards food expenses. If the designated amount equals or exceeds her fair share for food (or shelter if she designated the

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41 SSA applies a “five-dollar tolerance rule” where they will consider the client to be paying her fair share as long as her contribution is within \$5 of the fair share. POMS, Sharing, SI 00835.160.C.2 (Nov. 2016).

42 20 C.F.R. §416.1133; POMS, SI 00835.160.

43 20 C.F.R. §416.1133; Clients who pay their fair share of household expenses but receive outside ISM may still be getting both outside and inside ISM that is valued under the PMV rule. See POMS, Flowchart for Sequential Development of Living Arrangement (LA) and In-Kind Support and Maintenance (ISM) 00835.005.B (June 2012). Such situations, while complicated, are likely to be rare.

44 POMS, Contributions Toward Household Operating Expenses, SI 00835.480.A.1 (March 2010).

45 These situations, while valid as a way to pay for household expenses, are rare.

46 POMS SI 00835.480.B.

amount for shelter expenses), SSA would characterize this situation as “earmarking.”<sup>47</sup> Earmarking is uncommon and will not be explored in this guide, but it can be another way to avoid the VTR rule because an SSI recipient who is earmarking will not be receiving both food **and** shelter from within the household.

## Practice Tip

Sometimes an SSI recipient’s fair share far exceeds one-third of her monthly benefits. In these cases, it is often better for her to accept the VTR reduction rather than try to contribute her fair share of total household expenses.

## VTR Examples

### Individual receives ISM valued under VTR

Asha receives SSI and lives with her adult son, his wife, and their baby in a home that her son rents. The total household expenses for food and shelter are \$2,000 per month. Asha contributes \$100 per month towards these costs, but otherwise her son’s family provides Asha with her food and shelter.

Asha’s fair share of expenses is \$500/month ( $\$2,000 \div 4$  household members), which she is not fully paying. Because Asha is living in the household of another and receives food and shelter from within the household, SSA will value her ISM under the VTR rule. SSA will reduce Asha’s monthly SSI benefits by one-third, or \$250.

**Note:** The VTR amount is lower than Asha’s fair share of \$500. Thus, Asha actually saves more money by accepting the VTR reduction than she would if she were to pay her fair share to avoid being charged with ISM.

### Couple receives ISM valued under VTR

Consider the same situation as above, except now the household also includes Asha’s husband Gabe, who receives SSI as well. Asha still contributes \$100 per month towards household expenses; Gabe contributes nothing.

Asha and Gabe are an SSI couple, and their combined fair share of expenses is \$800/month ( $\$2,000 \div 5$  household members = \$400; multiply by 2), which they are not fully paying with their contribution of \$100/month. Because they are an SSI couple who live in the household of another and receive food and shelter from within the household, SSA will value their ISM under the VTR rule. SSA will reduce their monthly SSI benefits by one-third of the couple federal benefit rate, or \$375.

**Note:** The VTR reduction is lower than Asha and Gabe’s fair share of \$800. Thus, they save more money by accepting the VTR reduction than they would if they were to pay their fair share to avoid being charged with ISM. However, a conflict exists between maximizing Asha and Gabe’s income and maximizing the household income. By accepting the VTR reduction, Asha and Gabe keep more of their SSI benefits than they would if they were to contribute their fair share to household expenses. Yet the VTR reduction will also reduce the household’s overall income. **When SSI recipients are living**

<sup>47</sup> POMS, Earmarked Sharing, SI 00835.170 (April 2016).

**with friends or family and everyone is pooling money, some recipients may opt to maximize the household income rather than their own.**<sup>48</sup>

### **Individual avoids ISM by paying fair share**

Vanessa receives SSI and lives with her sister, brother-in-law, niece, and nephew in a home that her sister owns. The total household operating expenses for food and shelter are \$1,200 per month. Vanessa contributes \$240 each month towards these costs.

Although Vanessa is living in the household of another and receives food and shelter from within the household, she is paying her fair share of household expenses ( $\$1,200 \div 5$  household members = \$240). Thus, Vanessa is exempt from the VTR rule and SSA will not charge her with any ISM.

### **Individual receives ISM valued under VTR, no public assistance household**

Manny is an adult SSI recipient and lives with his mom, dad, and sister in a house that his parents own. Manny does not contribute anything towards household expenses for food and shelter. Manny's mom also receives SSI, and his dad works and is on Medicaid. His sister has no income and does not receive any public benefits.

In this case, Manny is subject to the VTR rule because he is living in the household of another and gets food and shelter from within the household. He does not meet any exceptions to the VTR rule – he is not contributing his fair share, nor is he part of a public assistance household. Although Manny and his mom receive SSI, Manny's dad and sister do not receive any means-tested cash benefits. Thus, SSA will charge Manny with the VTR and reduce his monthly benefits by \$250.

## Presumed Maximum Value (PMV) Rule

### When the PMV Rule Applies

If an individual receives ISM but does not meet the two conditions for the VTR rule, SSA will apply the PMV rule instead. Under the PMV rule, SSA will treat the ISM as unearned income and deduct its value from the recipient's benefits (but note that the \$20 unearned income disregard will apply). SSA will, as a default, value the ISM at the "presumed maximum value" (PMV), which is one-third of the federal benefit rate plus the \$20 unearned income disregard ( $\$250 + \$20 = \$270$  in 2018). For an eligible couple, the PMV is one-third of the couple federal benefit rate plus \$20, or \$395 in 2018.<sup>49</sup>

**The PMV, however, is rebuttable.<sup>50</sup> If an individual can demonstrate that the ISM should actually be valued less than the PMV, the reduction in her benefits will also be less.<sup>51</sup>**

<sup>48</sup> This conflict also exists in example #1 with Asha.

<sup>49</sup> 20 C.F.R. §416.1140; POMS, Presumed Maximum Value (PMV) Rule, SI 00835.300 (June 2012).

<sup>50</sup> 20 C.F.R. §416.1140; POMS SI 00835.300.C.3.

<sup>51</sup> 20 C.F.R. §416.1140; POMS SI 00835.300.C.3. Sometimes the actual value of ISM may be more than the PMV. However, SSA will not deduct more than the PMV from a client's benefits. The PMV is a cap in the amount of ISM that SSA will charge.

## Examples of When the PMV Rule Applies:

- SSI recipient lives in her own household because she has rental liability or ownership interest in the home she is living in.
- SSI recipient separately consumes food outside the household.<sup>52</sup>
- SSI recipient separately purchases food.<sup>53</sup>
- SSI recipient does not reside in the same living arrangement throughout the month.

Calculating the actual value of ISM differs depending on whether it is ISM received from within the household (“inside” ISM) or outside the household (“outside” ISM). If an SSI recipient has multiple sources of ISM, the actual value is the sum of the inside ISM and outside ISM.<sup>54</sup>

### Calculating Actual Value of Inside ISM

The actual value of ISM received from within the household is the difference between the individual’s fair share of household operating expenses and her contribution towards those expenses. (For contributions, it does not matter whether she is paying a vendor directly or pooling money with other household members.)<sup>55</sup> The steps in this calculation are as follows:

1. Determine the total household operating expenses for food and shelter.
2. Determine the SSI recipient’s fair share (total household expenses divided by number of household members).
3. Deduct her actual contribution from her fair share.
4. The result is the actual value of inside ISM to the SSI recipient.<sup>56</sup>

For SSI couples, the calculation process is similar. Determine the fair share for each member of the couple and multiply by 2, which equals their combined fair share. Deduct the couple’s total contribution from this combined fair share. The result is the actual value of inside ISM to the couple.<sup>57</sup>

**Note:** If the SSI recipient separately purchases food or consumes all her food outside the household, only consider shelter expenses (rather than total household expenses) when calculating inside ISM. If she shares her food with the household but one of its members does not, calculate the recipient’s fair share of food and shelter separately, omitting the non-food sharing household member from the calculation for food. Then, add the two shares together to determine the recipient’s fair share of total

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<sup>52</sup> See POMS, Separate Consumption, SI 00835.140 (Sept. 2014) for more information on what qualifies as separate consumption of food.

<sup>53</sup> See POMS, Separate Purchase of Food, SI 00835.150 (Dec. 2014) for more information on what qualifies as separate purchase of food. A common example of separately purchasing food is when clients buy food with their own SNAP benefits.

<sup>54</sup> POMS, Computation of In-Kind Support and Maintenance from Within a Household, SI 00835.340.B.5 (July 2016).

<sup>55</sup> POMS, ISM and Households – Households Costs, SI 00835.465.B (Nov. 2013).

<sup>56</sup> POMS SI 00835.340.C.

<sup>57</sup> POMS SI 00835.340.C.4.



household expenses.<sup>58</sup> In terms of couples, see the POMS for information on how to calculate inside ISM when one member of the couple separately consumes or purchases food.<sup>59</sup>

## PMV Examples (Inside ISM)

### **Individual has rental liability and receives inside ISM**

Darryl receives SSI and lives with his cousin, who has a job. They live in an apartment they rent together; both Darryl and his cousin are on the lease. The total household operating expenses for food and shelter are \$1,000 per month. Darryl contributes \$400/month (which includes his share of the rent). Because Darryl has rental liability, he is not living in the household of another and any ISM he receives is valued under the PMV rule.

Darryl's fair share is \$500/month ( $\$1,000 \div 2$  household members). Therefore, the actual value of ISM that he receives from his cousin is \$100/month ( $\$500 - \$400$ ), which is lower than the PMV. Darryl can rebut the PMV and SSA will deduct \$80 ( $\$100 - \$20$  unearned income disregard) from his monthly benefits rather than \$270.

### **Couple has rental liability and receives inside ISM**

Rachel and Lisa<sup>60</sup> are SSI recipients who are married and live with two housemates in a home that they rent. They are all on the lease. The total household operating expenses for food and shelter are \$1,400 per month. Rachel and Lisa each contribute \$250/month (which include their share of the rent). Because Rachel and Lisa have rental liability, they are living in their own household and any ISM they receive is valued under the PMV rule.

Rachel and Lisa's combined fair share is \$700/month ( $\$1,400 \div 4$  household members = \$350; multiply by 2). Therefore, the actual value of ISM they receive from their housemates is \$200/month ( $\$700 - \$500$  total contribution from Rachel and Lisa). This value is lower than the PMV for couples. Rachel and Lisa can rebut the PMV and SSA will deduct \$180 ( $\$200 - \$20$  unearned income disregard) from their monthly benefits rather than \$395.

### **Individual purchases food with SNAP benefits and receives inside ISM**

Maia receives SSI and lives with two friends in a house owned by one of the friends. Maia purchases her food separately with her SNAP benefits. The household expenses for shelter are \$900 per month. Maia contributes towards these expenses by paying the utility bills, which average \$150 per month.<sup>61</sup>

Because Maia is living in the household of another but does not receive food from within the household, any ISM she receives (in this case, ISM in the form of shelter) is valued under the PMV rule.

<sup>58</sup> SI 00835.340.

<sup>59</sup> See generally SI 00835.340.C.4.b.

<sup>60</sup> SSA now recognizes same-sex marriages for SSI purposes. POMS, Supplemental Security Income (SSI) Same-Sex Marriages and Same-Sex Couples, GN 00210.800 (Dec. 2014).

<sup>61</sup> SSA averages fluctuating household expenses. See generally POMS, Averaging, SI 00835.475 (Sept. 2014).

Maia's fair share of shelter expenses is \$300/month ( $\$900 \div 3$  household members). Therefore, the actual value of ISM that she receives is \$150/month ( $\$300 - \$150$ ), which is lower than the PMV. Maia can rebut the PMV and SSA will deduct \$130 ( $\$150 - \$20$  unearned income disregard) from her monthly benefits rather than \$270.

## Calculating the Actual Value of Outside ISM

Individuals sometimes receive ISM from sources outside their household<sup>62</sup> – for instance, an SSI recipient living alone might have a friend who pays her utility bills or part of the rent.<sup>63</sup> When assigning a value to this ISM, SSA will use the difference between the current market value (CMV) of the food and/or shelter and the individual's (or couple's) contribution. The CMV is typically the vendor charge or (if there is no vendor charge) an estimate of the CMV by the provider of food and/or shelter.<sup>64</sup>

In cases where an outside party is providing ISM that benefits an entire household (i.e. more than just the SSI recipient), the outside ISM must be allocated equally among all household members in order to determine the actual value to the SSI recipient.<sup>65</sup> Outside ISM that benefits an entire household is almost always in the form of shelter (for example, an outside party paying part or all of the rent, mortgage, electric bill, etc. or providing the shelter at no cost).<sup>66</sup>

The steps to calculating outside ISM that benefits an entire household are as follows:

1. Determine the CMV of the food and/or shelter provided by outside party.
2. Deduct the household contribution towards the item from the CMV.
3. Allocate the ISM equally among all household members (i.e. divide the balance from #2 by the number of household members).<sup>67</sup>
4. The result is the actual value of outside ISM to the SSI recipient.

If you have an SSI couple, follow the same steps but at the end multiply by 2 to determine the actual value of ISM to the couple.<sup>68</sup>

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62 Outside ISM refers to someone outside the household paying a vendor directly for household costs or providing the household with food or shelter at less than current market value (CMV). POMS SI 00835.465.C.

63 ISM that benefits only one member of a household is technically considered ISM-to-one rather than outside ISM. See generally POMS, In-Kind Support and Maintenance (ISM) to One Person, SI00835.400 (Oct. 2017). However, for simplicity's sake this guide will refer to this type of ISM as outside ISM.

64 POMS, Computation of In-Kind Support and Maintenance (ISM) from Outside a Household (Including Vendor Payments by a Third Party Outside the Household), SI 00835.350 (March 2013); SI 00835.465.C.

65 POMS 00835.350.B.4.

66 POMS 00835.350.C; see POMS SI00835.400 (providing examples of when ISM benefits only one person).

67 The ISM is allocated equally even if household members contribute different amounts towards the item provided. SI 00835.350.C.

68 POMS SI 00835.350.B, C.

## Practice Tip

Make sure to distinguish between cash payments from outside the household and outside ISM. If someone outside the household is giving the individual money to pay for household operating expenses, the payments are cash income and not ISM.<sup>69</sup> Outside ISM refers to someone outside the household paying a vendor directly for the SSI recipient's food and/or shelter or providing the food/shelter at less than CMV. As discussed earlier, cash income will often result in greater deductions to an SSI recipient's checks. If an individual is receiving money, advise her to ask the provider of the funds to pay for non-ISM items directly instead. But if the individual truly needs the money for food and/or shelter, it is still generally better for the third party to pay for ISM items than it is to give the individual cash.

## PMV Examples (Outside ISM)

### Individual rents home and receives outside ISM

Keith receives SSI and lives alone in a home that he rents for \$550 per month. He can only afford to pay \$400 per month, so his brother helps by paying the rest of the rent.

Because Keith is living alone/has rental liability, he is living in his own household and any ISM he receives (in this case, ISM in the form of shelter) is valued under the PMV rule. Keith receives outside ISM valued at \$150/month (\$550 - \$400 from Keith's contribution, i.e. the amount his brother pays), which is lower than the PMV. Keith can rebut the PMV, and SSA will deduct \$130 (\$150 - \$20 unearned income disregard) from his monthly benefits rather than \$270.

### Individual rents home and receives outside ISM that benefits entire household

Patricia is an SSI recipient who lives with her boyfriend in an apartment that she rents for \$700 per month. Her boyfriend does not contribute anything towards household expenses. Patricia can only afford to pay \$500 a month towards the rent, so her adult daughter (who lives elsewhere) helps by paying \$200 to the landlord.

In this scenario, Patricia does not receive any inside ISM, and the outside ISM (the partial rent that her daughter pays) benefits the entire household. SSA will allocate the ISM equally among all household members in order to determine the actual value to Patricia.<sup>70</sup> Patricia therefore receives outside ISM valued at \$100/month ( $\$200 \div 2$  household members), which is lower than the PMV. Patricia can rebut the PMV, and SSA will deduct \$80 (\$100 - \$20 unearned income disregard) from her monthly benefits rather than \$270.

### Individual rents home and receives outside ISM that only benefits the client

Consider the same situation as above, except now Patricia's daughter no longer pays \$200 towards the rent each month. Now she buys \$200 worth of food each month for Patricia, who needs to eat a special diet.

<sup>69</sup> POMS, Cash Income from Within and Outside Households, SI 00835.450.E (August 2017).

<sup>70</sup> SSA allocates the outside ISM equally regardless of how much each member contributes to the household payment for the item at issue. POMS SI 00835.350.C.

In this case, Patricia still does not have any inside ISM, and she still has outside ISM. But now the outside ISM is in the form of food that only benefits Patricia. This outside ISM will not be allocated among all household members. Thus, Patricia now receives outside ISM valued at \$200/month. She can still rebut the PMV, and SSA will deduct \$180 (\$200 - \$20 unearned income disregard) from her monthly benefits rather than \$270.

**Note: Patricia's ISM deduction was significantly lower when her daughter paid for rent rather than food (\$80 vs. \$180).** Although her daughter's in-kind support in terms of dollar amount was the same in both scenarios, the actual value of the ISM was lower for Patricia when it was in the form of rent that SSA allocated between her and her boyfriend. **In the current situation, Patricia's advocate should advise her to have her daughter pay for rent rather than food in order to minimize the impact of ISM.** Patricia's daughter could also instead pay for items that do not count as food and shelter – such as clothes or car insurance – which would allow Patricia to avoid being charged with ISM altogether.

### **Couple rents home and receives outside ISM**

Julie and Luis are a married couple who both receive SSI. They live with Luis' mother in a home that they rent (Julie and Luis are on the lease). Luis' mother has no income and does not make any contributions to household operating expenses for food and shelter. The rent for the home is \$800 per month, which Julie and Luis are able to afford only because their adult son (who lives elsewhere) pays \$300 every month towards the rent. Julie and Luis pay the remaining amount.

Because Julie and Luis have rental liability, they are living in their own household and any ISM they receive is valued under the PMV rule. They do not receive any inside ISM, and the outside ISM (the partial rent that their son pays) benefits the entire household. SSA will allocate the ISM equally among all household members in order to determine the actual value to Julie and Luis. The couple therefore receives outside ISM valued at \$200/month ( $\$300 \div 3$  household members = \$100; multiply by 2). This amount is lower than the PMV for couples, so Julie and Luis can rebut the PMV. SSA will deduct \$180 (\$200 - \$20 unearned income disregard) from their monthly benefits rather than \$395.

### **Individual receives both inside and outside ISM**

Max receives SSI and lives with a friend in a home that they rent (both are on the lease). The total household operating expenses for food and shelter are \$1,000 per month. Max's mom helps him by paying his share of the utility bills, which is \$50 each month. Max himself contributes \$300 to household expenses (which includes his share of the rent).

Because Max has rental liability, he is living in his own household and any ISM he receives will be valued under the PMV rule. In this case, he is receiving both inside and outside ISM.

Inside ISM: In cases with outside ISM benefiting an entire household, SSA takes that outside ISM into account when calculating a claimant's fair share of household expenses. **SSA will calculate Max's fair share from the household operating expenses that remain after Max's mom's payment, or \$950/month (\$1,000 - \$50 from Max's mom's contribution).** Max's fair share is thus \$475/month ( $\$950 \div 2$  household members), meaning Max's inside ISM from his friend is \$175/month ( $\$475 - \$300$ ).

Outside ISM: The portion of the utility bill that Max’s mom pays for benefits the entire household and will be allocated equally among all household members. Therefore, the actual value of outside ISM that Max receives is \$25/month ( $\$50 \div 2$  household members).

Total ISM: Adding the inside and outside ISM results in a total value of \$200/month, which is lower than the PMV. Max can rebut the PMV and SSA will deduct \$180 ( $\$200 - \$20$  unearned income disregard) from his monthly benefits rather than \$270.

## Deadlines for Rebutting the PMV

**Field offices often fail to make inquiries into the actual value of an individual’s ISM and will automatically charge the PMV.** However, SSA is technically supposed to offer an individual 30 calendar days to rebut the PMV if SSA has no evidence of the actual value of ISM. Under this rebuttal procedure, if the field office does not receive any evidence or a request for an extension by the close of the 30th calendar day, they charge the individual with the PMV.<sup>71</sup>

While advocates should try to help clients meet the 30-day deadline, it is not critical. Aside from helping clients request an extension, advocates can also file an appeal once the field office charges the client with the PMV, or (if the appeal deadline has passed)<sup>72</sup> request reopening of the determination.<sup>73</sup>

## Rental Liability When Relatives are Landlords

When SSI recipients have relatives as their landlords – for example, when an adult son who is getting SSI lives in his mom’s home and pays rent – it is critical for the relative to charge rent that is current market value. Although SSA assumes that a non-relative landlord is charging market rent, this assumption does not extend to landlords who are relatives.<sup>74</sup> SSA will inquire into whether the relative is reducing rent for the SSI recipient and may do this during interviews or by sending Form SSA-L5061, “Letter to Landlord Requesting Rental Information” (attached in Appendix C).<sup>75</sup> SSA will ask the landlord/relative how much she would charge a non-relative for rent and compare this figure (which SSA treats as the estimated CMV of the rent)<sup>76</sup> to what the recipient is actually paying.<sup>77</sup> If the recipient is paying a lower amount, SSA will charge her with ISM because they will consider her to be benefiting from subsidized shelter.<sup>78</sup>

71 POMS, Rebuttal Procedures and Presumed Maximum Value (PMV) Rule, SI 00835.320 (August 2015).

72 Clients can also have good cause for late appeals. See generally POMS, Good Cause for Extending the Time Limit, SI 04005.015 (Jan. 2014) and Good Cause for Extending the Time Limit to File an Appeal, GN 03101.020 (Dec. 2017) (providing examples of good cause).

73 Reopening is a complicated topic, but in general any SSI decision can be reopened within 12 months for any reason. See generally POMS, Title XVI Administrative Finality – Reopening Policies, SI 04070.010F (March 2017) and POMS, Reopening SSI Determinations, SI 04070.015 (May 2015).

74 See POMS, Rental Subsidies, SI 00835.380.A (August 2016).

75 POMS, Form SSA-L5061 (Letter to Landlord Requesting Rental Information), SI 00835.382 (October 2013).

76 SSA should accept whatever estimate the landlord provides of the current market value of rent. POMS SI 00835.380.C.3.5.

77 See Form SSA-L5061, “Letter to Landlord Requesting Rental Information”.

78 POMS SI 00835.380.E.

**Exception:** In Texas and the Second and Seventh Circuits (Connecticut, New York, Vermont, Illinois, Indiana, and Wisconsin), SSA applies more lenient rules regarding what counts as subsidized rent. SSI recipients in these states are only charged with ISM if they are paying rent that is less than the PMV (\$270) rather than the CMV. If the rent is less than the PMV, the ISM charged is the difference between the rent and the PMV or CMV (whichever is less).<sup>79</sup>

## Practice Tip

Landlords who are relatives frequently overestimate how much rent they would be able to charge on the open market. They will claim, for example, that they would charge \$600 for a room that their family member is renting for \$300. Advocates should be wary of such assertions and help relatives fill out the “Letter to Landlord” form carefully. Assuming it is reasonable, the rent that the landlord would charge a stranger should be the same as the rent being charged to the SSI recipient.

Individuals should always have formal rental agreements with their landlords, even if the landlord is a relative. Rental liability cannot exist without a rental agreement. Individuals may sometimes confuse rent with a general contribution towards household operating expenses, especially when the “landlord” is a relative they are living with.<sup>80</sup> But if individuals do not have rental liability, they are not paying rent. Thus, these SSI recipients may be subject to the VTR reduction when they are living with relatives because they will be living in the household of another.

Advocates should keep in mind that rent will result in income to the landlord/relative. Additional income could affect the relative’s taxes<sup>81</sup> and eligibility for public benefits. These consequences are especially important to consider when individuals are living with their landlords/relatives and the household is pooling money.

## Loans of ISM When Individuals Have Pending SSI Claims

When individuals have pending SSI claims and are living with others, they may lack the income necessary to contribute towards current household expenses<sup>82</sup> but may be able to contribute in the future. In these cases, advocates can help clients avoid ISM problems by ensuring that SSI applicants receive an advance of food and/or shelter in the form of a loan that they must later repay under a bona fide loan agreement.<sup>83</sup> If applicants have no loan agreement and are not paying their fair share of household expenses while an application is pending, their retroactive benefits will likely be reduced due to ISM once their claim is approved.

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79 20 C.F.R. §416.1130(b); POMS SI 00835.380.B.7.

80 POMS, Definitions of Terms Used in Living Arrangements (LA) and In-Kind Support and Maintenance (ISM) Instructions, SI 00835.020.B.28, 29 (Oct. 2005).

81 Also note that if the landlord is a parent claiming the child SSI recipient as a dependent, having the child also pay rent may be problematic.

82 Clients living in states with no General Assistance (GA) especially face this problem.

83 POMS, Loans of In-Kind Support and Maintenance, SI 00835.482 (Nov. 2016); Social Security Ruling 92-8p. Clients can also receive a loan of cash for food and shelter that the client must repay under a bona fide loan agreement. Loans of cash should be paid on a monthly basis rather than in a lump sum to avoid the risk of putting the client over resource limits. See 20 C.F.R. §416.1103(f) and POMS, Cash Loans, SI 01120.220 (Dec. 2013) for more information.

The POMS outlines the requirements of a bona fide loan agreement:

1. The agreement must be enforceable under state law as an oral or written contract (Recommendation: written loan agreement that is signed by all parties).
2. The agreement must have been in effect when ISM was provided (in other words, agreements prepared after the fact are invalid).<sup>84</sup>
3. The lender and borrower must both acknowledge an unconditional obligation to repay the loan.
  - The borrower must repay the loan whether or not she receives anticipated SSI benefits. The loan cannot be repaid with services such as housekeeping or babysitting.
  - If the obligation to repay is contingent on receiving SSI or any other benefits, no bona fide loan exists because the borrower is not considered to have a genuine obligation to repay the loan.
4. The loan agreement must include a plan for repayment with current or anticipated income.<sup>85</sup>
  - The repayment plan should state the value of food and/or shelter borrowed and the terms of repayment (e.g., how much the borrower will repay per week, per month, etc.).
5. The repayment plan must be feasible. SSA considers the following factors in determining feasibility:
  - the amount of the loan
  - the borrower's resources and income, including anticipated income
  - the borrower's monthly living expenses<sup>86</sup>

### Practice Tip

Because SSA will not accept retrospective loan agreements, advocates should discuss loans of ISM with their clients as soon as possible **before** they are awarded SSI to avoid reductions in back benefits. Loan agreements only help individuals avoid ISM problems going forward.

## Children and Young Adults Age 18 and Older

When SSI recipients are children and young adults, deeming issues are an important factor in ISM determinations. For a minor child living with her SSI-ineligible parents (or step-parents), food and shelter provided by the parents are not a problem because parental income is deemed to the child.<sup>87</sup> Because this deeming process already accounts for parental support, SSA does not charge the child

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<sup>84</sup> While retrospective agreements are invalid, contemporaneous oral agreements that are subsequently put in writing could still be considered valid. SSA, however, will likely be skeptical of such agreements.

<sup>85</sup> SSA is not required to verify that a borrower has repaid a loan of ISM. POMS SI 00835.482.B.5.

<sup>86</sup> POMS SI 00835.482.B.

<sup>87</sup> If the parents are SSI recipients themselves, there is no deeming but any food/shelter they provide to their children is not considered ISM.

with ISM from her parents. Once a child turns 18, however, parental income is no longer deemed to the 18-year-old.<sup>88</sup> **This change means that an 18-year-old SSI recipient will have to be concerned about possible ISM from her parents.**

### Practice Tip

As previously discussed, in some cases it is best for the SSI recipient to accept an ISM reduction rather than try to contribute her fair share of household expenses. This scenario is often especially true for cases involving young adults age 18 and older who live with their higher-income parents. Sometimes these young adults are living in households for which their fair share of expenses would greatly exceed a one-third reduction in benefits.

ISM issues might also arise when a child SSI recipient is living with an adult other than a parent, such as a grandparent, whose income is not deemed to the child. Cases in which a child is receiving ISM while living with parents **and** other relatives/adults can be particularly confusing. In these cases, advocates should determine whether the VTR or PMV rule applies as usual, but the key is determining the child's contribution to household operating expenses.

**The child's contribution will equal her own contribution plus a portion of her parent/deemor's excess contribution (with the excess contribution being whatever a deemor pays beyond her own fair share).** SSA will allocate a deemor's excess contribution equally among all children in the deeming unit and SSI-eligible individuals in the household.<sup>89</sup> Therefore, any excess contribution is a benefit to the SSI child because it effectively increases the amount that SSA considers the child to be contributing towards household expenses.

### Examples:

#### Child living with parents, no ISM

Peter is a 16-year-old SSI recipient who is living with his mom and dad in a home that they own. His parents provide Peter with all his food. Peter does not contribute anything towards his food or shelter. Because Peter is a minor child living with his parents, any food or shelter they provide for him is not considered ISM.

#### Child living with grandparents, ISM valued under VTR Rule

Mari is a 10-year-old SSI recipient who lives with her grandparents, who own the home they all live in. Mari's grandparents provide her with all her food. Mari does not contribute anything towards her food or shelter. Because her grandparents' income is not deemed to Mari, the food and shelter they provide her with will be considered ISM. SSA will value this ISM under the VTR rule because Mari is living in the household of another and receiving both food and shelter from within the household. Thus, SSA will reduce Mari's monthly SSI benefits by one-third, or \$250.

<sup>88</sup> 20 C.F.R. §416.1165; POMS, Deeming of Income from Ineligible Parent(s), SI 01320.500 (Dec. 2009); POMS, Deeming – In Kind Income and Deeming, SI 01320.150 (Feb. 2018).

<sup>89</sup> POMS, The One-Third Reduction Provision and Deeming, SI 00835.210 (Feb 2014).



## **Child living with parent and grandparent, ISM valued under VTR Rule**

Rosa, a 12-year-old SSI recipient, lives with her mom, grandmother, and younger brother Nicky in a home that her grandmother owns. The total household expenses for food and shelter are \$1,200 per month. Thus, everyone's fair share is \$300 per month. Rosa does not contribute anything towards the household expenses, but her mom and grandmother pool their money, with her mom contributing \$700 and her grandmother contributing \$500.

To determine Rosa's contribution, SSA would first take her mom's excess contribution ( $\$700 - \$300 = \$400$ ) and divide the excess equally among Rosa and her younger brother ( $\$400 \div 2 = \$200$  allocated each to Rosa and Nicky). Rosa's contribution would thus be \$200 (\$0 + \$200 from her mom's contribution).

In this case, Rosa is receiving ISM that would be valued under the VTR rule. She is living in another's household (her grandmother's), and she is receiving both food and shelter from within the household from someone other than her parent/deemor. (Rosa is receiving both food and shelter from her grandmother. If only her mom, i.e. Rosa's deemor, provided this food and/or shelter,<sup>90</sup> VTR would not apply because SSA would not count this support as ISM.<sup>91</sup> Also, because Rosa is not paying her fair share of household operating expenses, she is not exempt from the VTR rule). SSA will therefore reduce Rosa's monthly SSI benefits by one-third, or \$250.

**Note:** The all-or-nothing nature of the VTR rule results in Rosa losing the full \$250 even though she is underpaying her fair share by only \$50.

## **Child living with parent and grandparent, ISM valued under PMV Rule**

Consider the same situation as above, except now Rosa's mom (rather than Rosa's grandmother) owns the home. In this scenario, Rosa is living in her mom's household (and is therefore not considered to be living in "another's household"). The VTR rule does not apply, and SSA will value the ISM under the PMV rule instead. Because Rosa's contribution towards household expenses is \$200, she will be charged with \$100 of ISM (Rosa's fair share of \$300 – \$200). SSA will reduce Rosa's monthly SSI benefits by \$80 (\$100 – \$20 unearned income disregard).

## **Child living with multiple adults, including SSI-eligible individuals**

Henry is an 8-year-old SSI recipient who lives with his dad, his grandmother, his aunt, and his younger brother Peter. Henry's grandmother also receives SSI. Henry's dad rents the home from a landlord and the total household operating expenses for food and shelter are \$1,500 per month, meaning everyone's fair share is \$300/month. Henry contributes \$50 each month from his benefits, his dad contributes \$900, and his aunt contributes \$550.

In this case, Henry is receiving ISM that would be valued under the PMV rule. Henry is living in his dad's household (and is therefore not considered to be living in "another's household"). To

<sup>90</sup> Assuming she is over 21, Rosa's mom could likely get a SNAP grant for herself, Rosa, and Nicky, which would mean she would be providing food for Rosa.

<sup>91</sup> See POMS, Separate Purchase of Food, SI 00835.150.A.2 (Dec. 2014) for an example of a child getting food only from a parent.

determine Henry's total contribution, SSA would first take his dad's excess contribution (\$900 – \$300 = \$600) and divide the excess equally among Henry, his grandmother, and his younger brother ( $\$600 \div 3 = \$200$  allocated each to Henry, his grandmother, and Peter). Henry's contribution would thus be \$250/month (\$50 + \$200 from his dad's contribution).

Because Henry's contribution towards household expenses is \$250/month, he will be charged with \$50 of ISM (Henry's fair share of \$300 – \$250). SSA will reduce Henry's monthly SSI benefits by \$30 (\$50 – \$20 unearned income disregard).

## Transients (Homeless Individuals)

Transients are SSI recipients who have no permanent residence and are not part of a household – they are homeless or “couch-surfing” (i.e. staying with a succession of friends or relatives). For most homeless individuals, ISM is not a problem if they are living in shelters, on the streets, in their cars, etc. Food and/or shelter from non-profit organizations such as homeless shelters are generally not considered ISM, and individuals living on the streets are usually not receiving food or shelter that has any market value.<sup>92</sup>

**In contrast, SSI recipients who are couch-surfing may be receiving countable ISM.** Whenever these individuals stay in someone else's home – even if it just for one night – SSA will evaluate any ISM they receive under the PMV rule. (Recall that transients are living in non-households and are therefore not subject to the VTR rule.) Additionally, because transients have no permanent residence, they also are not subject to the first-of-the-month rule, meaning SSA will take into account ISM the individual received throughout a month in different living arrangements, not just ISM based on the individual's situation on the first day of the month.<sup>93</sup> However, just as with others, SSA will never reduce these individuals' monthly benefits by more than the PMV.

### Practice Tip

Individuals who are couch-surfing should document the actual value of any ISM they receive at each home they are staying in. Documentation will allow these individuals to rebut the PMV when possible. SSA prefers signed statements from the provider of the food and shelter attesting to their value.

### Example:

#### **Individual who is couch-surfing receives ISM valued under PMV Rule**

Grace receives SSI and has been living in a homeless shelter where she also gets her meals. On April 12, a friend invites Grace to stay with her for a week and provides her with food as well. Grace goes back to the shelter for another week, and then stays with her brother for the remainder of the month. Her brother does not charge her for food and shelter.

In this case, Grace is a transient who has no permanent residence. Therefore, she is subject to the

<sup>92</sup> POMS, Transients, Homeless Individuals, and LA/ISM Determinations, SI 00835.060 (May 2014).

<sup>93</sup> POMS SI 00835.060.B.3, E.

PMV rule because she is not living in the household of another. Further, the first-of-the-month rule does not apply, and SSA will evaluate any ISM that Grace received from all sources throughout the month. Although any ISM from the homeless shelter is not countable, SSA will charge Grace with ISM received while she stayed with her friend and brother. Grace can try to show that the actual value of the food and shelter she received in April is lower than the PMV, but if she cannot, SSA will charge the PMV and deduct \$270 from her monthly benefits.

## Residents of Public Institutions

Residents of public institutions (institutions administered by federal/state/local governments) are generally ineligible for SSI.<sup>94</sup> Common examples of public institutions are jails and hospitals.<sup>95</sup>

Some residents of public institutions, though, may be able to receive limited benefits. Notably, residents of medical treatment facilities (such as nursing homes) where Medicaid pays more than 50 percent of the cost of care are eligible for SSI monthly payments of \$30.<sup>96</sup> Additionally, residents of public emergency shelters for the homeless (PESH) are eligible for six months of SSI payments in any nine-month period.<sup>97</sup> But ISM problems for these individuals are rare.<sup>98</sup>

SSA also classifies many halfway houses as public institutions,<sup>99</sup> although SSA acknowledges that some of these institutions are private. ISM issues are likely to arise for residents of these private halfway houses because the value of food and shelter provided often exceeds the amount paid by the residents.

## Retrospective Budgeting

Advocates should keep in mind that in terms of calculating payments, SSA operates two months behind due to retrospective monthly accounting (also known as retrospective budgeting). Retrospective budgeting is a source of much confusion for both SSI recipients and advocates. When retrospective budgeting applies, it means, for example, that an individual's SSI payment for March will actually be based on what her income was in January. SSA determines benefits in this manner because it allows them to make payments based on known circumstances of a past month.<sup>100</sup>

### Practice Tip

Warn clients that fixing an ISM issue will not result in an immediate increase in their SSI payments.

94 42 U.S.C.A. §1382(e)(1)(A); 20 C.F.R. §416.211; POMS, Residence in an Institution, SI 00520.001.A.1 (Oct. 2016).

95 See generally POMS SI 00520.001; Social Security Administration Spotlight on Living Arrangements – 2017 Edition, available at [www.ssa.gov/ssi/spotlights/spot-living-arrangements.htm](http://www.ssa.gov/ssi/spotlights/spot-living-arrangements.htm).

96 20 C.F.R. §416.212; 416.414; POMS, Determination of Applicability of \$30 Payment Limit, SI 00520.011 (April 2013).

97 20 C.F.R. §416.201; 20 C.F.R. §416.211(d); POMS, Residents of Public Emergency Shelters for the Homeless, SI 00520.600 (Oct. 2013).

98 See generally POMS, In-Kind Support and Maintenance Provided Residents of Public Institutions, SI 00835.716 (Sept. 2014).

99 While SSA's justification for this treatment is not persuasive, little advocacy has been undertaken in this area. Contact Justice in Aging for more resources on this issue.

100 POMS, Retrospective Monthly Accounting Computation, SI 02005.001 (July 2013); see also Social Security Handbook 2183.4, Retrospective Monthly Accounting (Sept. 2004)(explaining retrospective budgeting as well as exceptions).

After an ISM problem has been resolved, clients will most likely expect their benefits to increase the next month. However, clients will have to wait until the month after the next (i.e. two months) to see their payments increase.

The same holds true for payment reductions – if a change in an individual’s situation triggers an ISM reduction, she will not be aware of the problem until two months later when SSA decreases her benefits.

When evaluating ISM problems, advocates should investigate not only clients’ current living arrangements, but also their past arrangements. Remember, any ISM reductions in an individual’s payment for the current month will be based on ISM from two months ago.

## Evidence for ISM Cases

The following are examples of documents that advocates can produce as evidence in ISM cases:

- Forms, such as the SSA-795 (“Statement of Claimant or Other Person”)<sup>101</sup>
- Declarations or affidavits
- Receipts
- Leases
- Signed letters
- Tax returns
- Loan agreements

While the above are all valid forms of verification,<sup>102</sup> SSA field offices vary in their willingness to accept certain documents. Some advocates may deal with particularly difficult field offices that refuse to believe clients’ assertions no matter what proof they provide. In these cases where the client’s problem cannot be resolved at the field office level, advocates may need to go to a hearing before an ALJ. See Appendix C and D for sample forms, agreements, and declarations.

### Practice Tip

Advocates should ensure that clients are providing consistent information to different bureaucracies. Clients applying for or already on SSI are usually receiving other public benefits (especially SNAP), and they frequently interact with state public assistance offices. Inconsistencies between information that clients give to these offices and SSA may cause additional problems.

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<sup>101</sup> This form is a general form that can be used in a variety of contexts, including ISM cases.

<sup>102</sup> No “right” form of evidence exists for ISM cases.

# Strategies for Minimizing ISM

How can advocates help clients benefit from as much financial assistance as possible while minimizing reductions in SSI benefits? As previously noted, friends and family members should always opt to provide in-kind support rather than provide cash to a client directly. But in order to minimize ISM reductions, advocates can employ a variety of strategies:

- Shift payments from items that count as ISM to items that do not count as ISM, such as medical bills, car insurance, car payments, cable, clothing, cell phone bills, transportation, etc.
- Avoid the VTR reduction by advising the client to pay her fair share, establish a rental agreement, separately purchase food, etc.<sup>103</sup> When ISM is valued under the PMV rule, the client can rebut the PMV and SSA may charge the client with less ISM.
- In cases where the PMV rule applies and the client is receiving outside ISM, advise the third party to pay for shelter expenses that will be allocated to the entire household rather than food (see Example #3 with outside ISM for Patricia in the section on the PMV rule).<sup>104</sup>
- Assist with documenting loans of ISM for clients with pending SSI claims before they are approved for benefits. Advance loans of ISM are especially important in light of the long delays clients face during the appeals process.

Whether these approaches are successful will depend on each client's unique circumstances. Further, sometimes clients benefit more from accepting an ISM reduction than they would if they were to try to avoid it. When considering different strategies to avoid ISM issues, advocates should carefully evaluate clients' preferences and any potential consequences to their benefits.

The examples below illustrate how advocates can use a range of strategies to fix clients' ISM issues. Although multiple strategies will likely be viable in any given situation, these examples will focus on highlighting one or two strategies in particular.

## Examples:

### Shifting Payments to Non-ISM Items

Lane is an SSI recipient who is seeking help because SSA is reducing her monthly check by \$270, or the PMV. She lives with her boyfriend, who has income from employment. They rent an apartment together and are both on the lease. The total household operating expenses for food and shelter are \$1,000 per month. Lane contributes \$400 per month. What can her advocate do?

Although Lane's advocate could help her rebut the PMV (which would result in SSA reducing Lane's benefits by \$80 per month – see example 1 with Darryl from this guide's section on the PMV),

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103 SSI recipients under the age of 22 who are still living with their parents will find it more difficult to separately purchase food because they will be unable to get their own SNAP benefits. SNAP considers individuals who are under 22 and living with their parents to be in their parents' household. They are therefore unable to get food stamps apart from their parents until they are 22 and over. For more information, refer to your state's regulations and policy manuals concerning SNAP.

104 This strategy generally works when clients are not receiving any inside ISM, only outside ISM.

another option would be to advise Lane to request that her boyfriend – who is currently subsidizing Lane’s food and shelter – pay for other monthly costs that do not count as ISM. Lane could increase her contribution to \$500/month, which would result in Lane paying her fair share and thus no reduction in benefits. Then, in order to offset the additional \$100 that Lane would be paying, her boyfriend could pay \$100 per month towards Lane’s car insurance or other monthly costs that SSA would not consider as food or shelter (note that because Lane’s contribution increased by \$100, her boyfriend’s own contribution to household expenses would decrease by \$100. This \$100 is what he would pay towards the car insurance). This re-working of payments within the household would mean that Lane would be left with more money each month than she would if she were to simply rebut the PMV.

### **Separately Purchasing Food or Paying Fair Share to Avoid VTR**

Ashwin is a 22-year-old SSI recipient living with his two sisters, a cousin, and his mom, who has income from employment. Ashwin seeks help because SSA is reducing his monthly check by \$250, or the VTR. Ashwin’s mom owns the home they are living in, and the total household operating expenses are \$1,100 per month (\$800 for shelter and \$300 for food). Ashwin is not contributing anything towards these expenses. What can his advocate do?

Ashwin’s advocate can help him avoid the VTR rule. One option is for Ashwin to pay his fair share of \$220/month ( $\$1,100 \div 5$  household members). His advocate could also suggest that Ashwin separately purchase his own food, perhaps by getting his own SNAP benefits. This option would make Ashwin’s ISM subject to the PMV rule, which is rebuttable.

Consider if Ashwin were to separately purchase his food with SNAP benefits. Now his fair share of household operating expenses (excluding food) is \$160/month ( $\$800$  in shelter costs  $\div 5$  household members). Ashwin could try to contribute towards these expenses to minimize his ISM reduction (recall that if a client rebuts the PMV, SSA will only reduce the client’s benefits by the actual amount of the subsidy). If he pays the full \$160, he would have no ISM reduction at all.

### **Setting Up Rental Liability to Avoid VTR**

Naomi receives SSI and seeks help because SSA is reducing her monthly benefits by \$250, or the VTR. Naomi lives with her friend, who has income from employment. Her friend rents the apartment they live in. The total household operating expenses for food and shelter are \$1,000 per month (\$600 of which is the rent). Naomi contributes \$400 each month towards these expenses. What can her advocate do?

Naomi’s advocate can help her avoid the VTR rule by advising her to get on the lease with her friend for their apartment so that Naomi has rental liability (she could also sublet from her friend). This option would make Naomi subject to the PMV rule, which is rebuttable.

Naomi and her friend decide to split the rent evenly so that Naomi’s share is \$300/month. Naomi continues contributing \$400 each month, but now \$300 of that money is rent. The actual value of inside ISM that she receives would be \$100 ( $\$500$  fair share –  $\$400$  contribution). As a result, she could rebut the PMV and SSA would deduct \$80 ( $\$100 - \$20$  unearned income disregard) from her monthly benefits.

## Reporting Changes to SSA

Individuals must inform SSA about changes to their living arrangements within 10 calendar days after the month in which the change occurred. These changes could affect SSI payments, and not reporting them could result in overpayments or underpayments. An individual's move to a new home, household members moving in or out, an individual gaining approval for SNAP and starting to purchase her own food – these are all examples of changes that could affect how much ISM an SSI recipient is receiving.<sup>105</sup> Ideally, individuals should consult with advocates about changes to living arrangements before they actually occur.

### Practice Tip

Encourage clients to report changes in person at their local field office to prevent any miscommunication. Moreover, be prepared to follow up as needed with the field office since SSA often fails to re-evaluate ISM even after an individual has notified them of relevant changes.

## Conclusion

Advocates who are knowledgeable about ISM issues can help their clients navigate a complex set of rules to maximize their clients' SSI benefits. ISM cases are fact-intensive, but SSA will frequently take shortcuts and fail to make the individualized inquiries necessary to properly develop these cases. Thus, it is critical for advocates to appeal and challenge ISM reductions. This guide was created to help advocates do so.

Although this guide reviewed the overall framework for ISM cases and the most common issues, there are many other issues this guide did not cover. Advocates should refer to 20 C.F.R. §416.1130 through §416.1148 and POMS SI 00835.000 (“Living Arrangements and In-Kind Support and Maintenance”) for the most comprehensive information on ISM.

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105 See POMS, SSI Posteligibility – Recipient Reporting, SI 02301.005 (Sept. 2016).

# Appendices for ISM Guide

## Appendix A

- [SSA's Programs Operations Manual System \(POMS\) SI 00835.000, Living Arrangements and In-Kind Support and Maintenance Subchapter, Table of Contents](#)

## Appendix B

- [Sample ISM Notices](#)

## Appendix C

- **Relevant Forms**

1. [Appointment of Representative \(SSA-1696\)](#): *To be completed by the advocate representing a claimant and signed by the claimant.*
2. [Request for Reconsideration \(SSA-561-U2\)](#): *Appeal form used to request reconsideration.*
3. [Statement of Claimant or Other Person \(SSA-795\)](#): *General form used for documenting statements from a claimant or other persons who have knowledge of facts regarding a claimant's SSI case.*
4. [Statement of Living Arrangements, In-Kind Support and Maintenance \(SSA-8006-F4\)](#): *To be completed by the claimant. Used to document a claimant's living arrangement and ISM.*
5. [Statement of Household Expenses and Contributions \(SSA-8011\)](#): *To be completed by the householder or a knowledgeable adult member of the claimant's household (other than the claimant's spouse) when SSA needs corroboration of ISM.*
6. [Letter to Landlord Requesting Rental Information \(SSA-L5061\)](#): *Used by SSA to develop a possible rental subsidy when the landlord is related to someone in the claimant's household.*
7. [Claimant Statement about Loan of Food or Shelter \(SSA-5062\)](#): *To be completed by the claimant seeking to establish that food and/or shelter provided by another person is actually a bona fide loan.*
8. [Statement about Food or Shelter Provided to Another \(SSA-L5063-F3\)](#): *To be completed by the person providing the food and/or shelter as a bona fide loan to the claimant.*

## Appendix D

- [Sample Loan Agreement](#)
- [Sample Declaration](#)