

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

In-Kind Support and Maintenance in the SSI Program

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April 11, 2018

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- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to trainings@justiceinaging.org.
- Slides and a recording are available at Justice in Aging - Advocates Resources - Trainings: justiceinaging.org/resources-for-advocates/webinars. See also the chat box for this web address.

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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've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

About Community Legal Aid Society, Inc.

CLASI is a statewide, nonprofit law firm whose mission is to combat injustice through creative and persistent advocacy on behalf of vulnerable and underserved Delawareans. CLASI is also Delaware's designated Protection and Advocacy agency for individuals with disabilities.

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Acknowledgments

Thank you to the Borchard Foundation Center on Law and Aging for their generous support of this project.

We are also very grateful to all of the advocates who took the time to share their suggestions, expertise, and resources with us.

Today's Webinar

- What is In-Kind Support and Maintenance (ISM)?
- How do the ISM rules work?
- How can individuals avoid ISM reductions and receive more benefits?

National Center on Law and Elder Rights

August 16, 2017:

In-Kind Support and Maintenance in the
Supplemental Security Income Program

Webinar and issue brief:

<http://www.justiceinaging.org/webinar-kind-support-maintenance-supplemental-security-income-program/>

In-Kind Support and Maintenance

What is In-Kind Support and Maintenance (ISM)?

In-Kind Support and Maintenance



Food



Shelter

What Counts As Food And Shelter?

- Food (but not food purchased with SNAP benefits)
- Rent
- Mortgage
- Real property taxes
- Utilities (gas, electricity, water, sewer, trash, heating fuel)

In-Kind Support and Maintenance

- Food/shelter that someone else (other than the SSI recipient) pays for
- MAJOR EXCEPTION: food or shelter based on need provided by nonprofits; HUD subsidies



In-Kind Support and Maintenance

- 20 C.F.R. §§ 416.1130 – 416.1148
- POMS SI 00835.000 et seq.:
 - Living Arrangements and In-Kind Support and Maintenance
 - <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500835000>

ISM Rules

How does ISM work?

Two Rules to Calculate ISM

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

Critical Difference: PMV is rebuttable

Value of 1/3 Reduction Rule (VTR)

- Living in the household of another who provides food and shelter
- \$250 deduction for individual
- Rules applies in full or not at all
- Applies only where SSI recipient does NOT have rental liability

POMS SI 00835.200

VTR Examples

Individual receiving ISM valued under VTR:

Asha

- lives with adult son, his wife, and baby
- her son rents house
- total HH expenses for food and shelter: \$2,000 per month
- Asha contributes \$100 per month

One Third Reduction Rule (VTR)

Exceptions:

- Paying Fair Share of Household Expenses
- Public Assistance Household

Fair Share

- Total household expenses for food and shelter / number of household members
- Household members include children

Public Assistance Households

- Means-tested cash benefits
- SSI, TANF, GA, VA payments based on need
- **NOT:** Medicaid, SNAP, SSDI, Unemployment, etc.

VTR Examples

Individual avoids ISM by paying fair share: Vanessa

- lives with sister, brother-in-law, niece, and nephew
- sister owns house
- Total HH expenses for food and shelter: \$1,200 per month
- Vanessa contributes \$240 each month

VTR Examples

Individual receiving ISM valued under VTR: Manny

- lives with his mom, dad, and sister in house parents own
- no contribution towards household expenses
- mom also receives SSI, and dad works and is on Medicaid
- sister has no income and does not receive any benefits

Presumed Maximum Value Rule (PMV)

- Claimant gets ISM, but VTR rule does not apply
- Maximum reduction of One-Third of Federal Benefit Rate, plus \$20 (\$270 for individual)
- Can rebut by showing actual value of ISM
- ISM treated as unearned income

POMS SI 00835.300

Rebutting the PMV

- Actual value of ISM = Fair Share or Current Market Value (CMV) of ISM less payment made by claimant
- SSA usually just assumes PMV

“Inside” and “Outside” ISM

- Claimants can receive ISM from within or outside household
- VTR applies only when there is “inside” ISM
- But PMV can apply when there is “inside” or “outside” ISM (or both)

PMV Examples

Individual has rental liability and receives
“inside” ISM:

Darryl

- lives with employed cousin
- both are on the lease
- Total HH expenses for food and shelter: \$1,000 per month
- Darryl contributes \$400 per month

PMV Examples

- Darryl can rebut the PMV
- Fair share is \$500/month
- Actual value of ISM = \$100/month (\$500–\$400 contribution)
- SSA will deduct \$80/month (\$100 – \$20 unearned income disregard) rather than the PMV (\$270)

PMV Examples

Individual rents home and receives
“outside” ISM:

Keith

- lives alone in home that he rents for \$550 per month
- can only afford to pay \$400 per month, so brother helps by paying remainder to the landlord

PMV Examples

- Keith can rebut the PMV
- Actual value of ISM = \$150/month (\$550 – \$400 contribution)
- SSA will deduct \$130/month (\$150 – \$20 unearned income disregard) rather than the PMV (\$270)

Dealing with ISM

How can individuals avoid ISM and receive more benefits?

Appealing ISM Decisions

- Opt for formal conference when requesting reconsideration
- Make every effort to resolve ISM cases at the initial or reconsideration levels (i.e. before you need to request an ALJ hearing)

Strategies for Minimizing ISM

- Shift payments to items that do not count as ISM (such as transportation costs, clothes, cell phone bills, etc.)
- Avoid VTR by:
 - paying fair share
 - establishing rental agreement
 - separately purchasing food, etc.
- Rebut PMV

Example

Shifting Payments to Non-ISM Items:

Lane

- lives with employed boyfriend
- both on the lease
- total HH expenses for food and shelter: \$1,000 per month
- Lane contributes \$400 per month

SSA is reducing her benefits by \$270/month (PMV)

Example - Shifting Payments to Non-ISM items

- Before: Lane contributing \$400/month, boyfriend contributing \$600/month. SSA reducing Lane's check by PMV (\$270/month).
- After: Lane contributing \$500/month, boyfriend contributing \$500/month and paying \$100/month towards Lane's car insurance. No ISM reduction.

Loans of ISM

- Relevant when clients are waiting to be approved for SSI
- SSI recipients can receive advance of food and/or shelter in the form of a loan
- Obligation to repay CANNOT be contingent on getting SSI

Evidence for ISM Cases

- SSA forms
- Declarations or affidavits
- Receipts
- Leases
- Signed letters
- Tax returns
- Loan Agreements

Other Topics Covered by the Advocates' Guide to ISM

- Key Points Regarding Living Arrangements
- Rental Liability When Relatives are Landlords
- Reporting Changes to SSA

Special Populations Covered in the Advocates' Guide to ISM

- Children and Young Adults Age 18 and Older
- Homeless Individuals
- Residents of Public Institutions

Recap

- When SSA is reducing recipient's benefits by \$250 or \$270, think ISM
- Two rules for calculating ISM:
 - VTR and PMV
- PMV is rebuttable
- Various strategies for minimizing ISM

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