

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

SSI Transfer of Asset Penalty

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Community Legal Aid Society, Inc. (Delaware)

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.

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

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.

Agenda

- What is the transfer penalty?
- What are the exceptions to the transfer penalty?
- What are some practice tips for assisting clients before and after transfer penalty imposed?

Supplemental Security Income

- Administered by the Social Security Administration (SSA)
- Needs-based, “means-tested” program
 - Limited income and resources
- Basic-needs level income for seniors (65+ years) or people with disabilities
- Title XVI of the Social Security Act

Resources

Resource Limit (maximum allowed value of a person's resources):

- At or under \$2,000 for an individual
- At or under \$3,000 for a couple

20 C.F.R. §416.1105

POMS SI 01110.000

Excluded Resources

- Home the recipient owns and lives in
- One vehicle, used for transportation, per family
- Ordinary household furnishings and personal property
- Certain burial funds
- Irrevocable burial contracts

POMS SI 01100.210

NCLER Webinar

Legal Basics: SSI Resources

<https://vimeo.com/268652895>

Chapter summary

<https://ncler.acl.gov/pdf/Legal%20Basics-%20SSI%20Resources.pdf>

Transfer Penalty

What is the transfer penalty?

Transfer Penalty

- Transfer penalty only applies when SSI applicant or recipient transfers a non-excluded resource to another person for less than fair market value
 - Transfer of cash counts
- Transfer period: Transfer occurring any time in the prior 36 months

POMS SI 01150.001 et seq.

Transfer Penalty

- Consequence: Ineligibility for up to 36 months, depending on the value of the transfer
 - Period of ineligibility is calculated by dividing uncompensated value of resource by monthly federal benefit rate (FBR) applicable to the individual. Rounded down result is number of months the individual is ineligible.

20 C.F.R. §416.1246

POMS SI 01150.110 - .111

Transfer Penalty

Example:

- In Dec. 2017, Mr. Zep decided that he was no longer able to drive, so sold one of his two cars for \$5,000 to his son. The car had FMV of \$12,000.
- In May 2018, Mr. Zep applied for SSI as an individual and is otherwise eligible for the full SSI monthly benefit of \$750.
- Transfer penalty presumptively applies:
 - Uncompensated value of car: \$7,000 ($\$12,000 - \$5,000$)
 - Duration of penalty: 9 months ($\$7,000 \div \$750 = 9.33$)
- Mr. Zep's period of ineligibility: Jan 2018-Sept 2018

Transfer Penalty

- Individuals cannot transfer countable resources to gain or retain eligibility
- Common problem #1:
 - SSI recipient notified by SSA that their benefits will be suspended due to being over the resource limit, but are not informed about transfer penalty
 - Recipient gives away excess resource(s) thinking it will help them to retain SSI benefits
 - Instead, they will be ineligible for extended period of time because of transfer penalty

Transfer Penalty

- **Common problem #2:**
 - SSI recipient receives lump sum of \$7,500 in personal injury settlement on January 1, 2017
 - Recipient spent some on own needs, gave some to relatives to pay back past support - money gone by June 1, 2017
 - SSA sends notice on June 1, 2018 re: PI settlement putting recipient over resource limit - recipient no longer over resource limit, but has transfer of asset problem SSA is not yet aware of

Spending Down

- Spending down to mitigate potential period of ineligibility due to being over resource limit without triggering transfer penalty
- Funds must be spent on the needs of SSI recipient
- Keep records re: any purchase made to show fair market value received

Exceptions

What are the exceptions to the transfer penalty?

Exceptions

- Transfer to a Trust
- Transfer of a Home
- Non-Home Transfer to Certain Family Members
- All Resources Returned
- Transfer for Purpose Other Than to Obtain SSI
- Undue Hardship

POMS SI 01150.120 - 01150.126

Transfer to a Trust

- Special needs trust for blind/disabled individual under age 65, including claimant/recipient
- Special needs trust for blind/disabled child of any age

POMS SI 01150.121

Transfer of Home

- Spouse
- Child under 21
- Blind/disabled child of any age
- Sibling with ownership interest residing in home for at least 1 year prior to transferor's institutionalization
- Child residing in home for at least 2 years prior to transferor's institutionalization, providing care

POMS SI 01150.122

Non-Home Transfer

- Spouse
- Blind/disabled child

POMS SI 01150.123

Resource Returned

- Must reacquire same percentage ownership interest
- Returned in same month, returned in subsequent month

POMS SI 01150.124

For Purpose Other Than to Obtain SSI

- Rebuttable presumption that transfer made to keep or obtain SSI eligibility
- Must present “convincing evidence”

POMS SI 01150.125

For Purpose Other Than to Obtain SSI

Examples:

- After the transfer, there is a traumatic onset of disability or blindness;
- After the transfer, there is a diagnosis of a previously undetected condition;
- After the transfer, there is an unexpected loss of other income or resources;
- In the month of the transfer, the transferred resource would have been excludable;
- In the month of transfer, total countable resources would have been below the \$2,000 resource limit (\$3,000 for a couple) even if the individual had retained the transferred resource;
- The transfer was court-ordered;
- The resources were given to a religious order by a member of that order in accordance with a vow of poverty.

Transfers under \$2,000/\$3,000

- Abbreviated development if resource is worth less than limit AND
- All resources in month of transfer are worth less than limit

POMS SI 01150.125(F)

Undue Hardship

- Failure to receive SSI would result in the loss of food or shelter, and
- Available funds (income and liquid resources) do not exceed monthly benefit amount

POMS SI 01150.126

Undue Hardship

Loss of shelter:

- Eviction from current residence, AND
- No other housing available

Interviewer's Guide for Exceptions

“Interviewers may use the following guide to assist them. . . . When asking the questions, remember the 36 month look-back date.”

POMS SI 01150.127

Practice Tips

What are some practice tips for clients with resource and transfer penalty problems?

Create a sympathetic story

Separate from the technical requirements of demonstrating hardship, it is important to have a compelling narrative that demonstrates the claimant is not trying to “game” the system.

Details, details, details

Use declarations or statements set out on Form SSA-795 to provide a narrative. Be creative. This is your opportunity to produce a compelling picture.

Challenge Assumptions

Do not assume SSA has correctly determined the equity value of the claimant's interest, especially with regard to real estate. Do not forget about liens/encumbrances on property. Get appraisals. On many occasions, clients have zero or negative equity in the asset.

Sources

- Regulations
 - 20 C.F.R. § 416.1246
- Program Operations Manual System (POMS)
 - SI 01150.001 – SI 01150.150

Questions?

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