

## Supplemental Security Income: In-Kind Support and Maintenance

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### Justice in Aging

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

### Community Legal Services of Philadelphia

Founded in 1966 by the Philadelphia Bar Association, Community Legal Services (CLS) has provided free civil legal assistance to more than one million low-income Philadelphians. CLS assists clients when they face the threat of losing their homes, incomes, health care, and even their families. CLS is nationally recognized as a model legal services program.

### Introduction

Supplemental Security Income (SSI) is a federal safety net program that provides a very basic income to older adults and people with disabilities who have little-to-no other income or resources.<sup>1</sup> Applicants and recipients must meet multiple and complex financial eligibility criteria on an ongoing basis. These requirements include many complicated rules involving income and resources.<sup>2</sup> One such rule covers “in-kind support and maintenance” (ISM),<sup>3</sup> which is counted as income by the Social Security Administration (SSA) and can cause recipients a significant hardship and reduction of their check of up to \$245 per month (in 2017).

Simply put, ISM is food or shelter that someone else provides for an SSI recipient.<sup>4</sup> The ISM rule is unique to the SSI program, and causes a lot of confusion for recipients, advocates, and SSA.

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

ISM is food or shelter that someone else provides for an SSI recipient. ISM is income that is *not* in the form of cash. The supposed idea behind ISM is that if an SSI recipient is being provided food and shelter at no or reduced cost, the recipient needs less cash to pay for those things. Of course, this rationale ignores the problem that a full SSI

1 42 U.S.C. §§ 1381–1383f.

2 20 C.F.R. § 416.1100 *et seq.* (income), § 416.1201 *et seq.* (resources).

3 *Id.* at §§ 416.1130 – 416.1149.

4 *Id.* at § 416.1130.

check is less than 75% of the poverty level.<sup>5</sup> It is important to remember that ISM only relates to the provision of food or shelter.

## What Counts as Food and Shelter for ISM Purposes?

SSA divides ISM into two categories: household operating expenses and household costs. Household operating expenses are the household's monthly cash expenditures for food and shelter without regard for current market value.<sup>6</sup> ISM that comes from household operating expenses is calculated by determining how much the entire household pays for food and shelter and dividing it by the number of residents in the house (adults and children). The individual receiving SSI benefits should be paying his or her full portion of that cost. If the person is not paying his or her share, the reduction in payments is counted as ISM. Household operating expenses do not include unpaid portions of food and shelter until they are paid, the cost of food consumed by individuals who separately consume or purchase their own food, and the value of food paid for with food stamps.<sup>7</sup>

Household costs include household operating expenses and the current market value of food or shelter that comes from individuals outside of the household.<sup>8</sup> Ten items are counted for ISM purposes: **food, mortgage** (plus insurance if required by the mortgage company), **real property tax** (less any tax rebate/credit), **rent, heating fuel, gas, electricity, water, sewer, and garbage removal.**<sup>9</sup>

### TIP:

In order to avoid a reduction in SSI benefits, friends and family members should not provide assistance by giving or paying for any of these ten items for an SSI recipient, unless their value is greater than one-third of an individual's SSI benefits.

Friends and family members can make payments for food and/or shelter for the SSI recipient as a loan, which will not be counted as ISM, but there must be a record properly documenting the loan and showing that the loan is to be repaid.<sup>10</sup> If a SSI recipient is living somewhere rent-free, it may be helpful to obtain an estimate of the Current Market Rental Value (CMRV) from the owner or provider so that ISM is not overstated.<sup>11</sup>

One important exception to ISM is that food or shelter provided based on need by nonprofit organizations does not count as income for the recipient.<sup>12</sup> So for example, if an SSI recipient receives food from a food bank, that won't reduce their SSI cash benefits. Also, various HUD subsidies for housing do not count as income under ISM.<sup>13</sup>

## Determining the Value of ISM

ISM is counted as a type of income, and two rules determine its value: the value of the one-third reduction rule and the presumed maximum value rule.

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

The value of the one-third reduction rule only applies when a SSI recipient lives in the household of another person who is providing both food and shelter. When this rule applies, an amount equal to one-third of the SSI

5 Annual Update of the HHS Poverty Guidelines, 82 Federal Register 8831-32, January 31, 2017.

6 Social Security Administration, Program Operations Manual System (POMS), Definitions of Terms Used in Living Arrangements (LA) and In-Kind Support and Maintenance (ISM) Instructions, SI 00835.020 (Oct. 27, 2005).

7 POMS, Computation of In-Kind Support and Maintenance from Within a Household, SI 00835.340 (July 25, 2016).

8 POMS, SI 00835.020.

9 20 C.F.R. § 416.1130(b); POMS, ISM and Households - Household Costs, SI 00835.465 (Nov. 7, 2013).

10 POMS, Loans of In-Kind Support and Maintenance, SI 00835.482 (Nov. 15, 2016).

11 POMS, Rent-Free Shelter, SI 00835.370 (Nov. 29, 2011).

12 20 C.F.R. § 416.1124(c)(2).

13 POMS, Federal Housing Assistance, SI 00830.630 (August 26, 2014).

federal benefit rate ( $\$735 \div 3 = \$245$ , in 2017) is treated as part of the individual's countable income. This amount is used regardless of the actual market value of the food and shelter provided.<sup>14</sup>

## EXAMPLE 1:

Marjorie Jones is a senior over age 65 applying for SSI. She lives with her adult daughter and her grandchildren in a home her daughter owns. She eats most of her meals with her family, she does not receive SNAP (food stamp) benefits, and she does not help pay for the household expenses. Her monthly SSI benefits will be reduced by one-third, to \$490 per month via VTR.

There are two exceptions to the application of the VTR rule. The first is if the SSI recipient is living in a public assistance household, then her SSI benefits will not be reduced.<sup>15</sup> Every member of the household must be receiving some kind of means-tested cash benefits (SNAP and Medicaid do not count), as listed in SSA's Program Operations Manual System (POMS), to qualify as a "public assistance household." In the above example, if Ms. Jones' daughter and her children were receiving Temporary Assistance for Needy Families (TANF) benefits, then Ms. Jones' SSI benefits would not be reduced for ISM.

The second exception is if the SSI recipient is paying their fair share of household expenses.<sup>16</sup> In the above example, if Ms. Jones' daughter pays \$700 per month for the mortgage, and the average household monthly bills are \$200 for electricity, \$100 for water and sewer, and \$600 for food, then the total monthly household expenses are \$1,600. Because there are 4 people in the household, Ms. Jones' share of the expenses is \$400 per month. If she pays her daughter \$400 for the monthly household expenses, there would be no reduction of her SSI benefits and she would get the full \$735 each month. If she pays her daughter less than \$400, then she would be receiving in-kind support and maintenance, and SSA would apply the one-third reduction rule—her SSI benefits would be reduced by \$245 and she would receive \$490 each month. Note the potential conflict between Ms. Jones contributing \$400 to the household expenses, which would increase her SSI benefits by \$245, but would decrease the money she has available for her personal needs by \$155 each month.

## Presumed Maximum Value (PMV) Rule

The presumed value rule applies when there is in-kind support and maintenance but the conditions for the one-third rule do not apply, i.e., (1) the SSI recipient is not living in the household of the person providing the support; or (2) either food or shelter is provided, but not both; or (3) rental liability exists between the SSI recipient and the person providing support.<sup>17</sup> Under the presumed value rule, in-kind support and maintenance has a presumed value equal to one-third of the SSI federal benefit rate plus \$20 ( $\$245 + \$20 = \$265$ , in 2017).<sup>18</sup> Critically, however, the presumption can be rebutted.<sup>19</sup>

If the SSI recipient is living in a public assistance household, as defined above, SSA will presume that she is not receiving ISM from other members of the household. SSA will only use the PMV rule if the SSI recipient receives food or shelter from someone outside of the household.<sup>20</sup>

The PMV amount will be deducted as countable income in calculating the amount of monthly SSI benefits, unless the individual can demonstrate that the actual value of the support is less. In-kind support and maintenance cannot be valued at an amount greater than \$265, regardless of actual market value.

14 20 C.F.R. § 416.1131; POMS, One-Third Reduction Provision, SI 00835.200 (Nov. 15, 2016).

15 POMS, Public Assistance Households, SI 00835.130 (Sept. 16, 2014).

16 20 C.F.R. § 416.1133.

17 *Id.* at §§ 416.1140–416.1145.

18 POMS, Presumed Maximum Value (PMV) Rule, SI 00835.300 (June 14, 2012).

19 POMS, Rebuttal Procedures and Presumed Maximum Value (PMV) Rule, SI 00835.320 (August 18, 2015).

20 20 C.F.R. § 416.1142(b).

## EXAMPLE 2:

Bob Bailey is an SSI recipient who lives alone in an apartment he is renting. His brother pays his rent of \$800 per month directly to the landlord. SSA will count this payment as in-kind support and maintenance. Although the rent is \$800, SSA limits how much of the \$800 is counted under the PMV rule.

SSA will take the \$265 from the PMV rule, then deduct the \$20 general income disregard from that amount, and reduce Mr. Bailey's SSI benefits by \$245, resulting in him receiving \$490 per month in SSI.

## EXAMPLE 3:

Joan Connolly lives in a house owned by her sister who allows her to live there rent-free. Ms. Connolly pays all the utilities and buys all her own food with her SSI benefits. SSA determines that the house would rent for \$900 per month if her sister rented it on the open market.

Ms. Connolly also receives \$300 per month in Social Security retirement benefits. In determining how much SSI benefits she should receive, SSA deducts the \$20 general income disregard from the \$300, leaving \$280 of income from the retirement benefits. SSA reduces Ms. Connolly's SSI benefits of \$735 per month by \$280 for the retirement benefits, and then by \$265 under the PMV rule, resulting in her receiving \$190 per month in SSI.

## EXAMPLE 4:

Susan Smith, an SSI recipient, lives with her friend and roommate, Rhonda Brown, in an apartment that rents for \$1,000. Ms. Brown, knowing Ms. Smith has very little income, offers to pay \$700, so Ms. Smith only has to pay \$300 per month towards the rent.

SSA will consider what Ms. Smith's "fair share" of the rent would be. Since the rent is \$1,000, SSA would determine that Ms. Smith should pay half, or \$500. Since she only pays \$300, SSA would consider her to be receiving \$200 of ISM from Ms. Brown to help pay for her shelter costs. SSA will then deduct \$180 (\$200 - \$20 general income disregard) from Ms. Smith's SSI benefit, resulting in her receiving \$555 in SSI per month.

## EXAMPLE 5:

Darryl Perkins lives alone in a home that he owns and his only income is from SSI. His son pays his electric bill which averages \$100 per month. SSA applies the \$20 general income disregard to the \$100 electric bill payment, resulting in \$80 per month as countable in-kind support and maintenance. Mr. Perkins will receive \$655 in SSI benefits each month.

## Relative as Landlord

SSA is somewhat skeptical that relative landlords charge fair market rent to relatives. Therefore, it is important that great care be taken when completing the relative as landlord form.<sup>21</sup> Particular attention needs to be paid to the questions regarding any difference in the amount charged to the relative compared to what would be charged to a non-relative. If the relative landlord charges less to his or her relative than would be charged to a stranger, then the SSA will assume that ISM exists. In contrast, SSA presumes that rent charged by a non-relative is fair market value.

Additionally, note that items provided with the understanding that the individual will later repay, such as when a friend or relative provides food and shelter while the SSI application is pending, do not constitute in-kind support and maintenance, provided that the loan is properly documented.<sup>22</sup>

<sup>21</sup> SSA L5061.

<sup>22</sup> POMS, Loans of In-Kind Support and Maintenance, SI 00835.482 (Nov. 15, 2016).

# Special Circumstances

## Temporary absences

On occasion, an SSI recipient may be temporarily absent from his or her permanent living arrangement. In short, a temporary absence does not count as ISM.<sup>23</sup> Generally, if the recipient returns during the same month or the following month after he or she leaves, then it is a temporary absence and should not affect living arrangements.<sup>24</sup> There are also circumstances under which there is no limit on the temporary absence. The POMS contains examples of these, such as a child who is away at school.<sup>25</sup>

## Homeless individuals

The POMS contains an entire section on homeless individuals and ISM.<sup>26</sup> Homeless individuals include those who are “couch surfing” or otherwise moving from place to place and have no permanent residence. ISM is still an issue for homeless individuals unless they are in a shelter run by a charitable, non-profit organization, or getting needs-based shelter assistance from a state or local government. The “first of the month” rule<sup>27</sup> does not apply to homeless individuals, but ISM will be a problem for SSI recipients who stay in a friend’s apartment for part of a month, for example, and do not pay for their accommodations.<sup>28</sup> Also, certain food and shelter, such as staying in an abandoned building, has no fair market value and thus is not counted as ISM.<sup>29</sup>

## Children

For minor children receiving SSI who live with their parents or step-parents whose income is deemed to the child, there is no ISM between the parent and the child.<sup>30</sup> ISM provided by someone from outside the household will still need to be addressed.<sup>31</sup> For minor children receiving SSI who live with other relatives, such as grandparents, whose income is not deemed to the child, then ISM will be an issue.

## Age 18 redeterminations

At age 18, the income of a parent is no longer deemed to the former minor child receiving SSI. For such children who do not move out of their parent’s home, ISM will have to be dealt with.

## Residents of public institutions, penal facilities, medical facilities and assisted living facilities owned and operated by a governmental entity

Individuals who reside in public institutions are not eligible for SSI payments.<sup>32</sup> While not the subject of this Issue Brief, the rules governing what exactly constitutes a public institution are set forth in the POMS.<sup>33</sup> Additionally, individuals who live in a medical facility where Medicaid pays for more than half of the cost may

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23 POMS, Temporary Absence from a Federal Living Arrangement (LA), SI 00835.040 (Jan. 8, 2015).

24 Id. at C.

25 Id. at C.1.b.; POMS, Temporary Absence of a Child from a Federal Living Arrangement Due to School Attendance, SI 00835.042 (March 27, 2017).

26 POMS, Transients, Homeless Individuals, and LA/ISM Determinations, SI 00835.060 (May 9, 2014).

27 POMS, First-of-the-Month (FOM) Residence and ISM Determinations, SI 00835.500 (Sept. 19, 2014).

28 POMS SI 00835.060.B.3. and E.3.

29 Id. at B.2.

30 20 C.F.R. § 416.1165; POMS, Determining Parent-Child Relationships for Supplemental Security Income (SSI) Purposes, SI 00501.015 (June 30, 2016).

31 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 13, 2013).

32 42 U.S.C.A. § 1382(e)(1)(A); 20 C.F.R. § 416.211.

33 POMS, Residence in an Institution, SI 00520.001 (Oct. 20, 2016), and Residents of Institutions - Eighth Judicial Circuit, SI 00520.120 (August 12, 2014).

be limited to receiving \$30 per month.<sup>34</sup> Residents of penal institutions are not eligible for SSI, but there can be considerable dispute over whether certain half way houses are public institutions.<sup>35</sup> There are special rules for publicly operated emergency shelters also.<sup>36</sup>

## Conclusion

As the above discussion illustrates, the ISM rule is very complex, and causes a lot of confusion for recipients, advocates, and SSA. If a SSI recipient receives a notice from SSA stating that their SSI benefits are going to be reduced due to ISM, they should not assume that SSA has applied the ISM rules correctly. The SSI recipient or a representative acting on behalf of the recipient should file an appeal with SSA as soon as they receive the notice regarding the ISM reduction. Loans with documented repayment dates, as well as assistance provided to SSI recipients that is not food or shelter, are some of the tools available to avoid a reduction in SSI benefits as a result of the ISM rule.

## Additional Resources

- 20 C.F.R. §§ 416.1130 – 416.1148
- POMS SI 00835.000 *et seq.*
  - » Living Arrangements and In-kind Support and Maintenance: [secure.ssa.gov/apps10/poms.nsf/lnx/0500835000](https://secure.ssa.gov/apps10/poms.nsf/lnx/0500835000)
- Supplemental Security Income (SSI) Living Arrangements: [ssa.gov/ssi/text-living-ussi.htm](https://ssa.gov/ssi/text-living-ussi.htm)
- Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-Kind Support and Maintenance: [ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html](https://ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [NCLER@justiceinaging.org](mailto:NCLER@justiceinaging.org).

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<sup>34</sup> 42 U.S.C.A. § 1382(e)(1)(B).

<sup>35</sup> POMS, Special Considerations for Penal Institutions, SI 00520.009 (March 9, 2017).

<sup>36</sup> POMS, Residents of Public Emergency Shelters for the Homeless, SI 00520.600 (Oct. 21, 2013).

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