

Social Security and Supplemental Security Income 101

BY KATE LANG

Social security and Supplemental Security Income (SSI) benefits are essential components of the economic security of virtually all Americans and are especially important for many vulnerable populations. Both programs are administered by the Social Security Administration, an independent agency of the federal government.

Social security is a social insurance program with benefits based on an individual's work history and can provide auxiliary benefits for a wage earner's spouse and children.¹ Social security is funded by a payroll tax (under the Federal Insurance Contributions Act, or FICA) paid on wages



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in equal amounts by employer and employee (6.2 percent each) for all persons working in a job covered by social security.²

Social security is also referred to as “Title II” and “OASDI” (Old Age, Survivors and Disability Insurance). Financial need is not a factor in eligibility determinations,

1 42 U.S.C. §§ 402, 423 (2015).

2 26 U.S.C. § 3101 (2015). The amount of a person's wages subject to the payroll tax is capped. In 2017 the cap is set at a maximum of \$127,200 (Social Security Administration, [Contribution and Benefit Base](#) [2017]).

and so no eligibility rules limit how much other income or resources an individual can have. Social security benefits are linked to Medicare eligibility.³

3 Medicare is a social insurance program for health care funded by a payroll tax. Monthly premiums, usually deducted by the Social Security Administration from social security benefits, also cover a portion of the costs. People 65 and older, those who have received Social Security Disability Insurance benefits for 24 months, and children or surviving spouses 50 or older who meet the social security disability standard are eligible for Medicare, which has four parts (42 U.S.C. §§ 1395c–1395i-5 (Part A, hospital insurance); *id.* §§ 1395j–1395w-6 (Part B, medical insurance); *id.* §§ 1395w-21–1395w-29 (Part C, Medicare Advantage plans); *id.* §§ 1395w-101–1395w-154 (Part D, prescription drug coverage)).

SSI, in contrast, is a means-tested program based on financial need. It provides cash assistance to people who are at least 65, blind, or disabled and who have very low income and limited assets.⁴ The SSI program is funded by general tax revenues, not by payroll taxes.⁵

SSI has extensive financial eligibility rules, and in 2017 the maximum federal benefit rate is \$735 per month for an individual and \$1,103 per month for an eligible couple, with some states providing a supplement to SSI benefits.⁶ A work history is not

4 *Id.* §§ 1381–1383f.

5 *Id.* § 1381.

6 Social Security Administration, [SSI Federal Payment Amounts for 2017](#) [2016]. See *id.*, [Program Operations Manual System \(POMS\), General Information About State Supplementation](#) (SI 01401.001) (Feb. 15, 2013); *id.*, [Understanding Supplemental Security Income SSI Benefits—2016 Edition](#).

required. SSI is also referred to as “Title XVI.” In most states anyone receiving SSI is automatically eligible for Medicaid.⁷

Social Security Benefits

Social security benefits are retirement (“old age”) benefits, survivor benefits, disability benefits, and dependent or auxiliary benefits for each of the other benefit types. Some 60.9 million Americans received these benefits in November 2016. Of those, 44 million, including retired workers (41 million), spouses of retired workers (2.4 million), and children of retired workers (659,000), received retirement benefits. Six million received survivor benefits, and 10.6 million, including disabled workers (8.8 million), children of disabled workers (1.7 million), and spouses of disabled workers (135,000), received disability benefits.⁸

In that month the average monthly benefit amount for all social security beneficiaries was \$1,246; for retired workers, \$1,360; for survivor beneficiaries, \$1,123; and for disabled workers, \$1,171.⁹

To calculate an individual’s benefit amount, the Social Security Administration starts with that person’s lifetime earnings, adjusted to account for changes in average wages since the year the earnings were received. Then the agency calculates the individual’s indexed monthly earnings during the 35 years in which the individual earned the most. The agency applies a progressive formula to these earnings to arrive at a basic monthly benefit amount, or “primary insurance amount,”

7 [42 U.S.C. § 1396a\(a\)\(10\)\(A\)\(i\)\(II\)](#). Ten states, known as “209(b) states,” do not make SSI recipients automatically eligible for Medicaid: Connecticut, Hawaii, Illinois, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia ([Social Security Administration, Program Operations Manual System \(POMS\), Medicaid and the Supplemental Security Income \(SSI\) Program](#) (SI 01715.010) (May 30, 2014)).

8 [Social Security Administration, Monthly Statistical Snapshot, December 2016](#) tbl.2 (Jan. 2017).

9 *Id.*

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and so low-wage workers have a higher replacement rate than high earners.¹⁰

In general, eligibility for social security benefits requires that the wage earner be “fully insured” at the time of retirement, disability, or death.¹¹ An individual is considered “fully insured” if the individual has 40 “quarters” or “credits” in covered employment.

The use of the term “quarters” is misleading; it has nothing to do with calendar quarters. It simply refers to a dollar amount that one must earn in a calendar year to obtain a credit for that year, with four being the maximum number of credits one can earn in a given year.¹² The amount required to earn a “quarter” is indexed and thus normally changes from year to year. In 2017 wages of \$1,300 are required for one “quarter” of coverage.¹³ A person who obtains the maximum four credits every year would be fully insured after ten years of work.

EXAMPLE

Q. George works for only one month in covered employment in 2017 and earns \$4,500 before taxes. How many quarters of coverage has he earned?

A. George has earned three quarters of coverage because he earned more than \$3,900 (\$1,300 x 3) for the year, but less than \$5,200, the amount required for four quarters.

10 [42 U.S.C. § 415](#).

11 *Id.* § 414(a); [20 C.F.R. § 404.110](#) (2017). Some survivor benefits are an exception to this rule (see [20 C.F.R. § 404.120](#)).

12 [42 U.S.C. § 413](#).

13 [Social Security Administration, Quarter of Coverage](#) [2017] (table showing amount of earnings needed to earn quarters of coverage in previous years).

Retirement Benefits. The amount beneficiaries receive when first getting retirement benefits sets the base for the amount they will receive for the rest of their lives. An individual can choose to begin receiving regular retirement benefits at full retirement age, reduced retirement benefits starting at 62, or increased retirement benefits up to 70.

Full Retirement Age. The age at which a fully insured person is first entitled to full or unreduced retirement benefits is referred to as “full retirement age.” For those born between 1954 and 1960, the full retirement age is gradually increasing from 66 to 67.¹⁴ The amount of benefits an individual will receive at full, or “normal,” retirement age is known as the primary insurance amount.¹⁵

Early Retirement Benefits. An individual can begin to receive retirement benefits at 62 if fully insured on that date. However, the benefit level is permanently reduced in proportion to the number of months before full retirement age.¹⁶ The age for early retirement has not increased, and so as the full retirement age increases, the reduction for early retirement will be greater. For example, when full retirement age was 65, retirement at 62 meant a 20 percent permanent reduction in the benefit level. For those whose full retirement age is 66, beginning retirement benefits at 62 means a 25 percent permanent reduction.¹⁷ Moreover, those receiving

14 *Id.*, [Retirement Planner: Benefits by Year of Birth](#) (n.d.).

15 *Id.*, [Primary Insurance Amount](#) [2017].

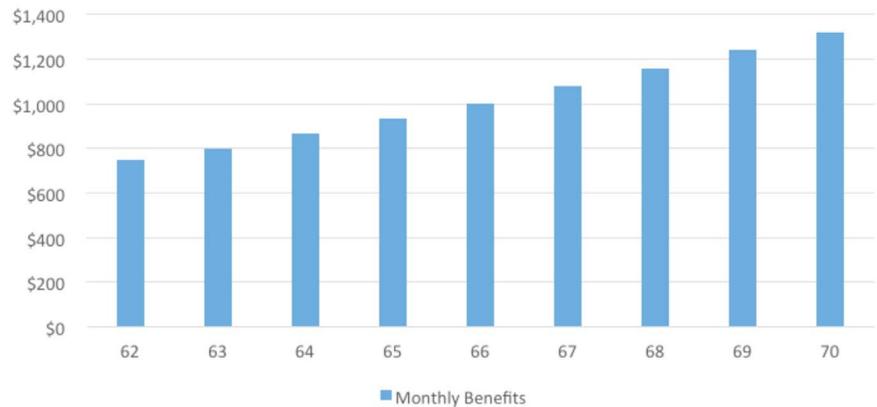
16 *Id.*, [Social Security Benefits: Benefit Reduction for Early Retirement](#) (Nov. 25, 2008).

17 *Id.*

early retirement benefits are not eligible for Medicare until they are 65 years old.

Those who choose early retirement and continue working are subject to a benefit reduction for each month they are working and earning over a certain amount. In 2017 benefits are reduced \$1 for every \$2 of gross earnings that exceed \$16,920 per year until January 1 of the year in which the beneficiary reaches full retirement age.¹⁸ If 2017 is the year in which the beneficiary reaches full retirement age, benefits are reduced \$1 for every \$3 of gross earnings that exceed \$3,740 per month in the months prior to reaching full retirement age.¹⁹ However, these earnings are taken into account in recalculating the primary insurance amount and thus in determining the amount of future benefits. The earnings test no longer applies beginning with the month in which the beneficiary reaches full retirement age.

Example of Starting Monthly Benefit Amounts If Primary Insurance Amount Is \$1,000 Per Month at 66 (Full Retirement Age)



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There is no universal “best age” for someone to start receiving retirement benefits; people must decide on the basis of their own individual and family circumstances. However, as a rule, if one can meet financial needs in the interim, deferring claiming benefits until 70, but not beyond, is best.

retirement age.²² Those who are receiving survivor benefits and are younger than full retirement age are subject to the earnings test as described above. A surviving spouse can begin receiving benefits as early as 50 if the surviving spouse can establish disability under the social security disability standard (see “Initial Determination” below) and if the disability started before or within seven years of the deceased wage earner’s death.²³ A surviving spouse under 62 can receive “mother’s” or “father’s” benefits when caring for the eligible worker’s child who is under 16 or disabled.²⁴

Undocumented immigrants are not eligible for social security benefits unless they filed an application for benefits before December 1, 1996.

Delayed Retirement Credits. Social Security retirement benefits are increased by a certain percentage (depending on year of birth) if the worker delays claiming retirement benefits beyond full retirement age, as long as the worker is fully insured at full retirement age.²⁰ The benefit increase applies whether or not the worker continues to work during this time. The benefit increase no longer applies once the worker reaches 70 even if the worker continues to delay taking benefits after that age.

Survivor Benefits. The spouse (or divorced spouse) of a deceased wage earner can receive survivor benefits if the spouse (1) is over 60, (2) is not entitled to a higher benefit on the spouse’s own earnings record, and (3) was married for at least 9 months, or 10 consecutive years in the case of a divorced spouse.²¹ If a surviving spouse begins receiving benefits before the surviving spouse’s own full retirement age, the monthly amount will be reduced by a fraction of a percent for each month before full

If an individual qualifies for benefits as a widow, widower, or surviving divorced spouse on the deceased wage earner’s record, the individual may choose to apply for survivor benefits and delay receiving the individual’s own retirement benefits until later, receiving delayed retirement credits as explained above.

If the decedent had credits for six of the thirteen consecutive quarters ending with the quarter of death, children,

¹⁸ *Id.*, [Exempt Amounts Under the Earnings Test](#) [2017]. This amount is indexed annually.

¹⁹ *Id.*

²⁰ 42 U.S.C. § 402(w); [Social Security Administration, Retirement Planner: Delayed Retirement Credits](#) (n.d.).

²¹ The nine-month rule has a few specific limited exceptions; the ten-year rule for a divorced spouse has no exceptions (20 C.F.R. § 404.335(a)(2)).

²² [Social Security Administration, Social Security Benefits: Benefits for Spouses](#) (Sept. 25, 2013).

²³ 20 C.F.R. §§ 404.335(c), 404.336(c).

²⁴ *Id.* § 404.339.

surviving spouses caring for a child under 16, and disabled adult children may be able to receive survivor benefits even if the decedent was not fully insured at the time of death. This is referred to as “currently insured” status.²⁵

Disability Benefits. Social Security Disability Insurance is often referred to as “SSDI” or simply “DI.” While SSDI accounts for only about 18 percent of all social security Title II beneficiaries, it accounts for the overwhelming majority of contested claims considered by the Social Security Administration because disability determinations are made on an individualized basis.

To receive SSDI, the individual must be (1) disabled, (2) fully insured, and (3) “disability insured.” A person is “disability insured” if the person has worked 20 of the last 40 quarters preceding the onset of disability.²⁶ A special rule covers individuals under 31.²⁷

As an alternative to early retirement benefits, SSDI has assumed increased importance as the retirement age increases. SSDI allows disabled older individuals to avoid the permanent benefit reduction they would potentially face for retiring before their full retirement age.²⁸

Dependents. A person who has reached full retirement age and is at least in the twelfth month of marriage can receive benefits on a spouse’s work history in an amount that, when added to any benefit to which the individual is entitled on the individual’s own record, equals one-half the

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benefit to which the spouse is entitled.²⁹ A person can qualify at 62 for the spousal benefit with the usual reduction for early retirement. The wage earner must be entitled to receive retirement or disability benefits if anyone else is to receive auxiliary benefits on the wage earner’s record.

A divorced spouse 62 or older can receive the same benefits on a former spouse’s work history if (1) the marriage lasted at least 10 years; (2) the divorced spouse is unmarried; and (3) the wage earner is entitled to retirement or disability benefits. If the wage earner is at least 62 but is not yet entitled to retirement benefits, then the divorced spouse can receive benefits on that record if the couple has been divorced for at least two years and all other requirements for divorced spouses are met.³⁰

Other dependents who can receive social security benefits on a retired, deceased, or disabled wage earner’s work history include minor children, stepchildren, or grandchildren, disabled adult children, and dependent parents of a deceased wage earner.³¹

Miscellaneous Considerations for Social Security Benefits. A few other considerations apply to all social security beneficiaries.

Marriage Recognition for Same-Sex

Couples. Social security currently recognizes all valid marriages of same-sex couples for purposes of determining entitlement to social security benefits, regardless of the jurisdiction in which the couple is living.³²

Family Maximum.

Social security’s family-maximum rules limit the total benefits paid to a beneficiary’s family. Family-maximum rules that apply to retirement and survivor benefits differ from those that apply to disability benefits.³³ The rules for calculating family-maximum benefits are complicated, but note that the wage earner’s own benefit is never reduced; only the benefits of dependents are reduced under these formulas. The benefits for divorced spouses (including surviving divorced spouses) are never reduced under family-maximum rules.

Immigrant Eligibility. Generally only those non-U.S. citizens who are authorized to work in the United States by the Department of Homeland Security can get a social security number.³⁴ Social security numbers are used to report an individual’s wages to the government and to determine an individual’s eligibility for social security benefits. Individuals need

25 *Id.* § 404.120.

26 *Id.* § 404.130.

27 *Id.* § 404.130(c), (d).

28 See [Social Security Administration, Disabled Worker Beneficiaries in Current Payment Status at End of June 2016, Distributed by Age and Sex](#) (July 9, 2016).

29 There are very limited exceptions to the 12-month marriage-duration requirement (20 C.F.R. § 404.330(a)(2)–(3)). Note the difference between eligibility and entitlement. People are *eligible* for benefits if they can meet all the statutory requirements; however, people are not *entitled* until they have applied for benefits and received a determination from the Social Security Administration that they are entitled.

30 *Id.* § 404.331.

31 *Id.* §§ 404.350–404.359 (minor children, stepchildren, or grandchildren), § 404.350(a) (disabled adult child must be unmarried, and disability must have begun before 22), § 404.370 (dependent parents of deceased wage earner).

32 See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

33 See [Kathleen Romig & Dave Shoffner, Understanding the Social Security Family Maximum](#), 75 (3) SOCIAL SECURITY BULLETIN 1 (2015); [Social Security Administration, Program Operations Manual System \(POMS\), Family Maximum Chart \(RS 00605.910\)](#) (Nov. 9, 2016); *id.*, [Maximum Family Benefits Based on DIB Eligibility After 1978—Initial Entitlement After June 1980](#) (RS 00615.742) (Nov. 14, 2016).

34 Individuals who want a number for federal tax purposes and are not authorized to work in the United States can apply to the Internal Revenue Service for an Individual Taxpayer Identification Number (see [Internal Revenue Service, Form W-7: Application for IRS Individual Taxpayer Identification Number](#) (Sept. 2016)).

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a social security number to work, collect social security benefits, and receive some other government services.

Undocumented immigrants are not eligible for social security benefits unless they filed an application for benefits before December 1, 1996. To be eligible for social security benefits, immigrants filing on or after that date must show that they are “lawfully present” (as defined by the U.S. attorney general) in the United States.³⁵

Supplemental Security Income

More than eight times as many people receive social security benefits as receive SSI. Just under 8.3 million were receiving SSI payments in October 2016.³⁶ Of these, 1.2 million were under 18; another 4.9 million were between 18 and 64; and 2.2 million were 65 or older.³⁷ Approximately 2.8 million individuals receive both SSI benefits and social security benefits simultaneously; this occurs when their social security benefit is less than the SSI benefit, due to a limited work history or a history of low-wage work or both. Of these individuals, known as “concurrent beneficiaries,” 1.5 million are individuals who have disabilities and are under 65, and almost 1.2 million are 65 or older.³⁸

Because SSI is a means-tested program, applicants and recipients must meet several eligibility criteria on an ongoing basis:

- **Categorical Eligibility.** The categories are age (65 or older), blindness, and disability. The applicant must satisfy only one category.
- **Financial Eligibility.** Both income and resources are counted.
- **Immigrant Eligibility.**
- **Residence.** Residence in the United States is required, even for U.S. citizens.

Unlike social security, SSI has no auxiliary benefits for dependents. However, if individuals are married or living together, and both are categorically eligible for SSI, then they must apply as a couple. Otherwise they may not apply as a couple.³⁹

If it cannot be used to obtain food or shelter, it is not income for SSI purposes.

Categorical Eligibility. Whether an individual is 65 or older is usually a straightforward determination. The process for determining whether an individual meets the disability standard for SSI is the same as that for social security (see “Initial Determination” below).⁴⁰ However, SSI disability benefits differ from SSDI benefits in that SSI disability benefits

are available for children who meet the Social Security Administration’s disability standard. Those under 18 follow a separate SSI disability determination process.⁴¹

Financial Eligibility. Many complicated financial eligibility rules apply to SSI recipients.

Income. For SSI purposes, “income” is a term of art. Income is defined in the SSI regulations as “anything you receive in cash or in kind that you can use to meet your needs for food and shelter.”⁴² In other words, if it cannot be used to obtain food or shelter, it is not income for SSI purposes.

Even if something is income under the SSI definition, it still might not be “countable income” under the SSI income-counting rules. Only countable income affects SSI eligibility and the amount of benefits to be paid.⁴³ Some items not considered to be income are the proceeds of a loan, income tax refunds, bills paid directly to the supplier by someone else for goods or services other than food or shelter, and infrequent or irregular income (up to \$60 per quarter of unearned income and \$30 per quarter of earned income).⁴⁴

To be eligible for SSI, an individual cannot have more countable income than the SSI payment level applicable to the individual’s living arrangement. Income is counted on

35 42 U.S.C. § 402(y).

36 Social Security Administration, *SSI Monthly Statistics, October 2016* tbl.1.

37 *Id.* tbl.2.

38 *Id.*, Annual Statistical Supplement, 2016: Supplemental Security Income tbl.7.D1.

39 The Social Security Administration will determine whether an applicant will be considered as an individual or as part of a couple. If the individuals are married and living in the same household and both are over 65 or blind or disabled, they must apply as a couple. If the individuals are in a registered domestic partnership or civil union, they are not considered married for SSI purposes, even though they may be considered married for social security purposes (20 C.F.R. §§ 416.1801-1835; Social Security Administration, Program Operations Manual System (POMS), *Determining Whether a Marital Relationship Exists* (SI 00501150) (Feb. 8, 2016)). If the individuals live together and lead people to believe they are married (“holding out”) and both are over 65 or disabled, then they must apply as a couple (Social Security Administration, Program Operations Manual System (POMS), *Determining Whether Two Individuals Are Holding Themselves Out as a Married Couple* (SI 00501152) (Feb. 5, 2016)). However, if the individuals are separated or if only one spouse is over 65 or disabled, then they must apply individually.

40 See 42 U.S.C. § 1382c(a)(3); 20 C.F.R. § 416.920.

41 See 20 C.F.R. § 416.924.

42 *Id.* § 416.1102.

43 *Id.* § 416.1104.

44 *Id.* § 416.1124.

a monthly basis, and the income is used to calculate the benefit two months later.⁴⁵

The Social Security Act divides income into two types for SSI purposes—earned and unearned income.⁴⁶ The distinction is crucial because the two types of income are calculated separately by using very different rules.

Unearned Income. In social security regulations unearned income is defined by what it is not, that is, it is not earned income.⁴⁷ Of those SSI recipients who have other sources of income, an overwhelming majority have only unearned income, usually from social security benefits.⁴⁸ For those who have only unearned income, the calculation of countable income to determine SSI eligibility and benefit amount is very simple: take the individual's unearned income for the month and subtract a general income disregard of \$20.⁴⁹ The result is countable income for the month.

EXAMPLE

Javier receives a \$520 monthly social security check and a \$170 monthly pension check, for a total monthly unearned income of \$690. He resides in the District of Columbia, which has no state supplement. Is he income eligible for SSI? If so, how much is his grant?

Yes. Javier has total unearned income of \$690. From this, subtract the \$20 unearned income disregard, leaving total countable income of \$670.

Since this amount is less than the combined federal benefit of \$735, he is eligible for SSI. The amount of the

grant is determined by subtracting his countable income (\$670) from the SSI payment level (\$735), leading to a small SSI grant of \$65 per month.

Keep in mind that in most states he also gets automatic Medicaid eligibility, making SSI eligibility worthwhile. Also note that although he has two sources of unearned income, he gets to use the \$20 unearned income disregard only once.

Earned Income. A very small percentage, about 3 percent, of all SSI recipients have earned income.⁵⁰ For elderly recipients, the number is even smaller, a little more than 1 percent. However, the rules for counting earned income are more generous than those for counting unearned income. Under the earned income calculation, start with gross wages, disregard \$65 per month, and subtract any impairment-related work expenses for recipients with disabilities. If the recipient has not already used it, the \$20 general income disregard is also subtracted. For the remaining earned income, only half is counted as income.⁵¹

EXAMPLE

Anna resides in California (which has a state supplement of \$156.40 per month) and earns \$1,475 in gross wages per month. She has no other income and has no impairment-related work expenses. Is she eligible for SSI as an individual? If so, how much is her grant?

Yes, Anna is eligible. To calculate her grant, subtract the earned income disregard of \$65 and the unearned income disregard of \$20 from Anna's gross wages of \$1,475, leaving \$1,390. This amount divided by 2 equals countable income of \$695.

Subtracting \$695 from the SSI/state-supplement level of \$891.40 (\$735 + \$156.40) leaves Anna eligible for an SSI grant of \$196.40 per month.

In-Kind Support and Maintenance.

Simply put, in-kind support and maintenance is food or shelter that someone else provides for an SSI recipient.⁵²

In-kind support and maintenance is counted as a type of income, and two rules determine its value: the one-third rule and the presumed-value rule.

- **One-Third Rule.** The one-third rule applies when an 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 federal benefit rate ($\$735 \div 3 = \245 , in 2017) is treated as part of the individual's countable income. This amount is used regardless of the actual market value of the food and shelter provided.⁵³
- **Presumed-Value Rule.** The presumed-value rule applies when there is in-kind support and maintenance but the conditions for the one-third rule do not apply, that is, (1) either food or shelter is provided but not both or (2) the individual is not living in the household of the person providing food and shelter. Under the presumed-value rule, in-kind support and maintenance has a presumed value equal to one-third of the SSI federal benefit rate plus the \$20 income disregard ($\$245 + \$20 = \265, in 2017). This amount is added to the individual's countable income in calculating the amount of the grant unless the individual can demonstrate that the actual value of the support is

45 *Id.* § 416.420.

46 See 42 U.S.C. § 1382a.

47 20 C.F.R. § 416.1120.

48 See Social Security Administration, *Annual Statistical Supplement, 2016: Supplemental Security Income* tbl.7.D1 [2016].

49 20 C.F.R. § 416.1124(c)(12).

50 See Social Security Administration, *supra* note 48.

51 20 C.F.R. § 416.1112.

52 *Id.* § 416.1130.

53 *Id.* § 416.1131.

less. In-kind support and maintenance cannot be valued at a greater amount regardless of actual market value.⁵⁴

Not everything received in-kind is counted; only in-kind food and shelter, or that which can be used to obtain food and shelter, is counted. Also, items provided with the understanding that the individual will later repay, such as when a friend or relative provides food and shelter while the SSI application is pending, do not constitute in-kind support and maintenance.⁵⁵

Resources. An SSI recipient's resources may not exceed \$2,000 for an individual or \$3,000 for an eligible couple.⁵⁶ Social Security Administration regulations define a resource as "cash or other liquid assets or any real or personal property that an individual ... owns and could convert to cash to be used for his or her support and maintenance."⁵⁷

Resources are generally counted on the basis of the equity an individual has in the resource, that is, market value minus encumbrances.⁵⁸ Resources are counted only once a month on the first day of the month.⁵⁹ Resources held in the middle of a month are irrelevant, although a period of ineligibility may be imposed for the transfer of a resource for less than fair market value (see "Transfer of Resources" below).

Certain resources are excluded and do not count toward the resource limit.⁶⁰ These are some of the principal exclusions:

- **Home.** The home in which the SSI recipient resides and all contiguous land are excluded regardless of value. If the recipient has the intent to return to the home, no matter how unrealistic the intent, the home still is excluded. This is important for a residential care facility resident or a nursing facility resident who is prevented from moving home by a medical condition.
- **Automobile.** One automobile is excluded regardless of value.
- **Personal or Household Goods.** There is no limit on value.
- **Burial Reserve.** Funds can go up to \$1,500 and must be separately identified and set aside.
- **Life Insurance.** This policy can have up to \$1,500 face value. This exclusion can be used in place of but not in addition to the burial reserve.
- **Burial Plot.** A burial plot is excluded regardless of value. This is in addition to the burial reserve.
- **Jointly Owned Property.** Where the sale would cause undue hardship to the co-owner because of loss of housing, jointly owned property is excluded.
- **Past-Due Social Security and SSI Payments.** These payments are excluded from resources for nine months.
- **Earned Income Tax Credit and Child Tax Credit.** These payments are excluded from resources for nine months.

Deeming of Income and Resources.

Deeming is when the income or resources of one person are considered available to the person applying for SSI benefits.⁶¹ Deeming applies only to three relationships: those of a spouse to an SSI spouse, a parent to an SSI child, and an immigrant sponsor to an SSI immigrant. The formula for determining the amount of the income and resources available to the individual is different in each relationship.

Spousal Deeming. The income and resources of an ineligible spouse living in the same household are deemed to the spouse applying for or receiving SSI.⁶² If both spouses are categorically eligible (aged, blind, or disabled) for SSI, then they must apply as a couple.

Parent-to-Child Deeming. The income and resources of a parent living in the household are deemed to the child applying for SSI.⁶³ A child's income or resources are never deemed to a parent applying for SSI.

Sponsor-to-Alien Deeming. Such deeming applies only to some sponsored immigrants, primarily those whose sponsors signed affidavits of support on or after December 1997.⁶⁴ These "new affidavits" provide for sponsor deeming to continue until naturalization or until the immigrant has 40 quarters of covered employment, whichever comes first.

Transfer of Resources. A potential SSI recipient who transfers resources to another person for less than fair market value could become ineligible for SSI benefits for up to

54 [Id. §§ 416.1140-426.2245.](#)

55 See [Social Security Administration, Program Operations Manual System \(POMS\), Loans of In-Kind Support and Maintenance](#) (SI 00835.482) (Nov. 15, 2016).

56 [42 U.S.C. §§ 1382\(a\)\(1\)\(B\), \(a\)\(3\).](#)

57 [20 C.F.R. § 416.1201\(a\).](#)

58 [Id. § 416.1201.](#)

59 [Id. § 416.1207.](#)

60 [Id. § 416.1210.](#) See [Social Security Administration, Program Operations Manual System \(POMS\), Resources Exclusions](#) (SI 01130.050–01130.740) (n.d.).

61 [20 C.F.R. §§ 416.1160](#) (income), [416.1202](#) (resources).

62 [Id. §§ 416.1161, 416.1163, 416.1202.](#)

63 [Id. §§ 416.1161, 416.1165, 416.1202.](#)

64 [Id. §§ 416.1166a](#) (income), [416.1204](#) (resources).

36 months.⁶⁵ The Social Security Administration looks back for such transfers 36 months prior to the application for benefits. Anyone receiving SSI or considering the possibility of applying for SSI within the next three years must consider this provision. Anything that fits within the SSI resource definition is a resource for purposes of the transfer penalty. A common scenario is where an SSI recipient is told her benefits are suspended because she is over the resource limit and is told nothing about the transfer penalty. She then gives away the excess resource under the impression this will help her retain her SSI and related Medicaid benefits. Instead she then learns she will continue to be ineligible for an extended period because of the transfer penalty.

There are some exceptions to the transfer penalty:⁶⁶

- *All Resources Returned.* If the resource is returned, there is no period of ineligibility, even for the period prior to the return of the resource.⁶⁷
- *Transfers for a Purpose Other Than to Obtain SSI.* The presumption that a transfer is for the purpose of obtaining SSI can be overcome only by convincing evidence that the transfer was exclusively for another purpose.⁶⁸
- *Transfer of a Resource that Would Have Been Excludable in the Month of the Transfer.* This exception allows for transfer of the home as

long as the individual was residing there at the time of transfer.⁶⁹

- *Undue Hardship.* This exception applies only where failure to receive SSI would result in loss of food or shelter, and the individual's total available funds do not exceed the applicable monthly payment rate for the individual's living arrangement.⁷⁰
- *Transfer of a Small Amount.* This exception applies if the transferred amount, when combined with other resources, is less than the \$2,000 (\$3,000 for a couple) resource limit.⁷¹

Gifts of cash are considered transfers of resources and incur a period of ineligibility if, when added to the individual's other resources, they exceed the resource limit. Repayment of a loan that one has a legal obligation to repay is not a transfer for less than fair market value. Individuals spending money on themselves never create a period of ineligibility.

Immigrant Eligibility. Before 1996, immigrant eligibility for SSI was very simple: lawful immigrants were eligible for SSI on the same basis as citizens. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, coupled with the Balanced Budget Act of 1997, established complex special requirements that greatly restricted immigrant eligibility for SSI and other benefits.⁷² Social Security Administration personnel being frequently unfamiliar with the details of these requirements, inappropriate denials are the result.

Any noncitizen who was receiving benefits on August 22, 1996, is grandfathered in, and the provisions of the 1996 legislation do not apply. Other noncitizens must look to their date of entry into the United States; one set of rules applies to those who entered before August 22, 1996, and another, more restrictive set of rules applies to those who entered on or after that date. However, for both groups, a prerequisite for eligibility is that the individual is among a limited group of noncitizens who are considered "qualified aliens." This group includes lawful permanent resident aliens, refugees, asylees, persons granted withholding of deportation, Cuban-Haitian entrants, persons paroled into the United States for at least a year or more, and certain domestic violence victims.⁷³ This is just a threshold qualification. Inclusion in this group does not by itself establish eligibility.

Residence. All SSI recipients must reside in one of the 50 states, the District of Columbia, or the Northern Mariana Islands.⁷⁴ An individual who is absent from the country for a full calendar month, or for 30 consecutive days or more, is no longer eligible until the individual has been back in the country for 30 consecutive days.⁷⁵ This rule applies to everyone, not just immigrants.

SSI for Same-Sex Couples. The Social Security Administration requires that

65 42 U.S.C. § 1382b(c); 20 C.F.R. § 416.1246; Social Security Administration, Program Operations Manual System (POMS), What Is a Resource Transfer (SI 01150.001) (Nov. 30, 2016).

66 Social Security Administration, Program Operations Manual System (POMS), SI 01150.120–SI 01150.127 (n.d.).

67 *Id.*, Exceptions—Transferred Resource Returned (SI 01150.124) (Dec. 24, 2013).

68 *Id.*, Exceptions—Transfers for Purposes Other Than to Obtain SSI (SI 01150.125) (Dec. 24, 2013).

69 *Id.*, Exceptions—Transfer of a Home (SI 01150.122) (Dec. 24, 2013).

70 *Id.*, Exceptions—Undue Hardship (SI 01150.126) (Dec. 24, 2013).

71 *Id.*, Exceptions—Transfers for Purposes Other Than to Obtain SSI (SI 01150.125(F)) (Dec. 24, 2013).

72 See 8 U.S.C. § 1612(a)(1) (2015).

73 See Tanya Broder et al., National Immigration Law Center, Overview of Immigrant Eligibility for Federal Programs (Dec. 2015). See also John Bouman, *Immigrant Eligibility*, in Olivia Golden et al., *Twenty Years After Welfare Reform: Reflections and Recommendations from Those Who Were There*, CLEARINGHOUSE (Aug. 2016).

74 20 C.F.R. § 416.1603. SSI benefits are not payable to people residing in Puerto Rico, U.S. Virgin Islands, Guam, or American Samoa (see U.S. House of Representatives Committee on Ways and Means, *Green Book: Background Material and Data on the Programs Within the Jurisdiction of the Committee on Ways and Means, Appendix B: Social Welfare Programs in the Territories* (2016)). However, if people there move to the mainland, they are eligible on the same basis as any other U.S. citizen.

75 *Id.* § 416.1327.

The agency will waive recovery of all overpayments based on delayed recognition of a same-sex marriage and will return any money already collected.

people in a same-sex relationship applying for SSI today be treated the same as those in an opposite-sex relationship in determining marital status and “holding out” as married. This means that if an applicant is living with someone to whom the applicant is lawfully married, with whom the applicant is in a registered domestic partnership, or with whom the applicant is holding out as married, the applicant is treated as married for purposes of SSI eligibility and benefit amount.⁷⁶

However, prior to the June 26, 2013, decision of the U.S. Supreme Court in *United States v. Windsor*, the Defense of Marriage Act prohibited any agency of the federal government from recognizing a marriage between two people of the same sex.⁷⁷ A person married to another of the same sex was listed in Social Security Administration records as single, and SSI eligibility was determined on that basis, even when the person presented a marriage certificate to the agency. This almost invariably resulted in the payment of significantly more benefits than the person would be entitled to if the marriage were recognized.

While the Social Security Administration began to process new applications in the beginning of 2014 from people married to others of the same sex, the agency did not take any action to recognize the marriages

of those already receiving SSI until, on a rolling basis, a year or more after *Windsor*. The agency reduced future benefits as it should have begun doing in July 2013. The agency then issued overpayment notices for the period from July 2013 and demanded repayment of thousands of dollars.⁷⁸

As a result of a lawsuit, the Social Security Administration changed its policy and

The adult standards for determining disability for SSDI, SSI, and Medicaid are the same.

agreed to stop trying to collect overpayments from those who were married to others of the same sex and receiving SSI prior to *Windsor*.⁷⁹ Since SSI redeterminations are done on a rolling basis, a number of same-sex couples with one or both spouses receiving SSI have not had a redetermination based on the *Windsor* decision and still receive more SSI benefits than they should. The agency will waive recovery of all overpayments based on delayed recognition of a same-sex marriage and will return any money already collected.

The Decision and Appeals Process

The Social Security Administration has a four-step administrative decision and appeals process: initial determination,

reconsideration, administrative law judge hearing, and appeals council. The process applies to all decisions the agency makes on whether an individual is entitled to social security benefits or is eligible for SSI payments.⁸⁰ At all stages of the process, the individual has 60 days (plus five days for mailing) to file an appeal of an adverse decision.⁸¹ Each stage excuses missed deadlines for good cause.⁸²

Initial Determination. The initial determination is made in the local office, also known as a field office or district office, except for disability determinations, which are made by the state disability determination service.⁸³

The adult standards for determining disability for SSDI, SSI, and Medicaid are the same. However, the social security and SSI disability definition differs from the definitions used in other programs, such as the Americans with Disabilities Act, state disability insurance, or veterans benefits.

The Social Security Act defines disability as an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or

76 See [Social Security Administration, Program Operations Manual System \(POMS\), Supplemental Security Income \(SSI\) Same-Sex Marriages, Same-Sex Couples, and SSI Deeming from a Same-Sex Ineligible Spouse](#) (GN 00210.800) (June 15, 2016).

77 [United States v. Windsor](#), 133 S. Ct. 2675 (2013).

78 See [Class Action Complaint, Held v. Colvin](#) (C.D. Cal. March 10, 2015) (No. 2:15-cv-01732).

79 [Social Security Administration, Emergency Message](#) (EM-16013 REV 2) (June 8, 2016).

80 [20 C.F.R. §§ 404.902, 416.1402](#).

81 [Id. §§ 404.909, 404.933, 404.968, 416.1409, 416.1433, 416.1468](#). See [id. §§ 404.901](#) (for social security, “[d]ate you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period”); [id. §§ 416.1503](#) (for SSI, “[d]ate we notify him or her means 5 days after the date on the notice, unless the recipient shows us that he or she did not receive it within the 5-day period”).

82 [Id. §§ 404.911, 416.1411](#).

83 [Id. §§ 404.904, 416.1404](#).

The rules between the programs differ, and advocates must understand the differences and be familiar with which rules apply to which program.

can be expected to last for a continuous period of not less than 12 months.”⁸⁴

The combined effect of a person’s impairments must be “of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.”⁸⁵ The agency has adopted a five-step sequential evaluation process to determine if someone meets the disability standard under the Social Security Act.⁸⁶

Reconsideration. The reconsideration step takes place at the local Social Security Administration office or a regional program center. In the case of disability determinations, reconsideration takes place at the state disability determination service. In most cases, reconsideration comes in the form of a “case review,” a paper-record review not involving a personal appearance or an opportunity to present witnesses.⁸⁷

As required by the U.S. Supreme Court, a special procedure for reconsideration applies to SSI-proposed suspensions or reductions in benefits.⁸⁸ In these cases the SSI recipient is entitled to receive full benefit continuation pending a decision on reconsideration if the recipient files a request for reconsideration within 10

days (plus 5 days for mailing).⁸⁹ The same good-cause provisions for missing the deadline to appeal apply to the deadline for receiving aid continuation as well.

In SSI suspensions or reductions the individual has the option of a formal conference or informal conference in addition to a case review.⁹⁰ The formal conference gives the SSI recipient and the recipient’s representative the possibility of requesting a subpoena for documents and witnesses from the agency and to cross-examine agency witnesses.

Administrative Law Judge Hearing. If the claim is denied on reconsideration, the individual can further appeal to the Social Security Administration’s Office of Disability Adjudication and Review for an evidentiary hearing before an administrative law judge (ALJ).⁹¹ There the claimant can present witnesses and request that the ALJ subpoena witnesses and documents. This step is the same for all types of appeals.⁹² Unlike reconsideration, a high percentage of cases get reversed at this stage of the process.⁹³ Most claimants are represented by counsel at the ALJ hearing. All relevant issues must be raised at the ALJ hearing because additional issues may not be raised later.

Appeals Council. A claimant can request appeals council review of an adverse ALJ decision. Review by the appeals council is discretionary, and in an overwhelming majority of cases the council simply denies review.⁹⁴ Though infrequently, the appeals council can also take a case on “own motion” review of an ALJ decision favorable to the claimant.⁹⁵

A claimant has 60 days (plus five days for mailing) to file an appeal in federal court from an adverse appeals council decision or from a denial of review by the appeals council.⁹⁶ The social security commissioner may extend this period upon a written request stating the reasons for late filing.⁹⁷

Both the social security and SSI programs have complex rules. Moreover, the rules between the programs differ, and advocates must understand the differences and be familiar with which rules apply to which program. This understanding ensures that the clients who rely on these benefits for their economic security are receiving and continue to receive the full amount to which they are entitled.

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84 [42 U.S.C. § 423\(d\)\(1\)\(A\)](#).

85 [Id. § 423\(d\)\(2\)\(A\)](#).

86 [20 C.F.R. §§ 440.1520, 416.920](#).

87 [Id. §§ 404.913, 416.1413](#).

88 See [Goldberg v. Kelly](#), 397 U.S. 254 (1970).

89 [20 C.F.R. § 416.1336\(b\)](#).

90 [Id. § 416.1413](#).

91 [Id. §§ 414.929, 416.1429](#).

92 See [id. §§ 404.929–921, 416.1429–1461](#).

93 [Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2015](#).

[Outcomes of Applications for Disability Benefits](#) (n.d.).

94 [20 C.F.R. §§ 404.981, 416.1481](#).

95 [Id. §§ 404.969, 416.1469](#).

96 [Id. §§ 404.981, 416.1481](#).

97 [Id. §§ 404.982, 416.1482](#).