

HIV AS A DISABLING CONDITION

Accessing SSI & SSD Benefits Today

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This webinar is presented as part of the AIDS Institute funded initiative presenting a broad array of legal topics to HIV providers across New York State.

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Social Security Disability Programs Overview

Social Security Disability (SSD)

- SSD is a program that allows people who have worked a certain amount of time to continue to receive income when they become disabled

Supplemental Security Income (SSI)

- SSI is for people who are 65 years of age or older or people of any age who are blind or disabled (including children). It provides monthly cash benefits from the federal government.

2021 SSI and SSP Maximum Monthly Benefit Levels Chart (reflects the 1.3% federal COLA increase, effective January 1, 2021)

Fed L/A Code	State Supp Code	New York State Living Arrangement	Federal Benefit/ Individual	State Benefit/ Individual	Total Benefit/ Individual ¹	Federal Benefit/ Couple	State Benefit/ Couple	Total Benefit/ Couple ⁴
A	A	Living Alone	\$794	\$87	\$881	\$1,191	\$104	\$1,295
A, C	B	Living with Others	\$794	\$23	\$817	\$1,191	\$46	\$1,237
B	F	Living in the Household of Another ²	\$529.34	\$23	\$552.34	\$794	\$46	\$840
A	C	Congregate Care Level 1- <i>Family Care</i> NYC, Nassau, Rockland, Suffolk and Westchester Counties	\$794	\$266.48	\$1,060.48	\$1,191	\$929.96	\$2,120.96
A	C	Congregate Care Level 1- <i>Family Care</i> Rest of State	\$794	\$228.48	\$1,022.48	\$1,191	\$853.96	\$2,044.96
A	D	Congregate Care Level 2- <i>Residential Care</i> NYC, Nassau, Rockland, Suffolk and Westchester Counties	\$794	\$435	\$1,229	\$1,191	\$1,267	\$2,458
A	D	Congregate Care Level 2- <i>Residential Care</i> Rest of State	\$794	\$405	\$1,199	\$1,191	\$1,207	\$2,398
A	E	Congregate Care Level 3- <i>Enhanced Residential Care</i>	\$794	\$694	\$1,488	\$1,191	\$1,785	\$2,976
D	Z	Title XIX (Medicaid Certified) Institutions ³	\$30	\$0 ⁴	\$30	N/A	N/A	N/A
A	Z	See Next Page ⁵	\$794	\$0	\$794	\$1,191	\$0	\$1,191

¹ The combined Federal and State SSI benefit provided to eligible individuals and eligible couples with no countable income.

² The *Living in the Household of Another's* Category includes recipients whose federal benefit has been reduced by the "value of 1/3 reduction" (VTR) due to the federal determination that they are both: a) Living in someone else's household; and, b) receiving some amount of free or subsidized food and shelter (room and board).

³ Applies when an SSI recipient is residing in a medical facility, is not expected to return home within 90 days, and Medicaid is paying for at least 50% of the cost of care.

⁴ Recipients in nursing homes licensed by DOH receive an additional monthly grant of \$25 issued by OTDA called a State Supplement Personal Needs Allowance (SSPNA). Residents of other medical facilities receive a SSPNA of \$5.

⁵ No State supplement is provided: a) when a SSI recipient is residing in a private medical facility and Medicaid is paying for less than 50% of the cost of care, or b) when a recipient resides in certain publicly operated residential facilities that serve fewer than 16 residents, or c) when a recipient resides in a public emergency shelter for 6 calendar months during a 9-month period.

Minimum Monthly Personal Needs Allowance	
Congregate Care Level 1	\$152
Congregate Care Level 2	\$176
Congregate Care Level 3	\$210

Limits on Countable Resources	
Individuals	\$2,000
Couples	\$3,000

Statutory References: Chapter 56 of the Laws of 2020

SSI and SSP Maximum Benefit Levels Chart effective January 1, 2020 (reflects the 1.6% federal COLA for January 2020)

Fed LIA Code	State Supp Code	New York State Living Arrangement	Individual			Couple		
			Federal	State	Total ¹	Federal	State	Total ¹
A	A	Living Alone	\$783	\$87	\$870	\$1,175	\$104	\$1,279
A, C (B)	B (F)	Living With Others (Living in the Household of Another) ²	\$783 (\$522)	\$23	\$806 (\$545)	\$1,175 (\$783.34)	\$46	\$1,221 (\$829.34)
A	C	Congregate Care Level 1 - Family Care OCFS certified Family Type Homes for Adults; and OMH or OPWDD certified Family Care Homes <i>NYC, Nassau, Rockland, Suffolk and Westchester Counties</i> <i>Rest of State</i>	\$783 \$783	\$266.48 \$228.48	\$1,049.48 \$1,011.48	\$1,175 \$1,175	\$923.96 \$847.96	\$2,098.96 \$2,022.96
A	D	Congregate Care Level 2 - Residential Care OMH or OPWDD certified Community Residences, Individualized Residential Alternatives and OASAS certified Chemical Dependence Residential Services <i>NYC, Nassau, Rockland, Suffolk and Westchester Counties</i> <i>Rest of State</i>	\$783 \$783	\$435 \$405	\$1,218 \$1,188	\$1,175 \$1,175	\$1,261 \$1,201	\$2,436 \$2,376
A	E	Congregate Care Level 3 - Enhanced Residential Care DOH certified Adult Homes and Enriched Housing programs; and OPWDD certified Schools for the Developmentally Disabled	\$783	\$694	\$1,477	\$1,175	\$1,779	\$2,954
D	Z	Title XIX (Medicaid certified) Institutions³	\$30	\$0 ⁴	\$30	N/A	N/A	N/A
A	Z	see below ⁵	\$783	\$0	\$783	\$1,175	\$0	\$1,175

Minimum Personal Needs Allowances	
Congregate Care Level 1	- \$ 150
Congregate Care Level 2	- \$ 174
Congregate Care Level 3	- \$ 207

Limits on Countable Resources	
Individuals	\$2,000
Couples	\$3,000

Statutory References: Chapter 56 of the Laws of 2019

Revised October 15, 2019

¹ The combined federal and State SSI benefit provided to eligible individuals and eligible couples with no countable income.
² The *Living With Others* category includes recipients whose federal benefit has been reduced by the "value of the 1/3 reduction" (VTR) due to the federal determination that they are both:
a) Living in someone else's household; and, b) receiving some amount of free or subsidized food and shelter (room and board).
³ Applies when an SSI recipient is residing in a medical facility, is not expected to return home within 90 days, and Medicaid is paying for at least 50% of the cost of care.
⁴ Recipients in nursing homes licensed by DOH receive an additional monthly grant of \$25 issued by OTDA called a State Supplemental Personal Needs Allowance (SSPNA). Residents of other medical facilities receive a SSPNA of \$5.
⁵ No State supplement is provided: a) when a SSI recipient is residing in a private medical facility and Medicaid is paying for less than 50% of the cost of care, or b) when a recipient resides in certain publicly operated residential facilities that serve fewer than 16 residents, or c) when a recipient resides in a public emergency shelter for 6 calendar months during a 9-month period.

Non-Disability Eligibility Requirements

SSD and SSI Eligibility

- Does a person have to be in financial need to be eligible for SSD?
 - No. SSD benefits are not based on need

- Does a person have to be in financial need for SSI?
 - Yes. To be eligible a person must have little or no regular cash income or resources that can be turned into cash.

Types of Income

- Earned Income
 - Gross wages – salaries, commissions, bonuses, severance pay
 - In-kind value of food or shelter
 - Net income from self-employment
 - Sheltered workshop earnings
 - Royalties
 - Garnished funds

Types of Income

- Earned Income Exclusions
 - Income not counted in determining SSI eligibility includes tax refund payments, any portion of the \$20 general exclusion not applied to unearned income, \$65 per month and one-half of remaining earned income in a month

Types of Income

- Unearned income
 - All income that is not earned income

- Unearned income exclusions
 - Needs-based assistance wholly funded by state or city, disaster relief assistance, and interest on excluded burial resources

- Non-income items
 - Items not considered income by SSA include medical care and services, clothing, income tax refunds, money borrowed and money received as repayment of a loan

Resources

- A resource is cash or other liquid asset or real or personal property that an individual owns and could convert to cash that can be used to provide for food or shelter.
- Liquid resources: cash or other property that can be converted to cash within 20 working days.
- Non-liquid resources: property that is not cash and cannot be converted within 20 working days.
- Exclusions from resources: resources not counted for purposes of the \$2000 or \$3000 limits.

How to Apply for Benefits

How Do You Apply for SSI or SSD?

- Visit the local Social Security office or call 1-800-772-1213 to make an appointment to file an application.
- SSD applications may be filed on-line at www.ssa.gov.
- SSI applications cannot be filed on-line.
- If the applicant is unable to go to the Social Security office, the SSI application can be made by phone.

How Do You Apply for SSI or SSD?

- Information needed to make the application appointment includes name and address, telephone number, social security number and whether the application is for SSD or SSI

- Type of information needed for the application
 - SSD – applicant will be asked about work background and the name of his/her doctor or doctors
 - SSI – applicant will be asked about work background but the emphasis will be on income and resources.

Note: an application for SSI is automatically an application for BOTH disability programs, SSI and SSD, but an application for SSD is NOT automatically an application for SSI.

The Application is Filed... Now What?

- Case is sent to a “Disability Analyst “
- Will take 3-5 months for a decision
- Claimant most likely will be asked to go to an appointment with a doctor or doctors
- Remember to always respond to requests for information from Social Security, provide complete and accurate information, and keep all consultative examination appointments
- If the application is denied, the claimant has only 60 DAYS to request an appeal. The request must be in writing.

How SSA Determines Disability

Defining Disability

- The term disability does not always mean the same thing. How disability is defined depends on the program.
- SSA has a very specific definition and method for determining if an individual is disabled.

Defining Disability

- Social Security's definition of disability
 - *“Inability to perform substantial gainful activity by reason of a medically determinable physical or mental impairment, or combination of impairments, which has lasted or is expected to last at least 12 consecutive months, or end in death, taking into account the individual's age, education and work history.”*
42 U.S.C. § 423(d); 20 C.F.R. §§ 404.1505; 416.905.

The Sequential Evaluation

- Social Security uses a five step series of questions to decide if an adult is disabled. The questions must be answered in order and if the SSA can make a decision at any step, the process ends.

The Sequential Evaluation

1. Are you working?
2. Do you have a severe condition or combination of conditions that keeps you from working?
3. Is the condition one that appears on Social Security's listing of impairments?
4. If you have worked in the past, can you do the work you previously did?
5. Can you do any other type of work?

Determinations at Steps 4 & 5

- Based on the applicant's Residual Functional Capacity as well as age, education and past relevant work experience.
- If the claimant has HIV will he or she be considered disabled and eligible for SSD or SSI?

Developing Strong Applications

What Types of Evidence Can Be Submitted?

- Medical Evidence

- Records
- Opinions
 - SSA should consider opinions from all medical sources, but will find some opinions more persuasive based on a number of factors, including how much support there is for the opinion in other medical evidence, and to some extent, the treatment relationship

What Types of Evidence Can Be Submitted?

- Other Evidence
 - Social worker's non-medical reports / observations
 - Observations by supervisors or co-workers
 - Observations of family, friends, neighbors with a basis of knowledge of the individual

What Types of Evidence Can Be Submitted?

- Detailed descriptions of activities of daily living
- Detailed descriptions of social functioning
- Detailed descriptions of mental work functions

How Social Workers and Case Managers Can Help

- Get letters from treating sources detailing the claimant's condition and limitations.
- Request reports and/or medical records.
- Assist claimant in recording symptoms and limitations and submit documentation to SSA.
- Gather letters from family, friends and neighbors.

Points to Remember...

- Social Security only considers full time competitive work in determining disability.
- Disability is not necessarily forever.
- SSA will conduct a review of the claimant's medical condition to determine if there has been improvement. This is called a Continuing Disability Review (CDR). If they determine the claimant is no longer disabled, benefits will cease.

Expediting a Decision

- In “Dire Need” cases
 - Terminal illness – TERI
 - Compassionate Allowances
 - Financial Emergencies – imminent homelessness or facing bankruptcy

Appeal Rights & Time Limits

Application Denied... what can be done?

- Beginning in January 2019, a claimant must ask for reconsideration
 - Must be requested within 60 days of the denial
 - Forms available at www.ssa.gov

Reconsideration Denied... what can be done?

- Claimant can ask for a hearing
 - Can be requested in writing within 60 days from the date the decision was received or
 - Can file appeal online at [SSA.gov](https://www.ssa.gov)
 - Claimant has a right to be represented at the hearing. A skilled representative familiar with Social Security law and hearing procedure is strongly recommended

Denied at Hearing... what can be done?

- Appeals Council
 - If the claimant disagrees with the hearing decision, they must ask for a review by Social Security's Appeals Council in writing within 60 days from the date the decision was received.

- Federal Court
 - If you disagree with the Appeals Council's decision or if the Appeals Council decides not to review the case, you may file a lawsuit in a federal district court.

Common Issues You May Appeal and Time Limits for Doing So

Other Decisions Made by Social Security May be Appealed

- Continuing Disability Reviews (CDRs)
- Fleeing Felons
- Resources

Ensuring Benefits Continue During the Appeal

- In some cases the claimant can request that SSA continues to pay benefits while a decision is being made on the appeal
 - The claimant is appealing a decision to discontinue benefits because SSA no longer considers them to be disabled
 - Continued benefits must be requested within 10 days
 - The claimant is appealing a decision that they are no longer eligible for SSI payments, or that their SSI payment should be reduced or suspended

Chris T. Case Example

- Chris T. is a 45 yr old single male who lives in a home he owns. The home is worth \$80,000 and there is no mortgage. He has \$198.00 in a bank account. He owns a 2007 Chevy pick-up truck worth \$2500. He works part-time collecting tolls on the George Washington Bridge and earns \$285 per month.

Can Chris T. Get SSI?

- Does he meet the resource guidelines for SSI eligibility?
- Does he meet the income guidelines for SSI eligibility?
- Is he working (substantial gainful activity)?

More About Chris T. ...

- Mr. T was diagnosed with HIV in 2010 and with AIDS in 2015, due to a T cell count below 200. He previously worked as a dishwasher and a prep cook. He stopped working in January of 2018. He was hospitalized for four days with pneumonia in March 2018. Current symptoms include fatigue, diarrhea, night sweats, occasional thrush, muscle pain and depression.

Can Chris T. Get SSI?

- What will you need in order to assist him in filing his application?
- What evidence should you gather and provide to SSA to support the application?
- Does he meet the disability criteria for Social Security Disability / SSI?
- Does he meet a “listing”?

Questions??

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