

MAXIMIZING SSI BENEFITS

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Empire Justice is a statewide, multi-issue, multi-strategy, public interest law firm focused on changing the “systems” within which low-income families live.

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DISTINGUISHING SOCIAL SECURITY AND SSI

SSD

- Title II, DIB, SSDI, RSDI or OASDI
- Requires a work history and enough quarters of credited work (FICA deductions) to be “insured”

SSI

- Supplemental Security Income, Title XVI, SSI, SSID
- No work history needed

SSD vs. SSI: family benefits

SSD

- Benefits available to insured workers and their:
 - Spouses or divorced spouses, age 62 and above
 - Widowed spouses, 60 & above or 50 and above and disabled
 - Children under 18 or disabled before age 22
 - Dependent parents of deceased workers

SSI

- None
- Benefits available only to qualified applicants
- No dependency or survivor benefits

SSD vs. SSI: effect of other income

- Overlapping Income
- Workers' Compensation or other federal or state disability may affect (offset) amount of SS benefit
- Unearned income of any kind (including deemed and "in-kind") affects benefit amount

SSD vs. SSI: when? how?

SSD

- Five month waiting period from date disabled
- Retroactive payments up to 12 months prior to date of application
- Benefits paid one month behind (May is paid in June)

SSI

- No waiting period
- Benefits payable month after the month of application but no retroactive payments
- Benefits paid for the month in which received

SSD v. SSI: medical insurance

SSD

- Eligible for Medicare 24 months after the 1st DIB payment or 29 months from onset of disability, or at age 65

SSI

- In 2/3 of states (including NY and NJ) eligible for Medicaid even if receiving only \$1 of SSI

Supplemental Security Income

ELIGIBILITY REQUIREMENTS

- Categorical eligibility
- Technical eligibility
- Financial eligibility
- Anti-fraud rules and penalties

CATEGORICAL ELIGIBILITY

- Aged - age 65 and above
- Blind - same criteria as Social Security
- Disabled - " " " " "

TECHNICAL ELIGIBILITY

- Citizen or qualified alien
- Residency
- Must apply for any other benefits
- Cannot be fugitive felon, escaped prisoner, or probation/parole violator
- Cannot be a resident of non-medical public institution, including prison

FINANCIAL ELIGIBILITY

- Income – any money claimant receives (earned, unearned, gifts, lottery winnings, PA, etc.) and free or below-cost food or shelter (subsidized by private sources or in-kind for services)
- Resources - assets claimant owns that could be converted to cash or used to buy food or shelter (e.g., bank accounts, life insurance, real property, stocks, bonds, etc.)



RESOURCE AND INCOME LIMITS

RESOURCE RULES

- The general rule is that an item received in a month is income and, unless spent, it becomes a resource in the following month.
- A resource is counted, or excluded, as of the first of the month

BASIC EXCLUSIONS FROM RESOURCES

- Residential home, regardless of value
- Household goods
- Automobile
- \$2000 cash; \$3000 for a couple
- Burial spaces and burial funds up to \$1,500 for an individual and \$3,000 for a couple

IS PROPERTY AN EXCLUDED RESOURCE WHEN IN FORECLOSURE?



- Generally, property will not be counted as a resource if:
 - SSI recipient has intent to return
 - Spouse or dependent relative lives in property
 - Sale would cause undue hardship to co-owner
 - Individual leaves because of domestic abuse
- Valuation (FMV) of resource if transferred to lender
 - Determination of ownership?
 - Determination of equity value?
- POMS SI 01130.120 - Resource Evaluations for Real Property in Foreclosure
 - <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500835115>
 - Copy attached

INCOME

- Earned income: wages (including earnings from sheltered and supported work) or self-employment income (including royalties on published work)
- Unearned income: anything not wages: social security & veterans' benefits; pensions, dividends, interest, in-kind support, etc.
- Deemed income: from parent to child, spouse to spouse and sponsor to alien

SSI and New York's State Supplemental Program (SSP)

SSI

- Benefits for aged, blind and disabled
- Benefits for 2 items of need
 - Food
 - Shelter

SSP

- Benefits for any NYS resident who receives even \$1 of SSI

HOW ARE SSI BENEFITS PAID?

- SSI benefits are paid from two sources:
 - General Federal Revenues [Federal Benefit Rate or FBR];
 - Optional State Supplementary Payments [“OSSs” or “SSPs”] in states that provide supplementary payments.
 - See POMS SI 01401.001

HOW ARE SSP BENEFITS PAID?

- States can contract with SSA to administer their SSP programs, or do so directly
- In October 2014, NYS took over the administration of its SSP program
 - 18 NYCRR Part 398

2021 SSI Benefits Explained

- Benefit levels
- Living arrangements
- Cost sharing
- In kind support
- Ways to max out SSI
- Reporting requirements



SSI BENEFIT LEVELS

- FBR = Federal Benefit Rate 2021
 - Living alone and with others:
 - \$794.00 (Individual) \$1,191.00 (Couple)
 - Living in the household of another
 - \$529.34 (Individual) \$794.00 (Couple)
- SSP = State Supplement Payment – NY 2021
 - Individual - \$87 or \$23
 - Couple - \$104 or \$46
- <http://otda.ny.gov/programs/ssp/#benefits>

LIVING ARRANGEMENTS

- SSI payments are based on income and living arrangements (LAs)
- Separate LA considerations for FBR and SSP

LIVING ARRANGEMENTS

- Federal categories
 - Living alone (including living with others) [FLA-A], and
 - Living in the household of another [FLA-B]
 - Title XIX (Medicaid) Institutions [FLA-D]

LIVING ARRANGEMENTS

- New York State (for SSP purposes):
 - Living alone [SLA-A]
 - Living with others [SLA-B]
 - Living in the household of another [SLA-F]
 - Congregate care categories [SLA-C-E]
 - Title XIX (Medicaid) Institutions [SLA-Z]

FEDERAL CATEGORIES

- Living alone includes:
 - Living alone (as an individual or as a couple, separate from anyone else);
 - Owning your own home or having mortgage liability;
 - Having rental liability (the claimant's name is on the lease)

LIVING ALONE (FEDERAL), cont'd

- Being a boarder
- Paying a flat fee for both room and board
- Earmarking: paying one's full pro rata share for either food or shelter
- Purchasing one's own food separately from others in the household
- Being a transient (homeless) person

LIVING IN THE H/H OF ANOTHER

- Living in someone else's household
- Receiving both food and shelter free or at a cost below the actual *pro rata* share in that household
 - ISM -- In-kind support and maintenance
- Can apply to an individual, a couple, or an adult child living with a parent or other caretaker
- Generally, a minor child with an adult is considered “living with others,” not living in the household of another

DETERMINING PRO RATA SHARES

- Determine total number in H/H (including anyone who is “temporarily absent”)
- Determine monthly expenses for food and shelter only (shelter includes utilities)
- Divide above

PRO RATA SHARE - EXAMPLE

- Molly is 90 years old and on SSI
- She lives with her grandson and his family of 5 including baby Kathryn who is 9 months old.
- Including everyone in the house, there are a total of 6 members.
- Groceries for the whole family for a month costs \$600 and the rent for the apartment costs \$1,800
- Molly's pro rata share of the monthly food expense is ($\$600 \div 6 =$) \$100; her pro rata share of the rent is ($\$1,800 \div 6$) \$300

PRO RATA SHARE, cont'd

- If Molly is paying less than \$400 to her grandson for her share of the household expenses, she is living the household of another
- The federal portion of her SSI benefit will be reduced by a full 1/3 of the federal benefit rate, bringing it down from \$794/month to \$529.34 (2021) (+ \$23 NY SSP = \$552.34)

PRO RATA SHARE, cont'd

- If Molly is paying \$400 per month (or more), she will get the full \$794, plus the \$23 state supplement = \$817
- Alternatively, Molly might be “earmarking” the money she pays to cover the full cost of one item (shelter) but only part of the other item (food). In this case she could be living with others

EFFECT OF STATE LAs

- SLA-A – “Living Alone”:
 - Molly could pay a set fee for room and board and be paid as if living alone (\$794 + full SSP of \$87 = \$881)
 - Molly could purchase and prepare her food separately and be entitled to the full SSP

EFFECT OF STATE SLAs- cont'd

- SLA-B – “Living with others”
 - Living with others and sharing food expenses results in a reduced SSP (\$23 vs. \$87)
- Example:
 - Georgette is on SSI and lives with her 3 kids; she prepares all their meals and eats with them
 - She is “living with others”- SLA-B
 - If no other income, SSI = \$817 (FBR \$794 + reduced SSP \$23)(2021)

DETERMINING ISM

- In-kind support and maintenance (ISM) is determined, depending on the beneficiary's living arrangement, by either:
 - Value of the One-Third Reduction (VTR)
 - Presumed Maximum Value (PMV)

VTR

- $VTR = FBR \div 3$ (2021: $\$794 \div 3 = \264.66)
- $FBR - VTR = \$529.34$ (2021: $\$794 - \$264.66 = \$529.34$)
- VTR applies if “living in the household of another” and receiving ISM for both food and shelter
- “Inside ISM”
- VTR is NOT rebuttable

VTR EXAMPLE

- Jack lives with his son Bob
- Bob owns the house and pays all expenses of \$2800 monthly
- Jack contributes \$100
- Since Jack is not paying pro rata share, his SSI is reduced by the VTR
- $SLA-BF = \$552.34 (\$529.34 + \$23 SSP)$

PRESUMED MAXIMUM VALUE

- $PMV = 1/3 \text{ FBR (2021-}\$264.66 + \$20 \text{ [unearned income disregard] = } \$284.66)$
- But PMV is rebuttable
- Applies in all situations except “living in the household of another”
- “Outside ISM”

PMV EXAMPLE

- Angus lives alone
- His cousin gives him food worth \$70/month
- Food = ISM, valued at PMV (\$264.66)
- Angus can demonstrate that ISM is only worth \$70
- In 2021, his SSI would only be reduced to \$724 ($\$794 - \70)

RENTAL SUBSIDIES AS ISM

- If the actual rent paid by an SSI recipient is less than the fair (or current) market rental value, SSA counts the difference as a subsidy, or ISM
- SSI is reduced by the lesser of:
 - the amount of the difference between the current market rental value and the actual rent paid; or
 - the presumed maximum value [$\frac{1}{3}$ the FBR + \$20].
 - In 2021, the PMV amount equals \$264.66

RENTAL SUBSIDY EXAMPLE

- Minnie rents an apartment from her daughter, Annie, for \$300/month
- Annie would charge \$600 per month, if it were not her mother
- SSA determines that \$600 is the fair market value (FMV) of the apartment and concludes Minnie is receiving in-kind support in the amount of \$300

RENTAL EXAMPLE #1, cont'd

- The difference between what Minnie pays and what the apartment is worth on the open market is higher than the PMV
- SSA can only reduce Minnie's SSI benefit each month by the PMV
- $\frac{1}{3}$ FBR + \$20 is \$264.66 (2021)
- If Minnie lives alone, her SSI in 2021 in NYS would be reduced to \$529.34 ($\$794 - \264.66)

ISM AND FORECLOSURES

- Generally, ISM is not “charged” due to nonpayment of mortgage
- Nor is ISM generally charged when occupant is given time to exit the property after foreclosure proceedings
- SI 00835.115 - In-Kind Support and Maintenance (ISM) evaluation for homes in foreclosure.
 - <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500835115>
 - Copy attached

INCOME AND LAs

- Assume that James, who earns \$385, moves in with others and pays his pro rata share (LA= AB)
- $\$385 - \85 (earned and unearned disregards) = $\$300 \div 2 = \150 countable income
- $\$794$ (2021 AB rate in NYS) - $\$150 = \644
- $\$641 =$ James's 2021 SSI benefit
- $\$1026 =$ James's total monthly income

Example #2

- What if James is not paying is pro rata share?
- $\$385 - \85 (earned and unearned disregards) = $\$300 \div 2 = \150 countable income
- $\$529.34$ (2021 “BF” rate in NYS) - $\$150 = \379.34
- $\$379.34 =$ James’s 2021 SSI benefit
- $\$764.34 =$ James’s total monthly income

Example #3

- What if James lives alone but his father pays his rent of \$600 each month?
- \$794 (2021 “AA” rate in NYS - \$264.66 (PMV 2021)) = \$529.34
- \$385 - \$85 (earned and unearned disregards) = \$300 \div 2 = \$150 countable income
- \$529.34 - \$150 = \$379.34 = James’s 2021 SSI benefit
- \$764.34 = James’s total monthly, plus free rent!
- Moral? BF is lowest payment regardless of ISM paid

MAXIMIZING LAs AND SSI

- See advocacy tips
- Advise clients early in process re: setting up household budgets
- Rental agreements
- Loan agreements to minimize ISM during retroactive period



CHANGING LAs

- LAs can be changed at any time
- Effective date of change depends on new LA
- Beware of credibility issues

REPORTING CHANGES

- When an event happens but no later than the 10th day of the following month;
- Within 30 days of SSA's request for a report.

REPORTING CHANGES

- all changes in status, address, income
- change in resources that exceed allowable levels
- eligibility for other benefits
- death of certain persons
- change of marital status, living arrangements, etc.
- medical improvement
- extended admission to hospital
- work activity

REPORTING CHANGES

- Eligible individual, spouse or child (unless adjudged incompetent);
- A representative payee; or
- An applicant awaiting a final determination of an application

REPORTING CHANGES

- Changes must be reported to SSA
 - SSA provides NYS OTDA with payment information and case data in the State data exchange (SDX)
 - POMS SI 01405.001
- BUT...since NYS take-over of SSP, some changes must also be reported to OTDA

REPORTING TO SSA

- SSA will still determine BF (Living in the Household of Another), which involves ISM (in-kind support and maintenance) and is considered income
- But SSA will no longer determine NYS LAs
 - See SSA EM-15038
 - Discontinuation of Federally Administered NY State Supplemental Payments
 - <https://secure.ssa.gov/apps10/reference.nsf/links/10162022101336AM>

REPORTING CHANGES TO NYS

- NYS/OTDA is now responsible for determining STATE living arrangements (LAs)
 - See chart: AA (Living Alone) vs. AB (Living with Others)

REPORTING CHANGES TO NYS

- A small number of beneficiaries will only be eligible for SSP
 - i.e., those with income just over the FBR (\$794 in 2021) but under the combined FBR and SSP rates
 - These cases should be referred to NYS/OTDA by SSA initially, but all subsequent reporting must be to OTDA

REPORTING CHANGES TO NYS

- Examples of changes that must be reported directly to SSP/OTDA include:
 - Residence and/or mailing address changes
 - Changes in living arrangements, including changes to who lives in the household
 - Marriage, divorce, or separation
 - Income or employment changes
 - Banking information changes

REPORTING CHANGES TO NYS

- OTDA's website at <http://otda.ny.gov/programs/ssp/> includes instructions for recipients regarding obligations to “double report” changes to both SSA and OTDA.
- Warns recipients that information reported to SSA about changes to State living arrangements will not be passed on to OTDA.
- Recipients must notify SSP of changes within ten days.
- Reminds SSP recipients that no information reported to SSA is shared with OTDA if the recipients only receive Title II benefits rather than SSI.

REPORTING CHANGES TO NYS

- ALL SSP issues are handled through a special unit in Albany OTDA
 - LDSSs are not be involved
- NYS SSP Customer Support Center
 - 1-855-488-0541
- Living Arrangement Form – LDSS-5030
 - <http://otda.ny.gov/programs/applications/5030.pdf>

HOW IS NYS DETERMINING LAs?

- Initially using LAs based-on information from SSA?
- Following up using questionnaire sent by mail (Living Arrangement Form – LDSS-5030)
- NYS/OTDA will/should also rely on SNAP household determinations?

MAXIMIZING SSI BENEFITS FOR HOMEOWNERS

- Questions?
- Comments?
- Contact:
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