

SSI, SSD AND SOCIAL SECURITY

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ELDER LAW AND SPECIAL NEEDS SECTION:

NYSBA INTERMEDIATE CLE: NOVEMBSER, 2016

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I. INTRODUCTION

The Social Security Act provides an economic cushion for seniors and those with disabilities. The following is an overview of the Social Security benefits available to children and adults with disabilities, i.e., SSI, SSD and Adult Disabled Child's Benefits. These materials also discuss Social Security benefits available to Dependents and Survivors of wage earners who are deceased, retired or disabled. Lastly, the materials touch on the timing of taking Social Security retirement benefits for single individuals and married couples.

II. PLANNING FOR THE JONES FAMILY

GRANDMA and GRANDPA JONES come in to meet with you along with DAUGHTER DEBBIE. GRANDMA is 64 and GRANDPA is 66. DEBBIE is 45.

DEBBIE's husband just passed away and she wants to know what benefits, if any, might be available to her through Social Security. She has two sons, SON SAM is 19 and SON SAUL is 15.

SON SAM is no longer in school. He had been in special education classes and received a local diploma. Although the school would have allowed him to stay until 21, he decided not to. He has been working at the local supermarket, earning \$10/hour for a 20 hour week. They originally hired him to stock the shelves and serve as a cashier for 30 hours/ week, but after the first week he asked his hours to be reduced. The anxiety of working was too much, and he was not sleeping or eating. He seems to do okay with the shelf stocking but never got the hang of the cash register.

SON SAUL is still in school. He receives special services through the resource center and is in mainstream classes. He has extended time to take his exams and is allowed to take his exams in the resource room, where he gets extra time and an aide can read the tests to him. He answers the questions on his own. He doesn't work and has never worked. This is the first time that he will take a Regents exam, and DEBBIE is very nervous that he won't be able to pass any Regents.

DAUGHTER DEBBIE wants to know whether she will be able to get benefits as her husband's widow. She has not been working, having been the "stay at home Mom" to her two sons. She hasn't worked since SAM was born 19 years ago. Her last job was as an administrative assistant, earning \$20,000/year. She has an Associate's degree from her local community college and is in good health.

DAUGHTER DEBBIE also wants to know what would happen if she did go back to work or even remarries (though it is hard for her to imagine that, given her husband's sudden and recent death) . They had been married for 22 years. HUSBAND HARRY had been a carpenter, proudly belonging to the union.

GRANDMA and GRANDPA want you to prepare their estate plan. They want to make sure that if they leave money to DEBBIE, their only child, that an inheritance won't affect her benefits or the benefits of the children. They also want to know what would happen if, God forbid, DEBBIE predeceased them – how should they provide for their grandchildren? And, lastly, GRANDMA and GRANDPA want some guidance on what would happen if they took their Social Security now? GRANDPA still goes into work as an insurance adjuster, and he has no plans on “being put out on the farm”. GRANDMA doesn't work and hasn't worked outside of the home since her “baby” (45 year old DEBBIE) was born. They also want to know about Medicaid planning if one or both of them should need long term care.

III. SSI: THE FEDERAL ENTITLEMENT PROGRAM FOR THOSE WITH DISABILITIES UNABLE TO WORK

A. Introduction to Supplemental Security Income

The Supplemental Security Income (SSI) program, 42 U.S.C. 1381 et seq. was signed into law in 1972 by President Nixon in order that the “worthy poor” receive a standard monthly income paid by the federal government and administered by the Social Security Administration. The SSI program is a needs based program. The federal program provides a monthly cash stipend to the aged, blind and disabled whose available resources and income do not exceed the maximum income and resources standards of the program.

The statute addressed gaps in federal benefit coverage for the aged, blind, and disabled who had not been able to work sufficiently to be currently insured so as to receive disability benefits that existed under the Social Security Act and who were poor. 42 U.S.C. 1381. Prior to the enactment of the SSI program, only state welfare programs were available to provide

monthly income to this group of “worthy poor”. The federal benefit amount is \$733 in 2016. States have the option of adding an optional state supplement “OSS” to the federal benefit amount. That amount is \$87/month for 2016 in New York for those residing in their own households. As of 2014, New York State has paid this Optional State Supplement separately from the federal SSI check paid to the recipient.

SSI uses the same definition of disability as does the Social Security Disability Insurance program. A person with a disability is someone whose inability to perform substantial gainful employment is expected to last for 12 months. 20 C.F.R. § 416.905. A blind person has central visual acuity of 20/200 or less in the better eye with the use of correcting lens. 20 C.F.R. § 416.981. An “aged” person is one over the age of 65.

B. Children’s Benefits

Until a child reaches 18, the financial eligibility of a child for SSI depends upon the economic situation of the parents. The parents’ assets and income are deemed available to the child when computing eligibility for SSI for the disabled child through the month of his/her 18th birthday. 20 C.F.R. 416.1202(b)(1). A two parent household may have no more than \$3000 in countable assets, while a one parent household may have only \$2000.00. The parents’ income must be at the poverty level. If the child does not have his/her own assets through a lawsuit recovery or inheritance, most estate planning attorneys will not encounter families with minor children on SSI who come in for planning.

After 18, however, the parents’ assets and income will not be counted when an application is made for the “adult” child’s own SSI benefits. Only his or her own assets and income will count. Many clients consult counsel in preparation for the child’s application for

SSI and to review existing assets and documents to prepare for the future of their son or daughter.

C. Resource Transfer Rules for SSI

An SSI recipient may have no more than \$2,000 in countable assets. If a child is under age 18 and lives with one parent, \$2,000 of the parent's total countable resources is exempt. If the child lives with 2 parents, \$3,000 of the parent's total countable resources will not count. SSI will count amounts over the parents' resource limits as part of the child's \$2,000 resource limit. In general, the uncompensated transfer of resources will result in a period of ineligibility for SSI. The wait is calculated by dividing the amount of resources transferred by the monthly SSI benefit. There is a 36 month look-back, and the ineligibility period is capped at 36 months, no matter how great the transfer. 42 U.S.C. § 1382b(c)(1)(A). If \$820/month is the monthly benefit, and \$8,200 is transferred, there will be a 10 month ineligibility for SSI. If \$82,000.00 is transferred, there will be a 36 month ineligibility. No ineligibility period will be assessed to transfers into a trust by someone under the age of 65 which provides a payback to the State for the lifetime of Medicaid provided pursuant to 42 U.S.C. § 1396p(d)(4)(A) or to a pooled income trust pursuant to 42 U.S.C. § 1396p(d)(4)(C). 42 U.S.C. 1396p(c)(2)(b)(IV). There is no payback for SSI benefits. 42 U.S.C. § 1382b(e)(5).

SO: WHEN THE CHILD HAS SAVINGS BONDS OR A CUSTODIAL ACCOUNT, OR GERBER'S LIFE INSURANCE, WHAT TO DO?

1. A Special Needs Trust may be established for bonds.
2. There has been a problem with some contracts for Gerber's life insurance, that automatically convert the ownership to the former child who is the beneficiary upon his/her reaching the age of 18. If the child doesn't have capacity, legal guardianship is needed to affect

the transfer of the ownership of the insurance, and that would be a disqualifying transfer for SSI purposes if a payback SNT will not own the insurance.

3. UTMA ACCOUNTS: These become vested in the child upon his reaching the age of 21. ISSUE: May the custodian/parent establish and fund a “payback” SNT prior to the child’s reaching the age of 21? In the New York Region, an opinion e-mail issued by SSA Regional Office advised that parents holding UTMA and UGMA accounts may establish an SNT with UTMA and UGMA funds. This e-mail referenced Section 12b of UTMA Act, which has fewer limitations on investments than do other statutes concerning fiduciaries, and Section 13a, which gives the custodian all of the rights that an unmarried adult would have as to those assets.

D. Deeming of Income and Assets from Parent to Child

1. Overview

Until a child reaches 18, the financial eligibility of a child for SSI depends upon the economic situation of the parents. The parents’ assets and income are deemed available to the child when computing eligibility for SSI for the disabled child through the month of his/her 18th birthday. 20 C.F.R. § 416.1202. After 18, however, the parents’ assets and income will not be counted when an application is made for the “adult” child’s own SSI benefits. Only his or her own assets and income will count. Id.

2. Deeming of Resources

When there is one parent living with the child with a disability, even if there are other children, the parent may have only \$2,000 in countable resources. 20 C.F.R. § 416.1202(b). If the custodial parent has remarried, the resource level is \$3000. See id. A parent’s home, a car, household furnishings and goods and retirement funds, such as

IRAs, KEOUGHS or tax sheltered annuities, do not count as resources that are deemed available to the child. 20 C.F.R. § 416.1202(b)(1)(i).

The assets and income of a noncustodial parent are not deemed available to the child. See 20 C.F.R. § 416.1851(c), referring only to the deeming of assets of a parent living with the child. The assets and income of a stepparent are, however, deemed available for the support and maintenance of a child with a disability for SSI purposes. 20 C.F.R. § 416.1202(b)(1). A stepparent means the spouse of a natural or adoptive parent living in the same household with the parent. Id.

When a parent who does not receive SSI transfers assets, there is no penalty for the child's SSI caused by the parent's transfer of assets. "[T]he provision [of transfer of resources] does not apply to a resource transfer made by a parent who is a deemor (unless the eligible child and parent are co-owners of the resource." POMS SI 01150.110E. **See Attachment 1.** The SSI caseworker may not be aware of this provision.

This provision is particularly important in a personal injury context where the parent has a received a loss of services award for a child who will place his/her funds into an SNT. This provision is also important if the parent receives an inheritance. If the parent retains the funds, the child will lose SSI, notwithstanding the SNT. If the parent transfers the funds, and s/he is not a disabled person, the parent's transfer of assets to another who is not a member of the household will not affect the child's ongoing eligibility for SSI.

3. Deeming of Income

A parent's earned and unearned income is deemed available to a child for SSI purposes. Earned income includes wages and salary or income from self-

employment. 20 C.F.R. § 416.1110. Gross income, not net earned income is counted. 20 C.F.R. § 416.1110(a)(1). Unearned income, such as interest, dividends or annuity payments or monthly maintenance (alimony) is also counted. 20 C.F.R. § 416.1102.

a. Child Support as Income

SSI defines child support as payments from the parent to or for the child to meet the child's needs for food and shelter. It may be voluntary or court-ordered. POMS SI 00830.420(A)(1). Child support is considered income of the child, not of the parent for SSI purposes. Id. When child support is paid to the custodial parent for a minor child with disabilities, i.e., one who is under the age of 18, **2/3 of the child support** will count as unearned income of the child that reduces the SSI payment dollar for dollar. POMS SI 00830.420(B)(1).

b. Application of Deeming

The following is the process in which to compute the deeming of income from parent to a child with a disability: If the parent has earned income, the first \$85 is disregarded. Then ½ of the remaining income is deemed available to the child LESS the adult federal benefit level, currently \$733/month. If the parent has only unearned income, the first \$20 is disregarded. Then all of the remaining income is deemed available to the child LESS the adult disregard of \$733/month. The resulting figures are deducted from the child's SSI amount. Because the SSI program is intended to encourage individuals to work, only approximately half of earned income is deducted from one's SSI, while almost all unearned income is deducted.

SO assume a parent earns \$2,500/month gross income and has only one child, a minor, with a disability. The SSI amount for the child is \$733/month. How will the parent's earned income affect the SSI amount?

1. Deduct \$85 from \$2,500 = \$2,415. Deduct half of that amount = \$1207.50. LESS the federal benefit level for an adult (parent not applying for SSI herself) \$1207.50 - \$733 = \$474.50. That is the amount deducted from the child's SSI. Child will receive \$258.50.

2. HOWEVER, if the income of the parent is all UNEARNED INCOME, i.e., Social Security, a pension or an immediate annuity, etc. bringing in the same \$2,500/month, the figures change. Deduct only \$20 (first \$20 income disregard) = \$2,480. Deduct the federal benefit level for an adult (parent not applying for SSI) \$2,480 - 733 = \$1,747. That is the amount deducted from the child's SSI. \$733 - \$1,747 = \$0. The child will not receive any SSI.

SO IN OUR SCENARIO:

1. Is 15 year SAUL disabled? Under Social Security guidelines, a child under age 18 will be considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of at least 12 months.

An important factor that is considered in the determination of disability is the maturation and development of the child and is it significantly less than other children his age. School source material is critically important here. The child's performance in

school, coupled with his social interaction with other students and with his teachers, his behavior, his following instructions, etc. are all considered, as whether he is in mainstream classes, mainstream classes with accommodations or self-contained special education classes. In addition, IQ testing, reports from the School's Committee on Special Education and school counselors and psychologists are important evidence in the disability process.

2. If he has no money or income of his own, and Debbie has no income and assets, he would qualify for SSI if he were found to be disabled.

3. If she worked and earned about \$2,500/month, he would still qualify for some SSI. (\$2,500 LESS \$85 LESS HALF OF THE REMANDER LESS FEDERAL BENEFIT LEVEL FOR AN ADULT IS DEDUCTED)

4. If she inherited assets from her husband other than the house and retirement accounts, SAM would not receive SSI due to her assets UNLESS she gave them away to GRANDMA and GRANDPA OR invested them in a home (paying off a mortgage or buying a home).

5. If DEBBIE inherited income from her husband, such as an annuity or pension, that UNEARNED income would preclude eligibility for SAUL's SSI if it were more than approximately \$1,500/month.

E. Applying for SSI Upon the Child's Reaching the Age of 18

1. Definition of Household

The SSI program pays a higher amount to those who live in their own household than to those who live with others or in another's household. An SSI recipient is residing in his/her own household if he or she has an "ownership interest or a life estate interest in the home," 20 CFR §

416.1132(c)(1), or pays the shelter costs in a business arrangement, *id.* at (c)(3), or pays “at least a pro rata share of household and operating expenses.” *Id.* at (c)(4). In the context of a family, when the SSI applicant cannot pay a pro rata share of household and operating expenses, then the Social Security Administration considers a rental subsidy provided by the parents as income that will reduce the SSI monthly payment by 1/3.

2. Effect of Pro Rata Share Rule

The pro rata share standard in determining household living arrangements thus results in a reduction in SSI benefits for the 18 year old child whose SSI is not sufficient to pay his pro rata share of the monthly household expenses. Assuming a middle class home with two parents and one 18 year old son, with a mortgage and taxes of \$2,800/month and utilities of \$500/month and food of \$600/month, the total household expenditures are \$3,900/month. The son’s pro rata share of the household expenses would be \$1,300/month. However, the SSI maximum payment is \$820/month. The SSA will impute the discount given by the parents to their son’s portion of household expenses as income to him.

The SSI payment will be reduced to reflect the household living subsidy, called in-kind support and maintenance, provided by the parents who are not (cannot) charge their child his/her pro rata share of the household expenses.

3. But NOT in the Seventh Circuit: Fair Market Value of Rent is Presumed if the Rent is at Least 1/3 of the federal SSI Benefit Monthly Payment

When the SSI recipient pays for room and board in a business arrangement, there is a presumption that the landlord has charged the fair market value for room and board. 20 C.F.R. § 416.1130 (b). Hence there is a presumption that the SSI recipient has not received a subsidy resulting in in-kind support and maintenance and a reduction of SSI monthly payments. In the

Seventh Circuit, a business arrangement is presumed to exist when the rent charged is at least 1/3 of the SSI monthly benefit amount. 20 C.F.R. § 416.1130 (b), codifying Jackson v. Schweiker, 673 F. 2d 1076 (7th Cir. 1982), but only in the Seventh Circuit.

4. And not in the Second Circuit: Ruppert v. Bowen and the Actual Economic Benefit Rule

In the Second Circuit, pursuant to Ruppert V. Bowen, 871 F.2d 1172 (2d Cir. 1989) and the Ruppert Acquiescence Ruling, AR 90-2(2), www.ssa.gov , no in-kind support and maintenance is being provided to an SSI recipient whose parent is charging at least 1/3 of the federal benefit monthly payment plus \$20 as a flat fee for room and board. So long as the parent charges at least one third of \$733/month plus \$20 for room and board, or \$265/month, there should be no reduction in the monthly SSI benefit amount.

5. A contract for necessities may be implied rather than written.

When the now adult child with a disability cannot enter into a written lease agreement due to cognitive impairments, the contract may be implied rather than written if it is providing a necessity (room and board) to the person with a disability. Ruppert v. Bowen, 871 F.2d 1172(2d Cir. 1989). Hence no formal written lease need be presented to the Social Security Administration with the application.

6. Loans are not income for SSI purposes

Proceeds of a loan are not considered income for SSI purposes. 20 C.F.R. § 416.1103(f). Food and shelter provided as a loan do not count as in-kind income reducing the SSI benefit. Hickman v. Bowen, 803 F. 2d 1377 (5th Cir. 1986). SSR 92-8p. It is the donor's intent, not the intent of the adult child, whether the provision of room and board is a loan to be repaid or a gift. Ruppert v. Bowen, 871 F.2d 1172(2d Cir. 1989).

Thus, during the period of time when the application is pending, the parent providing food and shelter to his child without being paid monthly for the room and board is not providing in-kind support and maintenance to reduce the SSI benefit, so long as the parent intends to be reimbursed from the retroactive SSI.

7. Tips to the Parents Applying for SSI for their 18 Year Old Son/Daughter

1. The Social Security Administration should NOT ask the parent about household expenses on the application. Answer: Not Applicable.

2. Parents MUST charge and collect the room and board in order to comply with the rules. "Cash must pass hands".

3. The contract/lease may be written but may also be an implied contract for necessities.

See Attachment 2: Ruppert v. Bowen, 871 F. 2d 1172 (2d Cir. 1989).

4. The parents will charge a flat fee for room and board.

5. When asked to list everyone in the applicant's household, list only the applicant. For household living arrangements, the child is living alone, i.e. in his own fiscal household.

6. When asked how the child is paying for the room and board while the application is pending, the parent will be making a loan of the food and shelter.

7. When the child receives the SSI payment, s/he must pay back the parent for the outstanding loan of the room and board from the first SSI payment, which will be retroactive to the application date.

F. SSI Offset for Recipients who Work:

If an SSI recipient works, s/he may still be considered disabled if s/he needs assistance in working. The salary will offset the SSI. To calculate the amount that the salary will reduce the monthly SSI payment, one first subtracts \$20 from the gross monthly salary and then \$65. One

divides the remainder in half, and that quotient is the amount that the earned income will reduce the SSI. If one earns \$1650/month, deducting \$85 = \$1565, and then dividing the remainder by half, one has \$782.50 that will be deducted from \$820. The adult's total income will be \$37.50 from SSI plus \$1650 in salary.

SO IN OUR SCENARIO:

1. SAUL could be considered disabled if it were shown that he is not substantially gainfully employed and can work only 20 hours/week due to his disabling condition.
2. DEBBIE's income and assets would no longer be deemed available to him.
3. He should be found to be residing in his own household for an SSI benefit of \$820/month if DEBBIE charges him a flat fee for room and board.
4. SAUL's earned income of \$800/month will offset his SSI. The first \$20 and then \$65 will be disregarded, bringing him to \$715/month. Half of that amount, \$357.50, is deducted from his \$820, giving him monthly SSI of \$462.50 in addition to his earnings of \$800/month, for a total income of \$1262.50, more than either the SSI or his earnings alone.

G. Earned Income Disregard for Full Time Students

A child with a disability under the age of 22 who is regularly attending school may exclude up to \$1,780/month in earned income from computation for his/her SSI eligibility. The maximum earned income exclusion is \$7,180/year. "Regularly attending school" means at least 8 hours/week at college or 12 hours/week for grades 7-12. If the school is a training course to prepare for employment, s/he must attend school for at least 12 hours/week, and 15 if shop practice is required. 20 C.F.R. 416,1861; SI 00501.020.

H. Optional State Supplement Issue

New York provides an Optional State Supplement of \$87/month to the federal SSI benefit level of \$733/month for those residing in their own households. The State is bound by the decision of the Social Security Administration as to whether or not one is residing in his own household. 18 N.Y.C.R.R. 398-4.3. Notwithstanding this regulation, in recent months New York State has reduced the Optional State Supplement to \$23.00/month based on its own interpretation of the State Living Arrangement.

In several cases, the State characterized 18 year old adult children paying room and board to their parents as living with others and not as living alone, even though they complied with the Ruppert household living arrangement. The State reduced their Optional State Supplement to \$23/month. Requests for reconsiderations were successful, and no hearings had to be held to correct the State Supplement and bring it to \$87/month. **See Attachment 3 – Letter, Decision, Living Arrangement Form, 18 NYCRR 398-4.3, 18 NYCRR 398-4.5.**

I. SSI POMS and First Party “Payback” Trusts

Social Security POMS have addressed SSI issues with First Party SNTs. Their directives are as follow:

1. Payments made by a trustee to third parties or entities providing the beneficiary anything other than food and shelter for the beneficiary will NOT affect SSI.

2. Income from the Trust paid directly TO the beneficiary, or to his/her guardian or legal representative is countable unearned income that reduces the SSI benefit dollar for dollar. See SI 01120.203B(1)(c).

3. Use of the Trust to pay for food and shelter will result in in-kind income to the beneficiary, reducing the SSI payment by up to 1/3 of the federal benefit amount. An SNT Trustee MAY provide food and shelter for the beneficiary, but must decide whether the

consequent reduction in the SSI is beneficial to the beneficiary, in the trustee's discretion, depending upon the terms of the SNT.

4. Paying for restaurants is considered food rather than recreation by the Social Security Administration. POMS SI 01120.201I(1)(d). www.ssa.gov.

5. An SNT may be funded with accumulated SSI. A Representative Payee may transfer SSI benefits to an SNT or fund an existing SNT, GN 00602.075(A), so long as these are not retroactive SSI benefits for a child under 18, as these must be held in dedicated accounts. GN 00603.025(B).

6. When the Representative Payee is funding an SNT, the Representative Payee must determine that the trust is in the best interest of the beneficiary, and that it will be used exclusively for him/her and that s/he is the sole beneficiary during lifetime. GN 00602.075c(1).

7. Income irrevocably assigned to the trust from an annuity or support payments made when the beneficiary was less than 65 and which continue after the age of 65 remain protected by the trust. SI 01120.200G(1)(b).

8. Disbursements that are not cash and which do not result in in-kind support and maintenance are not income. Examples given by the POMS include payments to third parties for education, therapy, medical services not covered by Medicaid, recreation, entertainment and phone bills. Payments made to third parties for items such as household goods that are not considered a resource do not result in income for the beneficiary in the month that they are paid for. SI 01120.200E(1)(c). See also SI 01120.201I(c).

9. Additions to trust principal made directly to the trust are not income to the beneficiary if such payments have been irrevocably assigned to the SNT. SI 01120.200G(1)(b).

10 Income that, by its own provisions, may not be irrevocably assigned to the SNT include monthly payments from Social Security, public assistance (TANF or AFDC), Veterans benefits, federal employee retirement payments, and ERISA private pensions. SI 01120.200G(1)(c).

11. Payments for credit card bills are not income if the credit card was used to pay for items other than food or shelter or countable assets. SI 01120.201I(1)(d).

12. Credit card bills paid by the trust for restaurants will result in in-kind support and maintenance, subject to a 1/3 reduction. Id.

13. If the trust assets are used to pay for gift cards and gift certificates, this will be considered unearned income in the month of receipt, even if the gift certificate is to a store that does not sell food or shelter items if the individual could sell/exchange the card for cash. SI 01120.201I(1)(e).

14. Household goods, i.e., items of personal property found in or near the home used on a regular basis, are not countable resources. 20 C.F.R. § 416.1216(a)(1). These items include, but are not limited to furniture, appliances, electronic equipment such as personal computers and televisions, dishes, cooking equipment, etc. 20 C.F.R. § 416.1216(a)(2).

15. Personal effects include items of personal property ordinarily worn or carried by the SSI recipient. 20 C.F.R. 416.1216(b)(2).

16. Items acquired or held for their value, such as collectibles, gems and jewelry that is not worn or owned due to family significance are countable resources. Id.

17. Credit cards issued to the beneficiary enable the trust to be used for the benefit of the beneficiary without the trustee's going shopping with the beneficiary for all items.

SO IN OUR SCENARIO:

1. If SAM had inherited money from his father and had established an SNT through his mother, the trust would not affect his SSI if not used for food and shelter.

2. If this trust will pay for his rent in an apartment so that he can live on his own, for example, the use of the trust for his rent would reduce his SSI by up to 1/3 because it is providing in-kind support and maintenance.

3. If SAM uses a credit card to make his payments, he will be able to use his SSI for cash and have the trust pay his credit card bills without affecting his SSI so long as the trust does not pay for food and shelter.

J. Noncitizens' Eligibility for SSI

1. Individuals who were lawfully residing in the United States as of August 22, 1996 who are blind or disabled are eligible for SSI.

2. Noncitizens who were receiving SSI on August 22, 1996 and are lawfully residing in the United States are eligible for SSI.

3. Noncitizens lawfully admitted for permanent residence under INA and have 40 work credits in the United States and entered prior to August 22, 1996 are eligible for SSI.

4. If a noncitizen entered the United States after 8/22/1996, s/he will not be eligible for SSI for 5 years even if s/he has 40 work credits. See generally 20 CFR § 416.1166(a)(3); DI 23515.005; 42 USC 202; POMS SI 02610.025.

K. Deeming: Spouse to Spouse

Assets and income of a spouse not applying for SSI are deemed available to the SSI applicant/recipient spouse. Deeming is applied when the spouses live in the same household. The couple may have \$3,000 in resources. The deeming is applied in much the same way as with parent to child deeming. To determine the amount that income will reduce an SSI benefit,

assume the spouse earns \$3,000.00/month. Earned Income is employment wages, the net earnings from self-employment, certain royalties, honoraria, and sheltered workshop payments. The gross earned income of the non-applicant is reduced by \$20 and then \$65, with half of the remaining income used as a base number. ($\$3,000 - \$85 = \$2,915$, divided by 2 = $\$1457.50$). From that number \$733, the federal benefit level for an adult, is subtracted ($\$1417.50 - \$733 = \$724.50$). That is the amount that would be deducted from the spouse's SSI. The Federal income level for a household of 2 is \$1,100/month, plus the OSS (Optional State Supplement). The spouse not applying for SSI will retain his earned income and the SSI applicant will receive $\$1,100 - \724.50 or $\$375.50$, plus the OSS.

L. Effect of Home Ownership on SSI Benefits

1. Home Owned by the SSI Recipient

A home owned by an SSI recipient is an exempt asset. 42 U.S.C 1382b(a)(1), 20 § CFR 416.1210, 20 CFR § 416.1212. For SSI purposes, the value of the home is excluded as an asset. If the SSI recipient pays for the ongoing shelter costs from his/her SSI benefits, s/he is considered residing in his/her own household and will not have any reduction in SSI.

2. Home Owned by an SNT

A home owned by an SNT is not a countable resource for SSI or Medicaid purposes, even if the beneficiary does not reside in the home, as it is a trust asset. SI 01120.200F(1). If a third party, such as the SNT, pays for shelter costs of the beneficiary, that will result in in-kind support and maintenance that will reduce the monthly SSI benefit, up to 1/3 of the monthly SSI payment. Shelter costs include mortgage costs, including property insurance required by the mortgage holder, real property taxes, heating fuel, gas, electricity, water, sewer and garbage removal. SI 00835.465D(1). See 20 C.F.R. 416.1133(c).

If the trust owns the home but does not pay for housing costs, there is no reduction in SSI monthly benefits. SI 01120.200F(2). However, the purchase of the home by the trust will be considered in-kind support and maintenance (1/3 reduction of SSI) in the month of purchase. SI 01120.200F(3). The use of trust assets to purchase a home will not reduce Medicaid benefits in New York.

If the SNT purchases a home subject to a mortgage, and the monthly mortgage payments are made by the SNT, these monthly payments result in in-kind support and maintenance, providing Shelter expenses that reduce the SSI monthly benefit by 1/3 each month in which they are made. SI 01120.200F(3)(b). If the SNT pays for shelter or household operating expenses or household costs, this results in in-kind support and maintenance. SI 01120.200F(3)(c).

If the SNT pays for accommodations to the home to make it handicapped accessible or for renovations that increase the value of the home, this does not result in in-kind support and maintenance that results in a 1/3 reduction of the SSI monthly benefit. Id. Extra mortgage payments to reduce the principal owed and extra insurance coverage not required by the mortgagee are not household costs resulting in in-kind support and maintenance when paid by the SNT. SI 00835.465D(2),(3).

III: SOCIAL SECURITY DISABILITY INSURANCE

A. Overview

The Social Security Act provides for Disability Insurance Benefits, 42 U.S.C. 423, which is a benefit program for workers who become disabled and are unable to work. The program provides a monthly income during a period of disability, while the individual is unable to perform substantial gainful activity, 42 U.S.C. § 423(d), (e). Substantial gainful activity means

work that involves doing significant and productive physical or mental duties; and is done (or intended) for pay or profit. 20 C.F.R. § 404.1510. In 2016, substantial gainful activity = \$1,130/month.

The applicant must also have insured status to qualify for eligibility under the Disability Insurance Program. 42 U.S.C. § 423 (c); 20 C.F.R. § 404.101 et seq. The disabled wage-earner must have paid into the Social Security system through a deduction from earned income pursuant to FICA (Federal Insurance Contributions Act), 42 U.S.C. § 409, the federal income tax withholding paid to the Social Security system.

To be “currently insured,” 42 U.S.C. § 423 (c)(1); 20 C.F.R. § 404.120, for a period of disability and Disability Insurance Benefits, one must have sufficient quarters of coverage (“Social Security Credits”). For each calendar year, an individual can earn a maximum of four (4) credits of employment and social security taxation. An individual gains one quarter for each \$1,260.00 of Social Security taxed employment earnings. Hence, if the individual earns \$5,040.00 in social security taxed employment earnings for a calendar year, with a minimum of \$1,260 in each quarter, that individual has secured four (4) quarters of coverage or social security credits.

In general, the individual must have paid taxes into (FICA) for a period of twenty (20) quarters out of the prior forty (40) quarters, i.e., five (5) years out of the ten (10) years prior to the disability and the application for Social Security Disability Insurance Benefits. 42 U.S.C. § 423 (c)(1)(B)(i); 20 C.F.R. § 404.130. Those under the age of thirty-one (31) require fewer quarters of coverage, but never fewer than six (6) quarters for those under the age of twenty-four (24). 20 C.F.R. § 404.130 (c).

After a two year waiting period, a recipient of Social Security Disability benefits is eligible to receive Medicare, 20 C.F.R. § 406.12, even though that individual has not yet attained 65 years of age.

Unlike the SSI program, there is no asset or income eligibility threshold for SSDI.

B. Coordination with SSI

In some instances, individuals who qualify for Social Security Disability Insurance Benefits might also be eligible for Supplemental Security Income if the amount of their monthly Social Security Disability Insurance benefit is less than the monthly benefit of SSI. If, for example, the SSDI monthly payment based on the recipient's earnings record is \$600/month, then the SSI program will pay \$220/month in 2016 to supplement the SSDI to bring the total amount up to the maximum SSI benefit of \$820/month. If, however, the SSDI will pay \$1,000/month, there is no SSI supplement. And, of course, to receive SSI, one must meet the asset (\$2,000) and income tests of the SSI program.

C. The Medical Criteria for Disability Pursuant to the Social Security Act

The Social Security program of Disability Insurance Benefits provides monthly payments to a wage earner who is totally and permanently disabled. The Social Security Administration has issued a Listing of Impairments, 20 C.F.R. § 404, Subpart P, Appendix 1, Part A, and Medical Vocational Guidelines, 20 C.F.R. § 404, Subpart P, Appendix 2, which are guidelines used to establish if one is disabled. If an individual presents medical evidence that there is a medically diagnosed impairment with the symptoms, signs, and test results that meet those identified in the Listings, then a finding of a period of disability is indicated, 20 C.F.R. § 404, Subpart P, Appendix 1, Part A. If an individual does not meet the criteria of a "listed impairment", that individual can still be entitled to benefits if the severity of their medical

determinable impairment or combination of impairments rises to the level of a “listed impairment”. 42 U.S.C. § 423(d), (e).

One must be totally and permanently disabled in order to receive Social Security benefits. 42 U.S.C. §§ 423 (d)(1)(A), 416 (i)(1). “Permanently disabled” refers to one who is unable 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 can be expected to last for a continuous period of not less than twelve (12) months. Id. One is totally disabled if his/her physical or mental impairment or impairments are of such severity that he/she is not only unable to do previous work but cannot, after considering the individual’s age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy. 42 U.S.C. § 423 (d)(2)(A).

The Social Security Administration must also consider the combined effects of all of the individual’s impairments without regard to whether or not any such impairment, if considered separately, would be of such severity as to rise to a level that would impair the individual’s ability to perform substantial gainful activity. Substantial gainful activity means work that involves doing significant and productive physical or mental duties; and is done (or intended) for pay or profit. 20 C.F.R. § 404.1510. See also 20 C.F.R. § 404.1571 et seq. The statute defines a physical or mental impairment as “an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques”. 42 U.S.C. § 423(d)(3), 20 C.F.R. § 404.1508.

The courts have uniformly ruled that substantial gainful activity is work that is of a functional nature that the disabled individual can realistically perform in a competitive work environment. City of New York v. Heckler, 578 F. Supp. 1109 (D.C.N.Y., 1984), aff’d, 742 F.2d

729 (2d Cir., 1985), aff'd, 106 S. Ct. 2022, 476 U.S. 467, 90 L.Ed. 2d 462 (1987). The distinction between a competitive and a non-competitive work environment is generally seen with younger individuals who perform employment services in a sheltered environment. 20 C.F.R. § 404.1573(c). These workers might have been placed in employment situations through vocational rehabilitation and require the assistance of a job coach to assist them with day-to-day work activities. These individuals that require and receive oversight, supervision, job coaching and assistance in performing work activities would not be considered to be performing substantial gainful activity in a competitive work environment.

D. The Application Process for Social Security Disability Insurance

The Social Security Administration allows electronic application filings and form completions through their website, www.ssa.gov. The Social Security Administration provides a guide for use when one is preparing the data necessary for to file benefit applications and it is a downloadable packet from the Social Security website, www.ssa.gov.

The application requests information concerning the individual's personal data, including specific contact information, birth and citizenship information, family and dependent data, a summary of the physical and/or emotional impairments that prevent the individual from working, the date that the applicant last worked, the income earned by the applicant in the form of wages for the three years prior to the application, and a section for any additional remarks that the applicant wants to make or expand on a prior answer from the application.

As part of the application process, the applicant must complete a Disability Report—Adult (SSA-3368-BK) which details the applicant's medical history regarding the claimed current disabling impairment(s). One does not need to list medical history that is independent of

the current disabling impairment(s); however, a medical condition that is independent of the current disabling impairment(s), but which is a complicating factor in the applicant's treatment plan should be listed.

The application process also includes the work history of the applicant. The data is designed to provide a comprehensive work history so that the Social Security Administration can determine the vocational background of the applicant as a means to establish the individual's capacity to perform his/her past relevant work, and, if the individual cannot perform his/her past relevant work, whether the individual has the capacity to do other work. It is important to note that an individual does not have to be able to do work at the same earnings level, and in fact, a prior salary structure is not even considered by the Social Security Administration. S/he must simply be able to perform a job, any job, even if it is menial compared to the prior work that the individual was performing.

Once the practitioner is retained and representing the individual in the application process, a practitioner should secure his/her own Medical Authorizations so that the practitioner can receive a copy of any pertinent medical evidence from the applicant's treating sources directly, without having to wait for the Social Security Administration to make a copy available to the representative.

In addition, a treating source may be willing to prepare a narrative letter in support of the application for benefits, and a practitioner's Medical Authorization will enable the practitioner to request and secure a letter directly from the treating source. A narrative letter from a treating source is entitled to great weight if supported by objective medical findings.

E. The Social Security Administration's Review of a Completed Application

After the application filing process is completed, the Social Security Administration will forward the medical information regarding the application to a state agency acting as a subcontractor with the Social Security Administration for purposes of issuing medical determinations. If the application for Social Security Disability Insurance benefits is approved, then the file is sent to the Social Security Payment Center for the processing of benefits, the issuance of a Social Security Award notice and payment of benefits.

If the application for benefits is denied, the applicant may appeal the Notice of Disapproved Claim by filing a Request for a Hearing before an Administrative Law Judge within sixty (60) days of the denial Notice. See Form annexed.

F. Social Security Administrative Hearing

The Administrative Hearing is conducted by an Administrative Law Judge through the Office of Disability Adjudication and Review. 20 C.F.R. §§ 404.914, 404.915 and 404.916.

All current Social Security files are electronic and therefore, access to a file to prepare for an Administrative Hearing is through the “Appointed Representative” website. ssa.gov/ar. Electronic Records Express provides access to appointed representatives to view a claimant’s folder and this is critical in the preparation for an Administrative Hearing. In fact, the appointed representative has arguably an affirmative duty to access the claimant’s electronic folder to make certain that all of the supporting evidence is in the claimant folder.

At the Administrative Hearing, the duty of the Administrative Law Judge is to act as an independent fact finder to elicit any and all information that he/she deems necessary to render a full and fair determination of the individual’s application for benefits. The Administrative Law Judge must review all of the evidentiary documents in the administrative record, take sworn testimony from the applicant and other witnesses and listen to any legal

arguments raised by the practitioner on the Social Security Laws, Regulations and case-law on point.

The Administrative Law Judge may also elicit testimony from a Medical Expert and/or a Vocational Expert, acting as the Administrative Law Judge's own expert witnesses. These individuals are contracted providers for the Social Security Administration, and the Administrative Law Judge provides great weight to their testimony. The Administrative Law Judge is not bound by any of the prior determinations made by the Social Security Administration and will render an independent decision.

The Administrative Law Judge may either issue a favorable or unfavorable decision. The Second Circuit for the United States Court of Appeals has summarized the review procedure as follows:

First, the Commissioner considers whether the claimant is currently engaged in substantial gainful activity. If he is not, the Commissioner next considers whether the claimant has a "severe impairment" which significantly limits his physical or mental ability to do basic work activities. If the claimant suffers such an impairment, the third inquiry is whether, based solely on medical evidence, the claimant has an impairment which is listed in Appendix 1 of the regulations. If the claimant has such an impairment, the Commissioner will consider him disabled without considering vocational factors such as age, education, and work experience; the Commissioner presumes that a claimant who is afflicted with a "listed" impairment is unable to perform substantial gainful activity. Assuming the claimant does not have a listed impairment, the fourth inquiry is whether, despite the claimant's impairment, he has the residual functional capacity to perform his past work. Finally, if the claimant is unable to perform his past work, the Commissioner then determines whether there is other work which the claimant could perform. Bluvband v. Heckler, 730 F.2d 886, 891 (2d Cir. 1984).

If the decision is Favorable, then the file is sent to the Social Security Payment Center for the processing of benefits. If the decision is Unfavorable, an appeal may be filed with the Appeals Council of the Office of Disability Adjudication and Review. There is generally no appearance before the Appeals Council, and the review is handled by submission. However, oral

argument can be requested and a substantial showing must be made for the Appeals Council to grant a personal appearance be granted. Given the fact that oral argument before the Appeals Council is rarely held, establishing a strong case at the Administrative Hearing is critical to any chance of success in reversing the Administrative Law Judge before the Appeals Council.

The Appeals Council may decide favorably for the applicant and either reverse the Administrative Law Judge and award benefits, or remand the case back to the Office of Disability Adjudication and Review for a new Administrative Hearing. If the determination of the Appeals Council is Unfavorable, the individual may appeal an unfavorable decision to the United States District Court for the district where the applicant resides. The Commissioner of the Social Security Administration is represented by the United States Attorney's Office in the District where the lawsuit is filed. **See Attachment 4, Request for a Hearing by Administrative Law Judge.**

G. Getting Paid

An attorney may receive only 25% of a successful retroactive recovery from representation before the Social Security Administration. Only a contingency fee retainer agreement is permissible, and the fee must be approved by the Social Security Administration. **See Attachment 5, Appointment of Representative Form.**

SO IN OUR CASE:

1. Although SON SAM is working, he is not performing Substantial Gainful Activity so he could be considered disabled even though he is working.
2. If he is paying \$1,260/month FICA tax he is earning credits.
3. After as few as 6 quarters he could qualify for some Social Security Disability on his own earnings.
4. He would then qualify for Medicare after 2 years.

5. Social Security counts as unearned income. It would offset his SSI amount, as also would his earned income. If he is earning \$800/month, \$357.50 (\$800 LESS \$85 LESS ½ OF THE REMAINDER) PLUS his Social Security benefit OF \$120/month, for example, OR \$477.50 is deducted from his SSI OF \$820, leaving him an SSI benefit amount of \$342.50. He would retain his earned income of \$800/month PLUS his Social Security Disability payment of \$120 PLUS SSI of \$342.50 or a total of \$1262.50.

IV: DEPENDENTS OR SURVIVORS BENEFITS

A. Children under 18: When a parent who has been a wage earner is retired (age 62 or older), deceased or disabled, minor children may receive survivors benefits on the earnings record of the parent. The amount of the benefit is based on the earnings of the parent. For the child to be eligible for these dependent's benefits, the child must be under the age of 18, or age 18 and a full-time student, or over age 18 until 19. 20 C.F.R. § 404.350.

If the parent is alive and receiving retirement or disability benefits, the benefit amount is 50% of the parent's benefit amount. 20 CFR § 404.353. If the parent is deceased, the benefit amount is 75% of the parent's benefit amount. 20 CFR § 404.353(a).

If there is more than one dependent, spouse and children, then the benefit is shared between them. 20 CFR § 404.304(d), 20 CFR § 404.335, 20 CFR § 404.353. The benefit continues up until the age of 18 for a child without a disability. There are no asset or income requirements for the child. 20 CFR § 404.350

The benefit amount to the family cannot exceed the Family Maximum benefit amount. 20 CFR § 404.403, 20 CFR § 404, 20 CFR 405, 20 CFR § 403, 20 CFR § 406.

B. 19 Year Old Full Time Student:

The dependent or survivor benefit continues while a full time student, provided that the dependent is in 12th grade or lower and not over 19 years of age. 20 § CFR 404.367, 20 CFR §

367(e). The benefit amount is based upon the parent's earnings. There are no asset or income requirements for the child. Id.

C. Spouse under 62 Caring for Child Under 16 or Child with Disability:

The spouse under the age of 62 of the retired or disabled or deceased wage earner who is caring for a child under 16 OR a child with a disability of any age will be able to receive Retirement or Disability benefits on the spouse's/parent's earnings, even though the caregiving spouse has not reached retirement age. 20 CFR § 404.348. The amount depends on what the person was or would have been receiving, the age of the survivors and the relationship to the deceased. The child with a disability must have become disabled prior to age 22. This is NOT a benefit for a widow. The children (a full-time student in elementary or secondary school) and the spouse will receive benefits subject to the FAMILY BENEFIT MAXIMUM of the deceased spouse/father's full retirement amount, based on the parent's earnings.

SO IN OUR SCENARIO:

1. DAUGHTER DEBBIE and SON SAUL will qualify for the survivors' benefits on deceased HUSBAND HARRY'S earnings. They will each receive their benefits, subject to the family maximum.

2. DEBBIE will receive her amount until SON SAUL turns 16.

3. SON SAUL will receive his benefit until while a full-time student if not disabled.

3. If SON SAUL should qualify as a child with a disability, and if DAUGHTER DEBBIE's own income from this Social Security and SON SAUL's own income from Social Security will be so low as to allow SON SAUL to receive SSI, he could also qualify for some SSI benefits.

4. If DEBBIE remarries, the stepparent's income and assets will be deemed available to the minor child for SSI.

5. If DEBBIE remarries, her age becomes a factor in the determination of her eligibility for benefits. She will not receive "parent's" benefits if she is remarried or otherwise eligible for widow's benefits.

V. WIDOW/ WIDOWERS BENEFITS

1. A widow who is at full retirement age and who has been married at least 9 months prior to the death of the spouse will receive 100% of the spouse's full retirement amount. 20 CFR § 404.335.

2. Benefits are payable if the widow is 60 years of age, or is 50 years and under 60 years of age, but disabled will receive benefits, reduced as with early retirement. 20 CFR § 335(c), 20 CFR § 338.

3. The widow of any age caring for the child under 16 OR child with a disability may receive benefits on the deceased spouse's account. 20 CFR § 404.340(e).

4. If the widow is unmarried. 20 CFR § 340(c).

SO IN OUR SCENARIO:

1. DAUGHTER DEBBIE, who is 45, will NOT receive Widows benefits at this time but will receive benefits as the caregiver of deceased HUSBAND HARRY's minor and/or disabled child, as "Mother's benefits".

2. If she is not disabled, she would be able to receive widows benefits at age 60, although that amount would be reduced in the same manner as one who takes retirement early.

VI: CHILDHOOD DISABILITY BENEFITS (ADULT CHILD BENEFITS):

When the child with a disability is over the age of 18 and his parent is retired, disabled or deceased, the adult child may be eligible to receive Social Security benefits based upon the parent's earnings. 42 U.S.C. 202(d).

A. Requirements:

1. The child must not be performing substantial gainful activity (\$1,130/month earnings; \$1,820/month for blind applicants);
 - b. must be unmarried at the time of the application;
 - c. must be disabled prior to age 22;
 - d. must be dependent upon the parent - this is presumed.

B. Medicare Entitlement

After 2 years, the adult child will receive Medicare benefits.

C. Interrelation with SSI

An adult child will receive the highest amount of either benefit, but the monthly benefits will not be added together to result in double monthly benefits. If the adult child's own SSI is \$820/month, and the Childhood Disability benefit on the parent's earnings is \$860/month, the client will LOSE SSI but receive the Social Security benefit. If the Social Security benefit is \$500/month, then the SSI will be added to the Social Security benefit to result in \$320/month of SSI and \$500/month Social Security.

ADVICE TO OUR CLIENTS:

1. The letter that the Social Security Administration sends when the adult childhood benefit begins often frightens the parent. It says that their son or daughter has lost the SSI benefit and may also lose Medicaid. It does not mention that the adult child will still

be eligible for Medicaid or that a separate application must be placed for those whose Medicaid was provided automatically with the SSI. We must show that the adult child will soon qualify for 3 or even four entitlements.

2. Childhood benefits are not means tested. If the child receives Medicare and Adult Childhood benefits, then a lawsuit recovery or inheritance will not affect ongoing eligibility for these benefits. Only if the child needs Medicaid must planning such as a Special Needs Trust or gifting of assets be undertaken.

3. Although the disability must have occurred prior to the child's reaching 22, the entitlement begins only upon the parent's retirement, disability or death. Hence, many SSI recipients subsequently become eligible for this benefit and Medicare when the child is 30 - 40 years old or more.

4. There will be no Medicaid excess income if the sole reason that a former SSI recipient has lost SSI is due to the increased Adult Child benefit. However, to have no excess income, the adult child must have no more than \$2000 in resources and not have made disqualifying transfers. See 95 ADM-11.

5. If the adult child wants to retain \$14,850 and continue to receive Medicaid, then the excess income must be placed into an SNT.

SO IN OUR SCENARIO:

1. If SON SAM should be found disabled and eligible to receive SSI and/or Disabled Adult Child Benefits, then DEBBIE would qualify for the caretaking parent entitlement subject to the deceased husband's Family Maximum Benefit because she will be the caretaking parent of a child with a disability.

2. If SON SAM receives Adult Disabled Child benefits and SON SAUL receives Survivor benefits until 18, they will split the Family Maximum Benefit.

VII. RETIREMENT BENEFITS & SPOUSAL BENEFITS: BRIEF OVERVIEW

A. Full Retirement Age

A worker who retires at Full Retirement Age can do so without reduction of the benefits amount. 20 CFR §§ 312, 20 CFR § 409. However, if the worker delays retirement, there is a bonus of a percentage for each year that the worker delays retirement. The amount of the retirement benefit is based on the worker's salary history. 20 CFR §§ 310 – 313, 20 CFR § 404.204.

Full Retirement Age is based on the workers date of birth and is gradually increasing. 20 CFR §§ 310 – 313. Currently, the full retirement age is 66 for individuals born between the years 1943 – 1954, 66 1/2 for those born between 1955 and 1959, and age 67 for those born after 1960. Gradual increases to Full Retirement Age are expected. 20 CFR § 410.

At age 62, workers may retire and start collecting Social Security retirement benefits, but those individuals who apply for retirement benefits early will collect reduced benefits for the rest of their lives. Workers who retire at age 62 collect a percentage of the maximum benefit they would be eligible to receive at Full Retirement Age based on their earnings history. 20 C.F.R. §§ 404.231- 233, 20 CFR §§ 310 – 313. The amount of the reduction for taking early retirement slowly decreases as the retiree approaches Full Retirement Age. 20 C.F.R. § 404.233.

The retirement benefit of a worker who works past Full Retirement Age and does not begin collecting Social Security Retirement, is increased by an annual percentage as incentive for the delaying of retirement. The percentage of the increased amount is greater for each year that

retirement is delayed until age 70, when the worker must begin collecting the retirement benefit regardless of whether or not s/he retires. 20 C.F.R. 404.313.

B. Spousal Benefits

Spousal Benefits are available to the spouse of the retired worker if that spouse had been married to the worker for a period of at least one year. 20 C.F.R. 404.330(a). Benefits paid to a spouse will not reduce the benefits amount payable to the retired worker. 20 CFR 404.330

To receive spousal benefits, the spouse must be age 62 or older, or, if under the age of 62, be caring for a child who is either under age 16 or disabled. 20 C.F.R. 404.330(c). The monthly spousal benefit is equal to one-half the retired worker's benefit amount. 20 C.F.R. 404.333. In the event that the spouse is also eligible for a retirement benefit based on his or her own work history, the spouse will receive the higher benefit amount. 20 C.F.R. 404.330(d).

If the applicant is a former spouse of a recipient, he or she must have been married to the worker recipient of retirement benefits for at least 10 years and, and must not be remarried. 20 C.F.R. 404.331.

C. Planning the Retirement

Issues can surface where a worker and/or the spouse of the worker takes early retirement. Waiting for benefits until Full Retirement Age avoids any diminution of the benefit amount. However, sometimes circumstances such as health or financial need make early retirement advantageous. Many practitioners use programs that can calculate retirement benefits based on earnings of both spouses and projected life expectancy to best advise the client.

While a worker and/or spouse will be locked into a reduced retirement benefit for taking the benefit early, there is no bar against a spouse switching from his/own benefits record to that

of the spouse when he/she reaches Full Retirement Age. (Social Security Retirement Guide – Pamphlet – 2016). Maximizing the amount of the benefits is always the primary goal.

In some instances, a person may change their mind after he/she has filed for retirement benefits, be it early at age 62 or at some point prior to age 70. In such a scenario, the person may withdraw their application and consequently stop their benefits. However, in order to do so, s/he must make this change within twelve months after the person became entitled to the retirement benefits. Only one withdrawal is allowed during lifetime. (SSA.gov/ “Retirement Planner – If you Change Your Mind”) (Bipartisan Budget Act of 2015)

If one withdraws the application, all of the benefits received by the individual and his/her family must be repaid to the Social Security Administration. All of the persons who received benefits must also consent in writing to the withdrawal, assuming that all are of age and capacity. In addition, if there were any monies paid from the gross retirement benefit for Medicare premiums, those need to be repaid as well. (SSA.gov/ “Retirement Planner – If you Change Your Mind”)

Of course, a person may withdraw from Social Security Retirement benefits but still keep his/her Medicare at age 65. If the person keeps Medicare, the individual will be billed directly by CMS (Centers for Medicare and Medicaid Services) for the premiums. Id.

If the individual has attained Full Retirement Age but not yet age 70, and it is more than one year after receiving retirement benefits so withdrawal is not available, that individual can ask that the retirement benefits be suspended until age 70. (SSA.gov/ “Retirement Planner – Suspending Retirement Benefit Payments”)

D. Social Security Disability and Early Social Security Retirement

If the worker planning retirement prior to Full Retirement Age due to health reasons happens to have impairments that would be deemed to meet the Social Security criteria for Disability Insurance Benefits, then it is prudent for the individual to apply for both Retirement and Disability. 20 CFR 404.310. The Retirement benefit will be processed much more quickly than the Disability benefit, and the individual can start to receive a monthly benefit immediately.

If a retired worker is found disabled by the Social Security Administration, s/he will receive the SSDI, which is the maximum benefit at Full Retirement Age. 20 CFR 404.310. After 2 years s/he will receive Medicare. If the individual is ultimately denied Social Security Disability benefits, s/he will still continue to receive the Social Security Retirement benefits applied for. However, the practitioner must consider whether to represent the client, as an attorney may be paid only 25% of a successful recovery.

VIII. SO WHAT DO WE TELL GRANDMA, GRANDPA AND DEBBIE?

1. Elder Law issues: If either or both grandsons were disabled, they could transfer assets to a trust for the sole benefit of the grandson to shelter assets for Medicaid eligibility.
2. Trust for DEBBIE? Not needed to shelter her own assets from being considered available to SON SAUL. Only needed if SON SAUL were going to qualify for SSI, which he probably won't because of the Social Security payments and pension that will be made to DEBBIE as the caretaker widow and the Social Security Survivor benefits paid to SON SAUL as the surviving son until 18 or 19.
3. DEBBIE's assets do not affect SON SAM's eligibility for benefits: either Childhood Benefits as an adult child with a disability, or SSI.

4. SON SAM may qualify for Adult Disabled Child benefits even if he is working because he is not engaged in Substantial Gainful Activity.
5. SON SAM might qualify for his own SSDI if he pays enough into FICA, although he would lose Disabled Adult Child Benefits.
6. SON SAM will lose Disabled Adult Child benefits if he ever marries, unless he marries someone with a disability.
7. DEBBIE'S benefits as a caretaking parent (Mother's benefits) may continue if she is under 62 and not remarried and the children are under 18 and/or disabled.
8. DEBBIE will be able to receive widow's benefits after age 60 if she does not remarry before age 60.
9. DEBBIE's receipt of Mother benefits may be affected if she works outside the home. If she earns more than \$1,310/month, her benefit will be reduced by \$1 for every \$2.00 earned.
10. If GRANDPA continues to work and does not take his own Social Security until age 70, GRANDMA can take her spousal retirement prior to age 66 ON GRANDPA'S EARNINGS. However, her benefit will be reduced if she is under Full Retirement Age.
11. If GRANDPA takes Social Security at age 66, GRANDMA can take her spousal benefit on his full earnings, but her benefit amount will still be reduced because she hasn't reached full retirement age.
12. If GRANDPA takes his Social Security now at age 66 so that GRANDMA can receive Social Security on his earnings, he can withdraw his application and cease receipt of benefits within 1 year, but he must pay back the government for his benefits received, as well as all others who received benefits on GRANDPA'S earnings record.

CONCLUSION

The Social Security Act provides a safety net for retirees, widows, surviving children and those with disabilities. Knowing the entitlements for which our clients may be eligible assists in providing them with planning options to maximize their benefits and preserve assets.

Attachment 1

- excerpt from SSA POMS SI 01150.110 stating that a transfer by a non-SSI recipient parent is not counted against a child's SSI

SI 01150.110 Period of Ineligibility for Transfers on or After 12/14/99

2. Length of Period of Ineligibility

A period of ineligibility can be from 1 month up to a maximum of 36 months depending on the amount of the uncompensated value. A period of ineligibility cannot exceed 36 months regardless of the uncompensated value of the transfer. Months in the period of ineligibility can coincide with months of ineligibility for other reasons. See [SI 01150.111](#) for instructions for computing the number of months in the period of ineligibility.

Example: Mr. Franklin has been receiving SSI for several years. While conducting a redetermination in 8/00, the CR finds that Mr. Franklin transferred a resource for less than fair market value on 12/20/99 and is subject to a 6-month period of ineligibility that begins as of 1/00. The CR also finds that Mr. Franklin was ineligible due to excess income in 3/00 and 4/00. Mr. Franklin's period of ineligibility runs from 1/00-6/00. The ineligibility in 3/00 and 4/00 due to excess income does not affect the length of the period of ineligibility due to the resource transfer.

E. Policy—types of transfers affected

This provision applies to transfers made:

- by an individual;
- by the individual's eligible or ineligible spouse ([SI 00501.150](#));
- by persons who are co-owners of the resource being transferred;
- on behalf of the individual by a person acting for and legally authorized to execute a contract (e.g., a legal representative, a legal guardian, a parent for a minor child, etc.);

by an individual transferring assets which he constructively received (e.g., he/she refused an inheritance).

by an individual transferring assets in the month of receipt (e.g. the transfer of income that would have been considered a resource in the following month, if retained).

This provision does not apply to transfers made by a deemor unless the deemor is a co-owner of the resource or is the ineligible spouse. For example, the provision does not apply to a resource transfer made by a parent who is a deemor (unless the eligible child and parent are co-owners of the resource).

Attachment 2 – Acquiescence Ruling Ruppert v. Bowen

Acquiescence Rulings

AR 90-2(2)

EFFECTIVE/PUBLICATION DATE: 07/16/90

AR 90-2(2): *Ruppert v. Bowen*, 871 F.2d 1172 (2d Cir. 1989) -- Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes -- Title XVI of the Social Security Act

ISSUE:

Whether the Secretary may charge an SSI applicant or recipient who receives a rental subsidy with in-kind income in all cases or whether the Secretary must first determine that the applicant or recipient received an "actual economic benefit" from the rental subsidy.

STATUTE/REGULATION/RULING CITATION:

Sections 1611 and 1612(a)(2) of the Social Security Act (42 U.S.C. Sections 1382 and 1382a); 20 C.F.R. Sections 416.1130, 416.1140, and 416.1141.

CIRCUIT:

Second (Connecticut, New York, Vermont)

Ruppert v. Bowen, 871 F.2d 1172 (2d Cir. 1989)

APPLICABILITY OF RULING:

This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, administrative law judge hearing and Appeals Council).

DESCRIPTION OF CASE:

Multiple SSI recipients filed a joint action challenging the methods used by the Social Security Administration (SSA) to calculate their benefits. Thus ruling related to the claims of Rose and Edward Faicco, Cheryl Karnett, and Alan Green, who alleged that the Secretary's treatment of the difference between the current market rental value of their housing and the rent actually paid for the housing as in-kind income was erroneous.

The facts for the pertinent claims are as follows:

FAICCOS

Rose and Edward Faicco were both over age sixty-five. They rented a house from their daughter. Although the monthly expenses for the house were \$951, the Faiccocos paid rent of \$350 per month, which was reduced to \$250 per month when their daughter's variable rate mortgage decreased.

An administrative law judge (ALJ) found that each of the Faiccocos was overpaid \$262.20 between November 1982 and March 1983. The ALJ found that they had been overpaid either because they had received subsidized rent or, because they did not pay their *pro rata* share of household expenses and therefore lived in their daughter's household. The ALJ also found that they were not without fault in causing the overpayment and that the overpayment could not be waived. This became the final decision of the Secretary and suit was filed in the United States District Court for the Eastern District of New York. The court affirmed the Secretary's decision. The decision was appealed to the United States Court of Appeals for the Second Circuit.

KARNETT

Cheryl Karnett, who is mentally retarded and autistic, lived with her parents. Her mother executed a rental agreement as both Cheryl's agent and her landlord. The rental agreement called for Ms. Karnett to pay her mother rent of \$169 per month and food payments of \$120 per month.

An ALJ found that Mr. Karnett had unearned income of \$36 per month, \$11 per month because her room's market value was \$180 and \$25 per month because of occasional meals provided by her parents. The ALJ's decision became the final decision of the Secretary. A civil action was filed in the United States District Court for the Eastern District of New York. The court affirmed the Secretary's decision. This decision was appealed to the United States Court of Appeals for the Second Circuit.

GREEN

Alan Green lived with his parents. Mr. Green and his mother had a written agreement, under which he was to pay her \$100 per month in rent and \$125 per month for food. There was evidence that his mother stated to SSA that she would have charged a stranger \$135 for lodging. An ALJ determined that Mr. Green had received in-kind income of \$35 per month, the difference between the current market rental value and the rent he agreed to pay. This became the final decision of the Secretary and a civil action was filed. The United States District Court for the Eastern District of New York affirmed the Secretary's decision. The decision was appealed to the United States Court of Appeals for the Second Circuit.

HOLDING:

The United States Court of Appeals for the Second Circuit held that, although the statute and regulations concerning in-kind income and rental subsidies are facially valid, if the proportion of income that an SSI recipient expends on housing is "so great that it flies in the face of reality" to conclude that unearned income in the form of subsidized housing is actually available to the recipient, the unearned income should be disregarded.

The court remanded the subject cases to the district court for a determination of whether any SSI recipients had received an "actual economic benefit" from their rental subsidies. However, the court did not state how "actual economic benefit" is to be established.

STATEMENT AS TO HOW *RUPPERT* DIFFERS FROM SOCIAL SECURITY POLICY:

Under 20 C.F.R. Section 416.1130(b), SSI applicants and recipients are found not to be receiving in-kind support and maintenance in the form of subsidized rent, if they are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly rent required to be paid equals the current market rental value. In situations where the landlord/tenant relationship is other than a parent/child relationship, we presume that the amount of monthly rent required to be paid equals the current market rental value.

When there is a parent/child relationship between landlord and tenant, SSA determines whether a rental subsidy exists. Generally, SSA views any difference between the current market rental value and the actual amount of rent paid as being in-kind income, up to the presumed maximum value established under 20 C.F.R. Section 416.1140(a)(1) (one-third of the Federal benefit rate plus the \$20 general income exclusion). SSA generally considers this difference to be an "actual economic benefit" to the applicant or recipient.

The Second Circuit's decision in *Ruppert* found that the difference between the current market rental value and the actual rent paid does not always constitute an "actual economic benefit" to the SSI applicant or recipient. The Court directed that a determination be made as to whether an applicant or recipient received an "actual economic benefit" from a rental subsidy, before charging the applicant or recipient with in-kind support and maintenance.

EXPLANATION OF HOW SSA WILL APPLY THE DECISION WITHIN THE CIRCUIT:

This Ruling applies only in cases in which the applicant or recipient resides in Connecticut, New York, or Vermont at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, administrative law judge hearing, or Appeals Council.

In cases where SSA determines that an applicant or recipient has received a rental subsidy, SSA will determine whether the applicant or recipient received an "actual economic benefit" from the rental subsidy. If SSA determines that the applicant or recipient received an "actual economic benefit," he or she will be imputed to have received in-kind support and maintenance. If SSA determines that the applicant or recipient did not receive an "actual economic benefit", the rental subsidy will be disregarded for purposes of determining eligibility for and the amount of Supplemental Security Income benefits.

Although the court required there to be a determination of "actual economic benefit" in rental subsidy cases, it did not specify the test to be used in making that determination. SSA has decided that it will

determine that an applicant or recipient did not receive an "actual economic benefit" from a rental subsidy when the monthly amount of rent required to be paid equals or exceeds the presumed maximum value described in 20 C.F.R. Section 416.1140(a)(1) (one-third of the Federal benefit rate plus the \$20 general income exclusion). If the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market rental value, whichever is less.

Attachment 3 –

**Letter, Decision, Living Arrangement Form,
18 NYCRR 398-4.3, 18 NYCRR 398-4.5**

KASSOFF, ROBERT & LERNER, LLP

ATTORNEYS AT LAW

100 Merrick Road
West Building ~ Suite 508
Rockville Centre, New York 11570
(516) 766-7700
Fax (516) 766-0738

July 18, 2016

NYS OTDA
Office of Administrative Hearings
NYS OTDA
PO BOX 1930
Albany, NY 12201
VIA FAX ONLY 518 473 6735

RE: [REDACTED]
SSI CLAIM # [REDACTED]
PERSON ID NUMBER [REDACTED]
REQUEST FOR FAIR HEARING:
CHALLENGE TO HOUSEHOLD LIVING ARRANGEMENT

Dear Sir/ Madam:

Please be advised that this office represents [REDACTED], who has been approved for SSI as a person residing in his own household, Category A. from March, 2016 ongoing. See SSI acceptance attached.

As per the Notice from NYS OTDA of the State Supplement Program dated June 27, 2016, NYS has not applied the correct living arrangement to [REDACTED]. Pursuant to 18 NYCRR 398-4.3, "[t]he office is bound by the decision and action taken by SSA on the SSI eligibility determination." SSA has categorized him as living in his own household. He does not live in the household of another.

[REDACTED] pays a flat fee to his landlord for room and board. See Acquiescence Ruling 90-2 applied to this case and all cases in the Second Circuit, in which the adult child living with the parent is considered to be living in a commercial establishment. See 18 NYCRR 398-4.5(1). Enclosed please find the Living Arrangement Form and a Request for Fair Hearing.

Please schedule a Fair Hearing. [REDACTED] challenges the determination that he resides in the household of another. Please provide the full amount of the State Supplement to [REDACTED] of \$87/month.

Sincerely,


Joan Robert

NYS OTDA
 STATE SUPPLEMENT PROGRAM
 PO BOX 1740
 ALBANY, NEW YORK 12201

CORRESPONDENCE NO: 2051211	DATE: 06/23/2016
CATEGORY: SSI/SSP	PERSON ID NUMBER:

0000299 P-0001 T-0002 00000299 2 MB .419



This is to inform you that you are eligible for benefits under the New York State Supplement Program (SSP) beginning in February 2016. SSP provides a monthly benefit to aged, blind or disabled persons with income and resources below established State limits.

Eligibility for SSP benefits is based on your current State Living Arrangement (SLA), information provided to New York State and information which you provided to the Social Security Administration (SSA) when applying for federal Supplemental Security Income (SSI) benefits.

You are eligible for \$23.00. We have calculated your SSP monthly benefit amount based on the following information available to us:

Your State Living Arrangement (SLA) is: (Living with others in the community as an individual)

Monthly Income Counted by SSA:	\$0.00
SSI Federal Benefit Rate Exclusion:	- \$733.00
SSP Countable Monthly Income:	\$0.00
Your SLA Maximum Benefit Amount:	\$23.00
Total SSP Countable Monthly Income:	- \$0.00
Total Monthly SSP Benefit Amount:	\$23.00

County of Residence: Suffolk

Please see the enclosed SSP Living Arrangement Form for a description of your current New York State living arrangement category as well as other living arrangement categories.



0000299



NYS OTDA State Supplement Program
Living Arrangement Form

Name _____ PID _____

Residence Address _____
(Street or PO Box) (City) (State) (Zip Code)

Mailing Address if different than residence address _____
(Street or PO Box) (City) (State) (Zip Code)

Please tell us the date that your current living arrangement began: (Month/Year) _____

Using the definitions below, please check the box that best reflects your current living arrangement.

- Living Alone** – You fit in this category if you meet one of the following conditions:
- You live physically alone or with a spouse receiving SSI;
 - You live only with a foster child or foster children;
 - You live only with a homemaker authorized by the Social Services district office or an aide paid for under the Medical Assistance (Medicaid) program;
 - You live with others but pay a "flat fee for room and board" or receive a "flat fee for room and board fee" from all others in the residence;
 - You live with others but take the majority of your meals during the month outside of your residence;
 - You live with others but you separately prepare, or have someone separately prepare, the majority of your meals during the month;
 - You have no permanent living arrangement and do not have a spouse or child with you for whom you are responsible.

- Living with Others** – You fit in this category if you meet one of the following conditions:
- You live with your spouse who does not receive SSI;
 - You live with others and you prepare food in common with at least one other person you live with;
 - You live in a religious community;
 - You are less than 18 years of age in any living arrangement other than Congregate Care Level 1 or 2;
 - You have no permanent living arrangement and are with an ineligible spouse or child for whom you are responsible.

- Congregate Care** – If you currently reside in Congregate Care (Level 1, 2, or 3) OR in a Medical Care Facility throughout the month, please have someone from the facility submit the Congregate Care Change Form (LDSS-5023) to the SSP Bureau. All SSP forms are available at www.otda.ny.gov/programs/ssp. Please call us toll free at 1-855-488-0541 if there are any questions.

I/We understand that anyone who knowingly lies or misrepresents the truth is committing a crime and can be punished under Federal law, State law, or both. Everything on this statement is the truth as best I/We know.

Applicant/Recipient/Representative Signature [Redacted]	Date 7/15/16	Spouse Signature X
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The completed form must be returned to NYS OTDA State Supplement Program, PO Box 1740, Albany NY 12201, or through e-mail at otda.sm.ssp@otda.ny.gov, or by fax to: 518-486-3459.



0000299



WestlawNext **New York Codes, Rules and Regulations**

18 CRR-NY 398-4.3
NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER B. PUBLIC ASSISTANCE
ARTICLE 5. MISCELLANEOUS
PART 398. SUPPLEMENTAL SECURITY INCOME (SSI) ADDITIONAL STATE PAYMENTS
SUBPART 398-4. STATE SUPPLEMENT PROGRAM (SSP)

18 CRR-NY 398-4.3
18 CRR-NY 398-4.3

398-4.3 Eligibility determinations for SSP benefits.

The office shall determine each individual's and couple's initial and ongoing eligibility for SSP benefits on the basis of the data supplied by the Federal SSA through the State Data Exchange (SDX), information provided by the applicant or recipient pursuant to Subpart 398-5 of this Title, and other information available to the office. The office is bound by the decision and action taken by SSA on the SSI eligibility determination.

18 CRR-NY 398-4.3
Current through June 15, 2016

END OF DOCUMENT

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WestlawNext **New York Codes, Rules and Regulations**

18 CRR-NY 398-4.5
NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER B. PUBLIC ASSISTANCE
ARTICLE 5. MISCELLANEOUS
PART 398. SUPPLEMENTAL SECURITY INCOME (SSI) ADDITIONAL STATE PAYMENTS
SUBPART 398-4. STATE SUPPLEMENT PROGRAM (SSP)

18 CRR-NY 398-4.5
18 CRR-NY 398-4.5

398-4.5 New York State living arrangements.

The five categories of State living arrangements are:

(a) Living alone.

Living alone means living in a private household composed of one eligible individual or one eligible couple.

(1) An individual or couple is considered to be living alone, if the individual or couple:

see (i) rents a room in an apartment or a private home, but pays a flat fee and takes the majority of their meals during the month outside the dwelling unit or prepares the majority of their meals during the month separately;

(ii) pays a fixed, pre-established flat fee for both room and board in a commercial establishment which meets no other SSP living arrangement criteria (e.g., not licensed as a congregate care facility and not a public emergency shelter);

(iii) lives with others, but takes the majority of their meals during the month outside the dwelling;

(iv) lives with others, but separately prepares, or has someone separately prepare, the majority of his or her meals during the month;

(v) receives a fixed, pre-established flat fee for room and board from all others in the dwelling;

(vi) lives with only a foster child;

(vii) lives with only a homemaker authorized by a social services district (SSD);

(viii) lives with only a family care resident placed by: the New York State Office of Mental Health (OMH), the New York State Office for Persons with Developmental Disabilities (OPWDD), or an SSD;

(ix) lives with only an aide paid for under the Medical Assistance program; or

(x) has no permanent living arrangement (e.g., a transient person or homeless person) and is not living with an ineligible spouse or a child for whom they have primary responsibility.

(2) An individual or couple is not considered to be living alone if:

(i) the individual lives with an ineligible spouse;

(ii) the individual or couple lives with a child for whom they have primary responsibility (unless the child is a foster child);

(iii) the individual is a child; or

(iv) the individual or couple resides in a dwelling with others and prepares food in common with at least one other person in the dwelling.

(b) Living with others.

Living with others means living in a private household composed of an eligible individual or couple and at least one other person. It includes a person who:

Attachment 4

Request for Hearing by Administrative Law Judge

REQUEST FOR HEARING BY ADMINISTRATIVE LAW JUDGE

See Privacy
Act Notice

(Take or mail the **completed original** to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records)

1. Claimant Name	2. Claimant SSN	3. Claim Number, if different
------------------	-----------------	-------------------------------

4. I REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. I disagree with the determination because:

An Administrative Law Judge of the Social Security Administration's Office of Disability Adjudication and Review or the Department of Health and Human Services will be appointed to conduct the hearing or other proceedings in your case. You will receive notice of the time and place of a hearing at least 20 days before the date set for a hearing.

5. I have additional evidence to submit. <input type="checkbox"/> Yes <input type="checkbox"/> No Name and source of additional evidence, if not included. Submit your evidence to the hearing office within 10 days. Your servicing Social Security office will provide the hearing office's address. Attach an additional sheet if you need more space.	6. Do not complete if the appeal is a Medicare issue. Otherwise, check one of the blocks <input type="checkbox"/> I wish to appear at a hearing. <input type="checkbox"/> I do not wish to appear at a hearing and I request that a decision be made based on the evidence in my case. (Complete Waiver Form HA-4608)
---	---

Representation: You have a right to be represented at the hearing. If you are not represented, your Social Security office will give you a list of legal referral and service organizations. If you are represented, complete and submit form SSA-1696 (Appointment of Representative) unless you are appealing a Medicare issue.

7. CLAIMANT SIGNATURE (OPTIONAL)	DATE	8. NAME OF REPRESENTATIVE (if any)	DATE
RESIDENCE ADDRESS		ADDRESS	
CITY	STATE	ZIP CODE	
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION- ACKNOWLEDGMENT OF REQUEST FOR HEARING

9. Request received on _____ (Date) by: _____ (Print Name) _____ (Title)

(Address) (Servicing FO Code) (PC Code)

10. Was the request for hearing received within 65 days of the reconsidered determination? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, attach claimant's explanation for delay and supporting documents if any.	15. Check all claim types that apply: <input type="checkbox"/> Retirement and Survivors Insurance Only (RSI) <input type="checkbox"/> Title II Disability - Worker or child only (DIWC) <input type="checkbox"/> Title II Disability - Widow(er) only (DIWW) <input type="checkbox"/> Title XVI (SSI) Aged only (SSIA) <input type="checkbox"/> Title XVI Blind only (SSIB) <input type="checkbox"/> Title XVI Disability only (SSID) <input type="checkbox"/> Title XVI/Title II Concurrent Aged Claim (SSAC) <input type="checkbox"/> Title XVI/Title II Concurrent Blind (SSBC) <input type="checkbox"/> Title XVI/Title II Concurrent Disability (SSDC) <input type="checkbox"/> Title XVIII Hospital/Supplementary Insurance (HI/SMI) <input type="checkbox"/> Title VIII Only Special Veterans Benefits (SVB) <input type="checkbox"/> Title VIII/Title XVI (SVB/SSI) <input type="checkbox"/> Other - Specify:
11. If claimant is not represented, was a list of legal referral service organizations provided? <input type="checkbox"/> Yes <input type="checkbox"/> No	
12. Interpreter needed <input type="checkbox"/> Yes <input type="checkbox"/> No Language (including sign language):	
13. Check one: <input type="checkbox"/> Initial Entitlement Case <input type="checkbox"/> Disability Cessation Case or <input type="checkbox"/> Other Postentitlement Case	
14. HO COPY SENT TO: _____ HO on _____ <input type="checkbox"/> Claims Folder (CF) Attached: <input type="checkbox"/> Title (T) II; <input type="checkbox"/> T XVI; <input type="checkbox"/> T VIII; <input type="checkbox"/> T XVIII; <input type="checkbox"/> T II CF held in FO <input type="checkbox"/> Electronic Folder <input type="checkbox"/> CF requested <input type="checkbox"/> T II; <input type="checkbox"/> T XVI; <input type="checkbox"/> T VIII; <input type="checkbox"/> T XVIII (Copy of email or phone report attached)	
16. CF COPY SENT TO: _____ HO on _____ <input type="checkbox"/> CF Attached: <input type="checkbox"/> Title (T) II; <input type="checkbox"/> T XVI; <input type="checkbox"/> T XVIII <input type="checkbox"/> Other Attached:	

Attachment 5

Claimant's Appointment of Representative Form

Name (Claimant) (Print or Type)	Social Security Number
Wage Earner (If Different)	Social Security Number

Part I CLAIMANT'S APPOINTMENT OF REPRESENTATIVE

I appoint this individual, _____
(Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

- Title II (RSDI) Title XVI (SSI) Title XVIII (Medicare) Title VIII (SVB)

This individual may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

- I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks), partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.
- I appoint, or I now have, more than one representative. My principal representative is:

(Name of Principal Representative)

Signature (Claimant)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part II REPRESENTATIVE'S ACCEPTANCE OF APPOINTMENT

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

- Check one: I am an attorney. I am a non-attorney eligible for direct payment under SSA law.
 I am a non-attorney not eligible for direct payment.

I am now or have previously been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. YES NO

I am now or have previously been disqualified from participating in or appearing before a Federal program or agency. YES NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address	
Telephone Number (with Area Code)	Fax Number (with Area Code)	Date

Part III FEE ARRANGEMENT

(Select an option, sign and date this section.)

- I am charging a fee and requesting direct payment of the fee from withheld past-due benefits. (SSA must authorize the fee unless a regulatory exception applies.)
- I am charging a fee but waiving direct payment of the fee from withheld past-due benefits --I do not qualify for or do not request direct payment. (SSA must authorize the fee unless a regulatory exception applies.)
- I am waiving fees and expenses from the claimant and any auxiliary beneficiaries --By checking this block I certify that my fee will be paid by a third-party entity or government agency, and that the claimant and any auxiliary beneficiaries are free of all liability, directly or indirectly, in whole or in part, to pay any fee or expenses to me or anyone as a result of their claim(s) or asserted right(s). (SSA does not need to authorize the fee if a third-party entity or a government agency will pay from its funds the fee and any expenses for this appointment. Do not check this block if a third-party individual will pay the fee.)
- I am waiving fees from any source --I am waiving my right to charge and collect any fee, under sections 206 and 1631 (d)(2) of the Social Security Act. I release my client and any auxiliary beneficiaries from any obligations, contractual or otherwise, which may be owed to me for services provided in connection with their claim(s) or asserted right(s).

Signature (Representative) _____ Date 2/3/15

REQUEST FOR HEARING BY ADMINISTRATIVE LAW JUDGE

See Privacy
Act Notice

(Take or mail the **completed original** to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records)

1. Claimant Name	2. Claimant SSN	3. Claim Number, if different
------------------	-----------------	-------------------------------

4. I REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. I disagree with the determination because

An Administrative Law Judge of the Social Security Administration's Office of Disability Adjudication and Review or the Department of Health and Human Services will be appointed to conduct the hearing or other proceedings in your case. You will receive notice of the time and place of a hearing at least 20 days before the date set for a hearing.

5. I have additional evidence to submit. <input type="checkbox"/> Yes <input type="checkbox"/> No Name and source of additional evidence, if not included. Submit your evidence to the hearing office within 10 days. Your servicing Social Security office will provide the hearing office's address. Attach an additional sheet if you need more space.	6. Do not complete if the appeal is a Medicare issue. Otherwise, check one of the blocks <input type="checkbox"/> I wish to appear at a hearing. <input type="checkbox"/> I do not wish to appear at a hearing and I request that a decision be made based on the evidence in my case. (Complete Waiver Form HA-4608)
---	---

Representation: You have a right to be represented at the hearing. If you are not represented, your Social Security office will give you a list of legal referral and service organizations. If you are represented, complete and submit form SSA-1696 (Appointment of Representative) unless you are appealing a Medicare issue.

7. CLAIMANT SIGNATURE (OPTIONAL)	DATE	8. NAME OF REPRESENTATIVE (if any)	DATE
RESIDENCE ADDRESS		ADDRESS	
CITY	STATE	ZIP CODE	CITY
TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION- ACKNOWLEDGMENT OF REQUEST FOR HEARING

9. Request received on _____ (Date) by _____ (Print Name) _____ (Title)

(Address) (Servicing FO Code) (PC Code)

10. Was the request for hearing received within 65 days of the reconsidered determination? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, attach claimant's explanation for delay and supporting documents if any.	15. Check all claim types that apply: <input type="checkbox"/> Retirement and Survivors Insurance Only (RSI) <input type="checkbox"/> Title II Disability - Worker or child only (DIWC) <input type="checkbox"/> Title II Disability - Widow(er) only (DIWW) <input type="checkbox"/> Title XVI (SSI) Aged only (SSIA) <input type="checkbox"/> Title XVI Blind only (SSIB) <input type="checkbox"/> Title XVI Disability only (SSID) <input type="checkbox"/> Title XVI/Title II Concurrent Aged Claim (SSAC) <input type="checkbox"/> Title XVI/Title II Concurrent Blind (SSBC) <input type="checkbox"/> Title XVI/Title II Concurrent Disability (SSDC) <input type="checkbox"/> Title XVIII Hospital/Supplementary Insurance (HI/SMI) <input type="checkbox"/> Title VIII Only Special Veterans Benefits (SVB) <input type="checkbox"/> Title VIII/Title XVI (SVB/SSI) <input type="checkbox"/> Other - Specify:
11. If claimant is not represented, was a list of legal referral service organizations provided? <input type="checkbox"/> Yes <input type="checkbox"/> No	
12. Interpreter needed <input type="checkbox"/> Yes <input type="checkbox"/> No Language (including sign language):	
13. Check one: <input type="checkbox"/> Initial Entitlement Case <input type="checkbox"/> Disability Cessation Case or <input type="checkbox"/> Other Postentitlement Case	
14. HO COPY SENT TO: _____ HO on _____ <input type="checkbox"/> Claims Folder (CF) Attached: <input type="checkbox"/> Title (T) II; <input type="checkbox"/> T XVI; <input type="checkbox"/> T VIII; <input type="checkbox"/> T XVIII; <input type="checkbox"/> T II CF held in FO <input type="checkbox"/> Electronic Folder <input type="checkbox"/> CF requested <input type="checkbox"/> T II; <input type="checkbox"/> T XVI; <input type="checkbox"/> T VIII; <input type="checkbox"/> T XVIII (Copy of email or phone report attached)	
16. CF COPY SENT TO: _____ HO on _____ <input type="checkbox"/> CF Attached: <input type="checkbox"/> Title (T) II; <input type="checkbox"/> T XVI; <input type="checkbox"/> T XVIII <input type="checkbox"/> Other Attached: _____	