

TRACK 5
Special Needs Planning:
A New Take on Current Issues

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Basics of Special Education
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Overview

During the first part of our presentation I will review some of the basic terms in special education. Then we will walk through an Individualized Education Program (IEP). Our hope is that this information will provide some insight on how to use the IEP to serve your clients in your special needs practice.

Special Education Loves Acronyms

IDEA- Individuals with Disabilities Education Act (or IDEIA Individuals With Disabilities Education Improvement Act). The federal statute that requires to states that accept funding under the IDEA provide all students with disabilities a Free and Appropriate Public Education. See 34 CFR § 300.700

FAPE- A Free and Appropriate Public Education. Not the Cadillac of special education but a program that is allows the Student to make appropriate progress based on his individual circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

CPSE- The Committee on Preschool Special Education (CPSE) is responsible for identifying and arranging for the delivery of Special Education services for preschool children with disabilities from ages three to five.¹

CSE- Committee on Special Education. The team, including the Parent, instructed to develop the IEP for the student.

- Parents/guardians of the student
- At least one regular education teacher of such student (*if the student is, or may be, participating in the regular education environment*)
- At least one Special Education teacher or one Special Education provider (*i.e., Related Service provider*) of the student
- A representative of the District who is qualified to provide/administer/supervise Special Education and who is knowledgeable about the general curriculum and the availability of resources of the District
- An individual who can interpret the instructional implications of evaluation results; may be a CSE member selected from the regular education teacher, the Special Education teacher or provider, the School Psychologist, or the District representative described above, or a person having knowledge or special expertise regarding the student as determined by the District

¹ <https://schools.ahrcnyc.org/parent-resources/glossary-of-common-special-education-terms/>

- At the discretion of the parents/guardians or the District, other individuals who have knowledge or special expertise regarding the student, including Related Services personnel
- When appropriate, the student with a disability
- School Psychologist
- School physician (*if requested in writing by the parents/guardians or District at least 72 hours prior to the meeting*)
- Parent member

IEP – Individualized Education Program

504 Plan- (Section 504 of the Rehabilitation Act) a plan that provides accommodations for the Student. Can be utilized to support physical disabilities as well.

IESP/ ISP- Individualized Services Plan. A plan developed when the student is attending a private school, but receiving services from the public school district. Many times the district where the private school is located will develop the services plan.

FERPA- Family Educational Rights and Privacy Act. Provides parents the right to access and review their child’s educational records.

IEE- Independent Educational Evaluation. A term to refer to any evaluation the student requires in order to evaluate his needs. Can be paid for by parents, publicly funded if parents disagree with district evaluations, and can be ordered by an impartial hearing officer at a due process hearing.

IHO- Impartial Hearing Officer. The administrative law judge appointed to hear a special education case. In New York, most hearing officers have familiarity with special education and hear many cases per year.

LRE- Least restrictive environment is a concept that promotes educating students with disabilities with their typically developing peers. LRE does not override the FAPE interest.

ESY- extended school year/12-month services. Student should receive these services if, without services over the summer, she would substantially regress

ESD- extended school day services can be extra services provided after school

ABA- Applied Behavior Analysis. Type of services and methodology for changing children’s behaviors

PLPS/PLOPS- Present Level of Performance. The section of the IEP that discuss the student’s current levels (see section two for more information)

SETSS- Special Education Teacher Support Services. This is a type of related service that can be provided in small group or individually to help students with academics. In some districts they are called “resource room.”

RTI/AIS- Response to Intervention and Academic Intervention Services are services provided to students without IEPs. Many times districts will go through levels of RTI services before determining the student requires a special education referral. I have also heard these services referred to as “building level” services

OT- occupational therapy

PT –physical therapy

Dissecting the IEP

Page 1

The Heading

Disability Classification

The classification should reflect the disability/ies that impact the Student’s education. For example, if the Student has dyslexia and a minor visual impairment, I would suggest the learning disability classification as that will help drive the academic program he requires.

- Autism
- Deafness
- Deaf-blindness
- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Learning disability
- Multiple disabilities
- Orthopedic impairment
- Other health-impairment
- Speech or language impairment
- Traumatic brain injury
- Visual impairment (which includes blindness)

The projected date IEP is to be implemented is not necessarily the date when the IEP team convened. Sometimes the meeting is held before the summer of one school year and the date to be implemented is the first day the IEP will go into effect the following year.

Projected date of annual review is usually the deadline for the IEP to meet to review the IEP. Each IEP must be reviewed and updated at least one time per year (should be based on current evaluative information).

Present levels of Performance 8 N.Y.C.R.R. § 200.4 (d)(2)(i)
Page 1-5

The Present levels should report the Student's **current** functioning

- Evaluation/assessment results. Generally the teacher(s) provide reports with anecdotes regarding the student's current performance/progress/areas of need
- The student's current functioning and individual needs in academic achievement, functional performance and learning characteristics; social development; physical development; and management needs. These considerations must include the strengths of the student and the concerns of the parent(s) for enhancing the education of the child.
- **The affect the student's disability has on the student's participation and progress in the general curriculum** (or, for preschool students, in appropriate activities); and
- Special considerations relating to behavior, communication, students with limited English proficiency, use of Braille and instruction in the use of Braille and use of assistive technology devices
- Whether the student requires a behavior intervention plan (BIP)
- Whether the Student requires assistive technology
 - The state regulations in section 200.4(d)(2)(v)(b)(6) state that the IEP shall indicate any assistive technology devices or services needed for the Student to benefit from education including the use of such devices in the student's home or in other settings.

Measurable Annual Goals
Pages 6-10

The IEP must list measurable annual goals, consistent with the student's needs and abilities, to be followed during the period in which the IEP will be in effect. For each annual goal, the IEP must indicate the evaluative criteria (the measure used to determine if the goal has been achieved), evaluation procedures (how progress will be measured) and schedules (when progress will be measured) to be used to measure progress toward meeting the annual goal.

- Goals must be measurable
- Help the student make appropriate progress
- Should address EACH area of needs mentioned in Present Levels

Recommended program and services

Pages 11-12

Spectrum of programs

- General Education with related services
- Integrated co-teaching services (one special education teacher, one general education teacher)
- 15:1 (appropriate when learning needs and behavior impact ability to attend to larger class)
- 12:1:1 or 12:1+1 (appropriate when learning needs and behavior significantly impact ability to attend in larger class) 12:1+1 means 12 students, 1 teacher, 1 paraprofessional/teacher's aide
- 8:1+1/8:1+2/6:1+1
- Special Education Teacher Support Services (SETSS) (individual or small group remedial academic support)
- Related services include speech, occupational therapy, physical therapy, counseling/social skills group, assistive technology training, parent counseling and training, parent psychological services, extended school day services

12-Month Service and/or Program

The IEP form must identify if the Committee recommends that the student receive special education services during the months of July and August. If so, the IEP must include:

- the identity of the provider of services during the months of July and August; and
- for a preschool student, the reason(s) the student requires special education programs and services during July and August.

Testing Accommodations

Page 13

The IEP must indicate the individual testing accommodations needed by the student, if any, to be used consistently by the student in his or her recommended education program, in the administration of district-wide assessments of student achievement and consistent with Department policy, in State assessments of student achievement that are needed by the student to participate in the assessment.

Coordinated Set of Transition Activities

Page 14

Beginning with the first IEP to be in effect when the student is **age 15** (and at a younger age, if determined appropriate) and updated annually, the IEP must include a statement of needed transition services. These services focus on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities.

- Vocational assessment starting at 12 years old
- Encouraged to invite other agencies to attend meeting and help plan

Other Items of Importance

Instructional Levels- this should give you a good idea of where at least the teacher estimates the student is currently performing. Comparing these levels is a very quick way of seeing whether the student is making progress

Promotional Criteria was recently modified so that districts cannot write in the IEPs the student will meet "50% of grade standards." Instead, the IEP team determines whether the student should be on a standardized or modified promotion.

Final Page, Attendance of the meeting

STUDENT NAME: Jane Doe DATE OF BIRTH: 7/7/2000	LOCAL ID #: 5555555	DISABILITY CLASSIFICATION: Learning Disability
PROJECTED DATE IEP IS TO BE IMPLEMENTED: 02/13/2015		PROJECTED DATE OF ANNUAL REVIEW: 05/19/2016

STUDENT NAME: Jane Doe

NYC ID:55555555

<p style="text-align: center;">PRESENT LEVELS OF PERFORMANCE AND INDIVIDUAL NEEDS</p> <p>DOCUMENTATION OF STUDENT'S CURRENT PERFORMANCE AND ACADEMIC, DEVELOPMENTAL AND FUNCTIONAL NEEDS</p>
<p>EVALUATION RESULTS (INCLUDING FOR SCHOOL-AGE STUDENTS, PERFORMANCE ON STATE AND DISTRICT-WIDE ASSESSMENTS)</p> <p>ELA State Exam 2014 Present Level 2 Proficiency Rating- 2.90 Growth Rate- 77% Scale Score 300</p> <p>MATHEMATICS State Exam 2014 Present Level- 2 Proficiency Rating- 2.57 Growth Rate- 24% Scale Score- 324</p> <p>ACADEMIC ACHIEVEMENT, FUNCTIONAL PERFORMANCE AND LEARNING CHARACTERISTICS LEVELS OF KNOWLEDGE AND DEVELOPMENT IN SUBJECT AND SKILL AREAS INCLUDING ACTIVITIES OF DAILY LIVING, LEVEL OF INTELLECTUAL FUNCTIONING, ADAPTIVE BEHAVIOR, EXPECTED RATE OF PROGRESS IN ACQUIRING SKILLS AND INFORMATION, AND LEARNING STYLE: In ELA, based on the Independent Reading Level Assessment Framework Jane Doe is reading on a 3rd grade level. This demonstrates that Jane Doe has mastered common core reading standards up to grade 3. She is currently struggling with skills that incorporate acquiring and using grade level academic language and word usage. When asked to use textual evidence to explain her ideas with a grade level text, Jane Doe demonstrates challenges to achieve this task on her own and requires supports in the form of scaffolded questions and graphic organizers. In reading, Jane Doe demonstrates challenges with making inferences and drawing conclusions. In the ICT ELA classroom, often Jane Doe demonstrates a lack of focus. She is very easily distracted and requires frequent monitoring to complete classroom tasks.</p>

PRESENT LEVELS OF PERFORMANCE AND INDIVIDUAL NEEDS

DOCUMENTATION OF STUDENT'S CURRENT PERFORMANCE AND ACADEMIC, DEVELOPMENTAL AND FUNCTIONAL NEEDS

Jane Doe is able to work in small groups, but often requires re-direction to stay on task. When Jane Doe is focused she is able to form accurate conclusions after reading texts on her independent reading level and can respond to questions verbally and in written form. In writing Jane Doe struggles with structuring essays and short responses. Currently Jane Doe has shown progress using the R.A.C.E formula to respond to short assessment questions. Essay writing is still a challenge. Jane Doe benefits from using graphic organizers that outline where to place transition words, details and explanations within a paragraph. Jane Doe has trouble completing and turning in H.W. assignments and benefits from the reinforcement and monitoring of her school planner to stay organized and to build responsibility appropriate for middle school.

MATHEMATICS

Jane Doe is a 6th grade student who does not particularly enjoy Mathematics. Jane Doe has had difficulty grasping the grade level curriculum. Jane Doe has basic addition and subtraction skills. However, when subtracting numbers with regrouping, Jane Doe is more likely to make errors. Jane Doe still requires practice with her multiplication and division skills. Jane Doe was given flash cards to practice her multiplication and division skills. Therefore, Jane Doe was not able to master topics such as finding the GCF and LCM. Jane Doe is constantly distracted in class. Jane Doe had difficulty with fraction and decimal operations as well. Jane Doe was able to multiply simple fractions, however, when she was instructed to convert mixed numbers and improper fractions before multiplying, there were many errors. Jane Doe was able to follow the steps for dividing fractions and again, with simple fractions, she was able to display some success. Jane Doe is often distracted in class. Due to the constant lack of focus, Jane Doe struggles with task completion. Jane Doe is quite talkative in class and could show more progress if she would prioritize and stay focused.

SCIENCE

Jane Doe shows willingness to learn new concepts. She comes to science class prepared and ready to work. She greatly benefits from working one on one with a teacher or in small groups with a teacher. It is helpful for Jane Doe when instructions are broken down into clear and simple steps. Graphic organizers that chunk or section pieces of information help Jane Doe to understand complex material. Embedded questions in chunked reading material help Jane Doe to stay focused when reading. Jane Doe follows teacher instructions and explanation. Jane Doe is mostly well mannered and respectful; she remains on task with frequent teacher check-ins to ensure focus and understanding. Jane Doe benefits from additional time to complete her assignments. Jane Doe is able to comprehend scientific texts while using vocabulary reference sources like a textbook. She also benefits from diagrams and images that portray scientific ideas and concepts, as well as real world- science curriculum examples.

STUDENT STRENGTHS, PREFERENCES, INTERESTS:

PRESENT LEVELS OF PERFORMANCE AND INDIVIDUAL NEEDS

DOCUMENTATION OF STUDENT'S CURRENT PERFORMANCE AND ACADEMIC, DEVELOPMENTAL AND FUNCTIONAL NEEDS

Jane Doe enjoys school, she expresses a desire to learn and likes learning. Her favorite classes include, science, math, ELA and PE class. She feels like she enjoys the social aspect of school, she has many friends in her class. Jane Doe's extra curricular activities include dance and cheerleading. Jane Doe also enjoys spending time with her family and is looking forwards to this summer vacation as her family has planned trips. Jane Doe plays in the school orchestra and enjoys learning the viola.

ACADEMIC, DEVELOPMENTAL AND FUNCTIONAL NEEDS OF THE STUDENT, INCLUDING CONSIDERATION OF STUDENT NEEDS THAT ARE OF CONCERN TO THE PARENT:

Mom is trying to make an appointment with a psychologist but is having difficulty finding someone. Mom needs a referral for an independent psychologist.

2013, Jane Doe saw a psychologist who recommender her to not be on medication ADHD, mom feels like Jane Doe would benefit from being on medication now.

Did she receive a promotion in doubt for this year?

Jane Doe would greatly benefit from a tutor outside of school. She requires some one-to-one instruction.

Mom feels that Jane Doe is struggling at in the ICT classes with SETSS services. At home, Jane Doe becomes distracted when attempting to do homework more so then previous years. Mom would like Jane Doe to continue with ICT class and SETSS services and add medication.

SOCIAL DEVELOPMENT

THE DEGREE (EXTENT) AND QUALITY OF THE STUDENT'S RELATIONSHIPS WITH PEERS AND ADULTS; FEELINGS ABOUT SELF; AND SOCIAL ADJUSTMENT TO SCHOOL AND COMMUNITY ENVIRONMENTS:

Jane Doe gets along well her peers and the staff in the school.

STUDENT STRENGTHS:

Jane Doe is a very social young lady. Jane Doe participates in school events like the school talent show, she preformed a cheerleading routine with other girls in the school. She also participates in school concerts.

SOCIAL DEVELOPMENT NEEDS OF THE STUDENT, INCLUDING CONSIDERATION OF STUDENT NEEDS THAT ARE OF CONCERN TO THE PARENT:

Jane Doe is very socially. It is easy for her to make friends. Mom is concerned that Jane Doe play fights with other students and can get carried away but mom speaks to her about this frequently.

PHYSICAL DEVELOPMENT

THE DEGREE (EXTENT) AND QUALITY OF THE STUDENT'S MOTOR AND SENSORY DEVELOPMENT, HEALTH,

PRESENT LEVELS OF PERFORMANCE AND INDIVIDUAL NEEDS

DOCUMENTATION OF STUDENT'S CURRENT PERFORMANCE AND ACADEMIC, DEVELOPMENTAL AND FUNCTIONAL NEEDS

VITALITY AND PHYSICAL SKILLS OR LIMITATIONS WHICH PERTAIN TO THE LEARNING PROCESS:

Jane Doe has been diagnosed with Attention Deficit/ Hyperactivity Disorder (ADHD). She does not currently take medication. Jane Doe is otherwise reported to be in good health.

STUDENT STRENGTHS:

Jane Doe participates willingly in class and sports activities. She likes to dance and participates in extracurricular activities.

PHYSICAL DEVELOPMENT NEEDS OF THE STUDENT, INCLUDING CONSIDERATION OF STUDENT NEEDS THAT ARE OF CONCERN TO THE PARENT:

No concerns at this time.

MANAGEMENT NEEDS

THE NATURE (TYPE) AND DEGREE (EXTENT) TO WHICH ENVIRONMENTAL AND HUMAN OR MATERIAL RESOURCES ARE NEEDED TO ADDRESS NEEDS IDENTIFIED ABOVE:

During classroom lessons, Jane Doe requires:

- small group instructions
- repeated directions
- on-task focusing prompts
- repeated directions
- breaks
- visual aids
- scaffolding to write extended response questions
- extended time to complete questions

EFFECT OF STUDENT NEEDS ON INVOLVEMENT AND PROGRESS IN THE GENERAL EDUCATION CURRICULUM OR, FOR A PRESCHOOL STUDENT, EFFECT OF STUDENT NEEDS ON PARTICIPATION IN APPROPRIATE ACTIVITIES

Jane Doe continue to in a general education setting with the structure and support provided in an ICT setting with where she can access more small group interaction and individual support throughout the day.

STUDENT NAME: Jane Doe

NYC ID:5555555

CONFERENCE INFORMATION

Referral type: Initial Annual Review Triennial Requested Review

Conference type: EPC Annual Review CSE Review CPSE Review

Attendance at Conference

Please note that your signature reflects your participation at the conference and does not necessarily indicate agreement with the Individualized Education Program.

Signature/Title	Role (Indicate if Bilingual)	Signature/Title	Role (Indicate if Bilingual)
Angela Green	Parent/Legal Guardian	Amy Kravitz	Parent/Legal Guardian
Sybil Andrews, AP	District Representative	Tom Jones	Special Education Teacher or Related Service Provider
	General Education Teacher		Parent Member (CPSE/CPSE)
	Student		Speech Therapist Other
	Education Evaluator	Juan Hernandez	Physical Therapist Other
	School Psychologist	Jonathan Cummings	Occupational Therapist Other
	Social Worker	Erica Mitchell	Guidance Counselor Other

Use an asterisk (*) to signify the participant who interprets the instructional implications of evaluation results.
 Use the letter (T) to signify participation by teleconference.

Conference Results

Initiate Service Modify Service Change Program / Service Category No Change

Indicate Modifications

Initiation, Duration, and Review of IEP

Projected Date of Initiation of IEP: 4/5/2004..... Projected Date Of Review of IEP: 3/22/2005.....
 Duration of Services: 1 year.....

Contacts with Parent / Guardian

Date Notice of Meeting Sent: 3/8/2004..... Date IEP and Notice of Recommendation

Date of Follow-up (if any): Type of Follow-up

3/15/2004..... Letter Telephone Letter Telephone

Given To Parent:
 Sent To Parent: 2/29/2004.....

CONFERENCE INFORMATION

Referral type: Initial Annual Review EPC Annual Review
 Triennial Requested Review CSE Review CPSE Review

Attendance at Conference
 Please note that your signature reflects your participation at the conference and does not necessarily indicate agreement with the Individualized Education Program.

Signature/Title	Role (Indicate if Bilingual)	Signature/Title	Role (Indicate if Bilingual)
Ronald James	1:1 Paraprofessional		Other
_____	_____	_____	Other
_____	_____	_____	Other
_____	_____	_____	Other
_____	_____	_____	Other
_____	_____	_____	Other
_____	_____	_____	Other
_____	_____	_____	Other

Use an asterisk (*) to signify the participant who interprets the instructional implications of evaluation results.
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 3/15/2004..... Letter Telephone Given To Parent:
 Letter Telephone Sent To Parent: 2/29/2004.....

ACADEMIC PERFORMANCE AND LEARNING CHARACTERISTICS

Describe the student's present levels of academic achievement, language development, cognitive development and learning style in English and the other than English language for LEP students. Discuss how the student's disability affects his/her involvement and progress in the general curriculum or, for preschool students, as appropriate, how the student's disability affects participation in appropriate activities.

PRESENT PERFORMANCE:
 Thomas is following the alternate curriculum... Thomas will make eye contact only when he is told "Look at me" or "Look at the..." He will sustain it for 2-3 seconds... Thomas communicates by gestures, crying, screaming, and the use of pictures, symbols, as part of a formalized exchange system... He repeats certain words and phrases numerous times, beyond the point when they are meaningful to activity or situation... Thomas manipulates objects repeatedly, moving hands rapidly in a random fashion... Thomas focuses on an activity only with constant redirection... He needs to attend to familiar activities for longer periods of time... When he is attending, Thomas can rote count to 100 by 1s, 2s, 5s, and 10s... He can write numbers 1-100 without a model but has difficulty staying within a boundary... He is currently learning to add single digit numbers up to 18... Thomas can recognize and write common and functional sight words... He is working on increasing his sight word vocabulary... Thomas likes to look at books about animals and sports... At times he will demonstrate inappropriate behaviors by repeatedly and...

Reading And Writing				Math			
Area	Date	Test/Evaluation	Score	Instructional Level	Area	Date	Test/Evaluation
Decoding	3/1-3/15	Teacher Observation		Alternate Performance Indicators	Computation	3/1-3/15	Teacher Observation
Reading Comprehension	3/1-3/15	Teacher Observation		Alternate Performance Indicators	Problem Solving	3/1-3/15	Teacher Observation
Listening Comprehension	3/1-3/15	Teacher Observation		Alternate Performance Indicators			
Writing	3/1-3/15	Teacher Observation		Alternate Performance Indicators			

ACADEMIC MANAGEMENT NEEDS

(Environmental modifications and human/material resources)

Thomas requires a highly structured, orderly instructional environment that utilizes discreet, trial instructional methodologies... Auditory and/or tactile stimuli need to be kept to a minimum as Thomas has difficulty processing information from these sources... Sensory stimuli need to be introduced very carefully... Thomas needs to wear a weighted vest to aide in keeping him centered during activities... Thomas needs to be prepared prior to transition from one activity to another... Thomas uses picture symbols as part of a formalized exchange system... Individualized instruction should be used for optimum learning... Staff need to support appropriate student to student interaction...

Social/Emotional Performance

Describe the student's strengths and weaknesses in the area of social and emotional development in English and the other than English language for LEP students.
 Consider the degree and quality of the student's relationships with peers and adults, feelings about self and social adjustment to school and community environments.
 Discuss how the student's disability affects his/her involvement and progress in the general curriculum or, for preschool students, as appropriate, how the student's disability affects participation in appropriate activities.

Present Performance :

Thomas will greet his classmates and teachers by name only when prompted to do so. He inconsistently responds to his name and makes eye contact only when directed and re-directed during activities. Thomas is hesitant to work with another student, preferring to remain with the 1:1 paraprofessional. He does not seem to take interest in other students and will not initiate contact with his peers. At times Thomas can be aggressive toward others, squeezing hands, pulling hair or kicking. When Thomas does not get what he wants/likes or wants to leave an activity, he begins to cry, cover his ears, screams loudly, jumps up and down and at times will throw himself to the ground. Thomas needs to develop a more consistent, appropriate way of making his needs known and demonstrate these skills across all environments. Thomas works best when he is one on one with an adult. He needs to begin to develop basic student to student interactions and become less reliant on the paraprofessional.

Behavior And The Instructional Process

- Behavior is age appropriate
- Behavior does not seriously interfere with instruction AND
- Can be addressed by General Education OR
- Can be addressed by special education teacher
- Behavior seriously interferes with instruction and requires additional adult support.
- Behavior requires highly intensive supervision.

Describe the present levels of support including personnel responsible for providing behavioral support.

1:1 paraprofessional; consistent communication system; counseling; system of positive reinforcement; weighted vest

Social Emotional Management Needs

Environmental modifications and human/material resources

Thomas requires a highly structured, orderly learning environment that utilizes discreet trial instructional methodologies, picture symbols as part of a formalized exchange system and clear physical, social and environmental boundaries. He requires support to begin interacting appropriately with peers. 1:1 paraprofessional to provide immediate reinforcement of appropriate behaviors and student to student interactions. Counseling as a means of coordinating a consistent, collaborative approach to managing and modifying Thomas' social behaviors and responses.

A behavior intervention plan has been developed. Yes No

Health And Physical Development

Describe the student's health and physical development including the degree or quality of the student's motor and sensory development, health, vitality and physical skills or limitations which pertain to the learning process, behavior and participation in physical education or other school activities. Discuss how the student's disability affects his/her involvement and progress in the general curriculum or, for preschool students, as appropriate, how the student's disability affects participation in appropriate activities.

Present Health Status And Physical Development:

Thomas suffers from seasonal allergies. Thomas also reacts to smells such as paint, colognes and perfumes by coughing and rubbing his eyes. He is not taking medication at this time. He has been diagnosed with exercise induced asthma. He should be watched during and after physical activity. Thomas should be in an air conditioned room in hot weather and when ozone alerts are issued.

Medical/Health Care Needs

During the school day, the student requires :

Oral medication Yes No

(If yes, functionally describe the condition for which medication is required.)

Treatment(s) or other health procedure(s) Yes No

(If yes, functionally describe the condition for which treatment(s) or procedure(s) are required.)

Health as a related service Yes No

(If yes, specify in related service recommendations.)

Physical Needs

The student: does does not have mobility limitations

(If yes, functionally describe the limitation(s).)

Accessible program yes no

Adaptive physical education yes no

if yes indicate staffing ratio: 6:1:1

Assistive technology device(s) yes no

Assistive technology service(s) yes no

(If assistive technology device(s) or service(s) are required, specify in management needs)

Health/Physical Management Needs

(Environment modifications, human/material resources or specialized equipment)

Thomas needs to be watched during allergy season and during and after any sustained physical activity.

ANNUAL GOALS AND SHORT-TERM OBJECTIVES CSE Case# ..10-333333.....

There will be 3 reports of progress this school year.

ANNUAL GOAL:	PROGRESS	Date Mon/Yr	1st	2nd	3rd	4th	5th	6th	7th	8th
Thomas will demonstrate increased time on task for familiar activities and routines across all environments.	Methods of Measurement Report of Progress Progress Toward Annual Goal Reasons for not Meeting Annual Goal									

SHORT-TERM OBJECTIVES: Other:

1. While seated at a table in a corner of the room, with his view obscured, and wearing a weighted vest, Thomas will attend to a familiar activity in a familiar environment for 3 minutes with 2 redirections to task, 4/5 opportunities over a 2 week period.
2. While seated at a table in a corner of the room, and wearing a weighted vest, Thomas will attend to a familiar activity in a familiar environment for 5 minutes with 1 redirection, 4/5 opportunities over a 2 week period.
3. While seated at a table and wearing a weighted vest, Thomas will attend to a familiar activity in a new environment for 5 minutes 4/5 opportunities over a 2 week period.

ANNUAL GOAL:	PROGRESS	Date Mon/Yr	1st	2nd	3rd	4th	5th	6th	7th	8th
Thomas will demonstrate improvement in his ability to communicate his wants and needs.	Methods of Measurement Report of Progress Progress Toward Annual Goal Reasons for not Meeting Annual Goal									

SHORT-TERM OBJECTIVES: Other:

1. Using picture symbols as part of a picture exchange system, Thomas will pick a preferred activity from 2 choices placed within his reach in response to the question "What do you want to do?" 4/5 opportunities over a 2 week period.
2. Using a picture symbol of a "clock" as part of a picture exchange system, Thomas will request a break before leaving an activity area by pointing to the symbol at least 5 seconds before leaving his seat, 4/5 opportunities over a 2 week period.
3. Using a picture symbol of the manual sign for "finished", Thomas will indicate that he is finished with an activity or routine before leaving his seat, 4/5 opportunities over a 2 week period.

METHODS OF MEASUREMENT 1. Teacher Made Materials 2. Standardized Test 3. Class Activities 4. Portfolios 5. Teacher/Provider Observations 6. Performance Assessment Task 7. Check Lists 8. Verbal Explanation 9. Other (Specify) _____	EXPLANATION OF CODING SYSTEM REPORT OF PROGRESS 1. Not applicable during this grading period 2. No progress made 3. Little progress made 4. Progress made, goal not yet met 5. Goal met	PROGRESS TOWARD GOAL A. Anticipate meeting goal B. Do not anticipate meeting goal C. Goal met	REASONS FOR NOT MEETING GOAL 1. More time needed 2. Excessive absence or lateness 3. Assignments not completed 4. Other (Specify) _____
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*While a review of your child's educational program occurs every year please be advised that you have a right to request a review of your child's program at any time.

The student's performance is approaching his/her promotion criteria as set forth on page 9 of the IEP:
 For students who are not anticipated to meet their annual goals and/or promotion criteria: We recommend that the IEP Team be reconvened:

Copy For: CSE _____ PARENT _____ SCHOOL _____ STUDENT _____ OTHER _____

ANNUAL GOALS AND SHORT-TERM OBJECTIVES

There will be 3 reports of progress this school year.

ANNUAL GOAL:	PROGRESS	Date							
		1st	2nd	3rd	4th	5th	6th	7th	8th
Thomas will demonstrate improvement in his ability to transition from one activity to another throughout the day.	Methods of Measurement								
	Report of Progress								
	Progress Toward Annual Goal								
	Reasons for not Meeting Annual Goal								

Other:

- SHORT-TERM OBJECTIVES:**
- Using an anticipation board with 2 picture symbols representing current and next activity, Thomas will remove the picture of the current activity (that was attached with velcro) and place it in the receptacle within 5 seconds of the prompt "we're finished, it's time to change" 4/5 opportunities over a 2 week period.
 - Using an anticipation board with 2 pictures representing the next 2 activities, Thomas will remove the correct picture (that was attached with velcro) and take it with him to the next activity within 5 seconds of the prompt "it's time to change, where do we go next", 4/5 opportunities over a 2 week period.
 - Using an anticipation board with picture symbols representing 4 consecutive activities, Thomas will transition from one activity to the next at the conclusion of each activity with only the naturally occurring cue (completion of the activity) 4/5 opportunities over a 2 week period.

ANNUAL GOAL:	PROGRESS	Date							
		1st	2nd	3rd	4th	5th	6th	7th	8th
Thomas will demonstrate improvement in his ability to interact appropriately with peers.	Methods of Measurement								
	Report of Progress								
	Progress Toward Annual Goal								
	Reasons for not Meeting Annual Goal								

Other:

- SHORT-TERM OBJECTIVES:**
- During preferred daily activities and routines involving 1 other student, with auditory stimuli kept to a minimum, Thomas (in his weighted vest) will remain seated within 1 foot of the student for at least 1 minute with hands remaining in his "space", 4/5 opportunities over a 2 week period.
 - During preferred daily activities and routines involving 1 other student, with auditory stimuli kept to a minimum, Thomas (in his weighted vest) will remain seated within 6 inches of the student for at least 3 minutes with hands remaining in his "space", 4/5 opportunities over a 2 week period.
 - During a play activity involving 1 other student, with auditory stimuli kept to a minimum, Thomas (in his weighted vest) will take turns with the student (2 turns for each student), 4/5 opportunities over a 2 week period.

ANNUAL GOAL:	PROGRESS	Date							
		1st	2nd	3rd	4th	5th	6th	7th	8th
Thomas will demonstrate improvement in his ability to interact appropriately with peers.	Methods of Measurement								
	Report of Progress								
	Progress Toward Annual Goal								
	Reasons for not Meeting Annual Goal								

Other:

- SHORT-TERM OBJECTIVES:**
- During preferred daily activities and routines involving 1 other student, with auditory stimuli kept to a minimum, Thomas (in his weighted vest) will remain seated within 1 foot of the student for at least 1 minute with hands remaining in his "space", 4/5 opportunities over a 2 week period.
 - During preferred daily activities and routines involving 1 other student, with auditory stimuli kept to a minimum, Thomas (in his weighted vest) will remain seated within 6 inches of the student for at least 3 minutes with hands remaining in his "space", 4/5 opportunities over a 2 week period.
 - During a play activity involving 1 other student, with auditory stimuli kept to a minimum, Thomas (in his weighted vest) will take turns with the student (2 turns for each student), 4/5 opportunities over a 2 week period.

SCHOOL ENVIRONMENT AND SERVICE RECOMMENDATIONS

GENERAL EDUCATION ENVIRONMENT

Area of Instruction	Language(s) or Communication mode	Periods per week	Supplementary Aids and Service	Program Modifications and Supports for School Personnel

SPECIAL CLASS ENVIRONMENT

Area of Instruction	Language(s) or Communication mode	Periods per week	Special Class and Staffing Ratio	Supports	Reasons for Non-Participation in General Education Environment
All	English; picture symbols	All	6:1:1	Related Services 1:1 Crisis Management Paraprofessional system of positive reinforcement weighted vest	Thomas' significant academic, behavioral and language/ communication needs require the intensive support of a specialized school.

OTHER PROGRAMS/SERVICES CONSIDERED AND REASONS FOR REJECTION

Provide an explanation of the programs/services considered and the reason for rejection. Specify why the student cannot achieve the goals of his/her IEP within a general education program with the assistance of supplementary aids and services.

General Education with Related Services: Thomas requires staff with knowledge of and the ability to adapt and modify instruction while addressing his significant behavioral and language/communication needs.

Special Class in a Community School: Thomas' significant academic, behavioral and language/communication needs require the intensive supports of a specialized school.

Second language instruction: If the student is exempt from second language instruction, explain why:

Thomas is following the alternate curriculum.

PARTICIPATION IN SCHOOL ACTIVITIES, RELATED SERVICE RECOMMENDATIONS AND PARTICIPATIONS IN ASSESSMENTS

PARTICIPATION IN SCHOOL ACTIVITIES

If the student cannot participate in lunch, assemblies, trips and/or other school activities with non-disabled students, indicate the activity and reason(s) for non-participation. Thomas can participate in all activities with his mandated supports in place. Special consideration to health issues and the impact of activities on well being.

Status*	Related Service	Language of service	Location**	Session/ week	Duration	Group size
C	Crisis Management Para	English	Separate Location	5	99+	1
C	Speech	English	Separate Location	2	30	1
C	Speech	English	Separate Location	2	30	2
C	Occupational Therapy	English	Separate Location	1	30	1
C	Counseling	English	Separate Location	1	30	1
C	Special Transportation Para	English	Separate Location	10	30	2

* Indicates status of recommendation: Initiate; Continue; Modify; or Terminate ** Indicate whether service is provided outside the general education classroom

PARTICIPATION IN ASSESSMENTS

The student WILL PARTICIPATE in state and local assessments. The student will participate in Alternative Assessment.

Without Accommodations With Accommodations

Describe accommodations, if any that will be used consistently throughout the student's educational program:

Thomas is following an instructional program based on The Learning Standards and Alternate Performance Indicators for Students with Severe Disabilities

In addition to Alternative Assessment, describe how the student will be assessed:

Teacher Observation, Videos, Data Collection

Promotion Standard Criteria Modified Criteria* **Promotion** * Describe the modified promotion criteria

.....

.....

.....

Transition

LONG TERM ADULT OUTCOMES

(Beginning at age 14 or younger if appropriate, state long term outcomes based on the student's preferences, needs and interests.)

Community Integration:
Post-Secondary Placement:
Independent Living:
Employment:

Diploma Objective

Regents Diploma Advanced Regents Diploma Local Diploma IEP Diploma

Expected High School Completion Date Credits Earned As Of Date

Transition Services

(Required for students 15 years of age and older.)

Instructional Activities

Responsible Party: Parent School Student Agency Fall Spring Summer

Community Integration

Responsible Party: Parent School Student Agency Fall Spring Summer

Post High School

Responsible Party: Parent School Student Agency Fall Spring Summer

Independent Living

Responsible Party: Parent School Student Agency Fall Spring Summer

Acquisition of Daily Living Skills Functional Vocational Assessment Needed Not Needed

.....

Responsible Party: Parent School Student Agency

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ELDER LAW AND SPECIAL NEEDS SECTION:

SUMMER MEETING: JULY, 2018

SPECIAL NEEDS PLANNING: A NEW TAKE ON CURRENT ISSUES

TRACK 5

ALPHABET SOUP:

SSI, SSD, DAC, TBI WAIVER, MBI-WPD, NHTD WAIVER

Joan Lensky Robert

I. INTRODUCTION

The Social Security Act provides an economic cushion for seniors and those with disabilities. New York State also has Medicaid waivers that provide services. 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 as well as the Traumatic Brain Injury Waiver, the Medicaid Buy-in for Working People with Disabilities and the Nursing Home Transition & Diversion waiver .

II. PLANNING FOR THE JONES FAMILY

DEBBIE comes to you to help plan her estate and to see if her sons are entitled to any benefits. She is a single mom. She earns \$65,000.00/year. She is 50. She has just been diagnosed with MS. She intends to continue to work. She has savings of \$100,000 and an IRA of \$250,000.

She has two children. Son AARON is 22 and BOB is 17. Both have struggled at school. SON AARON 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 BOB 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.

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 \$750 in 2018. States have the option of adding an optional state supplement “OSS” to the federal benefit amount. That amount is \$87/month 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 someone 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.

After 18, 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.

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 parents' 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 \$837/month is the monthly benefit, and \$8,370 is transferred, there will be a 10 month ineligibility for SSI. If \$83,700.00 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 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, WHAT TO DO?

1. A Special Needs Trust may be established for bonds.

2. 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. 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 $\frac{1}{2}$ of the remaining income is deemed available to the child LESS the adult federal benefit level, currently \$750/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 \$750/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 - \$750 = \$457.50. 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 – 760 = \$1,730. That is the amount deducted from the child's SSI. \$750 - \$1,730 = \$0. The child will not receive any SSI.

SO IN OUR SCENARIO:

1. Is 17 year BOB 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 if Debbie had low income and assets, he would qualify for SSI if he were found to be disabled. However, DEBBIE works and has savings. He will be eligible for SSI only at age 18 and only if he is found disabled at that time.

3. Is DEBBIE disabled? Not at this time. She is working and not receiving any assistance in working full time.

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. Assung 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 \$837/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 (can not) charge their child his/her pro rata share of the household expenses.

3. But Not ot 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, as the government presumes a business arrangement between parent and child.. So long as the parent charges at least one third of \$750/month plus \$20 for room and board, or \$270/month, there should be no reduction in the monthly SSI benefit amount.

4. 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.

5. 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.

6. 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 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 \$837. The adult's total income will be \$54.50 from SSI plus \$1650 in salary.

SO IN OUR SCENARIO:

1. AARON 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 \$837/month if DEBBIE charges him a flat fee for room and board.

4. AARON'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 \$837, giving him monthly SSI of \$479.50 in addition to his earnings of \$800/month, for a total income of \$1279.50, 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 \$1,820/month in earned income from computation for his/her SSI eligibility. The maximum earned income exclusion is \$7,350/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 \$750/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.

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 01120.203E(1)(a).

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. See POMS SI 01120.200E(1)(b). www.ssa.gov.

4. Paying for restaurants is considered food rather than recreation by the Social Security Administration. Id.

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)(d).

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 01120.200E(1)(c), (d).

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 including True Link financial are not income if the credit card was used to pay for items other than food or shelter or countable assets. SI 01120.201(I)(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 01120.201(I)(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 AARON inherits money from his grandparents, for example, and established a first-party SNT, or if DEBBIE established a third party SNT for him or a SOLE BENEFIT SNT, the trust would not affect his SSI eligibility if not used for food and shelter.

2. If any type of trust pays for his rent in an apartment so that he can live on his own, 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 AARON 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.

4. An ABLE account, 20 U.S.C. 529-A, may pay for food and shelter without reducing SSI.

J. 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).

IV: 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 2018, substantial gainful activity = \$1,180/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 \$1,320.00 of Social Security taxed employment earnings. Hence, if the individual earns \$5,280.00 in social security taxed employment earnings for a calendar year, with a minimum of \$1,320 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 \$237/month in 2018 to supplement the SSDI to bring the total amount up to the maximum SSI benefit of \$837/month. If, however, the SSDI will pay \$1,000/month, then 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 who require and receive oversight, supervision, job coaching and assistance in performing work activities should 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 sub-contractor 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.

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 to 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.

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. The representative must complete and file an Appointment of Representative Form.

H. 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.

SO IN OUR CASE:

1. Although SON AARON is working, he is not performing Substantial Gainful Activity so he could be considered disabled even though he is working.

2. If he is earning \$1,320/quarter and paying a FICA tax on those earnings he is earning work credits to be currently insured.

3. After as few as 6 quarters of coverage 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 \$837/month, leaving him an SSI benefit amount of

\$359.50. He would retain his earned income of \$800/month PLUS his Social Security Disability payment of \$120 PLUS SSI of \$359.50 or a total of \$1279.50.

6. If DEBBIE is no longer able to work at some point in the future, she may apply for SSDI. This will be beneficial to her, because she will receive her full retirement Social Security and after 2 years receive SSDI.

V: 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 (\$1,180/month earnings);
 - 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 \$837/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 \$337/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 \$15,150.00 and continue to receive Medicaid, then the excess income must be placed into an SNT.

SO IN OUR SCENARIO:

1. If DEBBIE applies for and receives SSD or reaches the Social Security retirement age and retires and takes Social Security, her sons could receive Disabled Adult Child Benefits at that time on DEBBIE's work record if her sons were disabled prior to age 22 and neither had worked enough to be considered to have substantial gainful activity. After 2 years they would receive Medicare. Neither benefit is means tested.

2. If they need Medicaid, however, they must meet the financial criteria for Medicaid. If they had been receiving SSI and lost the SSI solely due to the DAC benefits, and continued to have no more than \$2,000.00 in their name, they would be able to receive Medicaid without an income spenddown. If they had more than \$2,000, and up to \$15,150 they would have Medicaid with a spenddown.

VII MEDICAID WAIVER PROGRAMS

A. TBI WAIVER

The TBI Waiver is a Home and Community Based Waiver for those who suffered a Traumatic Brain Injury. It is available for those between the ages of 18 and 64 who were injured after age 18. It provides 11 Medicaid-funded services to assist participants to live in community-based settings. They may receive rent subsidies and housing supports. It is intended to provide supports for those who need a nursing home level of care but will stay in the community.

The New York State Department of Health oversees the program. DOH contracts with Regional Resource Development Centers to manage the waiver. The Regional Resource Development Specialist oversees enrollment in the waiver and assists in developing needed services.

The services provided are service coordination, independent living skills training, day programs, substance abuse programs, behavioral intervention, community integration counseling, home and community support systems, home modifications, respite, assistive technology, transportation and transitional services. An approved plan identifies the services that will be provided to each participant.

B. Medicaid Buy-in Program for Working People with Disabilities

This program allows individuals with disabilities who are working and whose income exceeds the Medicaid levels to “buy into” the Medicaid program without a spenddown. The individual may earn up to \$61,740 and have countable resources of \$20,000. Private insurance is primary to the buy-in program, but people who need home attendants and who work but would otherwise be found disabled are eligible for this program. If someone is not receiving Social Security disability benefits, the New York State Disability Review Team, through the local DSS will arrange for a disability review.

Our clients who have been accepted to this program include an attorney earning \$80,000/year but whose disability-related work expenses were so great that they brought her below the income level. In addition, one may shelter excess income in an SNT. Another client earned \$56,000/year and worked from home. Both were totally paralyzed. He was accepted to the program and the needed home attendants were provided.

C. Nursing Home Transition & Diversion Waiver Program

In an effort to assist people with disabilities to reside in the community rather than in a skilled nursing facility, this waiver assists people to remain in the community or return to the community with Medicaid services that will not cost more than the cost of care for them in the facility. This Medicaid waiver is available to those between the age of 18 and 64 who have a

physical disability and are eligible for Medicaid coverage for community-based long term care services such as community Medicaid and outpatient Medicaid services. They must need a nursing home level of care. They must identify where they will be living when participating in the waiver. They must be self-directing or have a legal guardian who can direct for them. The services provided to them will be as set forth in a service plan.

VIII. SO WHAT DO WE TELL DEBBIE?

1. DEBBIE's assets do not affect SON AARON's eligibility for SSI, because he is over the age of 18.
2. If BOB is determined to have a disability, he would be eligible for SSI at age 18, when DEBBIE's assets and income will not affect his benefits.
3. Either son may qualify for Adult Disabled Child benefits if DEBBIE applies for and receives SSD or retires and receives Social Security retirement if they have been disabled prior to age 22.
4. Either son might qualify for his own SSDI if he pays enough into FICA, so long as he is considered disabled but working with supports..
5. The sons will lose Disabled Adult Child benefits if they ever marry, unless they marry someone with a disability.
6. DEBBIE should include an SNT in her estate plan for each child, and may consider an ABLE account as well.
7. DEBBIE could potentially qualify for the MBIWPD waiver or the NHTD waiver.
8. If her sons are disabled, DEBBIE may qualify for Medicaid without any ineligibility period by transferring assets into a SOLE BENEFIT TRUST for each child.

CONCLUSION

The Social Security Act and Medicaid waivers provide a safety net for 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.