

The ABCs of the SSA

Neal A. Winston, Esq.

Winston Law Group, Boston, MA

The ABCs of the SSA – Disability Programs for Children

Prepared for the

Elder Law and Special Needs Section

New York State Bar Association

Summer Meeting, July 18-20, 2019

Boston, Massachusetts

By

Atty. Neal A. Winston¹

Social Security programs can be difficult for parents of children with disabilities to understand. This session will describe the Supplemental Security Income (SSI) program in more detail with examples of how it might apply to your clients, as well as provide some introductory information about Social Security Disability and Disabled Adult Child Benefits.

Defining the Different SSA Programs

Beginning in 1935, “Social Security” started out as a retirement “insurance” pension program in which the worker earned “coverage” by having Social Security taxes taken out of his or her wages with equal contributions from the employer. It was quite basic: when the individual reached retirement age, then age 65, the worker could receive a “retirement benefit” pension with the monthly benefit amount based upon the amount of taxes paid over the working

¹ Member, Bar of the Commonwealth of Massachusetts, Certified Elder Law Attorney (CELA) by the National Elder Law Foundation

lifetime. Generally 10 years (40 quarters of earnings) are required to be “fully insured”. In 1939, the worker’s spouse and other close family members, as “dependants” or as “survivors” of the worker, were added as potential “beneficiaries” and could receive additional benefits under certain conditions. Beginning in 1956, if the worker became disabled from working prior to retirement age, then “disability” benefits could be paid. The worker’s close family member dependants and survivors were eventually added as beneficiaries eligible for disability benefits of their own under certain circumstances. These programs are generally described by the SSA as Social Security Retirement Survivors Disability Insurance (RSDI) and Social Security Disability Insurance (SSDI).

Prior to 1974, most state or local government entities had their own cash benefit “welfare” programs for the aged and disabled based upon a wide range of eligibility criteria and benefit amounts. In an attempt to standardize eligibility and benefit amounts for these programs, the federal government created the Supplemental Security Income (SSI) program, which the states were required to subscribe to, effectively replacing the former federally supported state and local programs. Age, disability, and blindness were determined to be the three defined categories of need. The Social Security Administration was delegated to administer the program in all states. States were offered options that could be adopted including automatic Medicaid eligibility for all SSI recipients and supplemental amounts paid by the state to the federal SSI benefit. The SSA determined the primary SSI eligibility criteria based upon the federally uniform statute and the states could provide additional benefits with their own criteria based category and living arrangement.

Supplemental Security Income

Basic SSI Eligibility Rules:

1. The individual must be categorically eligible by being “aged” or age 65, or meet the Social Security definition of “disability” or “blindness”

2. Meet the income limit standards in which total countable monthly income is less than the SSI benefit amount for the individual's eligibility category (see 1. above) and living arrangement (see Appendix A for 2019 Federal and New York state supplement benefit levels, by category)
3. Meet the maximum countable "resource" limit amount, which is \$2,000 for an individual, and \$3,000 for an eligible couple, except that many resources are not countable
4. The difference between income and a resource: "Income" is anything that can be used for food or shelter and related expenses that is received in a particular month. If it is saved to the following month, it becomes a resource. A "resource" is something that the individual has ownership/control over at the beginning of any month following the month of receipt that can be used for or converted for use for food or shelter related expenses
5. Giving away resources to become eligible may create a period of ineligibility for up to 3 years
6. Meet certain citizenship or residency requirements
7. The New York State Office of Temporary and Disability Assistance (OTDA) has a detailed brochure explaining the federal SSI and state supplement (SSP) program interrelationship. See Appendix B

Detail for SSI Categorical Eligibility:

1. Proof of age 65 or greater
2. Definition of disability: Cannot do work done before, cannot adjust to other work because of medical condition(s); and disability has lasted or is expected to last for at least one year or to result in death². The disability definition for a child under age 18 differs from the adult definition³

²The inability to engage in substantial gainful activity because of a medically determinable impairment or combination of impairments that can be expected to result in death or can be expected to last for a continuous period of not less than twelve months, taking into consideration age, education, and prior work experience. 20

3. Definition of blindness: Vision cannot be corrected to better than 20/200 in better eye or if visual field is 20 degrees or less, even with a corrective lens

Detail for SSI Income Eligibility

1. Countable income must not exceed the income standard for the combined federal SSI and state supplement living arrangement category levels. SSI benefits are a form of guaranteed minimum income and are reduced as countable income increases and are not payable when monthly countable income that is not disregarded reaches the maximum income level amount of the particular category, living arrangement and state supplement (see Appendix A)
2. Certain income is “disregarded” or not counted depending on source. \$20 of “unearned” income and the first \$65 plus ½ of the remainder of “earned” (work) income is not counted each month. For example, Social Security insurance (RSDI) benefits, monthly pensions, and bank account interest and dividends are “unearned” income. “Earned” income is received as a direct result of being paid for work performed
3. The value of free or undervalued housing or food (called “in-kind support and maintenance” or ISM) counts as income and will reduce the SSI benefit, but only up to a maximum one-third of the federal benefit rate or \$257 monthly in 2019. For example, if a person receives \$200. in free food in a month from a relative, it will count as unearned income and reduce benefits accordingly.

C.F.R. §§ 416.905–416.911. In determining whether an applicant has a physical or mental impairment that has lasted or can be expected to last for at least twelve continuous months or result in death, the SSA requires that the presence of the impairment must be shown by medical evidence. 20 C.F.R. §§ 416.912–416.918.

³ The disability standard for children requires that the child (a person under the age of eighteen) have a medically determinable mental and/or physical impairment that has medical criteria or functional limitations resulting in “marked and severe functional limits” and that has lasted or is expected to last at least twelve months or result in death. 20 C.F.R. § 416.906. This means that if a child’s impairments do not meet or medically equal the severity of a listed impairment, the analysis turns to whether the child’s medically determinable impairments meet the functional equivalence standard. 20 C.F.R. § 416.924(b)–(f). Functional equivalence compares the child’s functional capacity in six different do-mains to determine how the functions compare to similar children without disabilities. 20 C.F.R. §§ 416.926a, 416.924a. If the child has marked level functional limitations in two domains or extreme level limitations in one domain, the child will be found disability eligible for SSI. 20 C.F.R. § 416.926a(e).

Federal or state welfare benefits such HUD subsidized (section 8 and similar) housing is not counted as income

4. Income of an ineligible spouse is “deemed” as available to the eligible individual and countable to the individual as income under certain conditions. Likewise, income of the parent(s) living in the household of a child under age 18 may be “deemed” as available to the child and countable as income to the child after certain deductions

Detail for SSI Resource Eligibility

1. A resource can be “countable” or “non-countable”. If countable, an individual is allowed a total of \$2000 and an eligible couple is allowed \$3000. Even \$1 in excess countable resources available to the individual will render an individual ineligible for each month that the excess is available, including retroactive ineligibility
2. Examples of a countable resource includes cash and other liquid assets, something that can be converted to cash such as cash value of a life insurance policy or IRA, land other than where the home is located, or anything else of value that can be reasonably cashed in that is not determined to be non-countable
3. Examples of defined non-countable resources include a home, a vehicle, home furnishings, personal effects, property needed for self support, an irrevocable burial contract or burial plot, one life insurance policy of \$1,500 or less, and a scholarship or fellowship
4. Resources of an ineligible spouse and parents of a child under age 18 living in the same household as the eligible individual are “deemed” as available after certain deductions

Social Security Child Disability Insurance Benefits (CDB)

The SSA describes the Child Disability Benefits (CDB) insurance program in the Social Security Handbook as follows:

Under the Social Security Disability Insurance (SSDI) program, an adult child (a person age 18 or older) may receive monthly benefits based on disability or blindness on the Social Security record of a parent as a dependent or survivor if:

- He or she has an impairment or combination of impairments that meets the definition of disability for adults. See the SSI section above for the disability and blindness definitions; and
- the disability began before age 22; and
- The adult child's parent worked long enough to be insured under Social Security and is receiving retirement or disability benefits or is deceased.

The child must not be doing any "substantial" work, and must have a medical condition that has lasted or is expected either to last for at least 12 months or to result in death.

Social Security Child Disability Benefits (CDB) is another form of Social Security dependants or survivors Childs Benefits under the insurance program in which the child of an insured worker can receive disability *insurance* benefits for life from the record of the insured parent if the child is disabled into adulthood. If the CDB benefits are less than the SSI and state supplement level, then it is possible that the individual can receive a portion of all of those benefits. Individuals generally apply for CDB benefits when they do not have enough work history or quarters of coverage on their own record to obtain SSDI benefits when they become disabled or are permanently disabled prior to adulthood. Sometimes trying to work age 22 and later, and then becoming unable to work due to a disability without having enough quarters of credits for SSDI on his or her own record may permanently disqualify an individual for CDB benefits.

If the child is receiving Child Benefits as a child, and then reaches age 18 and is disabled, then the child can transition to the adult disabled Childs Benefits program seamlessly if proper application is made. Other than the requirement that the child be disabled prior to the age of

22 continuously until such time as the parent worker that the child is dependent upon starts receiving benefits on his or her own record or dies, the eligibility criteria for CDB are similar to Childs Benefits for an individual receiving benefits as a child under age 18. If the child works (performs Substantial Gainful Activity, SGA) after age 22 and prior to the time that the worker starts receiving benefits or dies, and the child has not received DCB previously, then the child may be forever disqualified from receiving benefits

A child who has not received Childs Benefits may receive Child Disability Benefits (CDB) as long as the individual has not worked (performed SGA) after age 22 and prior to such time as the worker parent starts receiving benefits or dies and the child applies for CDB benefits

Once the child starts receiving CDB, then the benefits may be terminated if the disability ends, but reinstated under certain conditions if the disability returns. If the disability ends due to medical improvement but returns within 84 months, then the benefits will be reinstated. It will not matter that the individual has performed work during the interim

Determining What Benefits Are Being Paid

Under certain conditions, individuals can be eligible for both SSDI/CDB and SSI benefits at the same time. The SSA love of acronyms (OASDI, RSDI, SSDI, SSI, etc.) has provided perennial confusion to claimants and their attorneys over just what benefits the individual is receiving or perhaps eligible for

There are a few basic rules to determine what type of benefits an individual is receiving without contacting the SSA

- Since one reason for SSI eligibility is based on providing a minimum monthly income, having income above the SSI and state supplement limits being paid by the SSDI or CDB

insurance program each month can easily determine that the individual is only eligible for SSDI/CDB benefits and not SSI

- SSI and state supplement benefits are paid on the first of the month and CDB benefits are paid on the third day or later in the month based on the week in the month the person's birth date falls in. Since most SSI and RSDI benefits are direct deposited, looking at the individual's bank statement is a sure way of defining the benefit program and amount
- When an individual is eligible for any category of disability insurance (SSDI or CDB) benefits for 24 months or longer, then the individual will also become eligible for Medicare, which has a red, white and blue eligibility card as compared to the state issued Medicaid card, although many individuals are eligible for both medical coverage programs

Where to Obtain Benefit Eligibility Information

1. Contact the Social Security Administration by telephone either by calling the local office serving the location of the person's home or the national call in number, 800-772-1213. If requesting specific information, the individual must be on the phone and be prepared to provide Social Security number, date of birth, and mother's maiden name or some or identification generally known only to the individual
2. Visit a local office in the area where the individual or the individual's appointed representative lives. Note the hours that it is open and that offices close to the public at noon on Wednesdays. Identification will be required.

3. Go on the internet. The Social Security Administration has a very sophisticated website, providing both general information in multiple formats about everything that is SSI and Social Security, and specific information if the individual sets up a personal portal. The website is: <https://www.socialsecurity.gov>. Beware of any other internet website for accurate information. The Social Security Handbook gives a good simplified overview of benefits and eligibility criteria, https://www.ssa.gov/OP_Home/handbook/handbook.html. All of the program information, from federal statute to regional unique rules is located at <https://www.ssa.gov/regulations/>. The most detailed, and often the most helpful information is located in the Program Operations Manual System (POMS), <https://secure.ssa.gov/poms.nsf/Home?readform>. Go to the Table of Contents. SSI rules are found in section "SI", and CDB benefit rules are generally found in "RS", but more specifically RS 00203.080 - .090. Disability criteria for both SSI and CDB is found in section "DI"
4. There is a professional organization whose members specialize in representing individuals that are applying for SSI based on disability or SSDI. It is the National Organization of Social Security Claimants Representatives (NOSSCR). Telephone 845-682-1881 for a referral, or online, <https://nosscr.org/contact-us/>
5. The National Academy of Elder Law Attorneys (NAELA) has a member listserv and database that has a very large amount of SSI and Social Security information. Members advertise their interest in Social Security under listings in the member directory and are available for referrals. <https://www.naela.org/>

SSI and SSP Benefit Levels Chart effective January 1, 2019 (reflects the 2.8% federal COLA for January 2019)

Fed L/A Code	State Supp Code	New York State Living Arrangement	Individual		Couple		
			Federal	State	Federal	State	Total
A	A	Living Alone	\$771	\$87	\$1,157	\$104	\$1,261
A, C	B	Living With Others	\$771	\$23	\$1,157	\$46	\$1,203
B	F	Living in the Household of Another ²	\$514	\$23	\$771.34	\$46	\$817.34
A	C	Congregate Care Level 1 - Family Care OCFS certified Family Type Homes for Adults; and OMH or OPWDD certified Family Care Homes NYC, Nassau, Rockland, Suffolk and Westchester Counties Rest of State	\$771	\$266.48	\$1,157	\$917.96	\$2,074.96
A	D	Congregate Care Level 2 - Residential Care OMH or OPWDD certified Community Residences, Individualized Residential Alternatives and OASAS certified Chemical Dependence Residential Services NYC, Nassau, Rockland, Suffolk and Westchester Counties Rest of State	\$771	\$228.48	\$1,157	\$841.96	\$1,998.96
A	E	Congregate Care Level 3 – Enhanced Residential Care DOH certified Adult Homes and Enriched Housing programs; and OPWDD certified Schools for the Developmentally Disabled	\$771	\$694	\$1,157	\$1,255	\$2,412
D	Z	Title XIX (Medicaid certified) Institutions ³	\$30	\$0 ⁴	N/A	N/A	N/A
A	Z	see below ⁵	\$771	\$0	\$1,157	\$0	\$1,157

Minimum Personal Needs Allowances	
Congregate Care Level 1	\$ 148
Congregate Care Level 2	\$ 171
Congregate Care Level 3	\$ 204

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

Statutory References: Chapter 59 of the Laws of 2018

Revised October 23, 2018

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

Office of Temporary and Disability Assistance

Appendix B

New York State Supplement Program (SSP)

Overview

SSP provides state-funded financial assistance to aged, blind and disabled individuals and is part of the monthly benefit paid to most Supplemental Security Income (SSI) recipients.

Applying for SSP

You must submit an application for federal SSI benefits to the Social Security Administration (SSA).

SSP Eligibility

Eligibility is based on a number of factors, including age, disability, income, citizenship or qualified alien status.

SSP Benefits

Monthly benefit amounts vary depending on a variety of factors.

SSP Payment Schedule

Scheduled Availability of Benefits: April 2019 through September 2019

Reporting Changes to Your Case

You must report changes that may impact your benefits.

How to Get Proof of Your NYS SSP Benefits

If SSP recipients, their payees and authorized representatives need proof of their benefits they may request a verification letter.

Applying for SSP

You must submit an application for federal SSI benefits to the Social Security Administration (SSA). This serves as your application for SSP benefits. SSA shares this information with New York State, who will determine your eligibility for SSP benefits.

There is no online SSI Application. Please schedule an appointment with a local Social Security office to file an application.

- Social Security Office Locator [📍](#); or
- Call 1-800-772-1213 (TTY 1-800-325-0778), Monday through Friday 7 am to 7 pm.

For more information on how to apply for SSI benefits, visit www.socialsecurity.gov [🌐](#).

SSP Eligibility

You are eligible for SSP benefits if you:

- Are an adult who is age 65 or older; or are blind or disabled; or are a child under the age of 18 who has a physical or mental impairment; and
- Reside in New York State; and
- Have limited income and resources; and
- Are a citizen or a qualified alien, or otherwise meet citizenship requirements.

SSP Benefits

Monthly benefit amounts vary depending on a variety of factors including:

- living arrangements,
- income; and
- county of residence.

View Maximum Monthly Benefit Amounts by Year:

- SSI/SSP 2019 Maximum Monthly Benefit Amounts

How You Receive Benefits

If you receive both SSI and SSP benefits, you will receive your SSP benefits the same way you chose to receive your SSI benefit.

If you receive SSP benefits but do not receive SSI benefits, you can choose how to receive your benefits. We strongly encourage you to receive benefits through direct deposit, which is safe, fast and convenient.

If you currently have a representative payee for your SSI benefits, that person will also manage your SSP benefits. If you want to change your representative payee, you must contact SSA. If you receive SSP but do not receive SSI benefits, you can assign or change a payee by calling SSP at 1-855-488-0541.

Medicaid Eligibility

If you are eligible for SSP, you will automatically be eligible for Medicaid.

Reporting Changes to Your Case

You must report changes that may impact your benefits. The following reporting requirements apply to all SSP/SSPNA recipients:

Your SSP and SSPNA eligibility as well as benefit amount is based on information received from the Social Security Administration (SSA) as well as information reported to New York State (NYS).

Your failure to report changes and/or to report any changes in a timely manner may result in a possible suspension, discontinuance, or reduction of your benefits. You may also have to repay benefits that you improperly received as a result of not reporting changes as required.

For Individuals Who Receive Both SSI and SSP Benefits:

If you receive both SSI and SSP benefits, you will report your changes to SSA.

Examples of changes that must be reported include, but are not limited to:

- Change of residence and/or mailing address
- Marriage, divorce or separation
- Improvement of a disability
- Income or employment changes
- Change in countable resources that exceed \$2000 for an individual or \$3000 for an SSI/SSP couple
- Changes in bank account information
- Changes in your payee
- Changes in who you wish to allow to receive information about your benefits

NOTE: You must report any change in your State Living Arrangement directly to NYS SSP, not to the SSA.

A change in living arrangement must be reported to NYS SSP within ten (10) days of the date of the change. Please note that a change in who is in the household must be reported even if your address has not changed. The death of a household member, or changes to who is living in the household are living arrangement changes that must be reported.

For Individuals Who Only Receive SSP Benefits:

If you receive only SSP benefits, you will report your changes directly to NYS SSP.

Examples of changes that must be reported include, but are not limited to:

- Change of residence and/or mailing address
- Marriage, divorce or separation
- Improvement of a disability
- Income or employment changes
- Change in countable resources that exceed \$2000 for an individual, or \$3000 for an SSI/SSP couple

- Change in living arrangement or household composition, including the death of a household member or changes to who is living in the household. Please note that a change in who is in the household must be reported even if your address has not changed.

The changes listed above must be reported to NYS SSP within ten (10) calendar days of the date of the change.

You should also tell NYS SSP about the following changes as soon as you know about them:

- Changes in bank account information
- Changes in your payee
- Changes in who you wish to allow to receive information about your benefits

The Following Information Applies To All Recipients:

All applicants and recipients must respond to requests for information and/or documentation made by SSP within thirty (30) calendar days from the date of the request. Failure to respond to requests for information may have a negative impact on your benefits.

Where to Report Changes or Provide Requested Information:

You may report changes to SSA by calling 1-800-772-1213 or by visiting your local SSA office  in person.

You may report changes to SSP by calling toll free at 1-855-488-0541; OR by fax at: 518-486-3459; OR by email at: otda.sm.ssp@otda.ny.gov; OR by regular mail at:

NYS OTDA
State Supplement Program
PO Box 1740
Albany, NY 12201

NOTE: If you receive Social Security Retirement, Survivor's, or Disability payments and also receive SSP benefits, SSA does not share your federal benefit information or any changes, including address or living arrangement, with SSP and you must report changes directly to SSP.

Forms

Complete and send the following forms to tell us about changes to your:

- Living Arrangements - State Living Arrangement Form
- Bank Information - Direct Deposit Enrollment Form
 - Direct Deposit Cancellation Form
- Income - Income Verification Form
- Marital Status - Marital Status Change Form
- Designated Representative – Designated Representative Form
 - Rights and Responsibilities of Designated Representatives

Congregate Care facility representatives should report changes, including admissions, discharges, direct deposit bank account information, and income on behalf of residents using the following form:

- Congregate Care - Congregate Care Change Report Form

Where to Return Forms

Completed forms may be mailed to:

NYS OTDA State Supplement Program
PO Box 1740
Albany, NY 12201

Or may be faxed to: 518-486-3459.

Scanned forms may be emailed to: otda.sm.ssp@otda.ny.gov

How to Get Proof of Your NYS SSP Benefits

New York State Supplement Program (SSP) recipients, their payees and authorized representatives can request an SSP Benefit Verification letter in any of the following ways:

- By calling the SSP Customer Support Center toll free at 1-855-488-0541
- By emailing us at: otda.sm.ssp@otda.ny.gov
- By faxing us at 518-486-3459
- By writing us at:
NYS OTDA
State Supplement Program
PO Box 1740
Albany, New York 12201

When emailing, faxing or writing, please include the following information:

- Name
- Last four numbers of your Social Security Number
- Date of Birth
- Mailing Address

The SSP Benefit Verification letter provides information on current SSP benefits.

Benefit Verification letters are mailed directly to the recipient and/or representative's address.

Please allow at least 10 business days for the Benefit Verification letter to be received.