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 School of Industrial and Labor Relations

THE BENEFITS PLANNER

KEYS TO EFFECTIVE BENEFITS PLANNING, ASSISTANCE AND OUTREACH

SSI'S INCOME AND RESOURCE RULES PART II: A PRACTICAL APPLICATION

We would like to thank our readers who sent us questions about the SSI income and resource rules discussed in our most recent, Winter 2004-05 newsletter. This follow-up article will give our readers some more practical examples of how these rules play out in real life situations. We will use a hypothetical person, Maria, and walk through a brief period of her life. We will see how certain events - - the death of a spouse, receiving help from a sister, selling some of her possessions, and going to work - - affect her eligibility for SSI and the amount of the check she will get.

One wrinkle on SSI's treatment of income is the *Retro-spective Monthly Accounting (RMA)* system. Under RMA rules, income received in a month is generally used to determine SSI eligibility and payment amount two months later. We did not go into RMA

rules in the previous newsletter and we will not discuss them in any detail in our analysis of the issues below. Although we talk about events that occur in 2005 and 2006, we will use the 2005 SSI rates throughout the article. In reality, we can expect a slight cost-of-living increase to the SSI rates in 2006.

INTRODUCING MARIA

Maria, who is now 50 years old, qualified for SSI benefits in 1995 based on an anxiety disorder. It is January 2005 and Maria is married to Hector. The couple has been married for more than 15 years. They reside in a small, one-bedroom apartment which costs them \$400 per month including utilities. Hector, who is also 50, worked for years as a janitor until a disabling illness forced him to stop work in late 2004. Hector currently receives New York State disability payments of \$300 per month and is considering an application for

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Social Security Disability Insurance (SSDI) benefits.

Maria's SSI payment amount, January 2005. Since Maria resides with Hector, her SSI check will be based on New York's 2005 "living with others" rate of \$602 per month. And, since Hector's monthly income of \$300 is so low, Maria will get the full \$602 SSI amount per month. Maria will also be eligible for Medicaid since SSI recipients in New York are automatically eligible for Medicaid. Medicaid is important to Maria as it pays for her psychiatrist, counselor, and prescription drugs.

Based on SSI's formula for deeming of income from a spouse, Hector's monthly unearned income would begin to count against Maria's payment rate once it exceeds \$310 per month. If Hector's unearned income from state disability payments exceeded \$935 per month, Maria would not be eligible for an SSI check.

HECTOR'S DEATH

In late January 2005, Hector dies from his illness. Shortly thereafter, on January 31, 2005, Maria goes to the Social Security Administration (SSA) and reports her husband's death. SSA personnel assist Maria in filling out an application for Social Security Widow's Benefits, based on her disability, and have her complete an SSI form to report that she is now living alone.

In April 2005, Maria is notified by SSA that she will be eligible for SSDI benefits as a disabled widow based on her January 2005 application. After the mandatory five-month waiting period, Maria will receive her first SSDI check in July 2005. The SSDI payment amount will be \$357 per month.

Maria's SSI payment amount, February 2005. Effective February, Maria is now living alone and will be paid SSI based on the living alone rate of \$666 per month. Since Maria has no other income, earned or unearned, she will be paid the full \$666 per month. Knowing that she will face a challenge in paying her rent, without Hector's additional income, we should refer her to a program like the Section 8 Housing Choice Voucher Program for possible help with her rent payments.

Maria's SSI payment amount, July 2005.

Maria is still living alone, meaning her SSI payment will be based on the living alone rate of \$666 per month. However, now she qualifies for an SSDI check of \$357 per month. The SSI program will disregard the first \$20 of the SSDI as a general income exclusion ($\$357 - 20$) and she will have \$337 in countable income. Deducting this from the SSI base rate ($\$666 - 337$), her new SSI amount will be \$329 per month and she will still qualify for automatic Medicaid. Because of the \$20 general income exclusion, her combined income (\$686) is now \$20 more than the \$666 SSI amount she was getting.

A word about Medicare. An individual qualifies for Medicare after receiving SSDI benefits for two years (i.e., after a 24 month waiting period). In Maria's case, she would be eligible for Medicare in July 2007: Part A (hospital insurance benefits) would be automatic and cost-free, while Part B (supplemental medical insurance) would be optional and subject to a monthly premium. (In all likelihood, the Medicaid agency will be able to pay for the Part B premium under the Qualified Medicare Beneficiaries or QMB program.) When she qualifies for Medicare in 2007, she will then be required to have her prescription drugs paid for through the Medicare Part D program which starts in January 2006. (The Part D program is beyond the scope of this newsletter but will be covered in a later issue of the *Benefits Planner*.)

MARIA GETS HELP FROM HER SISTER

It is October 2005 and Maria continues to receive \$357 in SSDI benefits and an SSI supplement of \$329 as we calculated above. It is the 25th of October and Maria has run out of money and is nearly out of food. Her sister, Katherine, decides to help out. She takes Maria to the grocery store and pays for \$35 worth of groceries for Maria. After delivering the groceries to Maria's apartment, Katherine hands her \$20 to "help out" and picks up Maria's overdue phone bill saying she will send in a check covering the \$28 bill tomorrow.

As we analyze how each of these transactions or gifts from Katherine will be treated by the SSI program, we will go through a two-step analysis. First, we will determine if the help that Maria received meets the definition of income. Second,

assuming that the gift can be treated as income, we will then determine whether any part of it can be ignored under SSI's income exclusion rules.

Will the \$35 payment for groceries affect Maria's SSI? If we assume that the groceries are all food, the \$35 worth of groceries will be considered "in-kind income" and will be used to reduce her SSI check unless all or part of their value can be excluded. (Remember, income is anything received in cash or in kind that can be used to meet needs for food or shelter.) It will also be considered unearned income.

What if \$15 worth of the groceries consisted of toilet paper, dish washing liquid, tooth paste, shampoo, and laundry soap? Since this is not food or shelter, it will not be treated as unearned income. Now, only the \$20 worth of food will be potentially counted as unearned income.

Are there any exclusions to apply to the \$35 or \$20 worth of food? First, let's assume all \$35 worth of groceries is food. Until recently the exclusion rules would only allow Maria to exclude the first \$20 of the \$35 value. Up to \$20 of unearned income was excluded in a month if it was received on an irregular or infrequent basis. With \$20 disregarded, the remaining \$15 value of the food would be counted. However, the new SSI income rules, effective April 1, 2005, exclude irregular or infrequent unearned income of up to \$60 per quarter. Therefore, if Maria has no other income (other than her SSDI check) and Katherine doesn't start "making a habit" of giving her food, all \$35 worth of food will be excluded as irregular in-kind income.

Will the \$20 cash gift affect Maria's SSI? This \$20 cash gift will be considered unearned income. Can it be excluded? Under the old rules, none would be excluded since the \$20 unearned income disregard, for income received on an irregular basis, was already applied to the free food (see above). However, under the new SSI income rules, one could argue it is all part of the same unearned income received on an irregular or infrequent basis, and subject to the \$60 per quarter exclusion. Therefore, none of the additional \$20 cash would be counted against her SSI benefits.

Will the payment of Maria's phone bill affect her SSI? The \$28 payment for Maria's

phone bill will not be treated as income to her and will not affect her SSI check. This is because this payment does not meet SSI's definition of in-kind income (i.e., something other than cash that can be used to meet her needs for food or shelter). This also falls into what SSI calls "non-income items," as bills paid to a third party for something other than food or shelter.

How will all this affect Maria's SSI check?

Under the old rules, Maria would have had \$392 in unearned income: \$357 SSDI benefits; \$15 in donated food (\$35 - 20 irregular income deduction); and \$20 in donated cash. The first \$20 of the \$392 would have been disregarded, leaving \$372 in countable unearned income. That would have been deducted from the SSI rate of \$666 (living alone) and the SSI check would have been \$294 for that month. Under the new rules, there will be no impact on her SSI benefits because the combined food (\$35) and cash gift (\$20) fall within the \$60 per quarter for income received on an irregular or infrequent basis. Maria will continue to get a \$329 SSI check and automatic Medicaid.

KATHERINE'S GIFT OF A SOFA; MARIA'S GARAGE SALE

It is now November 2005 and Katherine gives Maria a new sofa, worth \$320, to replace her well-worn sofa. Maria decides to have a garage sale to sell the old sofa, some used clothing that no longer fits her, and some other household items which she no longer uses. She does very well at the garage sale and takes in \$245. She uses the \$245 to pay two neighborhood kids \$10 each for helping her with the sale; spends \$8 for a felt picture of Elvis that is sold by a neighbor in her garage sale; and uses the remaining money (\$217) to purchase badly needed clothing.

Will the gift of the sofa affect Maria's SSI? The gift of the sofa will not be treated as income to Maria and will not affect her SSI. This is because this payment does not meet SSI's definition of in-kind income (i.e., something other than cash that can be used to meet her needs for food or shelter). This also falls into what SSI calls "non-income items," as bills paid to a third party for something other than food or shelter.

Will the proceeds from the garage sale affect her SSI? The proceeds will not be treated as

income to Maria and will not affect her SSI. The money received for the sale or replacement of a resource (in this case, the sale of used furniture, clothing, and household items) is not counted as income. One resource has just been exchanged for another form of resource, in this case for money.

The \$217 that remains from the proceeds of the garage sale will count toward SSI's \$2,000 resource limit for one person. So long as the \$217 combined with other non-exempt resources remains at or below \$2,000, Maria's SSI eligibility would not be affected.

The felt picture of Elvis will not count as a resource, even if it is worth a bit more than the \$8 Maria paid for it. A picture will be classified under household goods or personal effects. As of April 1, 2005, the SSI program will no longer place a dollar limit on the value of household goods and personal effects (the limit had been \$1,500). So long as the Elvis picture is not some expensive collectible that Maria is holding as an investment, she need not worry about it affecting her SSI eligibility.

What if Katherine accompanied Maria to the clothing store and paid for the \$217 in clothing? Will the free clothing affect Maria's SSI checks? If Katherine provides Maria with free clothing, there will be no effect on Maria's SSI benefits. This is because under the new income rules, SSI no longer considers clothing as a form of in-kind income. Again, effective April 1, 2005, the SSI program only considers food and shelter in its definition of income.

INHERITANCE FROM AUNT SUSIE

Maria's Aunt Susie died during 2005. In her will she left her 2003 Ford Taurus to Maria, but did not leave her any money or any other items. Susie's will left \$14,000 to Katherine. A note, signed by Aunt Susie but not an enforceable part of the will, was delivered to Katherine, following Susie's death, saying that part of the \$14,000 should be used to pay for Maria's car insurance on the 2003 Taurus for one year.

Following probate of the will, Maria receives title to the 2003 Taurus in December 2005. The fair market value of the car is \$14,000. Katherine also receives her inheritance of \$14,000 the same month and uses \$1,200 of that money to directly

pay an insurance company for the first year's worth of insurance premiums for Maria's Taurus.

Will the receipt of the Taurus affect Maria's SSI? The car meets SSI's definition of a resource. It is personal property owned by Maria that she could convert to cash which could be used to provide for food or shelter. Under the old pre-April 1, 2005 rules, the car could have been fully excluded (not counted against the \$2,000 resource limit) if used to travel to medical appointments, to travel to work, or if specially modified to accommodate a disability.

Under the new rules, the auto will still meet the definition of a resource. However, effective April 1, 2005, one auto will be excluded, if it is used for the transportation needs of the person on SSI or a family member. This means that the Ford Taurus will not affect Maria's SSI eligibility even if she does not need it to travel to work or to medical appointments.

Will Katherine's payment for the insurance affect Maria's SSI? Katherine's payment for the insurance will not be treated as income to Maria and will not affect her SSI. This is because this payment does not meet SSI's definition of in-kind income (i.e., it cannot be used to meet her needs for food or shelter). This also falls into what SSI calls "non-income items," as bills paid to a third party for something other than food or shelter.

What if, instead of receiving the Taurus, Maria received \$14,000 as an inheritance and promptly went out and bought a Taurus with the money? If Maria received the \$14,000 outright, it would be treated as income in the month of receipt and a resource in later months. Maria would lose her SSI for at least one month. If she immediately spent the entire \$14,000 on a car, we then need to look at the analysis above. As long as the full value of the car is treated as an exempt resource (and it will as long as she uses it for transportation), Maria's period of ineligibility for SSI will last only one month.

What if Katherine did not pay the insurance company directly? Assume Katherine did not pay for the insurance, but gave the \$1,200 directly to Maria saying: "Aunt Susie wanted you to use this for insurance, but you will have to decide how to use the money." Maria uses \$500 to pay for the first six months of insurance premi-

ums, and uses the other \$700 to pay off bills. How would these events affect her SSI?

Under the facts, Katherine has given Maria the \$1,200 with a suggestion for its use. In reality, there are no strings attached to the \$1,200. Therefore, it will be treated as income in the month it is received as it is available to meet Maria's needs for food or shelter. Since the income does not come from earnings, it will be unearned income and will make Maria ineligible for SSI for at least one month. (The infrequent unearned income rule would apply but would be of limited value since the total is a lot more than \$60.) In later months it will be treated as a resource and will not affect Maria's SSI eligibility so long as the \$1,200 combined with other non-exempt resources is \$2,000 or less.

MARIA STARTS WORKING FOR KATHERINE

Maria has continued to receive the \$357 in SSDI benefits and an SSI supplement. In January 2006, she starts working for Katherine in her small shop where Katherine sells hand-crafted stained glass lamps and jewelry. Maria works 12 hours per week, making \$7 per hour. She is paid every two weeks, earning \$168 gross and taking home \$130.

How will the wages affect Maria's SSI? The gross pay that Maria receives each month will count as earned income. Since Maria is paid every two weeks, in most months she will get two paychecks. Every six months she will have a third paycheck. Therefore, her gross pay is \$336 in two-paycheck months and \$504 in three-paycheck months.

Now, we must do one calculation to determine countable unearned income and a separate calculation to determine countable earned income. We can make a user-friendly SSI Budget Worksheet available to our readers to make this budgeting process easier. Call us at 1-888-224-3272, toll free, to request a copy of the budget worksheet.

The SSDI, as unearned income, will be reduced by \$20 to \$337 ($\$357 - 20$). For earned income, we will use the figure of \$336 for two paycheck months and \$504 for three paycheck months. With the SSI program excluding the first \$65 and 50 percent of the remaining gross monthly income, her countable earned income in

most months will be \$135.50 ($\$336 - 65 = \$271 \div 2 = \135.50). Combined with the \$337 in countable unearned income, she now has \$472.50 in countable income reducing her monthly SSI check to \$193.50 ($\$666 - 472.50$).

MARIA STARTS MAKING NECKLACES AT HOME

During January 2006, Maria learned from Katherine how to make some of her better selling necklaces. Katherine agreed that Maria could make them at home, working on her own schedule. Katherine agrees to pay Maria \$12 for each necklace made. Maria makes 10 necklaces in February 2006 in addition to working in the shop, making an additional \$120 in gross pay. Katherine provides the tools and supplies for this work and treats this as part of Maria's employment (we will not treat this as self-employment). In February, in addition to working 12 hours per week at \$7 per hour, Maria makes the extra \$120 working at home.

How will the additional \$120 from the work at home affect Maria's SSI? The additional \$120 will be treated as earned income and added to the gross earned income that Maria is already making. Now, her gross earned income will be \$456 in two-paycheck months and \$624 in three-paycheck months. Using the same formula used above, for a two-paycheck month, Maria's countable earned income will now be \$195.50 ($\$456 - 65 = \$391 \div 2 = \195.50). Combined with the

WHEN TO CALL OUR TOLL-FREE LINE FOR TECHNICAL ASSISTANCE

Our State Work Incentives Support Center offers a statewide, toll-free number to call for information and technical assistance on a wide range of issues involving benefits and work. The staff of Neighborhood Legal Services is available to take calls concerning any of the topics you see discussed in these newsletters. For example, if a caller seeks information about any of the information discussed in this article, you can call us at 1-888-224-3272 for more information on these issues.

\$337 in countable unearned income from her SSDI check (\$357 - 20), she now has \$532.50 in countable income reducing her monthly SSI check to \$133.50 (\$666 - 532.50). (We are using 2005 SSI rates for all calculations.)

MARIA GETS A LUMBAR-SUPPORT CHAIR

Maria continues to make the necklaces at home, but struggles to make more than 10 of them working at her kitchen table. In addition to her emotional disability, Maria also has arthritic pain in her lower back from an old injury. Sitting on a kitchen chair to do this work aggravates the pain and, as a result, she can only make 10 necklaces per month.

Maria tells her doctor about the lower back pain and the doctor prescribes a special chair with lumbar support. The chair will cost \$240. Katherine agrees to buy the chair and allow Maria to pay off the \$240 at \$60 per month by deducting the \$60 from her paycheck. Maria receives the chair in late March 2006, with Katherine agreeing to reduce her pay by \$60 per month during April, May, June, and July to recover the \$240.

Maria starts using the lumbar chair in April and can now work much longer before the back pain starts to bother her. She now makes 20 necklaces in April 2006 and earns \$240 for working at home. She continues to work 12 hours per week in the store for \$7 per hour.

Can Maria deduct the cost of the chair as an impairment related work expense? Under these facts, the payment for the chair meets the three-part test for an impairment related work expense (IRWE): 1) Maria pays for it; 2) it is related to her disability (or, effective with a March 26, 2004 policy change, is related to some medical impairment for which she is being treated); and 3) she could not do the extra work without incurring the expense to obtain the item. Since Maria is paying off a loan for the chair by making payments of \$60 per month, she is entitled to a \$60 IRWE deduction each month for four months.

How will Maria's SSI check be affected by her increased income and expenses incurred during April? Maria now has unearned income of \$357 from SSDI and earned income of \$576

(\$336 for work in the store, \$240 for the necklaces). She would have an extra \$168 from the store if it was a three-paycheck month. We do the budget the same way as above, but now subtract the \$60 per month as an IRWE. Maria's countable earned income will now be \$225.50 (\$576 - 65 - 60 = \$451 ÷ 2 - \$225.50). Combined with the \$337 in countable unearned income from her SSDI check (\$357 - 20), she now has \$562.50 in countable income reducing her monthly SSI check to \$103.50 (\$666 - 562.50). Because the \$60 IRWE is deducted before the additional 50 percent exclusion, the actual reduction in countable income (and resulting increase in SSI payment) is one-half that amount or \$30.

VESID PAYS FOR JEWELRY MAKING COURSE, EQUIPMENT, SUPPLIES, AND LUMBAR SUPPORT CHAIR

Let's change the facts. Katherine does not purchase the \$240 chair for Maria. However, the Office of Vocational and Educational Services for Individual with Disabilities (VESID) agrees to provide the chair and pays for it during June 2006. VESID also agrees to pay for Maria to attend a six-week, jewelry making course; and to purchase equipment and supplies so that she can expand her jewelry making at home. Continue to assume that Maria will increase her productivity by using the special chair.

Can she deduct the cost of the chair as an IRWE? Maria will not be able to deduct the cost of the chair as an IRWE because she has not paid for the item herself.

When VESID pays for the jewelry-making class, the equipment, and supplies, will any of these payments be counted as income to Maria? VESID's payment for these items will not be treated as income to Maria and will not affect her SSI. This is because this payment does not meet SSI's definition of in-kind income (i.e., something other than cash that can be used to meet her needs for food or shelter). This also falls into what SSI calls "non-income items," as bills paid to a third party for something other than food or shelter.

Will the equipment and supplies count toward Maria's \$2000 resource limit? Under the current rules, SSI will no longer consider household goods and personal effects when

determining countable resources. However, if SSI determines the equipment and supplies do not meet the definition of household goods and personal effects, can these resources be excluded? Yes, this would be excluded as property essential for self-support. In this case, it is essential for self support because it will be used by Maria in her trade or business.

CONCLUSION

This article has provided a practical application of SSI's income and resource rules, to supplement the more technical description of those rules presented in our previous newsletter. As always, readers should call our toll-free work incentives hotline if they have questions about any of the topics discussed in this article.

The Technical Assistance Corner

Question: *I receive \$700 per month in SSDI benefits based on my long-term mental illness. I started working last year and finished my nine-month trial work period last month. Since I have been making about \$880 in gross wages per month, I understand this would ordinarily be considered substantial gainful activity (SGA) as it is more than \$830 per month. My employer allows me to use a full sick day each month to attend weekly visits with my mental health counselor. I also use at least one paid vacation day each month to make sure that I limit my work-related stress. When the Social Security Administration (SSA) looks at my wages to see if I am performing SGA, will they count the money I make as sick time or vacation time? I am concerned about whether I will soon lose my SSDI benefits.*

Answer: You are correct that SSA considers \$830 per month to be SGA in 2005 (the amount would be \$1,380 if you are legally blind). This means that if SSA counted your full \$880 per month against the SGA rule, you would soon begin to lose your monthly SSDI checks.

In our Summer 2004 newsletter, we explained in detail how these rules work. We explained that during the nine-month trial work period, you continue to get SSDI checks no matter how much you make. If you are earning at the SGA level the month after the trial work period ends, you will get benefits for three more months (a grace period). You will then be in your extended period of eligibility (EPE) for the next 33 consecutive months. During the EPE, you will get an SSDI check for any month when your gross countable wages are below the SGA amount; you will not get a check for any month when your gross countable wages are more than the SGA amount.

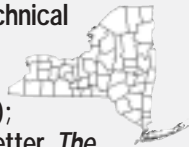
We have got good news for you! SSA has a special policy covering vacation and sick pay. This appears in SSA's policy manual at POMS DI 10505.010 C. It provides:

When evaluating earnings for substantial gainful activity purposes, consider only earnings derived from actual work activity for the month under consideration. If the individual receives sick or vacation pay for non-work days in a particular month, that pay should not be considered countable income for that month.

Based on what you have told us, you earn about \$40 per day in gross wages. This would mean that if you used one sick day and one vacation day in a month, your gross countable wages, for SGA purposes, would be reduced to \$800 per month (\$880 - 80). At \$800 per month, you would not be performing SGA. If this is your situation every month, it appears that you will not face a loss of your SSDI benefit during the foreseeable future.

We suggest that you contact the Benefits Planning, Assistance and Outreach (BPAO) project in your region for assistance. If you call our toll-free work incentives hotline at 1-888-224-3272, we'd be happy to provide you with the phone number for the BPAO project in your area.

The NY State Work Incentives Support Center will provide statewide services, including: training through traditional means and through use of the latest technology for distance learning; a toll-free technical assistance line, 1-888-224-3272 (English and Spanish); and a quarterly newsletter, *The Benefits Planner*. To subscribe to the Center's listserv, send your name and email address to tpg3@cornell.edu. To request a print copy of this newsletter, contact the toll-free number above.



Welcome to *The Benefits Planner*, a Quarterly Newsletter of the NY State Work Incentives Support Center

This newsletter will provide valuable information on how work for persons with disabilities affects government benefits, with an emphasis on the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) work incentives. Each newsletter will contribute to an ongoing dialogue on topics related to benefits and work. Back issues will appear on the Cornell University website, www.ilr.cornell.edu/edi/BenefitsPlanners.cfm and on the Social Security section of the Neighborhood Legal Services website, www.nls.org.

If you have special needs and would like *The Benefits Planner* sent in a special format, would like our Spanish version or would like the newsletter delivered by email, please call our toll-free technical assistance line, 1-888-224-3272.

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