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Special Features

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THE BENEFITS PLANNER

KEYS TO EFFECTIVE BENEFITS PLANNING, ASSISTANCE AND OUTREACH

SSI'S INCOME AND RESOURCE RULES REVISED

Working With The Revised Rules To Ensure Eligibility For SSI And Medicaid

The Supplemental Security Income (SSI) program provides cash benefits to individuals with disabilities who have limited income and resources. By contrast, the Social Security Disability Insurance (SSDI) program provides cash benefits to individuals with disabilities when a wage earner has paid into the Social Security trust fund through payroll deductions. In New York, receipt of SSI cash benefits guarantees automatic eligibility for Medicaid.

The Fall 2002 issue of the *Benefits Planner* discussed the SSI income and resource rules in effect at that time. However, in January 2004, the Social Security Administration announced a number of proposed regulations to "simplify" the process of determining financial eligibility for SSI. In March 2004, the Social Security Protection Act of 2003 was signed into law. The final regulations were published in February 2005: Fed. Reg., February 7, 2005 (Volume 70, Number 24), pp. 6340-6345, available online via GPO Access (www.gpoaccess.gov/fr/retrieve.html; then search by page number). The new rules and legislation include a number of significant changes, many of which become effective in March 2005.

Due to the recent changes in the laws governing SSI's income and resource rules, there was a need to provide our readers with updated information. Other previous issues of the *Benefits Planner* discussed the rules governing how wages affect eligibility for cash benefits and Medicaid. For example, our Spring 2001 issue explained the SSI formula for counting wages; the Fall 2001 issue explained how former SSI recipients, who lose cash benefits when wages get high enough, can retain Medicaid under the 1619(b) program. (All previous issues of the *Benefits Planner* are available on

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NEIGHBORHOOD LEGAL SERVICES, INC.

the Neighborhood Legal Services website at *www.nls.org/tocplanr.htm.*) We have also explained how the new Benefits Planning, Assistance and Outreach (BPA&O) projects (see box, p.135) can assist beneficiaries to understand these rules.

Because SSI is a needs-based program, the income and resource rules affect both initial eligibility and continuing eligibility for benefits. They also affect eligibility for continued Medicaid under the 1619(b) program. Although earned income or wages can be ignored in determining eligibility for continued Medicaid under section 1619(b), to be eligible for 1619(b) Medicaid an individual must still be "otherwise eligible" for SSI cash benefits. If the individual would be ineligible for SSI in any event because of either resources or unearned income that is too high, he or she would not be eligible for 1619(b) Medicaid. [See box, p.132, explaining the 1619(b) program.]

This article will summarize SSI's income and resource rules. We will explain how those rules affect eligibility for SSI, the SSI check amount, and continuing eligibility for Medicaid under section 1619(b). See areas in bold for specific information on the recent rule changes. This article should be viewed as a full replacement of our Fall 2002 edition of the newsletter.

THE SSI PROGRAM'S TREATMENT OF INCOME

The amount and type of income received by an individual will determine both income eligibility and the monthly benefit amount. Income is counted on a monthly basis. It is counted when it is received by the recipient, when it is credited to the recipient's account, or when it is set aside for the recipient, whichever is earliest. Generally, any money that an individual receives in a month is counted as income in that month, subject to the definition of income. If held until the following month, it is subject to SSI's resource rules.

The higher the countable monthly income, the lower the SSI check. When countable monthly income exceeds the applicable SSI base rate, the SSI benefit is reduced to zero. When this happens, the individual is not financially eligible for SSI and is not eligible for a payment. If the recipient becomes ineligible for an SSI check because of earned income, but would otherwise be eligible for an SSI payment, he or she is probably eligible for continued Medicaid under the 1619(b) program (see box, p.132). Benefit payments may be resumed in the case of a 1619(b) recipient, when the individual is again eligible based on income, even if the individual was ineligible for a cash benefit for 12 months or longer.

When an individual is ineligible for SSI because of unearned income (or earned income that is too high for 1619(b) eligibility), but would otherwise be eligible for SSI payments, eligibility will be suspended rather than terminated. Benefit payments may be resumed without a new application when the individual is again eligible based on income, unless the suspense period continues for 12 consecutive months. In the latter case, a new application would be required to establish SSI eligibility.

Income Defined

Historically, income was defined by SSI as anything an individual receives in cash or in-kind that can be used either directly, or indirectly (e.g., by selling), to meet basic needs for food, clothing or shelter. 20 C.F.R. § 416.1102. This broad definition included cash, wages, government benefits, and food, clothing or shelter provided by someone else. To calculate whether an individual is eligible for SSI, we must determine the amount and type of their income, and determine what part of it is "countable." **However, effective March 9, 2005, SSI will no longer include clothing in the definition of income.**

Countable income will be subtracted from the appropriate SSI rate to calculate the monthly SSI check. New York's 2005 SSI rates are: $666 for persons who live alone, $602 for persons who live with others and share expenses, and $409 for persons who live with others but do not contribute to household expenses. These are called "base rates," since SSI often supplements other forms of income.

SSI's Treatment of Earned and Unearned Income

The Social Security Administration (SSA) classifies income as earned or unearned. Each type of income is treated very differently. The SSI program will allow a $20 disregard from unearned income to determine what is subtracted from the base rate. By contrast, it will disregard the first $65 of earned income ($85 if there is no unearned income) and 50 percent of remaining earned income. What is left is subtracted from the base rate.

Under the old rules, nonrecurring income received in the first month of SSI eligibility used

to count against the first three months of benefits. Effective March 2005, the nonrecurring income will only be counted as income in the first month. Also, under the new rules, the exclusion of irregular or infrequent income and certain interest or dividend income will increase from $20 per month for unearned income to $60 per quarter. The exclusion of irregular or infrequent income will increase from $10 per month for earned income to $30 per quarter. In addition, under the new rules all interest and dividend income on countable resources, such as checking and savings accounts, will be excluded.

Earned income is income from work, including gross wages, salary and tips. It also includes net earnings from self-employment. Sheltered workshop wages are classified as earned income and must be considered in determining SSI income eligibility and benefit amount.

If an SSI recipient works, the first $65 earned each month is not counted (or $85 if there is no unearned income). The SSI check is then reduced by $1 for every additional $2 in gross monthly wages. For example, a recipient with gross monthly wages of $385 and no unearned income would have his or her benefit amount calculated as follows. First, as there is no unearned income, the first $85 would not be counted leaving $300 in countable wages. Second, the countable income would be reduced by $150, half of the remaining gross wages. Thus, an individual living alone would have his or her $666 SSI check reduced by $150 ($666 - 150 = $516) when they have $385 in gross monthly wages. Using the same formula, an individual with $685 in gross monthly wages will have $300 in countable income and receive a $366 SSI check.

Proponents of a more generous earned income exclusion argue that this "one-for-two" reduction is not enough of an incentive to encourage many SSI recipients to work. The exclusion may not totally cover the extra expenses many incur to work, including payroll taxes, transportation, new clothing, and childcare. In some cases, the current earned income exclusions are also offset by reductions in other public benefits, such as welfare benefits, food stamps and housing subsidies, which are caused by increased earnings. (See the Spring 2001 issue of the *Benefits Planner* for an explanation of special SSI rules that were tested in the *NY Works* research demonstration project in Erie County and New York City. For example, for *NY Works* participants the first $65 and 75 percent of remaining earned income was disregarded in calculating the SSI check amount. The *NY Works* Project ended in September 2004.)

SSI'S REGULATIONS GOVERNING INCOME AND RESOURCES

Income regulations

20 C.F.R. §§ 416.1100 - 416.1124.

Resource regulations

20 C.F.R. §§ 416.1201 - 416.1266.

In addition to the $65 plus 50 percent of remaining earned income that is always disregarded, the SSI program will also disregard: impairment related work expenses; blind work expenses; income that is set aside in an approved Plan for Achieving Self Support; and, in the case of students under age 22, up to $1,410 per month and $5,670 per year as a student earned income exclusion. **Effective March 2005, the student earned income exclusion will be extended to married students and those who are heads of households.**

Unearned income is income from non-work sources, including Social Security benefits, child support, alimony, interest on bank accounts, annuities, Veteran's Administration benefits, workers' compensation, and unemployment insurance benefits. It also includes gifts, inheritances and income "deemed" from a responsible parent or spouse. Finally, rental income that cannot be considered a part of a trade or business is unearned income.

Effective June 2004, cash gifts received that are used for paying tuition or educational expenses will be excluded from income. In addition, grants, scholarships, fellowships, or gifts to be used for tuition or education fees will be excluded from an individual's countable resources for 9 months after the month of receipt.

Until March 2004, a person only had six months to "spend down" retroactive SSI and SSDI benefits. Often this put considerable emotional pressure on the

SECTION 1619(B) MEDICAID

Special Rules Allow Former SSI Recipients to Keep Medicaid After Losing SSI Due to Wages

Section 1619(b) allows a working SSI disability recipient to remain eligible for Medicaid when earnings become too high to allow SSI cash payments. For example, in 2005 an individual who lives alone and receives SSI at the monthly rate of $666 would lose SSI if gross wages are $1,416 or more per month. In New York, for calendar year 2005, if the gross annual wages of a former SSI recipient are less than $37,575, the individual will continue to be eligible for Medicaid under 1619(b) so long as the other 1619(b) criteria are met. Some former SSI recipients can retain Medicaid at even higher levels of income when their medically related expenses are high enough. [See Fall 2001 and Summer 2003 issues of the *Benefits Planner* for a more detailed discussion of section 1619(b).]

The 1619(b) provisions are important because many employers either do not provide health insurance or the insurance they do provide does not cover expensive items like home health care services or prescription drugs. The 1619(b) provisions are also important because they allow an individual to retain their SSI status or a connection to SSI. This means, for example, that a 1619(b) recipient who lives alone can return to cash benefits status when their gross wages fall below $1,416 per month.

If you have questions about section 1619(b), call the Work Incentives Support Center's technical assistance line, toll free, at 1-888-224-3272.

person receiving such money. **Now, the time period to "spend down" retroactive SSI or SSDI benefits has been increased to nine full calendar months. In addition, the nine-month spend down provision applies to federal income tax refunds for child tax credits, and federal income tax refunds or employer advance payments for earned income tax credits.**

The SSI program will allow a $20 per month general or unearned income exclusion. The balance of unearned income reduces the SSI payment dollar for dollar. For example, an individual who lives alone and receives $385 per month in unemployment insurance benefits (UIB) will receive a $301 SSI supplement. The SSI program will disregard the first $20 of UIB ($385 - 20 = $365) and subtract the remaining $365 from the base rate ($666 - 365 = $301) to determine the SSI check amount. If the same individual receives $695 in UIB, the SSI check would be reduced to $0 per month. Using the same formula, SSI would reduce the countable income from $695 to $675. Since $675 is higher than the $666 base rate, the individual is not entitled to an SSI check.

Income deeming is the process of considering a portion of another person's income as the unearned income of an SSI recipient for the purpose of determining eligibility and payment amount. Deeming is an attempt to recognize societal duties of support between persons in a given relationship, i.e., spouse-to-spouse, parent-to-child, and even stepparent-to-stepchild. The deemed income reduces the SSI benefit of the recipient, or eliminates financial eligibility, depending on the amount. The premise is that these recipients have less need for SSI.

Unfortunately, the deeming rules apply regardless of whether the income of the spouse, parent, or stepparent is actually available to the SSI recipient, making deeming a very harsh rule in some cases. For example, a stepparent who lives with an SSI recipient stepchild will have his or her income considered available, or deemed to the stepchild without considering whether the stepparent is paying out hundreds of dollars each month in child support and alimony payments based on a previous marriage. Keep in mind that deeming will <u>not</u> apply when the spouse, parent, or stepparent does not reside in the same household as the SSI recipient. Also, keep in mind that the parent or stepparent's income will no longer be deemed once a child is 18 years old.

SSI'S TREATMENT OF RESOURCES

Resources are defined as "cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance." 20 C.F.R. § 416.1201. The individual must have an ownership interest in the property, a legal right of access to the property, and the legal ability to use it for personal support and maintenance before an asset will be considered a resource. The resource is counted or excluded "as of the first moment of the month." *Id*. § 416.1207(a). SSI eligibility for an individual or a couple depends in part on their resources. The general rule is that an item received in a month is income and, unless spent, becomes a resource in the following month. *Id*. § 416.1207(d).

If an individual has no more than $2,000 in countable resources, or a couple has no more than $3,000 in countable resources, the individual or couple is within the resource limit. These resource limits make it difficult for individuals to save money for things that will allow them to become more independent.

Liquid resources are cash or other property which can be converted to cash within 20 working days. Some types of liquid resources include stocks, bonds (U.S. Savings Bonds are not considered a resource during the six-month minimum retention period), promissory notes, mortgages, the cash surrender value of life insurance policies with a face value of more than $1,500, and bank accounts.

Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 working days. Except for automobiles, the equity value of the nonliquid resource is countable. Some types of nonliquid resources include automobiles, trucks, tractors, boats, machinery, livestock and buildings, and land. In the past, personal and household goods were considered countable nonliquid resources.

Both liquid and nonliquid resources are, with some exceptions, valued at equity value, rather than market value. Equity value is defined as "the price that item can reasonably be expected to sell for on the open market in the particular geographic area involved, minus any encumbrances." *Id*. § 416.1201(c)(2). In other words, SSA counts as a resource only the balance of money that would be left over if the individual sold the item and paid off all the debts, liens or other obligations owed on the item. For example, if an SSI recipient owns a boat appraised at $6,000 with a $5,000 unpaid balance on a loan that is secured by a lien on the boat, the equity value of the boat is $1,000. In that case, the $1,000 equity value of the boat will count toward the $2,000 SSI resource limit for this individual.

Resources owned by more than one person may be subject to various types of ownership restrictions that may affect whether the resource is counted. For example, a husband and wife may jointly own a piece of property, and, therefore, one spouse cannot sell the property without the consent of the other. In this type of a situation, when permission to sell is withheld by the joint owner, the property cannot be included among the resources to be counted when determining SSI eligibility. If the resource, however, is a jointly held account at a financial institution, SSA applies the following presumptions of ownership:

- If both account holders are SSI recipients, SSA presumes equal shares of ownership.
- If only one of the two account holders is an SSI recipient, SSA presumes 100 percent ownership by the recipient.
- If no account holders are SSI recipients but one is an individual whose resources may be deemed to an SSI recipient, SSA presumes equal shares of ownership between the deemor and the other account holder.

SSA allows the holders of joint accounts to rebut SSA's ownership presumptions by providing ownership statements from other account holders, documents showing account activity, and proof that the individual has either separated his or her own funds from those of the other account holder or corrected the title of the account.

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.

Resource Exclusions

Excluded resources are not counted in determining SSI eligibility for applicants and recipients. While there are many resource exclusions, we will focus on those most likely to affect working individuals with disabilities. For a full list, see chapter 2 of *Benefits Management For Working People With Disabilities: An Advocate's Manual*.

The recipient's home is excluded as a resource regardless of its value. If the home is sold, the proceeds are excluded if the recipient uses them to buy another home within three months from the date of receipt of the sale proceeds.

In the past, furniture, clothing and personal items were excluded if the total equity value was $2,000 or less. One wedding ring and one engagement ring was excluded from the total value of personal effects as well as items or equipment required because of a person's physical condition.

Under the new rules, effective March 9, 2005, SSI will no longer consider household goods and personal effects when determining countable resources. Household goods include items of personal property, found in or near the home, that are used on a regular basis; or items needed by the householder for maintenance, use and occupancy of the premises as a home. Such items include but are not limited to furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes. Personal effects include items of personal property ordinarily worn or carried by the individual or articles otherwise having an intimate relation to the individual. Such items include but are not limited to personal jewelry, including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments. SSI will not count as resources items of cultural or religious significance to an individual and items required because of an individual's impairment. **However, SSI will continue to count items that were acquired or are held for their value or as an investment.** Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles. Such items will be subject to the limits in section 416.1205 of the regulations.

In the past, one automobile was excluded regardless of its value <u>if</u> the recipient or a household member needed it for employment, for travel to medical appointments, or if it was modified for use by a person with a disability. If no automobile could be totally excluded, one automobile was excluded to the extent that its current market value (<u>not</u> equity value) did not exceed $4,500. The same rule applied if one automobile is totally excluded but the family has two automobiles. Then the second vehicle would be subject to the $4,500 limit. **Under the new rules, one automobile will be excluded, if it is used for the transportation needs of the person on SSI or a family member, regardless of whether it is needed for employment, medical visits, or has to be modified.**

SSA will not count the cash value of a life insurance policy if the total face value of life insurance owned by the individual (or his or her spouse) does not exceed $1,500 per individual. The face value of a policy is the amount the beneficiary gets when the insured person dies. The cash value is the amount the insured person can get if the policy is cashed in or borrowed against. If the face value of an individual's policy is more than $1,500, the cash value is counted as a resource. If an individual has previously borrowed against this policy, only the cash value, minus the loan is counted. Term insurance and burial insurance are not counted as resources as they have no cash value.

SSA excludes $1,500 in a burial account if the funds are set aside and kept separate from all other resources. Burial funds include revocable burial contracts, burial trusts, cash, accounts or other financial instruments with a definite cash value clearly designated for the individual's burial expenses.

SSA excludes the assets of a disabled individual set aside as necessary to fulfill an approved plan to achieve self-support (PASS). The written PASS must identify an occupational goal and designate the resources the individual has for the PASS and how these resources will be kept separate from other funds. The resources excluded are counted if the individual abandons or fails to follow the conditions of the plan, completes the time schedule, or reaches the goal outlined in the plan. The use of the PASS for excluding income is discussed above. (A more detailed discussion of the PASS appears in the Summer 2002 issue of the *Benefits Planner*.)

Deeming of Resources

SSA deems resources as being available to an SSI applicant or recipient in certain situations. Deeming a resource means that the resource is considered available to the individual whether or not it actually is available. Resources are at times deemed even when there is no legal duty to support.

Deeming from Ineligible Spouse to an Eligible Spouse: All the resources of an ineligible spouse over the resource limit for a couple ($3,000) are deemed available to an SSI applicant or recipient. Only one set of exclusions apply to a family unit (one home, one automobile, etc.). The pension funds of the ineligible spouse are not deemed to the eligible spouse.

Deeming from Parent or Stepparent of An Eligible Child: In determining the eligibility of a disabled child who lives with his or her parent(s) or stepparent(s), SSA combines the resources of the parents and the child. The combined resources are then subject to one set of exclusions (one home, one automobile, household goods up to $2,000, etc.). After all exclusions are applied, countable resources over $2,000, if one parent lives with the child, or $3,000, if both parents live with the child, are deemed to the child. The final step is to apply the child's $2,000 resource limit to the combination of the deemed resources and the child's own countable resources, if any. If those combined resources exceed $2,000, the child is financially ineligible for SSI. Finally, the pension funds of the ineligible parents are not deemed available to the eligible child.

CONCLUSION

SSI's income and resource rules often come into play when SSI recipients go to work. Many recipients will struggle as they try to determine how these rules will affect their right to continue receiving cash benefits and Medicaid. This means that BPA&O and other advocacy program staff, who work with recipients, will encounter many individuals who need assistance to understand these rules so they can manage their benefits when they are working.

A very important role that BPA&Os and other advocates can play, with respect to income and resource issues, is to work with recipients and SSA to foster better communication about the changes in income and other circumstances that may lead to problems in the future. With better reporting as well as a better understanding of the income and resource rules, many overpayments or suspensions of benefits due to resources can be avoided and the associated stress imposed on beneficiaries eliminated.

Benefits Planning, Assistance & Outreach Projects in New York

The following are the Benefits Planning, Assistance and Outreach (BPA&O) projects serving New York State and the contact persons for each office. The BPA&Os are funded by the Social Security Administration and are available to inform SSI and SSDI beneficiaries of the work incentives available to them and how going to work will affect their SSI, SSDI, Medicaid, or Medicare benefits.

Resource Center for Independent Living	Connie Angelini	315-797-4642	401-409 Columbia Street, P.O. Box 210, Utica, NY 13503-0210
Research Foundation for Mental Hygiene ("Brooklyn Works")	Olga Ivnitsky	718-368-7923	NY State Department of Labor 17-17 Avenue Z Brooklyn, NY 11235
Neighborhood Legal Services of Buffalo, Inc.	Krista McDonald	716-847-0650	295 Main Street, Room 495, Buffalo, NY 14203
Abilities, Inc., National Center for Disability Services	Leslie Monsen	516-465-1522	201 I.U. Willets Road, Albertson, NY 11507
Barrier Free Living, Inc.	Angela Caula	212-677-6668	270 East Second Street, New York, NY 10009
Queens Independent Living Center	Luis Rivera	718-515-2800	140-40 Queens Blvd., Jamaica, NY 11435
Independent Living, Inc.	Barbara Lohrke	845-565-1162	5 Washington Terrace, Newburgh, NY 12550

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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