



SSI Income & Resource Rules

I. Income

A. Definition

Anything received in cash or in kind that can be used to meet needs for food or shelter. [20 CFR 416.1102]. Effective April 1, 2005, clothing was eliminated from the definition of income and in-kind support and maintenance (ISM).

B. Earned Income [20 CFR 416.1110]

1. Gross wages—salaries, commissions, bonuses, severance pay and in-kind value of food or shelter
2. Net earnings from self employment
3. Wages received from sheltered workshop employment
4. Royalties earned in connection with the publication of an individual's work and honoraria received for services rendered. [42 USC 1382a(a)(1)(E); Policy Operations Manual Systems (POMS) SI 00820.450]
5. Funds withheld from earned income due to garnishment, to pay a debt or other legal obligation, or to make any other payments, will be counted.
6. Non-recurring income received in the first month of eligibility will only be counted as income in the first month, rather than the first three months because of modifications in retrospective monthly accounting (RMA)

C. Earned Income Exclusions [20 CFR 416.1112]

1. Earned income tax credits (EITC) [42 USC 1382a(b)(19); POMS SI 00820.400]
2. Income tax refund payments [20 CFR 416.1103(d)]
3. Up to \$30 per quarter of infrequent and irregular earned income
4. Student earnings (for students under age 22) up to \$1,640 per month but not more than \$6,600 in calendar year 2009. These amounts will increase by the cost of living in subsequent years.
5. Any portion of the \$20 general exclusion not applied to unearned income
6. \$65 per month
7. Impairment related work expenses (IRWEs) (applicable to both initial and continuing eligibility) [42 USC 1382(b)(4)(B)(ii); POMS SI 00820.540-.560]
8. One half (50%) of remaining earned income in a month
9. Blind Work Expenses (deducted after the 50% deduction, thereby providing a dollar for dollar savings)
10. Amounts set aside in a Plan for Achieving Self Support (PASS).

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11. Income compensation provided to volunteers by the Corporation for National and Community Service (CNCS) unless the compensation constitutes minimum wage under the Fair Labor Standards Act (FLSA) or applicable state law pursuant to 42 USC 5044(f)(1). See also 5 CFR 551.301.

D. Unearned Income [20 CFR 416.1121]

All income that is not earned income [20 CFR 416.1120].

1. Annuities, pensions and other periodic payments including [42 USC 1382a(a)(2)]:
 - a. Veteran's compensation and pensions (but not VA benefits paid to a fiduciary, see Social Security Ruling (SSR) 94-5p)
 - b. Social Security benefits
 - c. Railroad Retirement benefits
 - d. Private pension benefits
 - e. State disability benefits
 - f. Unemployment insurance benefits; and
 - g. Workers' compensation benefits.
2. Alimony and support payments
3. Certain royalties
4. Rental income, after ordinary and necessary expenses are deducted
5. Life insurance proceeds which exceed the amount spent for purposes of the deceased person's last illness and burial
6. Prizes and awards, including gambling and lottery winnings [POMS SI 00830.515]
7. Gifts and inheritances (see SSR 97-1p), except those used for purposes of a last illness and burial, and gifts used for paying tuition or education expenses
8. In-kind support and maintenance, for food, or shelter.

E. Counting Unearned Income [20 CFR 416.1123(b)]

1. Unearned income is counted when it is actually or constructively received. Non-recurring income received in the first month of eligibility will only be counted as income in the first month, rather than the first three months because of modifications in retrospective monthly accounting (RMA).
2. The Social Security Administration (SSA) will include, as unearned income, any amounts withheld by another program to recover an overpayment.
3. SSA also counts any amounts withheld because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as a Medicare payment. See *Robinson v. Bowen*, 828 F.2d 71 (2d Cir. 1987).
4. For veterans' benefits, amounts paid on behalf of a dependent are not counted as income to the veteran.

F. Unearned Income Exclusions [20 CFR 416.1124]

1. The first \$20 of unearned income received in a month
2. Needs based assistance wholly funded by state or city
3. Grant, scholarship or fellowship used for educational expenses, except for the portion used for room and board, and gifts used for paying tuition or education expenses
4. Home produce
5. Disaster relief assistance
6. Up to \$60 in unearned income in a quarter if it is received on an irregular or infrequent basis
7. Assistance for foster care of ineligible child
8. Interest on excluded burial resources
9. Home energy assistance
10. Any support or maintenance assistance based on need provided by a non profit organization. This can include groceries, meals (for example from a food pantry), clothing and even a rental subsidy paid directly to the landlord. [42 USC 1382a(b)(13); POMS SI 00830.605]
11. Federal relocation assistance
12. For child SSI recipients, one-third of support from an absent parent
13. Income which is set aside in an approved Plan for Achieving Self Support (PASS)
14. Interest earned on the value of agreements representing the purchase of burial spaces [POMS SI 00830.501]
15. Transportation tickets for domestic travel received as a gift [42 USC 1382a(b)(15); POMS SI 00830.521]
16. Monthly VA payments to Vietnam Veterans' children with spina bifida [POMS SI 00830.318].
17. Gifts to children with life threatening conditions retroactive to October 1996 [POMS SI 00830.750]. As of July 2005, SSA will exclude this income as long as the child is under 18 and the organization is tax exempt under section 501(c)(3) of the Internal Revenue Code. In order to be excluded, the gift must be in-kind and not converted to cash or a cash gift exceeding \$2,000 in a calendar year.
18. All interest and dividend income on countable resources is excluded, effective June 2004.
19. Income excluded by other Federal laws is updated to include payments to Native Americans under section 111 of the Michigan Indian Land Claims Settlement Act and payments under section 4 of the Cowlitz Indian Tribe Distribution of Judgment Fund.

G. Non Income Items [20 CFR 416.1103]

1. Medical care and services (includes VA payments for unusual medical expenses)
2. Social Services

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3. Sale or replacement of a resource (e.g., if you sell your automobile, the money you receive is not income, it is another form of a resource)
4. Income tax refunds
5. Money borrowed [SSR 92-8p]
6. Money received as repayment of a loan [SSR 92-8p]
7. Replacement of income already received
8. Bills paid for the SSI recipient for any non-food, or shelter item. This can include third party payments for home repairs, telephone bills and other items.
9. Weatherization assistance
10. Receipt of certain non cash items. This includes any item except food or shelter which would be excludable as a resource, e.g., household goods, automobile.
11. Flexible Spending Accounts (i.e., cafeteria plans) [POMS SI 00820.102]
12. All student financial assistance received under title IV of the Higher Education Act of 1965, or under BIA student assistance programs, is excluded from income and resources, regardless of use. Examples of title IV programs include: Pell grants, State Student Incentives, Academic Achievement Incentive scholarships, Supplemental Educational Opportunities grants, Upward Bound and Work-Study programs. [POMS SI 00830.455]

H. Special Income Exclusions

1. Payments made to victims of Nazi persecution [20 CFR 416.1124(b); POMS SI 00830.710; and see *Grunfeder v. Heckler*, 748 F.2d 503 (9th Cir. 1984)]
2. Payments to Japanese internees by the United States
3. Agent Orange settlement payments
4. State and local relocation assistance [42 USC 1382a(b)(18); 20 CFR 416.1124 (c)(18)]
5. Crime victim's compensation payments received from a state administered victim's assistance fund. [42 USC 1382a(b)(17); 20 CFR 416.1124 (c)(17)]
6. Alaska Longevity Bonus payments
7. Hostile fire pay
8. Interest or other earnings on a dedicated savings account which is excluded from resources (see section II. D. 13, below).
9. Vietnam War Era exclusions:
 - a. Payments to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations
 - b. Payments made to certain Vietnam veterans' children with spina bifida
 - c. Payments to children of female Vietnam veterans who suffer from certain birth defects.

II. Resources

A. Definition

Cash or other liquid assets or real or personal property that an individual owns and could convert to cash which can be used to provide for food or shelter. [20 CFR 416.1201(a)]

1. Individual must have:
 - a. An ownership interest in property;
 - b. A legal right to access to the property; and
 - c. The legal ability to use the property for personal support and maintenance before an asset will be considered a resource.
2. The resource is counted or excluded “as of the first moment of the month.” [20 CFR 416.1207(a)]
3. The general rule is that an item received in a month is income and, unless spent, becomes a resource in the following month. [20 CFR 416.1207(d)]
4. The general resource limit in 2009 is \$2,000 for an individual and \$3,000 for an eligible couple.

B. Liquid Resources

Cash or other property which can be converted to cash within 20 working days. Some types of liquid resources are listed at 20 CFR 416.1201(b) and include:

1. Stocks
2. Bonds

NOTE: U.S. Savings Bonds are not considered a resource during the six month minimum retention period. As of the first moment of the seventh month, however, they are considered a resource. If an individual has no access to the bonds, they are not considered a resource. [POMS SI 01140.240]
3. Promissory notes
4. Mortgages
5. Cash surrender value of life insurance policies with a face value of more than \$1500
6. Bank accounts:
 - a. SSA will presume that half the amount in a joint bank account actually belongs to the SSI recipient. This presumption can be challenged. [20 CFR 416.1208(c); POMS SI 01140.205; see also Gutierrez v. Bowen, 898 F.2d 307 (2d Cir. 1990)]
 - b. However, owners of individual accounts have no opportunity to rebut ownership. [20 CFR 416.1208(b)]

C. Nonliquid Resources

Property which is not cash and which cannot be converted to cash within 20 working days. The equity value of the nonliquid resource is countable, subject to any separate rule that would exclude it (see II.D below). Some types of nonliquid resources are listed

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at 20 CFR 416.1201(c) and include:

1. Automobiles
2. Trucks, tractors, boats
3. Machinery
4. Livestock
5. Buildings and land.

D. Exclusions From Resources [20 CFR 416.1210]

Resources not counted for purposes of the \$2,000 or \$3,000 limits:

1. Residential home regardless of value. Proceeds from the sale of a home remain excluded for three months if they are used to purchase another home. [20 CFR 416.1212(d)(1)] Promissory notes or installment contracts are all exempt if the proceeds go toward another home purchase. [20 CFR 416.1212(d)(2) & (d)(3)]. On December 9, 2008, SSA issued proposed regulations that would amend 20 CFR 416.1212(d) to extend the home exclusion to victims of domestic abuse who flee an abusive situation, but maintain an ownership interest in an otherwise excluded home. This exclusion would continue until the individual establishes a new principal place of residence or takes other action rendering the home no longer excludable. 73 Fed. Reg. 74.663.
2. Household goods and personal effects are no longer considered as resources effective April 2005
3. One automobile regardless of value will be excluded if it is used for the transport needs of the SSI recipient or a family member. [20 CFR 416.1218(b); see also POMS SI 01130]
4. Property essential for self support (\$6000/6% Rule): SSA may not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee [42 USC 1382b(a)(3)].
 - a. Property used to run a business is excluded.
 - b. Non business property, e.g., rental property, is still subject to the \$6000/6% rule which excludes the first \$6000 of property value if it generates at least 6% of its equity value in income.
5. Resources necessary to fulfill a Plan for Achieving Self Support (PASS)
6. Life insurance:
 - a. Term insurance (life insurance without cash surrender value) of any amount is excluded.
 - b. The cash surrender value of life insurance with a face value of less than \$1500 is excluded.
 - c. The cash surrender value of life insurance with a face value of more than \$1500 is counted.
7. Federal relocation assistance [20 CFR 416.1236(a)(1)]: State and local relocation assistance is excludable for nine months [20 CFR 416.1210(q), 416.1239]

8. Payments received as compensation for expenses incurred or loss suffered as a result of a crime are excludable for nine months after receipt. [20 CFR 416.1210(p), 416.1229]
9. Burial spaces [20 CFR 416.1231(a)]:
 - a. Burial spaces include conventional grave sites, crypts, mausoleums, urns and other repositories which are customarily used for the remains of deceased persons. [20 CFR 416.1231(a)(2)]
 - b. Burial spaces for the individual, the spouse, and the immediate family, including minor and adult children, brothers, sisters, parents, adoptive parents and the spouses of those individuals, are totally excludable regardless of value.
 - c. The value of a burial space agreement, including any accumulated interest, is excludable. [20 CFR 416.1231(a)(3)]
10. Burial funds up to \$1500 for an individual and \$3000 for a couple [20 CFR 416.1231(b)]:
 - a. Assets have to be designated as set aside separately for burial and cannot be used for any other purpose.
 - b. If funds are used for another purpose, the SSI recipient will only be penalized if inclusion of the spent funds puts the recipient over the applicable resource limit.
 - c. Interest earned on the burial funds will not be considered a resource. [20 CFR 416.1232(b)(7); 42 USC 1382b(d) (4)]
11. Retroactive SSI or Social Security benefit payments are excludable for nine months after receipt, as of March 2004:
 - a. Funds must be identifiable.
 - b. SSA must send notice of the nine month exclusion limitation. [20 CFR 416.1233]
 - c. Retroactive SSI benefits which exceed 12 times the monthly federal benefit rate must be paid in installments. [20 CFR. 416.545] Pursuant to the Deficit Reduction Act of 2006, effective May 8, 2006, past-due monthly SSI benefits that exceed three times the maximum monthly benefit (federal benefit rate + state supplemental payment) must be paid in up to three installment payments, 6 months apart, with the first two installment payments limited to three times the maximum monthly benefit. All remaining benefits are due to be paid in the third installment six months later. Each installment would be an excluded resource for nine months from the date of receipt.
12. For children under age 18, retroactive SSI benefits which exceed 6 times the monthly federal benefit rate must be deposited into a dedicated savings account. These funds are excluded from resources indefinitely as long as there is no commingling with any other funds. [20 CFR 416.1247]
13. Earned Income Tax Credits (EITC), excluded for nine months following receipt. [42 USC 1382b(a)(11); 20 CFR 416.1235]

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Resources / Deeming of Income and Resources

14. For disabled children under 18 who have a life-threatening condition, gifts from organizations like “Make-a-Wish” Foundation, up to \$2,000 in cash but no amount specified if in-kind. [42 USC 1382b(a)(13); see also 20 CFR 416.1210]
15. Replacement of lost, damaged or stolen excluded resources excluded for nine months from receipt, with the possibility of a nine month extension. [20 CFR 416.1232]
16. Assistance received on account of major disaster [20 CFR 416.1237]
17. Grants, scholarships, fellowships or gifts to be used for tuition or education fees not counted as resources for nine months after the month of receipt, effective June 2004
18. Restitution of Title II, Title VIII or XVI benefits because of misuse by certain representative payees

E. Other Exclusions From Resources

1. Agent Orange settlement payments
2. Payments to Japanese internees by the United States
3. German reparation payments to Holocaust survivors
4. Domestic travel tickets received as gifts [POMS SI 01120.150]
5. Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations
6. Payments made to certain Vietnam veterans’ children with spina bifida
7. Payments to children of female Vietnam veterans who suffer from certain birth defects
8. Any earnings, TANF matching funds and accrued interest retained in an Individual Development Account (IDA)

F. Trusts can be used to exclude cash resources if certain conditions are met:

1. Neither the principal nor the trust income can be available to the SSI recipient to meet needs for food and shelter.
2. The SSI recipient should not be the trustee. [POMS SI 01120.200]
3. SSA must notify children who receive Sullivan v. Zebley retroactive SSI awards that funds can be placed in trust within six months of receipt.
4. Trusts must be carefully drafted to comply with the Medicaid laws.

III. Deeming of Income and Resources

A. General Principles and Procedures, Income [20 CFR 416.1160-416.1169]

1. A portion of the income, both earned and unearned, of certain individuals must be counted as income of an eligible individual. This “deeming” of income applies to an individual’s spouse, parent(s), essential person or to an alien’s sponsor. This section will deal only with deeming of income from spouses and parent(s).
2. Generally, SSA applies the following steps to determine the amount of income to be deemed:

- a. SSA determines the total earned and unearned income of the individual whose income may be deemed.
 - i. Earned income includes wages, self employment income and sheltered workshop wages. [See Section I. B, above]
 - ii. Unearned income includes annuities, pensions, alimony, support payments, dividends, interest, royalties, rental income, life insurance proceeds, prizes, awards, gifts and inheritances. [See Section I. D, above]
- b. SSA then allocates and deducts the appropriate exclusion for each child who is not eligible for SSI benefits (ineligible child) in the household.
- c. The particular deeming rules (spouse, parent, etc.) are then applied.

B. Spouse to Spouse Deeming, Income¹ [20 CFR 416.1161 & 416.1163]

1. Spouse must not be eligible for SSI. (Note, if both spouses are disabled, use the applicable rate for a couple.)
2. Ineligible spouse must live within same household.
 - a. The income of a temporarily absent ineligible spouse may still be deemed.
 - b. Temporary absence is defined as leaving the household but intending to return and doing so within the same month or the immediately following month.
3. Determine ineligible spouse's total earned and unearned income.
4. Deduct an allocation from that sum for all ineligible children that live in the household.
 - a. The amount allocated for each ineligible child is one half the federal benefit rate (half of 2009 federal benefit rate is \$337) for an eligible individual.
 - b. Subtract any of the child's countable income from the allocation.
 - i. The ineligible child's income does not include earned income of \$1,640 a month, or less, up to a maximum of \$6,600 per year. [20 CFR 416.1161(c)]
 - c. No allocations deducted for children receiving public income maintenance payments (i.e., welfare, SSI, VA benefits based on need).
 - d. SSA deducts the allocation from the ineligible spouse's unearned income first. Any remaining allocation would then be deducted from earned income.
5. If the ineligible spouse's income after the appropriate allocation is not more than one half of the federal benefit rate for an individual, no income is deemed.
6. If the ineligible spouse's income is greater than one half of the federal benefit rate after all allocations, income from the spouse must be deemed to the individual.

¹ See pages 2-18 and 2-19 for an example with worksheet of spouse-to-spouse deeming.

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7. In deeming available income, first determine the claimant's benefit rate as if the ineligible spouse did not exist.
8. Do this by adding the claimant's own countable earned and unearned income and subtract from the SSI benefit rate for an individual (federal benefit rate for an individual plus applicable state supplement).
9. Then, combine the earned and unearned income of the eligible individual and the ineligible spouse (after allocations for ineligible children).
 - a. From the combined unearned income, deduct the \$20 general income exclusion to arrive at combined countable unearned income.
 - b. From the combined earned income deduct:
 - i. The balance of the \$20 general exclusion not offset by unearned income;
 - ii. The \$65 work expense exclusion
 - iii. Impairment related work expenses of the eligible individual and the ineligible spouse (if the ineligible spouse receives SSDI)
 - iv. One half the remainder
 - v. Blind work expenses if the ineligible spouse is blind.²
 - vi. Combine the countable earned income and countable unearned income and subtract any income used to fulfill a plan to achieve self support (PASS). This final number is the total countable income for the couple.
10. Deduct the total countable income from the SSI benefit rate (federal benefit rate for a couple plus state supplement for an individual, if only one in the couple is disabled).
11. Compare the claimant's benefit rate for an individual (#7 above) and the couple's benefit rate (#9 above). The claimant will receive the lesser of the two.

C. Parent to Child Deeming, Income³ [20 CFR 416.1161 & 416.1165]

1. Deeming of parental income only applies to children under the age of 18 who live in the same household as the parent(s).
 - a. The child must be unmarried and not the head of the household.
 - b. A parent is the natural or adoptive parent as well as a stepparent who lives in the same household as the child.
 - c. Deeming will not apply to children who: previously received a reduced SSI benefit while in a medical facility; are eligible for medical assistance under a Medicaid state home care plan (i.e., a Medicaid waiver); and would otherwise be ineligible for SSI because of deeming of parental income or resources. [20 CFR 416.1165(i)]

² See Chapter 3, Section III.G, "Blind Work Expenses as deductions from earned income."

³ See pages 2-16 and 2-17 for an example of parent-to-child deeming.

2. Deeming applies if the child is subject to parental control, even if the child is temporarily absent from the house attending school.
 - a. Temporary absence exists if the child comes home on weekends and on lengthy holidays and is subject to parental control.
 - b. According to SSA, parental control exists if parents have not legally relinquished parental rights. [SSR 82-11]
 - c. One District Court held, however, that a child living at a school was not under parental control since the school took care of the child's needs and development. *Parker v. Schweiker*, 551 F. Supp. 954, 956 (E.D.Pa. 1982).
3. Determine ineligible parent(s)' total earned and unearned income.
4. Deduct an allocation from that sum for all ineligible children that live in the household.
 - a. SSA deducts the allocation from the ineligible parent(s)' unearned income first.
 - b. The amount allocated for each ineligible child is one half the federal benefit rate for an eligible individual.
 - c. Subtract any of the child's countable income from the allocation.
 - d. No allocation is deducted for children receiving public income maintenance payments (i.e., welfare, SSI, VA benefits based on need).
 - e. Any remaining allocation would then be deducted from earned income.
 - i. The ineligible child's income does not include earned income of \$1,640 a month, or less, up to a maximum of \$6,600 per year. [20 CFR 416.1161(c)]
5. SSA deducts allocations for the ineligible parent(s). No allocation is deducted for ineligible parent(s) who receive welfare payments.
6. SSA then treats the remaining income as follows:
 - a. First deduct the \$20 general income exclusion from combined unearned income to arrive at countable unearned income.
 - b. From the combined earned income deduct:
 - i. The balance of the \$20 general exclusion not used to offset unearned income
 - ii. The \$65 work expense exclusion
 - iii. Impairment related work expenses if the ineligible parent receives SSDI
 - iv. One half of the remainder
 - v. Blind work expenses if the ineligible parent is blind
 - vi. The result is countable earned income.
 - c. Combine the countable unearned income and countable earned income to reach the total countable income.

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- d. The parental allocation to be deducted from the total countable income is the federal benefit rate for a couple, if both parents live with the child, or the federal benefit rate for an individual, if only one parent lives with the child.
7. The amount of parental income that remains after the allocations are applied is deemed to an eligible child as unearned income.
 - a. This sum is added to the child's own unearned income. [20 CFR 416.1124]
 - b. Subtract the \$20 general income exclusion.
 - c. Add any countable earned income the child may have, less appropriate exclusions (student earned income, \$65 work expense exclusion, impairment related work expenses, one half the remainder and blind work expenses).
 - d. From this countable income amount, subtract any income used to fulfill a PASS.
 - e. The result is total countable income.
8. Deduct the total countable income from the SSI benefit rate (federal benefit rate for an individual plus applicable state supplement) to determine the amount of benefits payable to the child.

D. Deeming of Resources [20 CFR 416.1202-416.1204]

1. As with income, the value of resources belonging to certain individuals is counted as a resource of the eligible individual whether or not the resource is actually available to the eligible individual, subject to applicable exclusions and limits.
2. Spouse-to-Spouse
 - a. All the resources of an ineligible spouse over the resource limit of a couple (\$3,000) are deemed available to a claimant.
 - b. Only one set of exclusions applies to the family unit (one home, one automobile, etc.).
 - c. Pension funds of the ineligible spouse are not deemed to the eligible spouse.
3. Parent-to-Child
 - a. Only the countable resources of a parent or a step-parent living in the same household of a child under 18 years of age are considered.
 - b. All the countable resources over the resource limit for an individual (\$2,000), if one parent lives in the household, or a couple (\$3,000), if two parents live in the household, are deemed available to the child.
 - c. Two sets of exclusions apply. One for the parent(s) and one for the child, except for the home (one per family).
 - d. Other children in the household are also allowed to have up to the resource limit for an individual (\$2,000 each).

- e. Pension funds of the parent(s) are not deemed to the child.
- f. Deeming of resources will not apply to children who: previously received a reduced SSI benefit while in a medical facility; are eligible for medical assistance under a Medicaid state home care plan (i.e., a Medicaid waiver); and would otherwise be ineligible for SSI because of deeming of parental income or resources. [20 CFR 416.1202(b)(2)]

IV. Conditional Payments

A. SSI Applicants can receive benefits while disposing of non liquid excess resources, as long as they meet all other eligibility criteria. [20 CFR 416.1240(a)]

B. Time Limits For Disposal [20 CFR 416.1242]

1. Applicants have nine months to dispose of real property.
2. Applicants have three months to dispose of personal property.
3. An extension of an additional three months is available to dispose of personal or real property if the applicant had “good cause” for failing to dispose of the resource. “Good cause” will be found if despite diligent effort, circumstances beyond the applicant’s control prevented disposing of the resource.
4. After the extension, as long as the basis for excluding the real property continues to exist, the property will continue to be excluded.
5. When excess resources are disposed of, the applicant must repay SSI benefits received as conditional payments (that is, three or nine months of benefits).

C. Exceptions To Disposition Of Real Property

SSA cannot require the disposition of any real property if it cannot be sold because [42 USC 1382b(b)(2)]:

1. Property is jointly owned and sale would cause undue hardship to a joint owner.
 - a. Joint ownership and undue hardship to a joint owner: The property must serve as the principal place of residence for one or more of the other owners and sale of the property would result in loss of that residence and no other housing would be available. [20 CFR 416.1245(a)]
2. Sale is barred by legal impediment.
 - a. Legal bar to sale: no right, authority or power to liquidate property.
3. Reasonable efforts to sell have been unsuccessful. This requires taking all necessary steps to sell the property in the geographic area in which the property is located, unless the individual has good cause for not taking these steps. [20 CFR 416.1245(b)]
 - a. If reasonable efforts to sell are unsuccessful, conditional payments cease and regular SSI benefits are paid.

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- b. After the nine month conditional payment period, the individual must continue to make reasonable efforts to sell the property.
- c. Once the property is sold, the SSI recipient must repay the nine months of conditional benefits received. The person will not owe SSA more than the nine months of benefits, even if it takes years to sell the property.

V. Transfer of Assets

A. Sources of Law

1. Statute - 42 USC 1382b(c); 1396p(c); 1396r-5
2. Regulation - 20 CFR 416.1246
3. POMS - SI 01110.000-090

B. For All Transfers On or After December 14, 1999

There will be a 36-month “look-back” period starting with the later of the SSI application date or the date of the transfer. The length of the penalty is the amount of the uncompensated value divided by the SSI federal benefit rate plus the SSI state supplement applicable to the individual’s living arrangement. There is a maximum penalty period of 36 months and the penalty starts in the month of transfer.

1. **Example 1:** On January 5, 2007, an SSI recipient is informed that he is eligible for \$710 a month. The same letter informs him that he will also be eligible for \$8000 in retroactive benefits (i.e., the third installment payment on a retroactive award made 12 months earlier). On January 30, 2007 he receives the retroactive check and immediately gives \$7,100 to his sister and receives nothing in return. His period of ineligibility will be 10 months (i.e., $\$7,100 \div \$710 = 10$ months).

C. For All Transfers Between July 1, 1988 and December 13, 1999

There is no penalty for continued SSI program eligibility if a non excluded resource is given away or sold for less than fair market value. [42 USC 1382b(c); 20 CFR 416.1246; POMS SI 01110.070 B.4]

D. Medicaid Eligibility

Medicaid eligibility is subject to the transfer of assets rule but only when the Medicaid applicant is institutionalized and the transfer occurred within 36 months (or, in some cases, 60 months) immediately before the application for Medicaid. [42 USC 1396p(c)(1)(B)]

E. For Transfers for Less Than Market Value Between April 1, 1988 and July 1, 1988, there is no penalty if suspension of benefits would result in hardship. [42 USC 1382b(c)(4); 20 CFR 416.1246(d)(2)(3)]

F. For Transfers for Less Than Market Value Between March 1, 1981 and April 22, 1988, there is a 24 month suspension of benefits if the resources exceeded the SSI limits. [42 USC 1382b(c)(1); 20 CFR 4116.1246(a)(1).]

G. Advocacy Tips

1. **Identify the relevant law**
Because of the changes in the law governing transfers of assets, advocates should carefully note the date of the alleged transfer, and carefully determine what law is applicable.
2. **Remember the exceptions to application of the penalty**
There are important exceptions to application of the penalty beginning on December 14, 1999, similar to those found in Medicaid. No penalty will apply if (1) resources transferred exclusively for a purpose other than to qualify for SSI; (2) denial of eligibility would work an “undue hardship” on the individual; (3) the individual “intended” to dispose of the assets at fair market value or for other valuable consideration; and (4) all resources transferred for less than fair market value have been returned to the individual. Further, most of the Medicaid exceptions apply, including transfers to a 42 USC 1396p(d)(4)(A) trust.
3. **Beware of “income” problems**
If an SSI beneficiary is about to receive money, which the beneficiary would be free to transfer elsewhere (in light of the exceptions to the transfer of assets rules discussed in this outline), note that the beneficiary may still be charged with “income” in the month in which money is received, even if the money is promptly transferred elsewhere. Consider whether the incoming money can lawfully be directed to someone other than the beneficiary, i.e., without passing through the possession of the beneficiary.
4. **Beware of “resource” problems**
When the law allows beneficiaries to transfer assets, a beneficiary may nevertheless be charged by SSA with the retention of the assets, putting them above the resource limits, unless the individual can explain, and adequately prove, where the assets went. There is no “double-counting,” i.e., the transfer is either treated as an available resource or a transfer for purposes of the penalty, but not both.
5. **Trusts**
The SSI program permits beneficiaries to establish trusts which place certain of their assets outside of their ownership and control, and outside of the SSI resources restrictions. It may be preferable for a beneficiary to establish a trust, rather than to simply transfer assets completely away.
6. **Credibility**
Because claimant credibility is a central issue in these disputes, special effort should be made to obtain testimonial or other evidence corroborating the claimant’s testimony, and the claimant’s general credibility.

Chapter 2 - SSI Income & Resource Rules

Monthly Parent-to-Child Deeming Example

Monthly Parent-to-Child Deeming Example

Ma and Pa Jones both work. Each earns \$1,270 a month. They have 2 children, John and Bill. John is clearly disabled and thus they are applying for SSI on his behalf. Bill is not medically eligible for SSI. If SSA finds John medically eligible for SSI, will he be financially eligible for SSI?

First, you need to calculate the Jones' total countable income. Start with their unearned income, if any. Subtract the \$337 (one-half federal benefit rate of \$674 for 2009) other child allocation. Subtract the \$20 general income exclusion. The remainder is their countable unearned income.

Next, look at their earned income. Subtract from their gross earned income (\$2,540) the other child allocation (\$337) and any general income exclusion (\$20) that was not offset by unearned income. In the Jones' case, the full amounts are subtracted, because they had no unearned income. Next, subtract the \$65 earned income disregard. Divide the remainder in half (\$1,059) and you have the parents' countable earned income. For the Jones, this amount is \$1,059. Add their countable unearned income and you have the parent's total countable income. Since the Jones have no unearned income their total countable income is \$1,059.

How much of the total countable income will be deemed to the disabled child? Subtract the appropriate Federal Benefit Rate (FBR) (In this case it is \$1,011 as the parents are a couple) from the parents' total countable income (\$1,059). The remaining amount (\$48) will be deemed to the disabled child.

To find out how much, if any, SSI the disabled child will receive, start with the child's unearned income, including the amount deemed from the parents. For John Jones, his only unearned income is the \$48 deemed from his parents. Subtract from that one third of any child support the disabled child receives and the \$20 general income exclusion. The remainder is the child's countable unearned income. John Jones has \$28 countable unearned income. If the child happens to have any countable earned income, add that to the countable unearned income to come up with the disabled child's total countable income. John Jones has no earned income, so his total countable income is \$28.

Finally, calculate the disabled child's SSI grant by subtracting the total countable income from the appropriate FBR including the state supplement. In this example, we use the 2009 FBR of \$674 plus state supplement for an individual living with others of \$23 in New York. (Remember, the state supplement will be different in other states.) John Jones will receive \$669 (\$697 - \$28) in SSI.

NOTE: In a state using 2009 FBR of \$674 with no state supplement, the child's SSI payment will be \$646 (\$674 - \$28).

Chapter 2 - SSI Income & Resource Rules
Monthly Parent-to-Child Deeming Worksheet

Monthly Parent-to-Child Deeming Worksheet		
Parent's Income	1. Parent's unearned income	\$ 0.00
	a. Subtract allocation for other children (\$311.50)	- 337.00
	Remaining unearned income	0.00
	b. Subtract \$20.00 general income exclusion	- 20.00
	2. Parent's total countable unearned income	\$ 0.00
	3. Parent's gross earned income	\$ 2,540.00
	a. Subtract any other children allocation (not offset by unearned income)	- 337.00
	Remaining earned income	2,203.00
	b. Subtract general income exclusion (not offset by unearned income)	- 20.00
	Remaining earned income	2,183.00
	c. Subtract \$65.00 earned income disregard	- 65.00
	Remaining earned income	2,118.00
	d. Subtract impairment related work expenses	- 0.00
	Remaining earned income	2,118.00
e. Subtract 1/2 of remaining earned income	- 1,059.00	
Remaining earned income	1,059.00	
f. Subtract blind work expenses	0.00	
Remaining earned income	1,059.00	
4. Parent's total countable earned income	\$ 1,059.00	
a. Add countable unearned income from line 2 above	+ 0.00	
5. Parent's total countable income	\$ 1,059.00	
a. Subtract applicable Federal Benefit Rate (Individual or Couple)	- 1,011.00	
6. Amount deemed to disabled child	\$ 48.00	
Child's Income	7. Disabled child's unearned income including amount deemed from line 6	\$ 48.00
	a. Subtract 1/3 of any child support	0.00
	Remaining child's unearned income	48.00
	b. Subtract \$20.00 general income exclusion	- 20.00
	Remaining child's unearned income	28.00
	c. Add child's countable earned income	0.00
Benefit	8. Disabled child's total countable income ("if total over the Federal Benefit Rate, no eligibility for federal SSI, but check state supplement rules for any eligibility for local state supplement")	\$ 28.00
	9. Disabled child's SSI grant level (Federal Benefit Rate + State Supplement)	\$ 697.00
	a. Subtract child's total countable income from line 8	- 28.00
	10. Disabled child's SSI benefit	\$ 669.00

Monthly Spouse-to-Spouse SSI Deeming Example

John Doe is applying for SSI. He currently receives \$100 a month from a private disability insurance plan. Mr. Doe is married to Jane Doe who works and earns \$800 a month. They have no children. Can Mr. Doe receive any SSI? If so, how much?

The first step is to calculate the ineligible spouse's total countable income. If the couple has children, subtract the \$337 per child allocation from the ineligible spouse's unearned income. The balance is the ineligible spouse's total unearned income. In the Doe's case, Mrs. Doe has no unearned income, nor do the Doe's have any children.

Next, look at the ineligible spouse's earned income. If the child allocation was not entirely used to offset the ineligible spouse's unearned income, the remainder can be used to offset the ineligible spouse's earned income. Subtract that amount from the ineligible spouse's earned income. The balance is the ineligible spouse's countable earned income. Add the ineligible spouse's countable unearned income and you have the ineligible spouse's total countable income.

Next, calculate the difference between the Federal Benefit Rate (FBR), including any state supplement, for an Individual and for a Couple. If the ineligible spouse's total countable income is less than that amount, then there will be no spouse to spouse deeming. In the Doe's case, Mrs. Doe's total countable income comes to \$800, more than the difference between the Couple's FBR (\$1,011) and the Individual's FBR (\$674).

You will need to calculate their combined incomes to see if Mr. Doe is financially eligible for SSI and if so, how much he will get. First, look at their combined unearned income (\$100). Use the ineligible spouse's unearned income after taking out the \$337 child allocation. Subtract the general income exclusion (\$20.00). The result is the couple's countable unearned income. For the Doe's, that amount is \$80 since Mr. Doe has \$100 in countable unearned income. Then look at the couple's combined earned income (\$800). Subtract the \$20 general income exclusion (or whatever portion was not used to offset unearned income; in this case \$0). Subtract the work expense exclusion of \$65 ($\$800 - \$65 = \735). Subtract impairment related work expenses. Divide the remainder in half ($\$735/2 = \367.50). Subtract blind work expenses. The balance is the couple's countable earned income, in the Doe's case \$367.50. Add the couple's countable unearned income (\$80) and you've got the couple's total countable income. The Doe's have \$447.50 countable income.

Finally, subtract the couple's total countable income from the FBR for a couple, plus the state supplement, if any. In this example we use the 2009 FBR of \$1,011 plus New York State Supplement (the figure will be different in other states) of \$23 for an individual as only he is disabled in the household ($\$1,034 - 447.50 = \586.50). If the one third reduction applies (if the individual is receiving in-kind support & maintenance), subtract that also. The remainder, \$586.50 for the Doe's, is the individual's benefit amount. Without the deemed income, in New York it would have been \$697, the Individual FBR plus state supplement (i.e., \$674 plus New York State supplement of \$23 as an individual living with others). Mr. Doe will get benefits of \$586.50, the lesser of the two calculations.

Chapter 2 - SSI Income & Resource Rules
Monthly Spouse-to-Spouse Deeming Worksheet

Monthly Spouse-to-Spouse Deeming Worksheet		
Ineligible Spouse's Income	1. Individual Federal Benefit Rate plus State Supplement	\$ 697.00
	2. Ineligible spouse's unearned income	0.00
	a. Less allocations for children (\$337 per child)	- 0.00
	b. Countable unearned income	0.00
Combined Income	3. Ineligible spouse's earned income	\$ 800.00
	a. Subtract allocation for ineligible child(ren) not offset by unearned income	- 0.00
	Remaining earned income	800.00
	b. Add countable unearned income from line 2b above	+ 0.00
	4. Ineligible spouse's total countable income If this amount is less than the difference between the Couple's and Individual's Federal Benefit Rate deeming is not applicable. Stop here.	800.00
	5. Combine unearned income (Eligible Spouse & Adjusted Ineligible Spouse)	\$ 100.00
	a. Subtract general income exclusion	- 20.00
	6. Countable combined unearned income	80.00
	7. Combined earned income	800.00
	a. Subtract any general income exclusion not offset by unearned income	- 0.00
	Remaining earned income	800.00
	b. Subtract work expense exclusion	- 65.00
	Remaining earned income	735.00
	c. Subtract impairment related work expenses	0.00
	Remaining earned income	735.00
	d. Subtract 1/2 remainder	- 367.50
Remaining earned income	367.50	
e. Subtract blind work expenses	- 0.00	
Remaining earned income	367.50	
8. Countable combined earned income	\$ 367.50	
a. Add countable unearned income from line 6 above	80.00	
9. Countable combined income	\$ 447.50	
a. Subtract amount from approved Plan to Achieve Self-Support	0.00	
10. Total countable combined income ("if total over the Federal Benefit Rate, no eligibility for federal SSI, but check state supplement rules for any eligibility for local state supplement")	\$ 447.50	
Benefit	11. Federal Benefit Rate for a couple plus state supplement for an individual living with others	\$ 1,034.00
	a. Subtract 1/3 reduction if applicable	0.00
	Remaining FBR plus state supplement	1,034.00
	b. Subtract total countable income from line 10 above	- 447.50
	Remaining FBR plus state supplement	586.50
12. Benefit (If amount in 11b is larger than line 1 above use amount in line 1.)	\$ 586.50	

