



JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Supplemental Security Income 101: A Guide for Advocates

SSI 101: A Guide for Advocates

MARCH 2018

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About This Guide

This Guide is designed to introduce advocates and individuals who provide assistance to older adults to the Supplemental Security Income (SSI) program. This Guide is focused on the basics of the SSI program for those who may qualify based on age (65 years or older): the benefits, key eligibility criteria, and the application and appeals processes. This Guide is intended to serve as a complement to other practice guides that focus on issues involving SSI disability determinations, eligibility, and benefits.

Justice in Aging strives to make the information in this Guide as accurate as possible as of the publication date. However, changes may be made to the SSI program and maximum benefit amounts change year-to-year. To get the most up-to-date information on the SSI program and to sign-up for alerts, Justice in Aging webinars, and other trainings, please [visit our website](#) and [join our email network](#).¹

Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972 we have focused our efforts on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

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Intro to Supplemental Security Income (SSI)

What is Supplemental Security Income (SSI)?

Supplemental Security Income, or SSI, is a federal income benefit program administered by the Social Security Administration (SSA), an independent agency of the federal government. SSI provides a very basic income to older adults and people with disabilities who have little-to-no other income or resources to help meet their basic needs.

What is the difference between Supplemental Security Income (SSI) and Social Security (OASDI)?²

Social Security is officially known as Old Age, Survivor, Disability Insurance or OASDI. It is important to note that while both SSI and Social Security are administered by the SSA and apply the same disability standard to determine eligibility based on disability, they are separate programs with distinct criteria and processes for determining eligibility.

Table 1. This table highlights key differences between of the SSI and OASDI programs by eligibility criteria, funding source, and relevant statutes.

| Program | Social Security (OASDI) | Supplemental Security Income (SSI) |
|----------------------|---|--|
| Eligibility Criteria | Based on an individual's (or their current or former spouse or other eligible family member's) work history; financial need is not considered for eligibility | Strictly needs-based; no work history required |
| Funding Source | Payroll (FICA) taxes, paid into Social Security trust funds | General fund taxes |
| Relevant Statute | Title II of the Social Security Act | Title XVI of the Social Security Act |

Who does SSI help?

More than 8.2 million low-income people, including over 2.2 million seniors and almost 1.2 million children with significant disabilities,³ rely on SSI benefits to meet basic needs, including housing and food.

- **Over half of all seniors who receive SSI benefits also receive a small amount of Social Security benefits based on their work history.** More than 1.2 million seniors receiving SSI received enough credits for their work to qualify them for a small amount of Social Security benefits.⁴ This occurs when their Social Security benefit is less than the SSI benefit amount. These seniors who may have earned low wages, had irregular wages, or spent time as unpaid family caregivers rely on both SSI and Social Security to avoid deep poverty.

- **Most SSI recipients are women—53% of all SSI recipients and 65% of older SSI recipients are women.**⁵ Women are disproportionately reliant on SSI because they are more likely to have spent time out of the workforce caring for their families, or to have worked in low-wage or part-time jobs, or in jobs where they did not receive Social Security credits.
- **SSI reduces homelessness.** SSI benefits can be used to pay for rent, mortgage, utilities, property taxes, home repair, and other basic costs that allow people to remain in their homes. SSI also provides reliable income to secure a housing lease. SSI benefits can mean the difference between an elderly woman having a home versus surviving on the streets.
- **SSI benefits support local communities.** In 2016, SSI recipients spent nearly \$4.5 billion dollars on housing, food, health care, transportation, and other basic needs in communities across the country.⁶

As our aging population grows and income inequality rises, more of our nation's seniors are becoming poorer. SSI is now more important than ever to people in every community around the country.

How does SSI work?

How do you apply for SSI?

A person with limited income and resources who is either 65 years or older, or a person from birth through 64 years old with a severe disability, can be eligible for SSI. If individuals are married and living together, and both are eligible for SSI based on age (65 years or older), blindness, or disability, they must apply as a couple.⁷ SSA currently recognizes all valid marriages of same-sex couples for purposes of determining entitlement to Social Security and SSI benefits regardless of the jurisdiction in which the couple is living.⁸

SSA specifies how an applicant can apply for benefits based on whether they are a child under age 18 with a disability, an adult between age 18 and 64 with a disability, or an adult age 65 or older. A person age 65 or older, whom SSA considers an “aged” SSI applicant, can apply for SSI either by calling SSA or making an appointment to visit their local SSA office.⁹ At the time of this publication, although there is an option for certain adults with disabilities to apply online, applying online is not an option available to those applying for SSI based on age. When possible, we encourage applicants to apply in-person at their local SSA office, and to obtain written proof of their application and the date it was submitted to SSA.

SSA will need to verify certain information about SSI applicants, including their identity, age, marital status, citizenship status, income and resources, place of residence, and living arrangement.¹⁰

How do you get language assistance services from SSA?

SSA policy is clear that it will provide an interpreter free-of-charge for anyone who prefers to do business with the agency in a language other than English. The same policy applies for deaf individuals as well. However, SSA field offices vary greatly in how well they apply that policy.

SSA staff should never ask someone to provide their own interpreter or bring a family member to interpret. Of course, if an individual prefers to have a family member or friend serve as the interpreter, that is their right as long as the friend or family member is an adult, is proficient in English as well as the other language, and understands the obligations of an interpreter. If the individual is applying for disability benefits, it is also important that the interpreter be familiar with medical terms in both languages.

SSA has a multilingual gateway to its website with a large quantity of useful informational material in 17 different languages and American Sign Language.¹¹ While SSA is a leader among federal agencies in its policy on oral interpretation services, its implementation on the ground varies greatly from one local office to another.

When it comes to written notices affecting an individual's benefits, the agency is sadly lacking. SSA notices are consistently provided only in English, and often, but not always, also in Spanish. Written notices are never provided in any other language.

How much is the SSI benefit?

The federal government provides a monthly cash grant for eligible SSI recipients, up to a maximum amount known as the Federal Benefit Rate (FBR). In 2018, the maximum FBR for an eligible individual is \$750 a month, which is only 74% of the official federal poverty level.¹² This maximum grant amount is adjusted annually based on the federal Cost-of-Living Adjustment (COLA).¹³ The actual SSI benefit paid to a given recipient depends on a number of factors: whether they are single or married, their living arrangement, what other income they have, and the state they live in.

Some states—California, for example—provide a supplement to SSI benefits, which increases the maximum benefit level potentially available to eligible recipients in those states.¹⁴ In most states, anyone receiving SSI is automatically eligible for Medicaid.¹⁵

Who is Eligible for Supplemental Security Income (SSI)?

SSI applicants and recipients must meet several eligibility criteria at the time of their application and on an ongoing basis, including categorical eligibility, financial eligibility, and immigrant eligibility.

Categorical Eligibility

To be eligible for SSI, individuals must satisfy one of these three categories: age (65 years or older), blindness, or disability.

In general, an applicant who is 65 years or older does not need to prove disability or blindness to be eligible for SSI benefits.¹⁶

The definitions and determinations of disability for SSI purposes are different for adults and children. For an adult age 18 to 64, disability is defined as: inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.¹⁷ The combined effect of a person's impairments must be "of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy."¹⁸ Those under age 18 follow a separate SSI disability determination process.¹⁹

Financial Eligibility

Income

Income, for SSI eligibility purposes, is a term of art. Income is defined as "anything you receive in cash or in kind that you can use to meet your needs for food and shelter,"²⁰ thus, if it cannot be used to obtain food or shelter, it is not considered income for SSI eligibility purposes. Examples of items not considered to be income include: proceeds of a loan,²¹ income tax refunds, and bills paid directly to the supplier by someone else for goods or services other than food or shelter.²²

Even if something is income under the SSI definition, it still might not be "countable income" under the SSI income-counting rules. Only countable income affects SSI eligibility and the amount of the benefits to be paid.²³ Links to additional information about items not considered to be income or not counted as income are included in the Resources for Advocates section at the end of this publication.

How much income is allowed?

An individual cannot have more countable income than the SSI payment level applicable to the individual's living arrangement.

What types of income are counted?

There are two categories of income for SSI purposes: unearned and earned income.

- **Unearned income** is defined by what it is not: it is not earned income. Of old age SSI recipients who have income, the overwhelming majority have only unearned income, and for the majority of those with unearned income, the only income they have is Social Security.²⁴ Examples of other types of unearned income include money received from other sources, such as from pensions.

There is a particular non-cash type of unearned income common to SSI applicants and recipients called In-kind Support and Maintenance (ISM). ISM refers to food and/or shelter that someone else provides for an SSI recipient. It is important to emphasize that ISM only applies to food and/or shelter as specifically defined by SSA (i.e. assistance with non-food and non-shelter expenses, such as payments made for car loans or medical expenses, are not counted as income to the recipient). Links to additional information about ISM are included in the Resources for Advocates section at the end of this publication.

- **Earned income** includes gross wages, net earnings from self-employment, and payments for services performed as part of certain programs designed to help individuals become self-supporting.²⁵ Only 1.3% of old age SSI recipients have earned income.²⁶

Understanding the distinction between earned and unearned income is important because the two types of income are calculated separately and subject to very different rules.

How is income counted?

Total countable income is the sum of all the countable unearned + countable earned income. The following describes how to calculate countable income for SSI purposes.

Unearned income:

Step 1. Add up all unearned income for the month, except excluded unearned income²⁷

Step 2. Subtract the general income disregard of \$20/month²⁸

The result is countable unearned income.

Earned income:

Step 1. Add up all earnings for the month using gross wages

Step 2. Subtract any exclusions or deductions, such as impairment-related or blind work expenses or Plan for Achieving Self Support (PASS) plans²⁹, but only if the recipient is receiving SSI on the basis of disability or was receiving it on the basis of disability the month before reaching age 65³⁰

Step 3. Subtract the earned income disregard of \$65/month³¹

Step 4. Subtract the general income disregard of \$20/month, but only if the \$20 has not already been applied to unearned income

Step 5. Divide the remaining amount by 2

The result is countable earned income.

Unearned income: In-Kind Support and Maintenance (ISM)

In-Kind Support and Maintenance (ISM) is food and/or shelter that someone else provides for an SSI recipient.³² ISM and maintenance is counted as a type of income, and one of two rules determine its value: the one-third reduction rule³³ or the presumed value rule.³⁴ The maximum reduction for ISM is 1/3 the federal benefit rate plus \$20, which in 2018 is \$270/month.³⁵

Not everything received in-kind is counted; only in-kind food and shelter, or that which can be used to obtain food and shelter, is counted. Also, items provided with the understanding that the individual will later repay, such as when a friend or relative provides food and shelter while the SSI application is pending, do not constitute in-kind support and maintenance.³⁶ One important exception to ISM is that food or shelter provided based on need by nonprofit organizations does not count as income for the recipient.³⁷

Mr. Jones—an example of how to calculate countable income

Mr. Jones applies for SSI as an individual. He receives \$620/month in a Social Security retirement check and \$165/month in cash for helping a neighbor. Is he income eligible for SSI, and if so, how much is his benefit?

\$620 – Mr. Jones's total unearned income

-\$20 – General income disregard

\$600 – Mr. Jones's total countable unearned income for the month

\$165 – Mr. Jones's total earned income

-\$65 – Earned income disregard

\$100 ÷ 2

\$50 – Mr. Jones's total countable earned income for the month

\$600 – Unearned income

+\$50 – Earned income

\$650 – Mr. Jones's total countable income (earned & unearned) for the month

\$750 (maximum monthly SSI benefit rate for an individual, in 2018)

-\$650

\$100

Mr. Jones is income eligible for \$100/month in SSI benefits.

When is income counted?³⁸

Income is counted on a monthly basis in the calendar month in which it is received. Income for the current month determines eligibility for the month. Income for the current month is used to calculate the amount of SSI benefit two months later; however, income in the first month of eligibility determines the amount of the grant for the first three months.

Given the strict SSI income limits and complex rules, it is important to understand what income is excluded or not counted, to ensure that an individual's income eligibility is accurately assessed and they are receiving the correct amount of benefits. Misclassification of excluded income as countable is one way that individuals may be denied or lose their SSI benefits.

Resources

Similar to income, there are strict limits and complex rules regarding resources and only countable resources affect SSI eligibility.

- **How much in resources is allowed?** An individual may not have more than \$2,000 in countable resources, or \$3,000 for a couple.
- **What resources are counted?** A resource is cash, other liquid assets, or any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance.³⁹ Real property is land, including buildings or immovable objects attached permanently to the land and personal property is any property that is not real property, and includes things such as cars, household goods, life insurance policies, jewelry, and tools.⁴⁰
- **What resources are not counted?** There are a number of excluded resources that do not count toward the resource limit. Some of the key resource exclusions include: the home in which the SSI recipient resides and all contiguous land regardless of value; one automobile regardless of value; personal or household goods; either burial funds and/or life insurance policies up to a \$1,500 combined value; a burial plot regardless of value; jointly owned property where the sale would cause undue hardship to the co-owner because of loss of housing. Time-limited resource exclusions: past-due Social Security and SSI payments and Earned Income Tax Credit and Child Tax Credit are excluded from resources for nine months. Links to additional information about excluded resources are included in the Resources for Advocates section at the end of this publication.
- **How are resources counted?** Resources are generally counted on the basis of the equity an individual has in the resource, meaning the market value minus any encumbrance on it.⁴¹
- **When are resources counted?** Resources are counted once a month at the beginning of the first day of the month. Resources held in the middle of the month are irrelevant, although a period of ineligibility may be imposed for transfer of a resource, as discussed immediately below.
- **What is the resource transfer penalty?** Given the low resource limits, when individuals have or obtain new resources, such as a second car or an inheritance, a natural instinct may be to disclaim or give away the resource so as not to risk going over the resource limit and losing SSI eligibility. However, an individual who transfers resources to another person for less than fair market value, such as disclaiming an inheritance or giving away a second car, will be ineligible for benefits for up to 36 months (i.e., 3 years).⁴² For individuals applying for SSI, SSA will look at the 36 month period prior to application to assess if any resource transfers for less than fair market value took place. Therefore, it is important that anyone considering applying for SSI, or anyone receiving SSI, be aware of this penalty.

Anything that fits within the SSI resource definition is a resource for purposes of the transfer penalty. The period of disqualification is calculated by dividing the uncompensated value of the resource (i.e., the difference between the fair market value and what the individual actually received) by the monthly benefit rate applicable to the individual. The rounded down result gives the number of months for which the individual is ineligible. The period of ineligibility begins the first of the month following the transfer.

Mr. Zep—an example of how to calculate the resource transfer penalty period

Mr. Zep decided in December 2017 that he was no longer able to drive. He sold one of his two cars to his granddaughter in that month for \$5,000. The car had a fair market value of \$12,000. In January 2018, Mr. Zep applied for SSI as an individual and is otherwise eligible. Does the transfer affect his eligibility, and if so, how?

Yes, the transfer does affect Mr. Zep's eligibility. The uncompensated value of selling the car is \$7,000. The duration of the penalty is determined by the amount of the uncompensated value (\$7,000) divided by the monthly benefit rate (\$750 in 2018). This yields 9.33 ($\$7,000 \div \750), which is rounded down to 9 months of ineligibility. Since the period of ineligibility begins on the first of the month following the transfer, Mr. Zep is ineligible beginning January 1, 2018 and will not become eligible until October 2018.

Fortunately, there are exceptions to the transfer penalty,¹ which include:

1. Any resource that is returned²
2. If the resource would have been excludable in the month of transfer, such as a home that the individual was residing in at the time of the transfer³
3. If not receiving the SSI benefit would result in loss of food or shelter (referred to as "undue hardship"), and the individual's total available funds do not exceed the applicable monthly payment rate for the individual⁴
4. If the transferred amount, when combined with other resources, is less than the \$2,000 (\$3,000 for a couple) resource limit.⁵

Gifts of cash from an individual to someone else are considered transfers of resources and will incur a period of ineligibility if, when added to the individual's other resources, they exceed the resource limit.⁶ Individuals who spend money on themselves will never create a period of ineligibility.

1 [Social Security Administration POMS](#), SI 01150.120–SI 01150.127.

2 [Id. Exceptions—Transferred Resource Returned](#), SI 01150.124.

3 [Id. Exceptions—Transfer of a Home](#), SI 01150.122.

4 [Id. Exceptions—Undue Hardship](#), SI 01150.126.

5 [Id. Exceptions—Transfers for Purposes Other Than to Obtain SSI](#), SI 01150.125(F).

6 [Id. What is a Resource Transfer](#), SI 01150.001.

Deeming of Income and Resources

Deeming is when the income or resources of one person are considered available to the individual applying for or receiving SSI.⁴³ Deeming applies only to three relationships: those of a spouse to an SSI spouse, a parent to an SSI child, and an immigrant sponsor to an SSI immigrant. The formula for determining the amount of the income and resources available to the individual is different in each relationship and is evaluated regardless of actual availability.

- **Spouse to Spouse deeming.** The income and resources of an ineligible spouse living in the same household are deemed to the individual. Spousal deeming applies only when one spouse is categorically eligible for SSI (based on age, disability, or blindness) and the other is not.
- **Parent to Child (under age 18) deeming.** The income and resources of a parent living in the same household are deemed to the child.⁴⁴
- **Sponsor to Alien deeming.** Not all immigrants are sponsored. Deeming applies only to some sponsored immigrants, primarily those whose sponsors signed affidavits of support on or after December 1997. These “new affidavits” provide for sponsor deeming to continue until naturalization or until the immigrant has 40 quarters of covered employment, whichever comes first. Earlier affidavits of support provided for sponsor deeming for only a three year period.⁴⁵

Immigrant Eligibility

Before 1996, immigrant eligibility was very simple: lawful immigrants were eligible for SSI on the same basis as U.S. citizens. The Personal Responsibility Work Opportunity and Reconciliation Act of 1996 and the Balanced Budget Act of 1997 resulted in complex special requirements that greatly restricted immigrant eligibility for SSI benefits.⁴⁶ Any noncitizen who was receiving benefits on August 22, 1996, is grandfathered in, and the provisions of the 1996 legislation will not apply.

For every noncitizen, it is necessary to look to the individual’s date of entry into the U.S., because one set of rules applies to those who entered before August 22, 1996, and another more restrictive set of rules applies to those who entered on or after that date. However, as a threshold matter for both groups, it is a prerequisite for eligibility that the individual be among a limited group of non-citizens who are considered “qualified aliens.” This group includes lawful permanent residents (LPRs), refugees, asylees, persons granted withholding of deportation, Cuban-Haitian entrants, persons paroled into the U.S. for at least a year or more, and certain domestic violence survivors.

Unfortunately, SSA personnel are frequently unfamiliar with the details of these requirements, resulting in inappropriate denials, so it is important for those assisting individuals with SSI to understand how the immigration rules apply to an individual’s specific circumstances.

Other Eligibility Considerations: Residence, Physical Presence in the U.S., Institutionalization

Residence

All SSI recipients, including U.S. Citizens, must reside in one of the 50 states, the District of Columbia, or the Northern Mariana Islands.⁴⁷

Physical Presence in the U.S.

An individual who is outside of the United States for a full calendar month, or for 30 consecutive days or more, is no longer eligible for SSI until the individual has been back in the United States for 30 consecutive days following their time abroad.⁴⁸ This rule applies to everyone, not just immigrants. SSA is only concerned with time out of the country that meets or exceeds the full calendar month or 30 consecutive days; eligibility will not be affected by travel outside of the country that is less than a full calendar month or less than 30 consecutive days (though note that absence during the entire month of February will impact eligibility). This is a common problem for SSI recipients who may wish to travel abroad to visit family.

Institutionalization

Residence in an institution may affect an individual's eligibility, benefit amount, or both. SSA provides a chart that explains how to evaluate SSI eligibility and benefit amount based on the specific residences defined as institutions, which include hospitals, nursing homes, other medical facilities, prisons, and jails.⁴⁹ This rule only applies if an individual resides in an institution throughout an entire calendar month, so the counting of days is important. A common occurrence for older adult recipients is residence in a medical treatment facility (if Medicaid pays for more than 50% of the cost of care, then the federal benefit is reduced to \$30/month while an individual resides in the facility)⁵⁰ or temporary institutionalization for medical care. For individuals who will be in a medical facility for 90 days or less, they may be able to maintain their eligibility for SSI benefits if they submit a doctor certification of the length of stay and a statement about the individual need for the benefits to maintain their living arrangement in the community.⁵¹

How do you Appeal an Unfavorable Decision?

SSA has a four-step administrative decision and appeals process: initial determination, reconsideration, administrative law judge hearing, and appeals council.⁵² The process applies for decisions involving initial and ongoing eligibility and benefit amount, and differs somewhat for cases involving disability determinations. At all stages of the appeal process, the individual has 60 days (plus 5 days for mailing) to file an appeal of an adverse decision, though an individual may be able to show that they have "good cause" for missing a deadline.⁵³

At each stage of the appeals process, an individual can request an extension of time to file an appeal if they have “good cause” for missing the deadline.⁵⁴ The following are some of the reasons SSA may consider when determining whether an individual has good cause for a late appeal: whether the individual has limited facility in English, whether the individual has cognitive or mental impairments that prevented them from either understanding the content of the notice or knowing about the need to file a timely appeal, and situations causing an individual to miss the deadline for receiving continued payment of benefits pending appeal such as a serious illness of the individual or an immediate family member. The decision on whether the individual can file a late appeal for good cause cannot be appealed.

Step 1: Initial Determination

The initial determination is made in the local Social Security office, also known as a field or district office, except disability determinations, which are made by the state disability determination service under contract with the SSA.⁵⁵ Every determination made by SSA should be communicated to an individual in a written notice that explains the reason(s) for the determination and states they have 60 plus 5 mailing days in which to appeal.⁵⁶

Step 2: Reconsideration

This first appeal step, referred to as a Request for Reconsideration, takes place at the local Social Security office or a regional program center. In the case of disability determinations, reconsideration takes place at the state disability determination service.⁵⁷ The reconsideration process differs depending on whether the case involves a disability determination, an appeal of an initial denial of eligibility, or an adverse action (e.g. reduction, suspension, or termination) for someone already receiving benefits. In most cases, reconsideration comes in the form of a “case review,” a paper-record review not involving a personal appearance or an opportunity to present witnesses.⁵⁸

As required by the U.S. Supreme Court, a special procedure for reconsideration applies to SSI-proposed suspensions or reductions in benefits.⁵⁹ In these cases, the SSI recipient is entitled to receive full benefit continuation pending a decision on reconsideration if the recipient files the appeal within 10 days (plus 5 days for mailing) of the date on the notice.⁶⁰ The same good cause provisions for missing the deadline to appeal apply to the deadline for receiving aid continuation as well.

In SSI suspension or reduction cases, an individual can choose from one of three options: having (1) a case review, (2) an in-person informal conference (involves face-to-face appearance before a decision-maker where a written summary of the conference becomes part of the case record), or (3) an in-person formal conference (same as the informal conference and includes the opportunity to request that documents and witnesses be subpoenaed).⁶¹ It is important to note that there is no opportunity for continued benefits beyond the reconsideration stage, except in the case of an appeal from an adverse Continuing Disability Review decision in disability cases.

Step 3: Administrative Law Judge Hearing

If the claim is denied on reconsideration, the individual can file a further appeal for an evidentiary hearing before an Administrative Law Judge (ALJ) through SSA's Office of Hearings Operations.⁶²

At the ALJ hearing, the individual can present witnesses and can request the ALJ to subpoena witnesses and documents. It is extremely important that all relevant issues be raised at the ALJ hearing as it may not be possible to raise additional issues later in the process. ALJs, although employed by SSA, have a great deal of independence from the agency. Unlike the people who make initial and reconsideration decisions, ALJs are not bound by the agency policies though they are bound by the regulations. Most individuals are (and should be) represented by an attorney or other advocate at the ALJ hearing.

Step 4: Appeals Council

An individual can request Appeals Council review of an adverse ALJ decision. Review by the Appeals Council is discretionary, and in the overwhelming majority of cases, the Council simply denies review.⁶³ Although it does not happen often, the Appeals Council can also take a case on "own motion" review to review an ALJ decision that was favorable to an individual.⁶⁴ The Appeals Council is the last step within the SSA administrative appeal process.

U.S. District Court

If an individual receives an adverse Appeals Council decision, or if the Appeals Council declines to review the case, they may go outside of SSA and appeal in federal court.⁶⁵

Conclusion

The SSI program provides vital assistance to low-income seniors. As the population continues to age and income inequality grows, SSI could be a crucial resource for many more low-income seniors who are struggling to make ends meet. To help more seniors access SSI benefits, it is important for advocates to understand the complex rules of the SSI program and to ensure that the individuals who rely on these benefits are receiving and continue to receive the full amount to which they are entitled.

Resources for Advocates

- Social Security Act: 42 U.S.C. §§ 1381-1385
- SSI Regulations: 20 C.F.R. §§ 416.101 – 2227
- Program Operations Manual System (POMS): <https://secure.ssa.gov/apps10/poms.nsf/partlist>
 - Income Exclusions
 - ✧ [POMS SI 00810.007](#) (Income Exclusions)
 - ✧ [POMS SI 00830.050](#) (Overview of Unearned Income Exclusions) and [POMS SI 00830.099](#) (Guide to Unearned Income Exclusions)
 - ✧ [POMS SI 00835.000](#) (Living Arrangements and In-Kind Support and Maintenance)
 - Resource Exclusions
 - ✧ [POMS SI 01130.050](#) (Guide to Resources Exclusions)
 - ✧ [POMS SI 01110.210](#) (Excluded Resources)
 - Income and Resource Deeming
 - ✧ [POMS SI 01320.000](#) (Deeming of Income)
 - ✧ [POMS SI 01330.000](#) (Deeming of Resources)
 - Immigrant Eligibility and Residence
 - ✧ [POMS SI 00501.400](#) (Residence and Citizenship Requirement) and [POMS SI 00502.000](#)
 - Presence
 - ✧ [POMS SI 00501.410](#) (Ineligibility due to Absence from the United States/Developing Presence)
 - Institutionalization
 - ✧ [POMS SI 00520.001](#) (Residence in an Institution)
 - Appeals Process
 - ✧ [GN 03101.020](#) (Good Cause for Extending the Time Limit to File an Appeal)
- Social Security Administration: <https://www.ssa.gov/>
 - ✧ [Understanding Supplemental Security Income Guide](#)
 - ✧ [SSI Federal Benefit Amounts](#)
 - ✧ [Request for Reconsideration](#) (SSA-561-U2)
 - ✧ [Request for Hearing by Administrative Law Judge](#) (HA 501-U5)

- Justice in Aging
 - Introduction to SSI Resources
 - ✧ [SSI Factsheet](#)
 - ✧ [SSI Basics Training and Issue Brief](#)
 - Issue-Specific SSI Resources
 - ✧ [SSI Overpayments Training and Issue Brief](#)
 - ✧ [In-Kind Support and Maintenance Training and Issue Brief](#)
 - ✧ [Non-Disability Appeals Training and Issue Briefs](#)
 - ✧ [Representative Payee Toolkit](#)
- National Center on Law & Elder Rights: <https://ncler.acl.gov/>

Sources of Law

Social Security Act

United States Code, Title 42, Chapter 7, Subchapter XVI. This is the law that authorizes and governs the SSI program.

Social Security Regulations

Code of Federal Regulations, Title 20, Part 416. Social Security regulations have the force of law. However, be careful because regulations often do not yet reflect the most recent changes in the Social Security Act.

Social Security Rulings (SSRs) and Social Security Acquiescence Rulings (SSARs)

SSRs are SSA's interpretations of regulations and policy statements on important issues, usually related to disability determinations. SSARs are SSA's statements of how it will apply a Court of Appeals decision with which it disagrees. SSRs and SSARs are published in the Federal Register and are binding at all levels within SSA, although they do not have the force of law.

Program Operations Manual System (POMS)

The official POMS is unpublished, does not have the force of law, and is written in language which is often difficult to understand. However, the POMS is the go-to resource for people who work in the local SSA office and is the only comprehensive formulation of SSA policy with which SSA staff are likely to have ready access. A public version of the POMS is available at <https://secure.ssa.gov/apps10/>. It is important for an advocate to know what the POMS has to say on a client's issue and to cite to the relevant POMS section(s) when communicating with SSA staff.

Emergency Messages (EMs)

EMs are transmittals to SSA personnel explaining how to handle a particular issue. EMs have an expiration date.

Program Circulars

Program Circulars are sometimes issued on subjects where SSA policy is thought to require clarification. Unlike the other sources previously mentioned, Program Circulars are often difficult to obtain, and an advocate often has no way of knowing of their existence. However, once you learn of them, SSA is usually willing to provide a copy.

Endnotes

- 1 Justice in Aging Economic Security work: <http://www.justiceinaging.org/our-work/economic-security>. Sign up for our email network: <https://justiceinaging.salsalabs.org/joinournetwork/index.html>.
- 2 42 U.S.C. §§ 402, 423.
- 3 Social Security Administration, *SSI Monthly Statistics, January 2018, Table 2*, available at ssa.gov/policy/docs/statcomps/ssi_monthly/2018-01/table02.pdf.
- 4 Social Security Administration, *Monthly Statistical Snapshot, January 2018, Table 1*, available at ssa.gov/policy/docs/quickfacts/stat_snapshot/.
- 5 Social Security Administration, *Annual Statistical Supplement to the Social Security Bulletin, 2016, Table 7.E3*, available at ssa.gov/policy/docs/statcomps/supplement/2016/supplement16.pdf.
- 6 *Id.* [Table 7.A1](#).
- 7 The Social Security Administration will determine whether an applicant will be considered as an individual or as part of a couple. If the individuals are married and living in the same household and both are over 65 or blind or disabled, they must apply as a couple. (20 C.F.R. §§ 416.1801-1835; [Social Security Administration, Program Operations Manual System \(POMS\), Determining Whether a Marital Relationship Exists](#) (SI 00501.150)). Couples in a registered domestic partnership or civil union may or may not be considered married for purposes of SSI eligibility depending on the law of the state or nation where the relationship was entered into. If the individuals live together and lead people to believe they are married (“holding out” to the community in which they reside) and both are over 65 or blind or disabled, then they must apply as a couple ([Social Security Administration, Program Operations Manual System \(POMS\), Determining Whether Two Individuals Are Holding Themselves Out as a Married Couple](#) (SI 00501.152)). However, if the individuals are separated or if only one spouse is over 65 or blind or disabled, then they must apply individually.
- 8 *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).
- 9 Social Security Administration, *Supplemental Security Income (SSI) Benefits*, available at ssa.gov/disabilityssi/ssi.html#apply.
- 10 Social Security Administration Program Operations Manual System (POMS), *Eligibility Under the Supplemental Security Income Provisions*, SI 00501.001.
- 11 SSA multilingual gateway: <https://www.ssa.gov/site/languages/en/>.
- 12 U.S. Department of Health and Human Services, *Poverty Guidelines*, available at <https://aspe.hhs.gov/poverty-guidelines>.
- 13 Social Security Administration, *Cost-of-Living Adjustment (COLA) Information*, available at <https://www.ssa.gov/news/cola/>.
- 14 Social Security Administration POMS, *General Information about State Supplementation*, SI 01401.001
- 15 42 U.S.C. § 1396a(a)(10)(A)(i)(II). Ten states, known as “209(b) states,” do not make SSI recipients automatically eligible for Medicaid: Connecticut, Hawaii, Illinois, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia. See [Social Security Administration POMS, Medicaid and the Supplemental Security Income \(SSI\) Program](#), SI 01715.010.

- 16 There is a small group of older immigrants who must also meet the SSA disability standard to be considered eligible for SSI benefits.
- 17 [42 U.S.C. § 423\(d\)\(1\)\(A\)](#).
- 18 [Id. § 423\(d\)\(2\)\(A\)](#).
- 19 [20 C.F.R. § 416.924](#).
- 20 [Id. § 416.1102](#).
- 21 [Social Security Administration, Spotlight on Loans – 2017 Edition](#), available at [ssa.gov/ssi/spotlights/spot-loans.htm](#).
- 22 [20 C.F.R. § 416.1124](#).
- 23 [Id. § 416.1104](#).
- 24 [Social Security Administration, Annual Statistical Supplement to the Social Security Bulletin, 2016, Table 7.D1](#), available at [ssa.gov/policy/docs/statcomps/supplement/2016/supplement16.pdf](#).
- 25 [Id. § 416.1110](#).
- 26 [Social Security Administration, Annual Statistical Supplement 2016: Supplemental Security Income, Table 7.D1](#), available at [ssa.gov/policy/docs/statcomps/supplement/2016/7d.html](#).
- 27 [Id. Guide to Unearned Income Exclusions](#), SI 00830.099.
- 28 [Id. \\$20 Per Month General Income Exclusion](#), SI 00810.420.
- 29 [Social Security Administration, Income Exclusions for SSI Program](#), available at [ssa.gov/oact/cola/incomexcluded.html](#).
- 30 [Social Security Administration POMS, Impairment-Related Work Expenses \(IRWE\)](#), SI 00820.540.
- 31 [Id. Earned Income Exclusions – General](#), SI 00820.500.
- 32 [20 C.F.R. § 416.1130](#).
- 33 [Id. § 416.1131](#). The one-third reduction rule applies when an individual lives in the household of another person and that person is providing the individual with both food and shelter. When this rule applies, an amount equal to one-third of the SSI federal benefit rate ($\$750 \div 3 = \250 , in 2018) is treated as part of the individual's countable income. This amount is used regardless of the actual market value of the food and shelter provided.
- 34 [Id. §§ 416.1140-1148](#). The presumed value rule applies where there is in-kind support and maintenance but the conditions for the one-third reduction rule do not apply, that is (1) either food or shelter are provided but not both or (2) the individual is not living in the household of the person providing the food or shelter. Under the presumed value rule, in-kind support and maintenance has a presume value equal to one-third of the SSI Federal Benefit Rate plus the \$20 general income disregard ($\$250 + \$20 = \$270$, in 2018). This amount is added to an individual's countable income in calculating the amount of the grant unless the individual can demonstrate that the actual value of the support is less. In-kind support and maintenance cannot be valued at a greater amount regardless of actual market value.
- 35 [Id.](#)
- 36 [Social Security Administration POMS, Loans of In-Kind Support and Maintenance](#), SI 00835.482.
- 37 [20 C.F.R. § 416.1124\(c\)\(2\)](#).

38 [20 C.F.R. § 416.420](#).

39 [Id. Distinction between Assets and Resources](#), SI 01110.100.

40 [Id.](#)

41 [Id. Determining Equity Value](#), SI 01140.042. [What Values Apply to Resources](#), SI 01110.400.

42 [42 U.S.C. § 1382b\(c\)](#); [20 C.F.R. § 416.1246](#); [Social Security Administration POMS, What Is a Resource Transfer](#), SI 01150.001.

43 [20 C.F.R. §§ 416.1160, 416.1202](#).

44 [Id. §§ 416.1161, 416.1165, 416.1202](#).

45 [Id. §§ 416.1166a, 416.1204](#).

46 [8 U.S.C § 1612\(a\)\(1\)](#).

47 [20 C.F.R. § 416.1603](#). SSI benefits are not payable to people residing in Puerto Rico, U.S. Virgin Islands, Guam, or American Samoa. However, if people there move to the mainland, they are eligible on the same basis as any other U.S. citizen.

48 [20 C.F.R. § 416.1327](#).

49 [Social Security Administration POMS, Residence in an Institution](#), SI 005100.001.

50 [Id. Determination of Applicability of \\$30 Payment Limit](#), SI 00520.011.

51 [Id. Temporary Institutionalization \(TI\) Benefits](#), SI 00520.140.

52 [20 C.F.R. § 416.1402](#).

53 [Id. §§ 416.1409, 416.1433, 416.1468](#).

54 [Id. § 416.1411, 416.1413\(b\)](#).

55 [Id. § 416.1404](#).

56 [Social Security Administration POMS, SSI Appeals Considerations](#), SI 04010.020.

57 [20 C.F.R. §416.1414](#).

58 [Id. §§ 404.913, 416.1413](#).

59 [Goldberg v. Kelly](#), 397 U.S. 254 (1970).

60 [20 C.F.R. § 416.1336\(b\)](#). See [Goldberg v. Kelly](#), 397 U.S. 254 (1970).

61 [Id. § 416.1413](#).

62 [Id. § 416.1429](#).

63 [Id. § 416.1481](#).

64 [Id. § 416.1469](#).

65 [Id. § 404.981](#).