Social Security Disability Insurance and Supplemental Security Income

Roy Froemming, Attorney
Wisconsin Coalition for Advocacy

Introduction
This chapter covers two different programs: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). These two programs are covered in the same chapter because they have some important things in common. Both programs are operated at the federal level by the Social Security Administration (SSA), provide cash income payments to people with disabilities, and use the same definition of “disability.”

There are also important differences between the programs:

Social Security Disability Insurance (SSDI) pays benefits to people with disabilities who have worked and paid Social Security taxes on their earnings, and to certain dependents of a worker who has retired, become disabled, or died. Eligibility, and amount of benefits, depends on how long the insured person worked, how much money s/he earned, and how many people are being paid from his/her account. There are no income or resource limits, but earnings from work may result in loss of disability-based benefits. **Eligibility for SSDI based on disability will make a person eligible for Medicare after a waiting period of two years.** *(See Medicare Program chapter, pg. 63.)*

Supplemental Security Income (SSI) pays benefits to people with disabilities whose income and resources are below set limits. Sometimes, resources and income of parents and spouses are counted. The person or family does not have to have a work history. Eligibility for SSI will make a person eligible for Medicaid which can be retroactive for up to 90 days. *(See Medicaid & BadgerCare chapter, pg. 38.)*

**A person eligible for SSI in Wisconsin may receive a State of Wisconsin SSI Supplement.** This benefit is administered by the state under state laws and policies.

Many people with disabilities receive both SSDI benefits and SSI benefits because their SSDI benefits are below the SSI payment level. Many people who now receive only SSI may become eligible for new or increased SSDI in the future, because they are working and paying taxes or because they become eligible as dependent spouses or disabled adult children. This may cause loss of eligibility for both Federal and State SSI benefits. *(See pgs. 16-19.)*
Both SSDI and SSI pay benefits to people who do not have disabilities. SSDI pays benefits, regardless of disability, to insured persons over age 62 who have retired, and to certain spouses and children of insured persons who are retired or dead. SSI pays benefits, regardless of disability, to people over age 65 who meet income and resource tests. This chapter does not provide detailed information about benefits where neither the insured person nor the person eligible for a benefit has a disability.

**Other References**

SSDI and SSI are complicated programs. This chapter cannot cover the details of every issue that readers may be concerned about. If you want to know more about an issue, there are several ways to get more detailed information:

- call SSA toll-free: 800-772-1213;
- visit the Social Security Online website which has information on all of the federal laws and regulations governing SSDI and SSI, Social Security publications on particular topics, and information on new developments;
- visit the Wisconsin SSI Supplement website;
- look in the United States Code or the Code of Federal Regulations (CFR) for the federal law or rule that covers your issue. The rules are detailed and written in fairly plain language. Rules for SSDI and SSI are found in Title 20 of the Code of Federal Regulations, parts 404 and 416. References for rules in the CFR are provided in this chapter for many issues, and look like this: 20 CFR 404.101;

Note: The U.S. Code and CFR are available in many libraries, and the laws and rules for SSDI and SSI are available on the Social Security Online website. **WARNING:** The rules in the CFR are usually accurate, but they may not reflect recent policy changes, especially where these are the result of a lawsuit. The most current policy is contained in the POMS. (See next paragraph.)

- request a current copy of the section of the Program Operations Manual System (POMS) that covers your issue. The POMS is the manual that Social Security personnel use in deciding issues, and is the most detailed and up-to-date source of information. Your Social Security Claims Representative has access to the complete manual on CD-ROM and should print out a copy of any section that you request. References for POMS sections are provided in this chapter for many issues, and look like this: DI 00115.000 (for SSDI) and SI 00510.000 (for SSI); or
talk to your claims representative. Sometimes, the most effective thing to do is to go to the Social Security office to talk to the person directly. If possible, make an appointment ahead of time, so s/he knows you are coming and what you want to talk about. Remember that you have a right to see your file, and to get copies of rules and policies that cover your situation.

### Evaluating Disability

#### SSDI/SSI Disability Test

To receive SSDI or SSI benefits based on having a disability, a person must have an impairment that meets a strict disability test:

- **Diagnosed impairment**
  - a medical professional must be able to determine that the person has a physical or mental impairment;

- **Permanence**
  - the impairment must be severe and be expected to last at least 12 months or to result in death. A broken leg may result in inability to work, but it is usually not a disability because it will usually heal in less than 12 months; and

- **Inability to work**
  - the person, because of the impairment, must not only be unable to do his/her previous work (if any), but must also be unable to do any other type of work that SSA considers to be “substantial gainful activity.” In making this decision, SSA looks at whether the person can do any kind of work that a significant number of other people in the country do. Social Security does not have to consider whether there are job openings for that kind of work or whether that kind of work exists in the person’s local area.

#### Sequential Evaluation Process

In evaluating whether a person has a disability, the evaluator goes through a series of questions, in a set sequence. This process of “sequential evaluation” is described in the following sections.

- **Is the person currently doing work that is substantial gainful activity when s/he applies for benefits?** If the answer to this question is yes, the person does not meet the disability test. At this point in the process, the issue is only what the person is actually doing now, not what the person might be able to do. In other words, a person can get past this part of the test simply by holding their current work below the Substantial Gainful Activity (SGA) level.

#### Substantial Gainful Activity

- **SSA considers work to be SGA if it involves significant mental or physical activity of a kind that people usually do to earn money, whether or not the person is being paid. Work can be substantial even if it is part-time and even if it is unpaid.**
Earnings test
20 CFR §§ 404.1574 and 416.974

Unless there is evidence showing that the person is doing substantial work that s/he is not being paid for, SSA usually decides whether work is SGA by looking at the earnings level. If a person has gross earnings as an employee over the guideline amount, the work will ordinarily be considered substantial. (The guideline amount is $750 in 2001, and will increase for inflation in later years.)

Exceptions to earnings test
A person whose gross earnings are above the guideline amount per month may still be able to show that his or her work is not SGA:

20 CFR §§ 404.1576 and 416.976

- SSA should not count any part of the person’s income that s/he must use for impairment-related work expenses (IRWEs). (See the box on page 14 for more detail on IRWEs);

20 CFR §§ 404.1574 and 416.974

- the person may be able to show that the work is not really worth what the person is paid, for example, by showing that the wages are subsidized, that the actual value to the employer is less than the amount paid, or that the person is only able to do the work with substantial assistance from another person.

Self-employment
20 CFR §§ 404.1575 and 416.975

If the person is self-employed or works for a business that s/he owns, SSA does not rely solely on earnings, but also looks at whether the work the person does is worth the guideline amount or more to the business as a whole. For example, a person who has worked on a family farm or other business and who continues to plan business activities or keep the books may be found to be doing SGA, even if s/he does no physical work and is not paid for the help.

Blindness and SGA
20 CFR §§ 404.1581-.1587 and 416.981-.966

A person applying for SSDI based on blindness must meet the SGA test, but the level of earnings allowed is higher than for other applicants. A person who is applying for SSI based on blindness can meet the disability test regardless of level of current work.

Medical determination
20 CFR §§ 404.1508 and 416.908

Does the person have an impairment that can be identified by a doctor? SSA will not consider evidence of disability unless a medical professional, such as a physician or psychologist, can determine that the person has one or more impairments, using medically acceptable diagnostic techniques. This does not mean that the condition has to be physically observable: the medical professional may base his/her determination on the person’s own statements about their condition, such as his/her description of pain.

Drug addiction and alcoholism
42 USC §§ 423(d)(2) and 1382c(o)(3); POMS DI 90070.050

A person cannot be found to have a disability based on impairments that are a result of either alcoholism or addiction to drugs. If a person has alcoholism or addiction to drugs in addition to other impairments,
Social Security will find that s/he has a disability only if it finds that s/he would meet the disability test, even if the alcoholism or drug addiction stopped.

**What expenses count as Impairment-Related Work Expenses?**

Impairment-related work expenses can be deducted from earned income, both when determining whether a person is engaged in substantial gainful activity, and when determining countable income for SSI. To be deductible, an expense must be caused by the person’s impairment and must be paid for by the person. Expenses may be deductible even though the person also uses the items and services for daily living functions not related to work. Examples of expenses that may be deducted are: attendant care; payments to a family member who has given up work to provide services; modification to a home or vehicle; equipment and supplies; medical costs; and specialized transportation. Lump-sum costs may be spread out and deducted over a 12-month period.

**Is the impairment severe?** Under this test, all of the person’s impairments, taken together, must limit the person’s ability to do basic work activities.

**Does the impairment meet or equal a “listed impairment”?** The listing of Impairments is a detailed list of physical and mental conditions that SSA considers disabling. If a person has an impairment that is on the list, and is not currently working in Substantial Gainful Activity, then s/he is automatically considered to be disabled, regardless of other evidence about age, education or work experience that may indicate that s/he could work.

An adult will also be considered disabled if the medical evidence shows that the effect of the person’s impairments on his/her ability to function is the same as the effect of a listed impairment. Having a listed impairment, or a condition that equals a listed impairment, can be a big advantage. First, it can shorten the application process. Second, it can mean that evidence about education and work experience that may show ability to work is not considered. Third, it can help the person feel assured that, as long as his/her medical condition does not change, s/he can try working without being concerned that s/he will permanently lose access to status as a person with a disability under SSDI and SSI.

Many people are found not to be disabled when they first apply because they have not presented all of the evidence that would support their case. It is important to make your best case from the beginning.
Medical evidence from doctors and psychologists who know the person well is the most important evidence in providing disability. Some things to remember are:

- in general, evidence from a doctor who has treated the person over time carries a lot of weight. On the other hand, Social Security often will need evidence from a doctor who specializes in the person’s condition and has done specialized tests;

- a doctor’s conclusion that s/he thinks the person is disabled is not very helpful. What is helpful is for the doctor to describe the person’s medical condition in detail, and to provide reports from examinations and tests that demonstrate the existence and effects of the condition;

- Social Security can decide that the person is disabled based on the combined effects of more than one condition. Also, Social Security does not just look at physical ability. It is important to get reports on all conditions that affect the person’s ability to work. For nonphysical disabilities, such as mental conditions and allergies, it is helpful for the doctor to describe the effects of those conditions on the person’s ability to function in their daily life, particularly in a work setting; and

- doctors may not know what impairments Social Security considers to be disabling. Giving the doctor a copy of the conditions Social Security covers can help the doctor know what kinds of issues Social Security looks at in determining whether a condition is disabling, and what kinds of tests may help.

While medical evidence is important, it is not the only evidence. Other important evidence includes:

- the person’s own account of what they can and cannot do. This can include experience from past work or attempts to work, but can also include ability in activities of daily living at home and in the community;

- evidence about the person’s abilities from employers or co-workers who have observed the person on the job or in training situations; and

- evidence from people who live with the person or know the person well and can describe what s/he can or cannot do.

The rules contain a separate listing of impairments for children under age 18. To have a disability for purposes of SSI, a child under 18 must have a an impairment listed in this separate listing of impairments. For children, medical equivalence is not enough to establish disability.
**Employability test**

*20 CFR §§ 404.1529(f) and 416.920(5)*

Is the person, given his or her remaining ability to work, age, education, and work experience, able to work in any substantial gainful activity? An adult whose disability does not meet or equal a listing, may still establish disability under the “employability” test by showing that s/he cannot work in any SGA. It is not enough to show that the person cannot do his/her past work. To establish disability, SSA must find that the person cannot do any other work that a significant number of people do, either where the person lives or in several other parts of the country. The question is not whether there are job openings, but only whether the person could do the work involved. SSA considers four major factors:

- **Residual functional capacity**
  *20 CFR §§ 404.1545 and 416.945*

- SSA considers the remaining ability of the person to perform basic work activities despite his or her impairments. SSA considers both physical ability (for example, how far the person can walk and how much s/he can lift) and the effect of other limitations, such as mental illness or sensory impairment;

- **Age**
  *20 CFR §§ 404.1563 & 416.963*

- SSA does not consider age to be a factor for people under age 45. For people age 45-65, SSA considers the effect of age on the person’s ability to adapt to new work; the effect is considered greater as the person grows older;

- **Education**
  *20 CFR §§ 404.1564 & 416.964*

- SSA considers how the person’s education affects his/her ability to adjust to new work. The person may show that his or her education level is less than it appears because skills learned in the past have not been used or are outdated.

- **Work experience**
  *20 CFR §§ 404.1560-.1569 and 416.960-.969*

- SSA considers work the person has done in the last 15 years to determine if the person has skills s/he can transfer to new work.

**Continuing Disability Reviews**

After a person establishes disability, SSA may periodically review whether the disability continues. If SSA finds that a person no longer has a disabling impairment, benefits will continue for two months after the month in which the disability ended.

Continuing disability reviews are supposed to happen at least once every seven years, but may happen sooner if SSA expects the person’s condition to change. As part of the review, the person may be required to provide reports from doctors, or to go to an examination by a doctor appointed by SSA. SSA may only reopen the question of whether a person is disabled if there is substantial evidence that one of the following circumstances exists:

1. There has been some medical improvement in the person’s condition that is related to his/her ability to work;
2. The person has benefitted from advances in medical or vocational therapy or technology related to his or her ability to work; or

3. A prior determination was in error at the time it was made.

SSA may still stop benefits for other reasons, for example, because of fraud in the original process or because the person is doing SGA, cannot be located, or fails to cooperate with the disability review or with prescribed treatment.

People are often concerned that working above the SGA may trigger a continuing disability review, and/or be used as evidence that they have medically recovered. Under a new law that goes into effect on January 1, 2002, for people who have been receiving SSDI benefits for 24 months or more, SSA will no longer be allowed to:

1. Use work activity alone as a reason to schedule a continuing disability review; or

2. Use the fact that a person has engaged in work activity as evidence that s/he is not disabled.

Eligibility for Social Security Disability Insurance

Eligible Recipients Based on Disability

All Social Security benefits must be drawn on the account of someone (called a “worker” below) who has worked long enough, and paid enough Social Security taxes, to have “insured status.” A worker may be insured for some benefits, but not for others, depending on the kind of insured status s/he has. (See pg. 20.)

Eligibility for workers

A worker who has both fully insured status and disability insured status is eligible for SSDI if s/he is in a period of disability, and if s/he has completed a waiting period of at least five full calendar months since s/he became disabled. If the worker was entitled to disability benefits in the past within five years before again becoming disabled, no waiting period is required.

Dependents’ benefits

Some people considered dependents can draw benefits, either because the worker is disabled or because they themselves have a disability and the worker is disabled, retired, or deceased. (Spouses and children who are not themselves disabled may also be eligible for benefits on the account of workers who are retired or deceased. These benefits are not discussed in this chapter.)

Spouses and divorced spouses

If a worker is receiving disability benefits, their spouse may be eligible for a benefit on the worker’s account if they have been married for one year and if the spouse is at least 62 years old or is caring for a child of the worker who either is under 16 or has a mental disability.
that requires supervision or substitute decision-making, or a physical disability that requires personal services. A divorced spouse can receive benefits under the same circumstances, but only if the marriage lasted 10 years, the divorce occurred at least two years ago, and s/he is currently unmarried.

**Minor children and students**

20 CFR § 404.350-369

If a worker is receiving disability benefits, his/her dependent children can receive a benefit on the worker’s account. A “dependent child” includes a biological or adopted child, if the adoption occurred before the worker became entitled to benefits. It may also include a stepchild, grandchild, stepgrandchild, or child adopted after the worker began receiving benefits, if the child meets Social Security’s requirements for proof that s/he was dependent on the worker at the time the worker became disabled. To be entitled to benefits, a child must be unmarried and must be under age 18. A person over age 18 may qualify for “child’s” benefit if s/he is a full-time elementary or secondary school student, or has a disability that began in childhood.

**Disabled Adult Children - DAC**

20 CFR § 404.350(a)(5)

A worker’s dependent child (see above) who is age 18 or over and has a disability that began before age 22 may be entitled to a benefit on the worker’s account as a “disabled adult child” (DAC) if the worker is receiving retirement or disability benefits or is deceased. If the worker is deceased, a DAC benefit may be paid even if the worker was only currently insured at the time s/he died.

**Re-entitlement to DAC**

20 CFR § 404.351(c)

A childhood disability beneficiary may lose benefits if s/he no longer meets the tests for disability. However, s/he can become entitled to benefits again if his/her condition again becomes disabling within seven years after the month for which s/he last received a benefit, provided s/he has not married in the meantime.

**Effect of marriage on DAC benefits**

20 CFR § 404.352(b)(2)

A person is not eligible based on childhood disability if s/he is married at the time of application. However, a disabled adult child already receiving benefits will not lose those benefits if s/he marries a person who is also receiving Social Security benefits, unless his/her spouse is receiving benefits as a nondisabled child.

**Effect of DAC benefit changes on people receiving SSI**

If a person is receiving a federal SSI payment and a new DAC benefit or an increase in an ongoing DAC benefit puts the person over the federal SSI payment level, s/he will lose federal SSI eligibility. This may reduce the person’s total income because the person will also lose any Wisconsin State SSI Supplement s/he has been receiving. *(See pg. 29.)*

**Effect of DAC benefit changes on Medicaid and Medicare benefits**

42 USC § 1383(c)(c) & PL 99-643, Sec. 6

DAC benefits can also affect eligibility for Medicaid. If a person is receiving SSI benefits as a result of being eligible for SSI, and income goes over the SSI limit, s/he will receive a notice that s/he is losing both SSI and Medicaid. Under federal law, people in this situation can continue to be eligible for Medicaid (or can become eligible again) if they have income below the SSI limit, after subtracting out the DAC
benefit that made them ineligible. It is important that they be aware that their Medicaid eligibility is protected by federal law, and that they must go to their county to apply for continued benefits. Receiving DAC benefits will result in eligibility for Medicare after a waiting period. (See Overview of Medicare Program chapter, pg. 63.)

**Planning for Future DAC Benefits and Changes**

It is important to be aware of events that may entitle an adult who became disabled as a child to DAC benefits, usually the death or retirement of a parent. The amount of a DAC benefit may also change if a retired worker dies, or if another dependent stops receiving a benefit on the same account. Awareness of future changes will enable the person to plan for the impact on income and for any effects on SSI or Medicaid. The person will not have a choice about whether to receive DAC benefits, even if the effect is negative: SSI and Medicaid require that a person apply for all available Social Security benefits. In some cases, plans for assistance from family members, including special needs trusts, can be written flexibly to take into account the fact that the person is likely to someday lose SSI. (See pg. 31.)

**Disabled surviving spouses**

A surviving spouse or surviving divorced spouse of a worker who died fully insured may be eligible for a benefit if s/he is between 50 and 60 years old and meets Social Security’s disability test. Several restrictions apply:

1. The marriage must have lasted at least 9 months, unless the worker died due to an accident.
2. The spouse’s disability must have begun within seven years after the death of the worker or of the last month in which the spouse received a benefit based on having a child of the worker in his or her care.
3. The spouse must not have remarried, unless s/he was disabled at the time of the remarriage.
4. The first time the person applies, s/he must have been disabled for five calendar months before benefits can begin.

Disabled surviving spouse benefits can have the same unwanted side-effects as DAC benefits for people receiving SSI. (See Planning for Future DAC Benefits and Changes above.) Unlike DAC benefits, there is no federal protection of Medicaid for people who lose SSI as a result of a new disabled surviving spouse benefit.
Insured Status

Social Security measures a person’s work record in “quarters of coverage.” A worker gets insured status by earning a certain number of quarters of coverage in a certain period of time. Since 1978, a worker earns a quarter of coverage by earning and paying taxes on a specified amount of money during the year. It does not matter when in the year the person earns the money, but s/he can earn only four quarters of coverage in any one year. A person who is in a period of disability may still earn quarters of coverage by working and achieve insured status.

The different kinds of insured status are:

**Fully insured status**
20 CFR § 404.110
- a person is fully insured if the number of quarters of coverage the person has at least equals the number of years between the year s/he became 21 and the year in which s/he becomes disabled, dies, or reaches age 62. A worker can never be fully insured with less than six quarters of coverage;

**Disability insured status**
20 CFR § 404.130
- a person is insured for disability if s/he has earned 20 quarters of coverage during the ten year period just before s/he becomes disabled. If the worker becomes disabled before age 31, s/he must have quarters of coverage for one-half of the quarters since the quarter s/he became 21; or

**Currently insured status**
20 CFR § 404.120
- a person is currently insured if s/he has 6 quarters of coverage in the 13 quarters before s/he dies or begins a period of disability.

Period of Disability

A period of disability is a continuous period during which a person is disabled. A person who is insured for disability can apply to Social Security to establish that s/he is (or was) in a period of disability, even if s/he does not have insured status.

*If a person has a disability and cannot work at the substantial gainful activity level, it is important to apply to establish a period of disability, even if the person does not expect to be eligible for a benefit. If the person is eligible to establish a period of disability, SSA will not count the time during which s/he is unable to work in figuring out eligibility and benefits. This can help the person qualify for insured status if s/he continues or returns to work by reducing the number of quarters of coverage s/he needs to be eligible, and can increase benefits if s/he eventually becomes eligible.*

Earnings Record and Potential Benefits

A person who has paid Social Security taxes can request a Statement of Earnings and Benefit Estimate at any time. The Statement includes a record of earnings on which Social Security taxes were paid, the
number of quarters of coverage the person has, quarters of coverage needed to qualify for benefits, and an estimate of benefits that could potentially be paid to the person or his/her dependents.

Correcting the record

If a person’s earnings record does not show the correct quarters of coverage, s/he can correct the record within three years, three months, and 15 days after the year in which the earnings were received. After that it is more difficult to correct the record. A person always has the right to prove that wages were paid in a period if his/her employer completely failed to report wages for that period, e.g. through wage slips or testimony of fellow employees.

Effect of Working on Eligibility for SSDI

A person who is receiving SSDI based on a disability other than blindness will lose eligibility for benefits in a month if SSA finds that s/he is working in Substantial Gainful Activity and has used his/her nine month Trial Work Period and three month grace period. SSA evaluates whether the person is working in SGA in the same way as it does for new applicants. (See pg. 12.) However, the SSDI program contains several provisions designed to allow a person to try to work without immediately losing benefits.

During the Trial Work Period (TWP), a person will not lose benefits for work even if the work is above the SGA level. Ordinarily, a person gets a total of nine months of trial work during a period of disability.

In 2001, a person uses up a month of trial work in any month where s/he has earnings of $530 or more (up from only $200 in 2000). The TWP test will go up with inflation in future years. A person can use up their TWP even if they never work at the SGA level and even if the nine months are not consecutive.

Note: If the person has never used up the full nine month trial work period, months of work that happened more than 60 months before the current month may not count toward the TWP.

The extended period of eligibility is a period of 36 months that begins the month after the trial work period is used up. The months in the extended period of eligibility are consecutive calendar months after the last TWP month; they are used up whether the person works during the months or not. The first three months of the extended period of eligibility are a grace period during which the person still gets SSDI benefits, whether or not s/he works at the SGA level.

During the extended period of eligibility, a person will receive a benefit for any month during which s/he does not work in SGA, without having to reapply or reestablish disability. In years before 2001, the person loses eligibility for all SSDI payments if s/he continues to work at the SGA level after the extended period of eligibility ends, and has to reapply if s/he stops work in future.

Trial work period

42 USC § 422(c) and 20 CFR § 404.1592

Extended period of eligibility

20 CFR § 404.1592a
In January, 2001, a new law created an “expedited reinstatement period” that will last for five years after the extended period of eligibility ends. The person still has to reapply, but the law provides for benefit reinstatement based on the person’s statement in the application that the person is unable to work in substantial gainful activity due to a disability, and that the person has a disability that is the same as, or is related to, the disability that previously made the person eligible for SSDI.

If a person on SSDI begins to work at the SGA level, but is not considered medically recovered, eligibility for Medicare, without a Part A premium, continues for seven years and nine months after the end of the Trial Work Period.

The Medicaid Purchase Plan allows people with disabilities to work, have some savings, and get Medicaid by paying a premium. (See pg. 32.)

A new “Ticket to Work” program, to begin in Wisconsin in 2001, will allow people to get employment and vocational rehabilitation and support services from a wide range of providers. Wisconsin’s Pathways project plans to pilot other incentives and supports for people who return to work. (See pg. 33.)

Eligibility for Supplemental Security Income

Recipient Qualifications

To be eligible for federal or state SSI based on a disability, a person must meet the following tests.

Disability or blindness

The person must meet Social Security’s disability test, or be statutorily blind. Statutory blindness is vision (with glasses, if needed) no better than 20/200 or a visual field no greater than 20 degrees.

Residence in U.S.A. and Wisconsin

The person must live in the United States. A person is ineligible if s/he is out of the U.S. for an entire month, and must be back in the U.S. for 30 days before s/he can become eligible again. Only residents of Wisconsin can receive a Wisconsin state SSI supplement.

Status as a citizen or qualified alien

The person must meet the requirements of laws passed in 1996 and 1997 that restrict SSI eligibility to U.S. citizens and limited groups of noncitizens. Some noncitizens living in the U.S. are not eligible for SSI and some others are eligible only for seven years, unless they go on to become citizens. See “Supplemental Security Income for Noncitizens,” SSA publication No. 05-11051.

Prisons and state mental hospitals

The person is not eligible for SSI in a month if s/he spends the entire month in a prison or jail or in a large public mental health institution where his/her care is not paid for by Medical Assistance. This may
apply to people age 22-64 at state or county mental health facilities. *(See below for an exception if the person has been working while on SSI.)*

**Refusing treatment or vocational rehabilitation services**

20 CFR § 416.1715

A person on SSI may lose benefits for any month in which s/he refuses, without good cause, to accept available treatment or vocational rehabilitation. “Good cause” may include other means the person is using to get back to work, medical reasons, family health or welfare, and religious reasons.

**Income and resource tests**

To be eligible for SSI in a month, the person’s countable resources (things s/he owned when the month began) must be below the applicable resource test, and the person’s countable income (things s/he received during the month) must be below the applicable standard payment amount. *(See Financial Eligibility below.)*

**Application for other benefits**

20 CFR § 416.210

The person must apply for all other benefits for which s/he may be eligible. Application must be made within 30 days after SSA sends notice of a possible benefit, unless the person is incapacitated, knows the application would be useless, or has another good reason for not applying.

**Financial Eligibility for Federal SSI**

**Definition of resource**

What is a resource, and how is it valued? A “resource” is money or other property that the person owned on the first day of the month and can use to buy food, clothing, or shelter.

20 CFR § 416.1207

Resources can include cash and other liquid assets, personal property, or real estate. When SSA counts resources to see if a person was eligible in a particular month, it only looks at the resources the person had at the moment the month began. Property the person receives during the month is not considered a resource for that month, but it may be counted as part of the person’s income. Most property becomes a resource if it is held into the month after it is received. *(See next section for some exceptions.)*

**Availability**

20 CFR § 416.1201(a)

To be a resource, property must be available to be used to obtain food, clothing or shelter. Property is not a resource for a person:

1. If the legal ownership belongs to someone else.
2. If it cannot legally be sold or cashed in.
3. If it can be shown that no one will buy it.
4. If the person is unaware that s/he owns it.

**Value**

20 CFR § 416.1201 (b) & (c); POMS SI 01110.400

In almost all cases, the value of a resource is its equity value. This is the amount it could be cashed in for or its current market value (the amount it could be sold for in the local area), minus any mortgages, security interests or liens on the property involved. This is usually much less than the original cost to purchase the item.
Resource test

What resources can the person own and still be eligible for SSI?

Under the resource test for an individual person (unmarried, or married but living alone) a person will not be eligible for any SSI payment in a month if s/he owns more than $2000 in countable resources. A couple who are married and live together can own no more than $3000 in countable resources. Despite inflation, the resource test has not been increased since 1989.

A key word in the resource test is “countable”. There are many types of property that appear to meet the definition of resources but are either not defined as resources or are excluded from countable resources. These items include:

- certain cash payments, such as:
  - SSI and Social Security back payments, but only for the six months after the month they are received,
  - disaster relief payments,
  - payments made to enable the person to buy social or medical services, but only for the month after the month the payment is received. Examples in Wisconsin would include cash payments under the Family Support, Community Options, Vocational Rehabilitation and Supportive Home Care programs. This exclusion does not apply to repayments of amounts the person has already paid.

- the home in which the person lives, up to any value, including the land it is on and related buildings. The form of the home does not matter: houses, condos, mobile homes, farms, and houseboats are all homes if the person lives in them. The person may own the home completely, share ownership or own a “life estate” (the right to use the home while s/he lives). A home of a person in an institution can be excluded if a spouse or dependent relative lives there, or if the person is expected to return to the home. Money received from selling a home is excluded if it is used to buy another home within 3 months of the date it is received;

- household goods and personal effects up to an equity value of $2000. This includes not only furniture, appliances, and clothing, but also things like musical instruments and hobby materials. The value of a wedding or engagement ring and of medical and adaptive equipment is not counted towards the $2000. Social Security ordinarily assumes that household goods and personal effects are under the $2000 limit, but may ask for more detail if the person owns multiple items worth over $500, or one item worth over $1000;
an automobile, regardless of value, if it is necessary for employment, to get regular medical treatment or to perform essential daily activities, or if it is modified for a person with a disability. A car that does not meet these tests may be excluded if its market value is less than $4500. Any excess market value over $4500 will be counted (this is an exception to the rule that only equity value is counted). If a person owns a second car that cannot be otherwise excluded (e.g., as essential to self-support), only the equity value of the second car is counted;

transportation tickets for domestic travel, if they were received as a gift and the person does not convert them to cash;

property essential to self-support. Property used in a trade or business is excluded up to any value if it ordinarily produces income. This can include cash necessary to the operation of the business, and inventory. Tools, equipment and uniforms required by an employer for work are excluded up to any value;

money or property that is part of a plan to achieve self-support approved by SSA. (See pg. 32);

the cash value of life insurance, if the total face value of the insurance on any one person is $1500 or less. Insurance with no cash value and policies that belong to someone else are not considered; and/or

burial spaces can be excluded including improvements such as a vault, marker, burial container and contract for opening and closing the gravesite. In addition, up to $1500 per individual set aside for burial expenses, and interest earned on these burial funds can be excluded from resources. However, the $1500 exclusion is reduced by the face value of life insurance where the cash value has been excluded from resources, and by amounts in irrevocable burial trusts.

How can excess resources be reduced? If a person is ineligible because of nonliquid resources (property that will take time to sell for cash), and has total countable resources under $3000 (or $4500 for a couple), s/he may be eligible if s/he makes an agreement with SSA to sell the property within a set time. If the person’s resources are over the resource limits after the sale, s/he may have to pay back part of the SSI payments received while s/he was selling the property.

Often, a person is at risk of having excess resources because s/he receives a lump-sum of cash, such as an SSDI/SSI back-payment (held beyond the six month grace period) or an inheritance. In these situations, the person has limited options. These include: buying excluded resources, such as a home, car or furniture; prepaying rent or other expenses; taking a big vacation; or putting the money in a trust that meets special restrictions.
Divestment and self-funded trusts
PL 106-169

Under a law passed in 1999, giving property away (divestment) is not an effective way to reduce resources if the person may need to rely on SSI or Medicaid within the next three years. Under the new law, the person will lose eligibility for benefits for a period of time after s/he has given away excess resources. The period of ineligibility can be up to 36 months, and is calculated by dividing the value of property the person gave away by the monthly benefit the person would have received. The new law also placed new restrictions on trusts that contain property that belonged to the person. (See Medicaid & BadgerCare chapter, pg. 44, for effect of divestment on Medicaid.)

Definition of income

What is income, and how does it affect SSI? “Income” includes any property a person receives in cash or in-kind in a month which is available to the person to meet his/her needs for food, clothing and shelter. Like resources, some items that appear to be income are excluded from being counted as income. SSA divides income into two types, earned and unearned.

Countable unearned income
20 CFR § 416.1120-1124

Unearned income is everything except wages for work and net earnings from self-employment, and includes Social Security payments, pensions, interest, gifts, etc. SSA does not count the first $20 of unearned income per month. Other types of unearned income not counted include:

1. State or local public assistance based on need, including payments intended to be used for medical and social services.
2. Grants, scholarships or fellowships for tuition, fees or educational expenses (not room and board).
3. Food the person raises and consumes.
4. Disaster relief.
5. Irregular or infrequent income, if it is less than $20 for the month (for example, occasional gifts).
6. Payments for being a foster parent.
7. Interest on excluded burial funds.
8. The property a person gets by selling or exchanging a resource. SSA counts the property as a resource and not as income.
9. Replacement of income that was lost, destroyed or stolen.
10. Weatherization assistance.

(See pg. 31 for additional types of assistance the person may receive that is not counted as income.)
**Countable earned income**

20 CFR § 416.1110-.1112

Earned income includes gross wages from work and net earnings from self-employment in a trade or business. Wages are counted in the month that the person receives them, or has the ability to get hold of them. Self-employment income is spread out over the taxable year. In figuring countable income, SSA subtracts (“disregards”) the following items, in the following order:

1. Impairment-related work expenses (IRWEs). *(See pg. 14.)*

2. The first $65 of earned income per month. This amount may be increased by any part of the $20 exclusion of unearned income the person has not used. For example, if the person has no unearned income, s/he may exclude $85 of earned income. *(A student under age 22 may qualify for a larger exclusion.)*

3. One-half of any remaining earned income.

4. Any earned income devoted to a Plan to Achieve Self-Support. *(See pg. 32.)*

Because only half of earned income over $65 is counted, a person who works can have actual income that is much higher than the applicable payment standard. *(See Effect of Working on SSI, pg. 32, for other protections for earnings from work.)*

**Payment based on earlier month**

20 CFR § 416.420

Income eligibility in a particular month is determined by comparing total countable earned and unearned income in the month to the standard payment amount (SPA) for the person or couple’s situation. However, if the person is eligible, his/her SSI payment is usually determined by comparing the applicable SPA to his/her income in the month two months before. One exception to this rule is that if a person is newly eligible, or has become ineligible and is now eligible again, benefits for the first and second month will be based on income in the first month of eligibility.

*Example:* Sam is disabled and lives on his own. He receives $400 per month from Social Security and is paid $205 from work in July, 1999.

Countable unearned income., $400 - $20 = $380
Countable earned income., $205 - $65 = $140 divided by 2 = $70
Total Countable Income, $380 + $70 = $450

The Federal Standard Payment Amount for Sam in 2001 is $530. He is income eligible for a Federal SSI benefit. His Federal SSI benefit in September, based on his July income, will be $530 - $450 = $80. *(He will also receive a state supplement benefit.)* *(See pg. 29.)*

**In-kind income**

20 CFR § 416.1102

How does in-kind income affect countable income? In-kind income is noncash income that is either food, clothing or shelter, or that can be sold or exchanged to get food, clothing or shelter. For example, if
someone gives the person a nonexcluded resource that s/he can sell for cash, it is income because s/he could use the cash for food, shelter or clothing. In-kind gifts of excluded resources are not counted as income.

**Food, clothing or shelter**

20 CFR § 416.1130

Gifts of food, clothing, or shelter are called “in-kind support and maintenance” and receive special treatment. This includes situations where someone gives the person food, clothing or shelter, or pays the person’s bills for these items, or charges less for them than they are worth.

**Household of another rule**

20 CFR § 416.1131-.1133; POMS 00835.001 & .200

If an adult lives in another person’s household (including an adult living with parents or other family members) and receives in-kind food and shelter, the Federal SSI payment is reduced by one-third, no matter what the value of the support really is. This can be helpful if the value of the support is high, but is sometimes applied where the support is small or nonexistent. To avoid the one-third reduction, the person may establish: (1) an ownership interest in or direct responsibility for rent for the home; (2) that the person buys food separately or pays his or her share of food costs; or (3) that the person pays his or her fair share of household expenses. Household expenses considered are food, mortgage interest payments, rent, property taxes and utilities, other than telephone. If the person avoids the one-third reduction, the value of any in-kind support may still be counted as income.

**Presumed maximum value**

20 CFR § 416.1140-.1144; POMS 00835.001 and .300

If the person is receiving unearned in-kind food, clothing or shelter, and the household-of-another rule does not apply, SSA will assume that the support is worth a set amount called the presumed maximum value, equal to one-third of the Federal SPA, plus $20. SSA should never count more than this value as income, but may count less if the person proves that the value of the support is really lower. Under a court case that applies to Wisconsin, the fact that a person’s rent is below market value is not counted as income if the rent paid is equal to or greater than the presumed maximum value. SSA may not consider a person to be receiving in-kind support and maintenance if the support comes from a foster or family home placement, from a nonprofit retirement home or similar institution, from a household where everyone gets public assistance, or from someone whose income is “deemed” to the person.

**Spouse not disabled or age 65**

20 CFR § 416.1163 and .1205

When is income of a person’s spouse or parent deemed to be the person’s income? If a person who is disabled or over 65 is married to (and lives with) a spouse who is under 65 and is not blind or disabled, the Federal SPA for an individual applies. SSA may treat part of the ineligible spouse’s income as if it were the eligible spouse’s income. Resources are considered together and the couple’s resource test applies. If there are children who are not blind or disabled, some of the spouse’s income may be protected for their support.
If a child with a disability who is under age 18 lives with one or both parents (including a stepparent) who is not aged, blind or disabled, part of the resources and income of the parent(s) will be considered (deemed) to be available to the child. Income and resources of a parent not living with the child are not considered in this process, but two-thirds of support payments actually made may be counted as income. Once the child reaches age 18, s/he is treated as an individual and deeming stops. After that, actual in-kind assistance from the family may count as income. A child ineligible for SSI due to deeming may be eligible for Medicaid if s/he meets special level-of-care standards. (See Medicaid & BadgerCare chapter, pg. 49.)

**How is the federal standard payment amount determined?** Eligibility for federal SSI and the amount of a person’s payment depend on what standard payment amount (SPA) applies. Federal SPAs are different depending on the person’s marital status and living arrangement.

**Individual SPA**
A person’s income will be tested against the SPA for an individual if s/he is unmarried, married but not living with his/her spouse, or married to a person who is not disabled or age 65 or over.

**Couple’s SPA**
A couple’s combined income will be tested against the couple SPA if each member of the couple is either disabled or age 65 or over, SSA considers them married, and they live together. The couple’s SPA is only about one-and-one-half times the size of the individual SPA, so there is a substantial loss of benefits when two people are treated as married and living together. (SSA considers people to be married if they are legally married, or if they lead other people to believe they are married.) (See income information, pg. 26.)

**Household of another SPA**
If a person spends a full month in a hospital, nursing home or other facility paid for by Medicaid, the federal SPA is only $30 per month. (See pg. 32 for an exception if the person has been working while on SSI.)

**Institutionalization**
CFR § 416.414

**Wisconsin State SSI Supplement**
Wisconsin pays a state supplemental benefit to people who are receiving Federal SSI benefits and to some people who have lost SSI due to earnings from work. (See pg. 32.) The state check comes separately from the federal SSI check. The state pays the benefit based on information from the Social Security Administration that the person was eligible in a particular month. Individuals who are newly applying for SSI must qualify under the federal SSI payment standard alone, not the total of the federal and state payment. If they do qualify for a federal SSI benefit, they will then begin to receive the additional state supplement.

If a person receiving Federal SSI loses his/her Federal SSI benefit due to excess unearned income, he/she will also lose his/her state supplement. This can result in a reduction in total income, because any excess income results in loss of the entire state supplement.
Example: In 2001, Mary was receiving Federal SSI and an SSI-E supplement, giving her total income of $709.77 per month. Her father retired during the year, and she became eligible for $550 in Social Security Disabled Adult Child benefits. She must accept the benefit. As a result, she loses both federal and state SSI, and her income falls to $550/month.

Grandfathered “state-only” recipients

In addition to people who are receiving Federal SSI, the state pays supplemental benefits to people who, as of December, 1995, (1) were receiving a state supplemental payment, but (2) were not receiving a Federal SSI payment, so long as they remain eligible in all other respects for an SSI benefit. On a case-by-case basis, people who did not meet the grandfathering test because of participation in a work-incentive program in December, 1995, may also qualify for a state supplement. Eligibility for this benefit is reviewed annually, through a mail survey. This means that changes in income and resources do not affect the benefit until the next review occurs.

Who can receive the state exceptional expense supplement (SSI-E)?
Wisconsin provides an exceptional expense supplement (worth about $96 per month), called SSI-E, to any person eligible for a state supplement who either:

- receives supervision or services in a community living arrangement, including a community-based residential facility for no more than eight residents, an adult family home, or a group or foster home for children; or

- lives in an ordinary home or apartment and is in need of 40 or more hours per month of long-term support services, including supportive home care, daily living skills training, and/or services from a community support program for persons with mental illness. SSI-E is available based on need for services; the services need not be actually available.

How to apply
A person must already be on the state SSI supplement to receive SSI-E. A person applies for SSI-E by requesting certification from their county Department of Human Services (also called Department of Community Programs or Unified Services Board).

Who can receive an additional state supplement as the parent of a dependent child?
People with disabilities who are on SSI and have dependent children who live in their home may qualify for an increased state SSI supplement payment. The increase is $250 per month for the first child, and $150 per month for each additional child. The child may qualify for Medicaid by applying to the county. A parent on SSI will not receive an added benefit for a child who is also on SSI.
### Useful Assistance for People Receiving SSI

A frequent issue for family, friends and trustees who want to use their resources to benefit a person on SSI is: **How can we provide assistance that will not be counted as cash or in-kind income or put the person over the resource limit?**

Despite the income and resource rules, there are ways that other people can provide useful assistance. These include:

1. **Payments for services**
   - Paying someone to provide a service to the person on SSI.

2. **Payments to suppliers**
   - Paying bills for things that cannot be resold and are not food, clothing or shelter, such as telephone and cable TV bills and bills for fuel and upkeep for a car.

3. **Gifts of excluded resources, equipment and furniture**
   - Gifts of excluded resources, other than food, clothing or shelter. Examples are a car, furniture, and things the person needs for a trade or business.

4. **Payment for travel expenses**
   - Gifts of airline tickets, and payment for hotel, meals and a companion while the person is traveling.

5. **Loans of money or things**
   - Lending money to the person or lending things the person can use, such as a car, furniture, or equipment for a hobby. (Note: borrowed money can be a countable resource if the person holds onto it into the next month.)

6. **Contributions to achieve self-support**
   - Making a contribution of money or property to a plan to achieve self-support. *(See pg. 32.)*

7. **Supplemental needs trust**
   - Putting money or property into a supplemental needs trust.

8. **Housing assistance**
   - Assisting the person to become a home-owner, or providing housing at reduced rent. *(See pg. 28.)*

For more detail, see these publications by the Wisconsin Council of Developmental Disabilities, P.O. Box 7851, Madison, WI 53707-7851, 608-266-7826 / 608-266-6660 (TTY):

- **One Step Ahead: Resource Planning for People who Rely on SSI and Medical Assistance**
- **Threshold: Housekeeping Details on Renting or Owning a Home for People with Disabilities**
- **Provisions: Sample Language for Supplemental Needs Trusts.**
**Effect of Working**

Work can be used to significantly increase real income for a person on SSI. Impairment-related work expenses are deducted from countable income, and less than half of remaining earned income is counted in computing SSI benefits. *(See pg. 27.)*

A person who has been receiving SSI based on disability but is now working at the substantial gainful activity level can continue to be eligible for both SSI benefits and Medicaid under Sections 1619(a) and (b) of the Social Security Act. Under 1619(b) even if SSI stops, Medicaid can continue if the person continues to be disabled by the same impairment(s) that made him/her eligible for SSI and meets the usual SSI income and resource tests, except for his/her earnings from work.

A person who loses eligibility for SSI and 1619 Medicaid benefits can become eligible again under Sec. 1619 as long as s/he is still disabled and has not been off the program for 12 months or more. S/he does not have to prove that s/he is still disabled, although SSA may begin a continuing disability review if the person has had high earning from work. If the person has been off both SSI and Medicaid (under 1619) for 60 months or less, s/he will be able to reestablish eligibility under an expedited reinstatement process if s/he declares that s/he continues to have the same or a related disability and otherwise qualifies for SSI.

Under the Medicaid Purchase Plan, a person with a disability who is working or in an approved employment counseling program can obtain Medicaid coverage by paying a premium. The person can have countable resources of up to $15,000, and family income up to 250% of the federal poverty level. *(For more information see Medicaid & BadgerCare chapter, pg. 38.)*

If a person who is eligible under 1619 goes into an institution or nursing home, s/he can continue to get full SSI benefits for the first two months that s/he is there. This helps people to keep their homes and lives together until they get out again.

SSA will not count income and resources that are used or set aside for use under a Plan for Achieving Self-Support (**PASS**) . If someone else makes contributions of money or other property to a PASS, the contributions also will not count as income or resources.

Under a PASS, a person can use or set aside income or resources for goals such as starting a business, buying equipment, or obtaining training. The plan must be in writing and be approved by SSA. There must be a reasonable chance that the plan will help the person get a better job, work more hours, or need less support to work. For more information, get SSA’s publication *Working While Disabled: A Guide to Plans for Achieving Self Support.* *(See SSA’s web site, pg. 11.)*
One strategy that some people have used is to pledge part or all of their SSDI benefits to a Plan to Achieve Self Support (PASS), so that they become eligible for SSI and Medicaid. SSI and/or Medicaid benefits can then continue if the person loses SSDI because s/he works in a substantial gainful activity. This strategy is complicated, and should only be attempted with expert advice from a benefits counselor.

**PASS and Medicaid**

A person on SSI who works is also building a work record for SSDI. It is important for a person on SSI to keep track of how earnings are affecting current or potential SSDI benefits. Increased SSDI benefits may cause a person who is not working at the substantial gainful activity level to lose federal and state SSI. An improved SSDI work record may also mean that a person in the 1619 program cannot go back on SSI if s/he stops working at the substantial gainful activity level and starts receiving SSDI.

A person receiving either SSI or SSDI who is in a vocational rehabilitation program approved by the Wisconsin Division of Vocational Rehabilitation may continue to receive benefits until the program is completed even though s/he no longer has a disabling impairment, if the program will help the person support him/herself.

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**Pathways to Independence Project to Help People Return to Work**

Pathways to Independence is a research and demonstration project, intended to help people with disabilities who rely on SSI, SSDI, Medicaid and Medicare to return to work without risking loss of essential benefits and supports. Each Pathways site offers participants intensive benefits counseling, vocational rehabilitation services, and job planning, through a single source. Sites are not available in all areas, and each site serves a specific disability group. More information on Pathways is available at: 608-261-8884 or www.dwd.state.wi.us/dvr/pathways.htm

Pathways is designed to test several different approaches, some of which are still in the planning stages. For example, the project has received a waiver under which SSI recipients who participate in the project will be able to keep $3 of every $4 they earn from work, and will be able to save up to $8,000 per year from work without affecting benefits. The waiver also eliminates continuing review for SSI recipients with permanent disabilities.

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**Application Process**

Generally, Social Security and SSI benefits are available only if the person applies for them. Most Social Security disability benefits are retroactive for up to 12 months before the month the person applies, if s/he was eligible. Some adults with a childhood disability may be
SSI; presumptive, advance and interim payments
20 CFR §§ 416.520 and 931-.93420

If there is a high probability that an applicant for SSI is disabled and meets other SSI eligibility tests, SSA may pay the person presumptive disability benefits for a maximum of 3 months before a final determination of disability is made. SSA may also make advance payment of $100 to a person ($200 to a couple) who is very likely to be found eligible and faces a financial emergency.

Ongoing Issues
Reporting Requirements
A person receiving benefits is required to report changes in his/her disability, marital status, work status, income, resources, etc., that may affect eligibility for or amount of benefits. Failure to report may result in an obligation to pay back overpayments, and may also result in money penalties under SSI rules.

Underpayments
20 CFR §§ 404.501 and 416.535

Recovery: SSI
42 USC § 1383(b)(1); 20 CFR § 416.570; POMS SI 02200.000

SSA can recover an SSI overpayment by reducing future SSI benefits or by requiring the person, his or her estate, his or her eligible spouse or the spouse’s estate to pay it back. If a recovery is from SSI benefits, SSA can ordinarily recover only up to 10% of the person’s countable income (including the SSI payment) per month. SSI overpayments may not be recovered by reducing ongoing Social Security benefits.

Where to apply
Application for SSDI and SSI should be made to the local Social Security Administration District or Branch Office. An appointment may be set up by calling 800-772-1213 between 7 a.m. and 7 p.m. (TTY: 800-325-0778) or contacting the SSA office nearest you (scroll to Local Offices under web site www.ssa.gov/ sitemap.htm and type in your zip code to find your local SSA office). The state supplement is administered by the state Department of Health and Family Services, based on information it receives from SSA and from annual questionnaires sent to recipients who are not getting federal SSI.
SSA can recover a Social Security overpayment by reducing future payments made from the same account, requiring the person or his/her estate to pay it back, or recovering from tax refunds due. Social Security overpayments cannot be recovered from SSI benefits. However, if a Social Security overpayment is being recovered, the money withheld may still be counted as income in figuring the SSI payment, unless the person was receiving SSI when the overpayment was made.

Waiver of overpayments

A person from whom SSA is trying to recover money may request a waiver of recovery if (1) the person was without fault in causing the overpayment and if (2) recovery would either “defeat the purpose of the program” or “be against equity and good conscience.” SSA will usually waive recovery if the person requests it and the overpayment is $500 or less.

Without fault

Whether the person is “without fault” usually involves the question of whether the person made a reasonable effort to meet reporting requirements and to not accept incorrect payments. The person’s ability to understand program requirements, given age and mental and physical condition, is considered. The person may be found without fault if s/he relied on an incorrect statement from SSA. However, the fact that SSA made an error is not enough if the person was also at fault. A person will usually be “without fault” if an SSI overpayment was caused by excess resources of $50 or less, unless the person intentionally failed to report the resources.

Defeat program purpose or unfair

Recovery will “defeat the purpose” of Social Security or SSI if the person would be deprived of income s/he needs for ordinary and necessary living expenses. Most ongoing SSI recipients automatically meet this test. Recovery is “against equity or good conscience” if the person gave up a valuable right or changed his or her position for the worse in reliance on the incorrect payment.

Appeal and waiver process

The person may appeal the overpayment (that is, argue that it did not happen or is too large), ask for a waiver, or both. The person can also appeal denial of a waiver. If an appeal or request for a waiver is made within 30 days, or is late for good cause, no recovery should begin until after the reconsideration stage. An appeal or request for a waiver made after 30 days should stop further recovery. An appeal must be made within 60 days, but a waiver request can be made at any time, even after recovery is completed. In all SSI cases and in Social Security waiver cases the person has a right to request a fact-to-face conference with an SSA representative at the reconsideration stage, rather than relying on a paper review.

Representative Payee

A representative payee is a person who receives and manages a person’s benefits on behalf of the person. SSA will appoint a representative payee for most people under age 18, and for a person...
Use of benefits

SSA may appoint a payee without prior notice or hearing. Usually, SSA will write to the person before the decision to ask if s/he objects. The person may review the evidence and submit more evidence before the decision is made. **If the person does not like the decision to appoint a payee, or the person chosen to be payee, s/he may appeal.**

The payee must use all payments for the benefit of the person, and should first use payments to assure that the person’s needs for food, clothing, shelter medical care and personal comfort items are met, and may then use them to pay debts or add to savings.

The payee may be required to account for use of funds, but a parent or spouse who lives in the same household usually does not have to account. SSA may replace the payee for misusing payments. **SSA may end representative payment if the person proves s/he can manage the payments.**

**Notices and Appeals**

SSA must send notice of a decision affecting benefits, the reasons for it, and the person’s appeal rights. Unfortunately, SSA’s notices often do not provide clear information, and the person will need to call or visit his or her claims representative to find out the factual and legal basis for the decision. In many cases, a good first step is to ask to see the file and to have it explained. The person, or someone authorized in writing by the person, has the right to see and get copies of what is in the file, and to ask that information be added or corrected. If there is an appeal, a request to see the file should be made early, to see if new evidence is needed and because it may be difficult to get later on.

A person has a right to appeal most initial determinations by SSA that affect eligibility, amount of benefits or representative payment. The appeal process has four stages:

1. The person may request reconsideration within 60 days of notice of SSA’s decision. Reconsideration is a review by someone who was not involved in the initial decision, who will look at the file and any evidence the person sends in. In some cases, the person may request a fact-to-face conference or hearing at this stage.

2. In cases involving reduction or termination of ongoing SSI benefits, the person may request that benefits continue until a reconsideration decision is made, but only if s/he appeals within
10 days of notice of the initial decision. The person can also request that benefits be continued until a reconsideration decision in cases that involve termination of Social Security benefits based on a finding that the person is no longer disabled.

### Hearing

20 CFR §§ 404.933 and 416.1433

3. The person may request a hearing within 60 days of notice of the reconsideration decision. The hearing is an important stage because it is conducted by an Administrative Law Judge who is independent of the office that made the decision and who does not have to follow the POMS provisions. It is important that all evidence be presented at this stage. New evidence will ordinarily not be considered if an appeal is necessary.

### Appeals Council and court

4. The person may request review by SSA’s Appeal Council within 60 days after notice of the hearing decision. The person may then appeal to Federal Court within 60 days of notice of the Appeals Council.

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