

An Introduction to Old-Age, Survivors, and Disability Insurance and Supplemental Security Income

By Jenny Kaufmann

The Old-Age, Survivors, and Disability Insurance (OASDI) program, commonly known as social security, and the Supplemental Security Income (SSI) program both serve as potential sources of cash benefits for clients in need. In this article I present a short history of the Social Security Act, which authorized OASDI and SSI, an overview of the funding and administration of OASDI and SSI, and a summary of the eligibility requirements for each program. I conclude with a short explanation of why benefits may be legitimately denied and how overpayments may occur.

History of the Social Security Act

America's first social insurance program was actually a civil war pension that began shortly after the start of the Civil War.¹ Unlike federal pensions paid to disabled soldiers, this program paid benefits to survivors of Union soldiers. Eligibility for disabled soldier and survivor pensions eventually expanded to include soldiers who had reached "old age." Soon after the civil war, urbanization and industrial-

ization transformed American society from an agricultural society to an industrial one dependent on employers and wages. The new employment model brought with it a level of insecurity; earning a living was now dependent on factors outside of a worker's control, including recessions, layoffs, and bankruptcy.²

The stock market crash of 1929 and the subsequent depression brought severe economic hardship to many workers. Unemployment was high, and many people lived in poverty. There was an increased demand for old-age assistance from the federal government rather than the states.³ In 1932, as part of his plan to bring economic security to the country, President Franklin Delano Roosevelt proposed a social insurance program including a retirement program based on workers' contributions.⁴ On August 14, 1935, President Roosevelt signed into law the Social Security Act, the finalization of his plan.⁵ The Act created a new program that would provide a guaranteed source of income to retired workers under a fed-

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¹ Social Sec. Admin., Brief History of Social Security, at www.ssa.gov/history/briefhistory3.html (last updated Apr. 2002).

² *Id.*

³ Only seventeen states had an old-age assistance program, and none existed in the south. Three states, California, Massachusetts, and New York, accounted for 87 percent of total expenditures. *Id.*

⁴ *Id.*

⁵ Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301-1399 (2000)).

eral old-age insurance program. The Act also included a number of public benefit programs such as old age assistance (for low-income older individuals who had not worked), unemployment benefits, and federal-state public assistance to needy dependent children and the blind. A new government agency, the Social Security Board (replaced in 1946 by the Social Security Administration), was created to administer the new insurance program.⁶

Participation in the new insurance program was mandatory, and old-age benefits were paid to every retired worker regardless of unearned income or resources.⁷ The first old-age insurance payments were made as a single lump-sum payment from 1937 until January 1940, when monthly benefit payments finally began. Benefit payments were based on a worker's earnings and contributions to the program and, for the first ten years, were fixed at an amount determined at the time the worker retired.⁸ In 1950 Congress first increased the fixed benefit. Further increases over the next twenty years or so required special legislative action. The formula used to calculate the monthly benefits was, and still is, progressive and weighted in favor of low-wage earners.⁹

Amendments to the Act since 1935 have been numerous. In 1939 coverage was extended to dependents of retirees

and the surviving family members of a deceased worker. The federal disability insurance program was added in 1956, at first limiting coverage to workers 50–64 who became disabled and to disabled adult children. The age limit was lifted in 1960 to provide benefits to all disabled workers and their children.¹⁰ The programs established by these amendments are now collectively known as Title II or the OASDI programs. Health insurance programs, Medicare (Title XVIII), and Medicaid (Title XIX), were added in 1965.

Title XVI, the SSI program, was added in 1972 to provide a national minimum monthly income level for low-income individuals who are aged (65 or older), blind, or disabled and who meet uniform income and resource levels.¹¹ The national minimum monthly income level is known as the federal benefit rate.¹² SSI replaced a patchwork of state administered programs that had grown increasingly complex, with benefit amounts that varied as much as 300 percent from state to state. The federal program established uniform eligibility rules on status, income, and resources. States were allowed to supplement the federal monthly benefit but had to apply the basic federal eligibility rules for all SSI beneficiaries.¹³

Other major amendments to the Act passed in 1972 included a minimum re-

⁶ Brief History of Social Security, *supra* note 1.

⁷ ROBERT M. BALL, *INSURING THE ESSENTIALS: BOB BALL ON SOCIAL SECURITY* (2000).

⁸ Brief History of Social Security, *supra* note 1. Most of the early beneficiaries were also eligible for old-age assistance, which at the time paid a higher benefit than the average insurance benefit. *Id.*

⁹ *Id.* Initially monthly benefits were based on average monthly earnings in covered employment. Now benefits are based on lifetime earnings.

¹⁰ *Id.*

¹¹ 42 U.S.C. §§ 1381 *et seq.* (2000).

¹² The federal benefit rate for 2002 is \$545 per month for an individual and \$817 a month for a couple. Social Sec. Admin., SSI Payment Amounts, *at* www.ssa.gov/OACT/COLA/SSI.html (2002). This amount is the maximum benefit payable by the federal government. Each year the federal benefit rate is adjusted to compensate for increases in the cost of living. Many states supplement the federal benefit rate for certain classes of Supplemental Security Income (SSI) recipients. The categories and amount of the supplement vary by state. *See* James R. Sheldon Jr. & Diana M. Straube, *Supplemental Security Income and the Family Law Attorney: Using Creative Alimony, Child Support, and Property Settlements to Maximize Supplemental Security Income and Medicaid*, 33 CLEARINGHOUSE REV. 148, 151 (July–Aug. 1999).

¹³ Brief History of Social Security, *supra* note 1. For more information on state supplementation and a state-by-state breakdown of maximum supplements, see Program Operations Manual System (POMS) SI 01415.001–01415.28.

tirement benefit (a provision that is not well known), extension of Medicare to individuals who had chronic renal disease or who had received benefits for two years, and delayed retirement credits for individuals who retired after age 65. A separate bill in 1972 provided for annual automatic cost-of-living adjustments to benefit levels and to the wage-base used to calculate the initial benefit.¹⁴ Congress continues to propose and make radical changes in the Act's current mandatory contribution system and basic benefits.

Administration and Funding of Programs

The Social Security Administration administers both the OASDI and the SSI programs. The programs share a number of rules, including the same disability and blindness standards, but significant differences between them are many. Advocates must know the difference between OASDI and SSI, both as a matter of policy and as a matter of entitlement. (See table 1.)

Understanding the funding stream for OASDI and SSI leads to some insight into the rationale behind the rules and policies governing the two programs. Funding for OASDI and SSI comes from two entirely different sources. Funding for SSI comes solely from general revenues, while OASDI funding comes from payroll taxes.

OASDI funds are distributed between two separate trust funds: the old-age and survivors insurance benefits (the larger of the two) and disability insurance benefits. Workers contribute to the trust funds via payroll or self-employment taxes. A complicated formula that is fixed by law and depends upon a worker's earnings over time determines the level of benefits paid under OASDI.¹⁵ General revenue funds have not been needed to pay for OASDI benefits because more taxes are being deposited, creating a surplus of funds, in the trust funds than are being paid to eligible beneficiaries. That situation is changing because the ratio of workers to bene-

ficiaries is decreasing. If no changes are made in the benefits formula, the level of contributions, or the indexing of the yearly cost of living increases, the government will have to use the trust fund surplus and eventually appropriate general revenues to meet its obligations.

Statutes, regulations, administrative policies, and a large body of case law govern OASDI and SSI. (See table 2.) Although the published version of the Code of Federal Regulations is updated only yearly, changes in the regulations are effective within thirty to sixty days of their publication in the *Federal Register*. The Social Security Administration maintains updates on its regulations, separate from the online version of the C.F.R., at www.ssa.gov/regulations/rules-in-effect.htm. The Social Security Administration's administrative policies are found in the Program Operations Manual System (POMS) and are the primary source of rules that Social Security Administration staff use in local field offices in the day-to-day operation of the programs. POMS is a compilation of detailed policy instructions and step-by-step procedures for the use of Social Security Administration personnel in developing and adjudicating claims. POMS rules are exempt from formal rule making and do not have the force and effect of law.

For additional information on the administration and funding of OASDI and SSI, see the Web sites of the following organizations:

- National Senior Citizens Law Center: www.nslc.org.
- National Organization of Social Security Claimant Representatives: www.nosscr.org.
- Social Security Advisory Service: www.ssas.com/connect (public service posting board; links to helpful sites).
- The Centers for Medicare and Medicaid Services: www.cms.gov (information on health care benefits).

¹⁴ Brief History of Social Security, *supra* note 1.

¹⁵ 20 C.F.R. §§ 404.201–222 (2001). Advocates who know their clients' salary histories may use a calculator available on the Social Security Administration's Web site, www.ssa.gov, to compute the level of their clients' benefits.

Title II: Old-Age, Survivors, and Disability Insurance

OASDI, authorized by Title II of the Social Security Act, provides workers with an insurance program designed to protect against unexpected loss of earnings due to injury, retirement, or death.¹⁶ A person qualifies for OASDI benefits when a wage earner pays into a social security trust fund. A person's income and resources do not affect eligibility for OASDI benefits.

Basic Eligibility Requirements. Entitlement to OASDI benefits is dependent on whether the worker meets the insured status requirements at the time of retirement, death, or onset of disability. Since August 21, 1996, entitlement is also dependent on whether the beneficiary is a U.S. citizen or "qualified alien."¹⁷ Persons who are not lawfully present in the United States are not eligible for benefits even if they contributed to the trust funds.¹⁸ The dependents or survivors of an ineligible worker may be eligible for benefits if they are U.S. citizens or qualified aliens who meet the residency requirements.

The Social Security Act covers most work performed in the United States or for a U.S. employer in a foreign county. The Act does not cover state and local government employees who participate in a state or local government pension plan; neither does it cover most agricultural and domestic workers.¹⁹ All work performed is counted in quarters of coverage. Currently a worker receives credit for each quarter in which the worker earns the minimum amount of wages set by law, up to a maximum of four quarters per year.²⁰

Table 1.—Differences Between Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI)

OASDI	SSI
<ul style="list-style-type: none"> ■ Funded through payroll taxes ■ No income or resource restrictions ■ Monthly benefit based on lifetime earnings 	<ul style="list-style-type: none"> ■ Funded through general revenues ■ Strict income and resource limits ■ Uniform monthly benefit set by federal government and supplemented by some states
<ul style="list-style-type: none"> ■ Benefits paid to eligible family members ■ Eligible for Medicare at 65 or 2.5 years after entitlement to disability benefits (except for end-stage renal disease and amyotrophic lateral sclerosis) 	<ul style="list-style-type: none"> ■ No family benefits ■ Usually eligible for Medicaid (some states have more restrictive financial criteria)

A worker must be "fully insured" before being entitled to benefits under any program. A worker must also be "currently insured" in order to be entitled to survivors, dependents, or disability insurance benefits. Benefits are not payable to any individual who is confined in a jail, prison, or other correctional facility for the conviction of a felony.²¹

To be "fully insured," a worker must have earned at least six but not more than forty quarters of coverage. A worker is fully insured for old-age insurance benefits if the worker earned one quarter of coverage for each calendar year elapsing after 1950 or, if later, after the year in

¹⁶ 42 U.S.C. §§ 401–422 (2000).

¹⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 8 and 42 U.S.C.).

¹⁸ 42 U.S.C. § 402(y) (2000).

¹⁹ 20 C.F.R. § 404.1004 (2001). Before 1984, federal employees were not covered by social security. After 1984, all newly hired government employees are covered.

²⁰ Soc. Security Admin., Quarter of Coverage—A Unit of Social Security Credit, *at* www.ssa.gov/OACT/COLA/QC.html (last modified Jan. 30, 2002). The amount of earnings required for a quarter of coverage in 2002 is \$870. Before 1978, workers were credited with one quarter of coverage for each \$50 of earnings. Since 1978, the amount of earnings needed for a quarter of coverage has increased automatically each year with increases in the national average wage index. *Id.*

²¹ 20 C.F.R. § 404.468 (2001).

Table 2.—Statutes, Regulations, and Administrative Policies Governing OASDI and SSI

	OASDI	SSI	Internet Location
Statutory	42 U.S.C. § 401	42 U.S.C. § 1381	www.access.gpo.gov/congress/cong013.html
Regulatory	20 C.F.R. §§ 404 <i>et seq.</i>	20 C.F.R. § 416 <i>et seq.</i>	www.ssa.gov/OP_Home/cfr20/cfrdoc.htm
Policy	POMS	POMS	http://policy.ssa.gov/poms.nsf/aboutpoms

which the worker became 21 and before the worker reached retirement age or died.²² Any year included in a period of disability is not counted in determining the number of elapsed years.²³

To be “currently insured,” a worker must have earned at least six quarters of coverage during the thirteen-quarter period ending with the calendar quarter in which the individual died, most recently became entitled to disability benefits, or became entitled to retirement benefits.²⁴ “Currently insured” status may be all that is needed in order to receive some benefits.²⁵

Old-Age Benefits. To be eligible for old-age benefits, the worker must be fully insured and be 62 (with a reduction) or older.²⁶ Full benefits are paid at normal retirement age, which was 65, but, for individuals born after 1950, that age is gradually increasing. Retirement age will eventually reach age 67 for individuals born in 1960 and later.²⁷

Auxiliary Benefits. Auxiliary benefits are those benefits paid to eligible members of the insured worker’s family—

including certain spouses, children, and divorced spouses—under the retirement and disability insurance programs.²⁸ The family member must meet specific criteria provided in the regulations in order to qualify for benefits. Payment of these benefits does not decrease the insured worker’s monthly primary insurance amount, but there is a maximum benefit payable to all eligible family members.²⁹ The insured worker must be entitled to either retirement or disability insurance benefits. All family members must file an application and must not be entitled to a monthly benefit on another record that equals or exceeds the auxiliary benefit.

Survivor Benefits. Survivor benefits are payable to widows and widowers, surviving children, and, in very limited circumstances, parents.³⁰ Widows and widowers may include certain surviving divorced spouses if they are 60 or over or between 50 and 60 and disabled.³¹ To be entitled to benefits, a widow or widower must meet the specific criteria provided in the regulations.³²

²² *Id.* § 404.110(b)(2), (3); *see also* Soc. Security Admin., Fully Insured Status Defined, at www.ssa.gov/OP_Home/handbook/handbook.02/handbook-0203.html (last modified Mar. 2001).

²³ 20 C.F.R. § 404.110(c) (2001).

²⁴ *Id.* § 404.120(a).

²⁵ Soc. Security Admin., Currently Insured Status Defined, at www.ssa.gov/OP_Home/handbook/handbook.02/handbook-0206.html (last modified Mar. 2001).

²⁶ 20 C.F.R. § 404.310 (2001).

²⁷ *See* Soc. Security Admin., Age to Receive Full Social Security Benefits, at www.ssa.gov/mystatement/retchart.htm (last visited July 28, 2002).

²⁸ 20 C.F.R. § 404.330 (spouses), 404.331 (divorced spouses), 404.350 (children) (2001). Divorced spouses are not entitled to benefits before age 62 even if they are caring for an entitled child. *Id.* § 404.331.

²⁹ The family maximum is divided equally among the eligible members. *See id.* § 404.403.

³⁰ *Id.* § 404.335 (widows and widowers), 404.350 (children), 404.370 (parents).

³¹ *Id.* § 404.336.

³² *Id.* § 404.335(a)(1)–(4).

Disability Insurance Benefits. To be entitled to disability insurance benefits, a worker must be fully and currently insured, must meet the strict definition of disability, and must be insured for disability benefits (nonblind).³³ In order to be insured for disability benefits (nonblind), a worker must earn at least twenty quarters of coverage within the last forty quarters (the “20/40 test”) before the disability began. If a worker is under 31, the 20/40 test is not required. In that case the worker must have earned quarters of coverage in at least half of the quarters in the period after the worker turned 22, up to and including the quarter in which disability began.³⁴ If a worker is younger than 24, the worker must have earned six quarters of coverage in the twelve-quarter period immediately before becoming disabled.

Title XVI: Supplemental Security Income

SSI, authorized by Title XVI of the Social Security Act, is a welfare or needs-based program for the aged, blind, or disabled.³⁵ To qualify for SSI, a person must have limited income and resources. SSI may constitute a person’s sole form of income, or it may supplement other income, such as wages or OASDI benefits.

Eligibility Criteria. Applicants for SSI (or claimants, as the Social Security Administration calls them) must meet five basic eligibility criteria: category (aged, blind, or disabled), residence, citizenship or alien status, income, and resources. The Social Security Administration will not process any application for SSI benefits

based on blindness or disability unless the applicant meets these criteria. Individuals applying for SSI as aged individuals need to give proof of age before their applications are processed.

■ **Category.** A claimant must fall into one of four categorical definitions: aged, blind, disabled adult, or disabled child. To be aged, claimant must be age 65 or older.³⁶ To be blind, a claimant must have vision no better than 20/200 or vision limited to a visual field of 20 degrees in the better eye.³⁷ A disabled adult is a person 18 or older who is unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous twelve months or result in death.³⁸ A disabled child is a person under 18 with a medically determinable physical or mental impairment that causes marked and severe functional limitations and has lasted or can be expected to last for a continuous twelve months or result in death.³⁹

■ **Residence.** A claimant must reside in the United States or Northern Marianas Islands for at least thirty days to be eligible for SSI. Any recipient who travels or lives outside the United States for more than thirty consecutive days is ineligible. Eligibility can be reestablished only after the recipient returns to the United States and lives here for thirty consecutive days.⁴⁰

■ **Citizenship or Alien Status.** An individual must be a U.S. citizen or meet one of eight qualified alien categories and one

³³ *Id.* § 404.315. A disabled adult is an individual over 18 who is unable to engage in substantial gainful activity due to a medically determinable physical or mental impairment which has lasted or can be expected to last twelve continuous months or result in death. *Id.* § 404.1505.

³⁴ *Id.* § 404.130.

³⁵ 42 U.S.C. §§ 1381–1383 (2000).

³⁶ 20 C.F.R. § 416.202 (2001).

³⁷ *Id.* § 416.981.

³⁸ This definition, which the Social Security Administration is using, does not correlate word for word with the definition of disability provided in the regulations. *See id.* § 416.905.

³⁹ *Id.* § 416.906.

⁴⁰ *Id.* § 416.215.

of the conditions that allow a qualified alien to receive benefits.⁴¹ A citizen is a person born in the United States, Puerto Rico, Guam, or the U.S. Virgin Islands, or a person who has obtained citizenship through naturalization. Individuals born in American Samoa, Swains Island, and the Northern Marianas Islands are U.S. nationals who are treated as U.S. citizens for purposes of SSI eligibility.⁴² Since legislative changes of 1996 and 1997 significantly complicated SSI eligibility for noncitizens, eligibility should be considered in two steps:⁴³

Step one: Consider whether the noncitizen is a “qualified alien.”⁴⁴ Qualified aliens include individuals who are

- (1) lawfully admitted for permanent residence;
- (2) admitted as refugees;
- (3) granted asylum (asylees);
- (4) paroled into the United States for at least one year (parolees);
- (5) granted withholding of removal (also known as deportation);
- (6) granted conditional entry;
- (7) Cuban/Haitian entrants; and

(8) battered spouses or children as defined by the U.S. Department of Justice.

Step two: Consider whether the noncitizen qualified alien meets one of the following six SSI “exceptions”:

- (1) Time-limited: refugees, asylees, persons granted withholding of removal for the first seven years after the date status is granted;⁴⁵
- (2) Military: a lawfully admitted permanent resident who is on active duty or a U.S. veteran with an honorable discharge, his or her spouse, widow or widower, or unmarried dependent child;⁴⁶
- (3) Forty quarters: a lawfully admitted permanent resident who entered the United States before August 22, 1996, and (i) has worked for forty qualifying quarters or can be credited with quarters from a parent or current spouse and (ii) did not receive any federal means-tested public benefits during any quarter beginning after December 31, 1996;⁴⁷
- (4) “Grandfathered”: noncitizens lawfully residing in the United States and receiving SSI benefits on August 22, 1996;⁴⁸

⁴¹ 8 U.S.C. § 1641 (Supp. 1999); 20 C.F.R. § 416.202 (2001). Eligibility for SSI benefits was greatly restricted for noncitizens with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 8 and 42 U.S.C.). Some noncitizen benefits were restored by the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

⁴² 20 C.F.R. § 416.1603, 416.1610 (2001).

⁴³ When applying for SSI, noncitizens need to be aware of the risk that receiving cash benefits under a public entitlement program may result in a public-charge finding that can affect the approval of a green card. *See* Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28676 (May 26, 1999) (proposed regulations); Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (May 26, 1999). Public-charge policy does not apply to aged, blind, and disabled refugees, asylees, Amerasian immigrants, and certain Cuban or Haitian immigrants. When deciding whether to apply the public-charge policy, the Immigration and Naturalization Service is supposed to consider the totality of the circumstances.

⁴⁴ 8 U.S.C. § 1641 (Supp. 1999) (defining categories of qualified aliens).

⁴⁵ *Id.* § 1612(a)(2)(A).

⁴⁶ *Id.* § 1612(a)(2)(C).

⁴⁷ *Id.* § 16129(a)(2)(B). Until they have resided in the United States for five years, this exception is not available for lawfully admitted permanent residents who entered the United States on or after August 22, 1996. *Id.* § 1613(a).

⁴⁸ *Id.* § 1612(a)(2)(E).

(5) Lawfully present in the United States on August 22, 1996, and blind or disabled;⁴⁹

(6) Long-term SSI recipient (receiving before January 1, 1979) unless there is “clear and convincing evidence” of ineligibility.⁵⁰

If a noncitizen is a qualified alien (step one) who meets one of the six SSI exceptions (step two), the noncitizen has met the citizen or alien eligibility criteria.

■ *Income.* Anything that an individual receives in cash or in kind and can use to meet basic needs for food, clothing, or shelter is income.⁵¹ It can be earned, unearned, or in kind. Whether an individual may receive SSI and how much SSI the individual is eligible to receive depends on how much income the person has available. Earned income includes wages, net earnings from self-employment, and payment for services performed in a sheltered workshop or work activities center. Earned Income may include the value of food, clothing, or shelter provided instead of cash.⁵² Unearned income includes “all income that is not earned income,” either in cash or in kind.⁵³ Examples include annuities, social security and veterans’ benefits, workers’ compensation, dividends, interest, court awards, gifts, inheritances, and spousal or child support payments. In-kind income is the value of food, clothing, or shelter provid-

ed to the individual or something that can be used to obtain food, clothing, or shelter. Items may be earned or unearned, and the various income exclusions apply.⁵⁴ Income withheld to recover an overpayment of social security or veterans’ benefits or to collect a federal debt or income that is garnished pursuant to a support order is counted as income.⁵⁵ A number of items are not considered income because they cannot be used as, or to obtain, food, clothing, or shelter.⁵⁶ Advocates should maximize nonincome items, including vendor payments, when structuring any support orders or damage awards. Receipts from the sale, exchange, or replacement of a resource continue to be treated as resources that have changed form, and not income.⁵⁷

Income exclusions: In determining eligibility or the amount of a beneficiary’s monthly benefits, some income or a portion of the countable income is excluded or not counted at all.⁵⁸ The three most common income exclusions are the first \$20 per month of income, the first \$65 of earned income, and one-third of support payments made to a child.

Income counting rules: When eligibility is being determined, income is counted in the month it is received. If an individual loses SSI because of excess income, eligibility can be reestablished after any month in which the SSI benefit is \$0 so long as income decreases.⁵⁹ After

⁴⁹ *Id.* § 1612(a)(2)(F). Before the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a lawfully admitted permanent resident might receive SSI as an aged individual. This category is no longer available for qualified aliens who do not meet one of the other exceptions. Instead these qualified aliens must prove that they are either blind or disabled.

⁵⁰ POMS SI 00502.120.

⁵¹ 20 C.F.R. § 416.1102 (2001).

⁵² *Id.* § 416.1110(a)–(d).

⁵³ *Id.* § 416.1120.

⁵⁴ *Id.* § 416.1130.

⁵⁵ *Id.* § 416.1123(b)(1), (2).

⁵⁶ *Id.* § 416.1103 (listing items that are not considered income).

⁵⁷ *Id.* §§ 416.1103(c), 416.1205(e).

⁵⁸ *Id.* § 416.1124.

⁵⁹ *Id.* § 416.420.

eligibility has been established, income is computed two months retrospectively.⁶⁰ If income is retained for more than a month, it becomes a resource in the following month.

The Social Security Administration does not count the first \$20 per month as unearned income.⁶¹ The remaining unearned income is countable, dollar for dollar, against the federal benefit rate.⁶² When counting earned income, the Social Security Administration applies a general income exclusion and excludes \$65 per month.⁶³ One-half of any remaining income is excluded, and the final amount reduces the federal benefit rate dollar for dollar.⁶⁴ In-kind support and maintenance do not involve the exchange of cash but includes anything else that is given to the applicant or paid for by a third party for food, clothing, or shelter.⁶⁵ When structuring support or damage awards, an experienced advocate should be consulted regarding the in-kind support and maintenance counting rules and their interplay with the unearned income counting rules.⁶⁶

■ **Resources.** A resource is any cash, personal property, or real property which one owns or which one has the legal right, authority, or power to dispose of

or liquidate in order to convert it to cash to be used for one's own support and maintenance.⁶⁷ An individual is ineligible for SSI for any month in which the prescribed resource limit is exceeded. Reentitlement can be established after the excess has been spent down. Currently the resource limit is \$2,000 in countable resources for an individual and \$3,000 for a couple.⁶⁸ Resources are counted on the first day of the month. Resources are valued pursuant to the amount of equity in the property on the first day of the month.⁶⁹ Not all resources are countable, and some are excluded by law. Common countable resources include cash on hand, money held by a financial institution, stocks or bonds, certifications of deposit, U.S. savings bonds, real property on which the individual does not reside, life insurance with face value of over \$1,500, and certain trusts. Some excludable resources include

- (1) the home where an individual lives;⁷⁰
- (2) one car, regardless of value, used for work or medical appointments;⁷¹
- (3) personal goods up to \$2,000;⁷²
- (4) life insurance with face value of less than \$1,500;⁷³

⁶⁰ E.g., the income received in January for a current beneficiary decreases the March benefit. This counting method is confusing for some beneficiaries and advocates since the income is often no longer available after the SSI benefit is reduced. Because of retrospective and estimated counting, SSI recipients must report even receiving \$0.

⁶¹ 20 C.F.R. § 416.1124(c)(12) (2001). The \$20 exclusion may be used only once in any calculation.

⁶² *See id.* § 416.1123.

⁶³ *Id.* § 416.1112(a), (c)(5).

⁶⁴ *See id.* § 416.1112.

⁶⁵ *Id.* § 416.1130(b).

⁶⁶ In-kind support and maintenance are counted by using one of two methods: the one-third reduction rule (20 C.F.R. § 416.1131 (2001); POMS SI 00835.200) and the presumed value rule (20 C.F.R. § 416.1140 (2001); POMS SI 00835.300).

⁶⁷ 20 C.F.R. § 416.1201 (2001).

⁶⁸ *Id.* § 416.1205.

⁶⁹ *Id.* § 416.1201(c)(2). The equity value is the price at which an item can be expected to sell on the open market less any encumbrances. *Id.* § 416.1207(d).

⁷⁰ *Id.* § 416.1210(a), 416.1212.

⁷¹ *Id.* § 416.1210(c). If by some strange chance the car may not be excluded, the Social Security Administration excludes the current market value up to \$4,500. *Id.* § 416.1218(b)(2).

⁷² *Id.* § 416.1210(b), 416.1216.

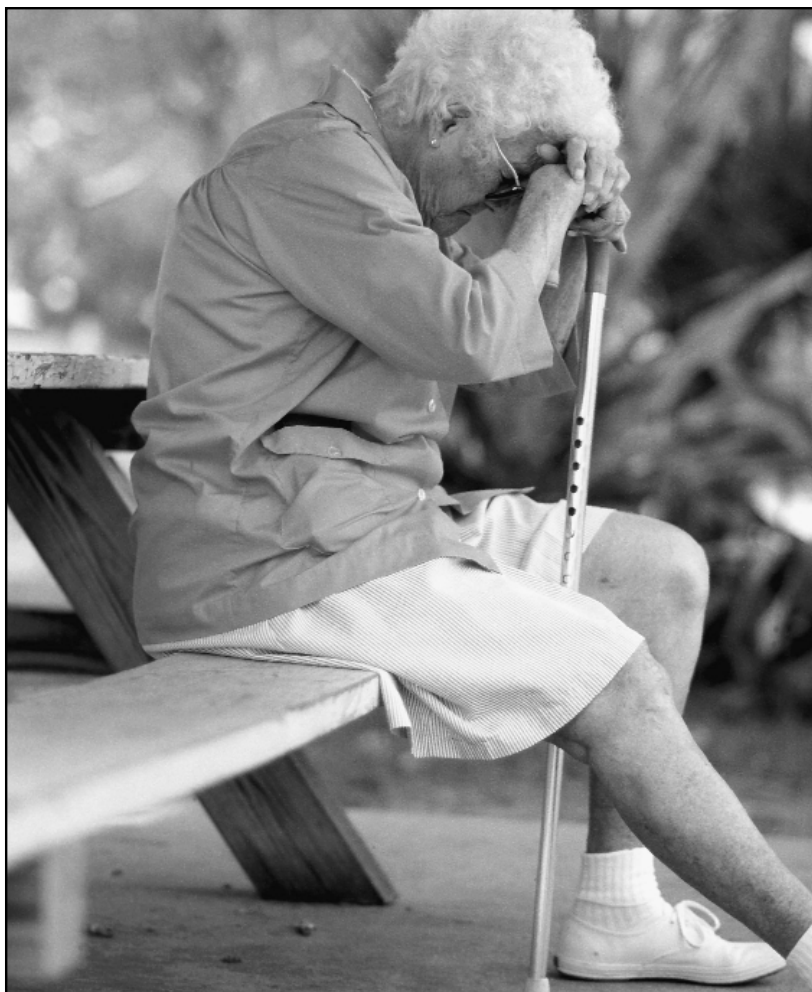
⁷³ *Id.* § 416.1210(h), 416.1230.

- (5) burial funds of \$1,500;⁷⁴
- (6) retroactive lump sums of OASDI or SSI benefits (for six months);⁷⁵
- (7) dedicated accounts for children;⁷⁶ and
- (8) real property pending effort to sell (up to nine months) or when sale would create hardship.⁷⁷

A complete list of excludable resources can be found in POMS SI 01130.050. The Internet POMS has hyperlinks to specific rules on each resource.⁷⁸

Jointly Held Accounts at Financial Institutions. Jointly held accounts at financial institutions create difficulties in both income and resource evaluations.⁷⁹ If the SSI applicant or recipient is the only name holder, the Social Security Administration presumes sole ownership, and the presumption is not rebuttable. For a joint account with one SSI applicant or recipient named on the account, the Social Security Administration presumes that the SSI individual is the sole owner, but this presumption is rebuttable.⁸⁰

Deeming Income and Resources. Both the income and resources of certain individuals may be deemed available to an SSI applicant or recipient.⁸¹ “Deemors” include ineligible parents and spouses who live with the SSI applicant or recipient, essential persons, and sponsors of noncitizens.⁸² All of the usual income and resource exclusions apply to deemors. The deeming rules and calculations are useful to know, especially for checking



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the accuracy of the Social Security Administration’s calculations.

Transfer-of-Assets Penalty. The Social Security Administration assesses a penalty of ineligibility for SSI when an SSI-eligible individual transfers a countable

⁷⁴ *Id.* § 416.1210(d), 416.1231. The funds must be specifically identified as burial funds and kept in a separate account. *Id.* § 416.1231(b)(1).

⁷⁵ *Id.* § 416.1212(m), 416.1233.

⁷⁶ *Id.* § 416.1212(r), 416.1247. All children’s SSI back awards that exceed six times the monthly benefit must be kept in a separate account and be used only for items or services which are related to the child’s disability and which benefit the child. *Id.* § 416.640(e), 416.1247; POMS GN 00602.140.

⁷⁷ 20 C.F.R. § 416.1245 (2001).

⁷⁸ See <http://policy.ssa.gov/poms.nsf/aboutpoms>.

⁷⁹ 20 C.F.R. § 416.1208(b), (c) (2001).

⁸⁰ POMS SI 01140.200, 01140.202.

⁸¹ 20 C.F.R. § 416.1160, 416.1202 (2001).

⁸² *Id.* § 416.1160(a)(1)–(4), 416.1202–.1204.

resource for less than fair market value.⁸³ The length of the ineligibility penalty is the number of months equal to the amount of the uncompensated value divided by the federal benefit rate, and any state supplement. Countable resources include legal rights such as inheritances, damage awards, and spousal or child support rights. A penalty would not be assessed if the transfer was for a purpose other than to establish eligibility for SSI, if the individual intended to sell the resource for fair market value, if all transferred assets had been returned, or if denial or termination of SSI would result in “undue hardship.”

Trusts. In general, any trust established with the assets of the individual or the individual’s spouse on or after January 1, 2000, is a resource unless specifically exempt.⁸⁴ Special-needs trusts and pooled trusts are exceptions to this rule. A special-needs trust is established with the assets of a disabled person under 65 by a parent, grandparent, legal guardian, or a court and includes specific language reimbursing the state for Medicaid expenditures. A pooled trust, maintained by a nonprofit organization, is established with the assets of a disabled person of any age by the individual or a

parent, grandparent, legal guardian, or court and contains specific language reimbursing the state for Medicaid expenditures. A trust is not counted as a resource if the resulting ineligibility for SSI would cause “undue hardship.”⁸⁵

Ineligibility Based on Status. Ineligibility rules apply to

- residents in a public institution,⁸⁶
- inmates of a penal institution,⁸⁷ and
- “fleeing felons.”⁸⁸

Neither OASDI nor SSI benefits are payable to anyone whose alcoholism or drug addiction is material to a finding of disability.⁸⁹ Individuals who fall under these ineligibility rules but who have impairments that are independently disabling, such as blindness, are eligible for benefits.

Denial and Overpayment of Benefits

The two most common problem issues regarding OASDI and SSI that confront legal services attorneys are the denial of benefits due to unfavorable medical determinations of disability and the overpayment of benefits. Addressing an unfavor-

⁸³ Foster Care Independence Act of 1999, Pub. L. No. 106-169, §§ 206, 205, 113 Stat. 1822 (1999). Before December 14, 1999, no penalties were applied to transfers occurring between July 1, 1988, and December 14, 1999. An SSI-eligible individual was allowed to transfer countable resources to an excludable trust without incurring a penalty. After the passage of the Foster Care Independence Act of 1999, trusts created with an SSI-eligible individual’s own funds are generally countable. As of June 2002, no regulations have been proposed or published on the transfer penalties. The Social Security Administration has published guidance on the statute in POMS SI 01150.001–210. The difference between the fair market value and the amount received for the resource is known as the “uncompensated value.”

⁸⁴ See POMS SI 01120.200-204.

⁸⁵ See *id.*

⁸⁶ 20 C.F.R. § 416.211, 416.1325 (2001); POMS SI 00520.140. A public institution is a facility that is operated or controlled by the federal, state, or local government that makes available some treatment or services in addition to providing food and shelter. 20 C.F.R. § 416.201 (2001). Residents of public institutions include inmates. *Id.*

⁸⁷ 20 C.F.R. §§ 404.468, 416.211, 416.1325 (2001); see also 42 U.S.C. § 1382(3)(1)(A), (I) (2000).

⁸⁸ 20 C.F.R. § 416.708(o), 416.1339 (2001); POMS SI 00501.050. This prohibition currently applies only to SSI benefits. A bill extending this prohibition to Old-Age, Survivors, and Disability Insurance benefits passed in the House of Representatives on June 26, 2002, and is pending further action. Social Security Program Protection Act of 2002, H.R. 4070, 107th Cong. (2002).

⁸⁹ 20 C.F.R. §§ 404.1535, 416.935 (2001).

able medical determination of disability requires a level of expertise that I cannot address in this overview.⁹⁰

We must realize that the Social Security Administration's disability definition is extremely restrictive and that applicants may not receive partial or temporary benefits. Both OASDI and SSI define disability as the 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."⁹¹ A person who is unable to perform the duties of a past job or who has difficulty performing everyday tasks is not necessarily disabled for purposes of OASDI and SSI. Similarly a person does not automatically fit the Social Security Administration's definition of disability when the person is found disabled by the Department of Veteran Affairs, the state welfare department, a private disability insurer, or for purposes of workers' compensation. The Social Security Administration is not bound by the decision of any government or private disability program.

Overpayments in the OASDI and SSI programs are a perpetual problem for most SSI beneficiaries and for OASDI beneficiaries who work.⁹² The majority of overpayments occur due to the Social Security Administration's inability to adjust benefits timely when a beneficiary reports a change in circumstances (e.g., married, returned to work, or received a large lump

sum of money from an inheritance or personal injury award). A minority of overpayments occur when beneficiaries or their representative payees fail to report changes in circumstances because they did not know or understand the reporting requirements, were unaware of the income and resource limitations for SSI, or were deliberately concealing information.

Most advocates will not see many eligibility issues arise for individuals under the retirement insurance program. Occasionally questions will arise because an individual has not met the marriage-duration requirement, or more frequently, under the survivor's program, dependency or parentage cannot be established. The most common eligibility problems seen under the SSI program include the existence of a joint bank account with a non-SSI individual, a spousal support order providing monthly cash payments, free or privately subsidized rent, and a bank account balance that exceeds the resource limit for more than a month.

OVER THE COURSE OF THEIR CAREERS, MANY advocates will encounter clients who are applying for, are receiving, or have been denied benefits under the OASDI program, the SSI program, or both. In order to serve clients best in such situations, advocates must be familiar with the structure and rules of OASDI and SSI. Understanding these benefits will not only assist advocates in advising clients but also lead to a better understanding of the debates on proposed changes.

Author's Note

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⁹⁰ For a discussion of unfavorable medical determinations of disability, see Soc. Security Admin., *Chapter 6: Factors in Evaluating Disability*, SSA ONLINE SOCIAL SECURITY HANDBOOK, at www.ssa.gov/OP_Home/handbook (last modified Mar. 2001).

⁹¹ 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A) (2000).

⁹² Overpayments as a result of work activity are no longer a problem for old-age insurance beneficiaries over 65. Congress repealed the earnings test for these beneficiaries when it passed the Senior Citizens Freedom to Work Act of 2000, Pub. L. No. 106-182, 114 Stat. 198 (2000).