

Summary – Social Security Disability Insurance and Supplemental Security Income

Annette Hines

This talk will cover both Federal and State law. No attorney-client relationship is established by the provision of any information in this podcast.

SSI for Children and Adults with Disabilities - Annette Hines, Esq.

SSI has more of a financial impact; both disability and financial status are considered
Disability determination process is the same for both

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SSI is means tested - there is an income and an asset test

SSDI is not means tested but has other eligibility depending on how much you have worked or what the parents' eligibility might be

Social Security Administration will look at what programs a person is eligible for in a particular order:

1. Retirement
2. SSDI
3. SSI - last because program is meant to be for people who have no other option.
Meant to keep disabled people off of the streets

Applicant does not have a choice about what they want to be eligible for

Slide 3 - SSI Eligibility

- blind, aged or disabled
- must have limited assets; another person's assets might be deemed to be assigned to you if you have a person who is legally obligated to take care of you (i.e. parents)
- Parents are required to support children until age 18
- Spouses also encounter deeming issues for income
- Must have limited income; depending on type of income you have, may have reduction in SSI payment
- U.S. citizen or alien status

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SSI payment is very limited

Some states have SSI supplemental payments; they are dependent on qualification under federal guidelines

Amount depends on living arrangement and type of disability

SSI payment chart attached as PDF at <http://www.mitoaction.org/blog/social-security-benefits>

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Definition of disability listed here

For children, age-appropriate milestones are the standard

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Public Benefits: Healthcare

In approximately 40 states, Medicaid is an automatic benefit for those who are eligible for SSI payments without further application

This is very important for those who require community care - Medicaid pays for many benefits that help keep people in community and out of institutions

Covers durable medical equipment, dental treatment, co-pays, deductible, Personal care attendants, nursing, and HCBS waivers

Slide 7 - income limits

Income divided into working income and non-working income

Income is counted in the month it is received

If not spent, the following month it is again counted as a resource/asset

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Working income is an encouragement for people to go to work

First \$20 of all income disregarded

Next \$65 of working income disregarded

Then, every \$ reduces SSI payment by 55 cents

Always get to keep work income; depends on how much it impacts the SSI payment

Work does not affect most state supplement plans

Probably able to earn up to \$1000/month without impact

Slide 9 - non-working income

- Many payments not considered income under SSI
- Case workers have POMS manual to determine what payments are excluded from income
- Child support - has a different impact for under 18 vs. over 18. Under 18, there is a 1/3 disregard. Often, paying parent wants to decrease child support by amount of the SSI payment. This argument is disfavored by the courts because it shifts burden of support from noncustodial parent to the government
- Alimony - dollar for dollar reduction in benefits
- Investment income, pensions and annuities result in dollar for dollar reduction in benefit; often fluctuates year to year, which can affect SSI benefit in the future

Slide 10 - Asset Limits

- Extremely low and have not increased in decades: \$2,000 for individual and \$3,000 for married couple
- Everything is included in assets, even furniture, etc.
- College savings accounts are assets of the person who set up the plan
- One non-luxury vehicle can be included in exemptions
- Home is an exempt asset if it is yours

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How to fix an asset or income problem?

Cannot give assets away or refuse income

Social security looks back 3 years

Medicaid looks back 5 years

Social security can go back very far and find assets that would have put applicant over the limit - can ask for repayment of benefits.

Can transfer assets and income to trust, but there will be an impact to SSI income

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Trusts

Two types of Special Needs Trusts

Third party: other people's money

First party: Disabled person's money

Benefit is not necessarily the income provided by SSI, but rather the fact of social security eligibility and the other programs opened through this eligibility

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Third-party trusts work because beneficiary has no authority over disposition of assets

Slide 14

Strategy for when disabled person has assets

Slide 15

Pooled trust — can set up third-party or first-party trusts and manage them for disabled beneficiary

Slide 16

ABLE accounts - are allowed under Federal law but not all states have implemented them

Limit to amount per year; total amount allowed is \$100,000; limit to one account per person

Limited uses for distribution

Still has estate recovery just like a first-party special needs trust

Allows person to create and fund themselves more easily and to control assets themselves if they are able

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SSDI - Social Security Disability Insurance - Tai Venuti, MPH, Allsup Manager of Strategic Alliances

Slide 19 - SSDI Eligibility

Most common reason for ineligibility is lack of work credits — must be currently insured and fully insured

Slide 20 - SSDI for younger people

Slide 21 - Definition of disability

Slide 22 -

Adult children of social security benefit recipient might be eligible under parent's work record for SSDI

- Cannot be doing any substantial work
- meet disability criteria
- Diagnosed before age 22

Slide 23

Benefits of SSDI

- Monthly income
- Medical benefits under Medicare
- Drug coverage

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Benefits of SSDI (continued)

- Extend COBRA benefits
- Protected retirement benefits
- Return to work incentives - encourages disabled to return to workforce

Slide 25

- Protects other income benefits like LTD policies
- Dependent benefits - would be half of entitlement for dependent

Slides 26-27

Social security reviews list of impairments.

For Mito, use related diseases and symptoms (listed)

Slide 28 - SSDI process

Consists of five levels in most states

Many who file get frustrated with the process and never continue with process

Slide 29 - Level 1 - Initial application

Most people get denied at this level (68%)

Slide 30 - Flowchart for sequential evaluation process for adults

RFC = residual functional capacity - how much capacity to perform previous work still exists

Age, education, work experience - older you are, less education you have, more likely you will be awarded at this level

Slide 31 - Reconsideration (level 2)

89% denied at this level

(Annette — she has more success at this level when the denial is based on misunderstanding of financial matter, such as characterization of an asset)

Slide 32 - Some states skip this level 2 reconsideration in an effort to speed up the process, including AL, AK, CO, LA, MI, MO, NH, NY, PA

Slide 33 - hearing with Administrative Law Judge

- opportunity to submit more evidence and medical records
- half of all claims denied at this level
- Many applicants bring in a representative at this point in time Slide 34

Level 4 - Appeals Council

99% are denied

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Level 5 - Federal District Court

Attorney required

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Why people need help with appeals

Slide 37

SSDI and Mitochondrial Disease

Slide 38

Getting help with SSDI - get help early

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how much does help cost?

If no award, do not pay representative anything

Level 1 - flat rate if awarded at this stage

OR

25% of retroactive payment if claim goes through appeals process, capped at \$6,000

Also ask about out-of-pocket expenses to avoid unexpected bills

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Difficulties in going through the SSDI process on your own (bar graph results from Allsup survey)

Slide 41

Experiences while waiting for SSDI award (bar graph results from Allsup survey)

Slide 42

Health Insurance Assistance (important to avoid lapses in coverage)

Slide 43

Questions to ask potential SSDI representatives

Especially important: do they have experience with Mitochondrial Disease and how will representative keep you up to date about your claim?

Slide 44-45

Meeting the Ticket to Work Challenge

Eligible for work support once SSDI is approved with work support

Slide 46 - Why Work?

Slide 47-49 - Ticket to Work and work incentives — try working without risking the loss of benefits

If successful, still have an extended period of eligibility

Still eligible for expedited reinstatement for up to five years after benefits stop due to earnings if benefits do cease

Also, continuation of medicare coverage and exclusion from medical continuing disability reviews so long as you have an active ticket to work

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Provider resources that can help with securing employment

www.choosework.net

Slide 51 - Provider Description

Employment Network — free service to beneficiaries; helps person develop an individual work plan

Career placement, job placement, ongoing employment support, benefits counseling

Slide 52 - Summary of SSDI process

Slide 53 - Tai Venuti contact information

Q&A

Q: Who can help with disability paperwork at the very beginning of the process? Caller is having trouble finding someone to help at this stage.

Tai - Allsup can help with paperwork nationwide — experts.allsup.com or [1-888-841-2126](tel:1-888-841-2126)

Paperwork can be very overwhelming at the beginning

Q: 17-year old daughter living with parents who have more than \$2000 in the bank. How can SSI or SSDI be awarded in this situation?

Annette - Transition planning is important for children between 17 and 25, including eligibility for public benefits, special needs trusts, school issues, housing, guardianship, etc.

Most of the time, looking at someone becoming eligible at age 18 because parental income is no longer included at that time. Might want to move some resources to a Special Needs trust to avoid its impact on public benefits

Annette cannot work with people out of state because most public benefit programs are state based. Can work with local estate planning attorney and advise on Special Needs trusts portion

How much will it cost? Depends on scope and complexity of the situation - could be \$4,000 - \$10,000

Annette willing to discuss generalities of such matters with anyone through MitoAction without charge — contact her office to set up and tell scheduler not to go through usual intake process

Tai - in general, if you have a child with a diagnosis made before age 22, when parent retires or receives any type of Social Security benefits, the child may receive Social Security Disability benefits on the parents' work record without asset limits applying.

Annette - that can be a curse, not a blessing - that instance does not have automatic Medicaid eligibility, so SSDI payment can put you over Medicaid limit. Easier to fix the asset problem than the income problem.

Q: Is there a benefit to starting the process of applying for SSI or SSDI for a 14-year old child? Mom has assets but not income due to her child's disability

Annette — look for other state programs that reimburse parents for staying out of the workforce and keeping child out of institutions. Varies greatly from state to state, so finding local state disability nonprofit is important. No benefits available until child is 18, so no sense in starting early.

Q: IHSS (in-home support services) - Does this affect Social Security payment for an adult child?

Annette - not sure; most will not affect Social Security payment. Look under POMS to specific rules for each state. Should get expert in-state assistance for that.