

Supplemental Security Income (SSI): Resources

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About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

1. Supplemental Security Income (SSI) is a needs-based program with strict limits and complicated rules related to resources.
2. To be eligible for SSI, an individual or couple must have countable resources that are no more than the resource limit.
3. There are some common problems with resources for those applying for and receiving SSI.
4. A period of ineligibility may be imposed for the transfer of a resource for less than fair market value or for declining a resource that an individual or couple is entitled to receive.

Section 1

A Key Eligibility Criteria for the Supplemental Security Income (SSI) program: Limited Resources

Supplemental Security Income (SSI)

- Administered by the Social Security Administration (SSA)
- Needs-based, “means-tested” program
 - E.g. limited income and resources
- Seniors (65+ years) and people with disabilities
- Funded by general fund taxes
- Title XVI of the Social Security Act
 - Code of Federal Regulations (CFR) and SSA’s Program Operations Manual System (POMS)

Resources Defined (1 of 2)

- What is a resource?
 - Cash or other liquid assets or any real or personal property that an individual owns and could convert to cash to be used for their support and maintenance (food or shelter). 20 C.F.R. §416.1104

Resources Defined (2 of 2)

- A resource exists when:
 - Individual has the right, authority, or power to liquidate the property (or their share of the property).
 - If a property right cannot be liquidated, the property will not be considered a resource. 20 C.F.R. §416.1201(a)

SSI Resource Limit

The maximum value of resources allowed:

- At or under \$2,000 for an individual
- At or under \$3,000 for a couple

20 C.F.R. §416.1105

How and When Resources are Counted

- How Resources are Counted

- Based on the equity an individual has in the resource

POMS SI 01140.042; SI 01110.400

- When Resources are Counted

- Once a month
 - At the beginning of the first day of the month following receipt
 - Resources held only in the middle of the month are not counted

20 C.F.R. §416.1207; POMS SI 01110.600

Deeming of Resources

- Deeming is when the income or resources of a person ineligible for SSI are considered to be available to the individual applying for or receiving SSI

20 C.F.R. §§416.1202-1204

- Deeming only applies to three relationships:
 - Spouse (living in same household)
 - Parent of child under 18 (living in same household)
 - Sponsor of certain sponsored immigrants

20 C.F.R. §§416.1203-1204; 1210-1239; 1245; 1247

Excluded Resources

- Excluded resources do not count toward the SSI resource limit
- Some key excluded resources:
 - Home
 - Household goods and personal property
 - One vehicle
 - Burial plot
 - Burial funds and/or life Insurance (up to \$1,500)
 - Retroactive SSA benefits up to 9 months after receipt
 - Earned Income Tax and Child Tax Credits up to 9 months after receipt

POMS SI 01110.210

Section 2

Common Problems with Resources for SSI Applicants and Recipients

Common Resource Problems

- Some common resource problems
 - Property where the SSI recipient is not currently living
 - Court Awards and Lump Sum Settlements
 - Inheritances
 - Burial Funds and/or Life Insurance Policies
- In some cases, the resource may be excluded

Property where the SSI Recipient is not Currently Living

- Due to a variety of life circumstances, an SSI recipient may have an ownership interest in property where they are not currently living.
- Resource exclusion rules exempt certain excess real property

Excess Real Property Resource Exclusion: Loss of Housing for Co-Owner (1 of 3)

- Exclusion applies when the sale of excess real property would result in loss of housing for co-owner:
 - Where property is jointly owned by the individual and at least one other person,
 - One (or more) of the owners uses the property as their principal place of residence,
 - The other owner(s) would have to move if the property were sold; and
 - Had no other readily available housing

20 C.F.R. §416.1245(a)

Excess Real Property Resource Exclusion: Loss of Housing for Co-Owner (2 of 3)

Case Example:

George and Martha are married and live together in a house they co-own. George and Martha divorce, and George, an SSI recipient, leaves the household with no intent to return. Martha has no other place to live if George sold the house.

Will George's ownership interest in house be counted as a resource for SSI purposes?

Excess Real Property Resource Exclusion: Loss of Housing for Co-Owner (3 of 3)

Will George's ownership interest in house be counted as a resource for SSI purposes?

Although George has ownership interest in a house that he no longer lives in, it would impose an undue hardship on Martha if he sold the house. Therefore, the value of George's interest in the house would not be counted as a resource as long as Martha lives there.

Court Awards and Lump Sum Settlements (1 of 3)

1. Court Awards

- An award from a court, board of arbitration, or similar body is considered unearned income

20 C.F.R. §416.1121

2. Lump Sum Settlements

- Although little formal guidance in C.F.R. or POMS, general SSI rules pertaining to income and resources typically apply

POMS SI 00810.030, SI 01120.005

Note: unearned income does not include expenses necessary to obtain the award or settlement (e.g. legal fees connected with an award or settlement are not counted). 20 C.F.R. §416.1123(b)(1)(3)

Court Awards and Lump Sum Settlements (2 of 3)

Case Example:

- Ms. Lee, an SSI recipient, received a lump sum settlement for \$1,000 from a car accident claim into her bank account in March
- Ms. Lee's bank records show resources over \$2,000 on April 1, May 1, and June 1
- In mid-June, Ms. Lee spent down funds, bringing her under the \$2,000 resource limit

How will Ms. Lee's SSI benefits be affected by receipt of the lump sum settlement from her car accident?

Court Awards and Lump Sum Settlements (3 of 3)

How will Ms. Lee's SSI benefits be affected by receipt of the lump sum settlement from her car accident?

The lump sum settlement will be treated as income in March, and as a resource in April, May, and June, making Ms. Lee ineligible for SSI benefits for those months.

Assuming all other eligibility criteria met, Ms. Lee can become eligible again starting in July.

Inheritances

- Inheritance defined: cash, a right, or noncash item received as the result of someone's death

20 C.F.R. §416.1121

- In general, SSI rules related to income and resources apply: inheritance is income in month of receipt, and a then a resource in all subsequent months, BUT...

Inheritances (cont.)

- ...declining to accept or disclaiming a right of inheritance is a transfer of a resources for less than fair market value and will result in a period of ineligibility under resource transfer penalty

20 C.F.R. §416.1246

- An ownership interest in an unprobated estate may be a resource if an individual:
 - Is an heir or relative of the deceased; or
 - Receives any income from the property; or
 - Under state intestacy laws, acquired rights in the property due to the death of the deceased

POMS SI 01120.215

Burial Funds and/or Life Insurance Policies

- Generally, individual and/or spouse can set aside up to \$1,500 per person for burial expenses or life insurance policies.
- An individual has burial funds and life insurance policy
 - Combined value of burial expenses and face value of life insurance policies up to \$1,500 per person excluded from resource limit
 - If exceeds \$1,500 cap, some of the burial funds may count as a resource

Section 3

SSI Resource Transfer Penalty

Resource Transfer Penalty (1 of 4)

- Resource transfer penalty only applies when individual transfers a non-excluded resource to another for less than fair market value
 - Transfer of cash also counts
- Transfer Period: transfer occurring any time in the prior 36 months
- Transfer Penalty: ineligibility for up to 36 months, depending on the value of the transfer
 - Period of ineligibility is calculated by dividing uncompensated value of resource by monthly benefit rate applicable to the individual. Rounded down result is number of months the individual is ineligible.

Resource Transfer Penalty (2 of 4)

- Individuals cannot transfer countable resources to gain eligibility for SSI
- Common problem:
 - SSI recipient is notified by SSA that their benefits will be suspended due to being over resource limit, but are not informed about resource transfer penalty
 - Recipient gives away excess resource(s) thinking it will help them retain SSI benefits
 - Instead, they will be continue to be ineligible for extended period of time because of the penalty

Resource Transfer Penalty (3 of 4)

Case Example:

- In Dec 2017, Mr. Zep decided that he was no longer able to drive, so sold one of his two cars for \$5,000. The car had FMV of \$12,000.
- In Jan 2018, Mr. Zep applied for SSI as an individual and is otherwise eligible for the full SSI monthly benefit of \$750.
- Transfer penalty applies:
 - Uncompensated value of car: \$7,000 ($\$12,000 - \$5,000$)
 - Duration of penalty: 9 months ($\$7,000 \div \$750 = 9.33$)
- Mr. Zep's period of ineligibility: Jan 2018-Sept 2018

Resource Transfer Penalty (4 of 4)

Practice Tip:

- Transfer of Resources by Spend-Down
 - Spending-down cash can be a valid transfer of resources that helps to mitigate potential period of ineligibility due to being over-income and/or over-resource limit(s)
 - Important that any purchases made receive fair market value in return
 - Keep records that show any purchase made to show fair market value received

Resource Transfer Penalty: Exceptions

- Key exceptions to the Resource Transfer Penalty:
 - **All resources returned**
 - **Transfers for a purpose other than to obtain SSI**
 - **Transfer of a resource that would have been excludable in the month of transfer**
 - **Undue Hardship**
 - **Transfer of a small amount:** if amount transferred, when combined with other resources, is less than the resource limit

POMS SI 01150.120-01150.126

Tips to Avoid Problems

- Report changes in resources within 10 days after end of month in which change occurred.

POMS SI 02301.005

- Ensure any resource transfer is well documented and that the individual receives fair market value.

Tips for Resolution

- Persistence pays off
 - Put requests in writing and provide support with documentation and appropriate C.F.R. or POMS citation(s)
 - Follow up with phone calls
- Develop good working relationship with SSA field office staff/supervisor
- Document thoroughly

What You Can Do

- Familiarize yourself with common SSI Excluded Resource and Resource Transfer Penalty rules
- Counsel clients about Resource rules and tips for staying within Resource limit
- Ensure due process requirements are met
- Assist with gathering documentation
- Spread word about systemic advocacy to networks

Case Consultations

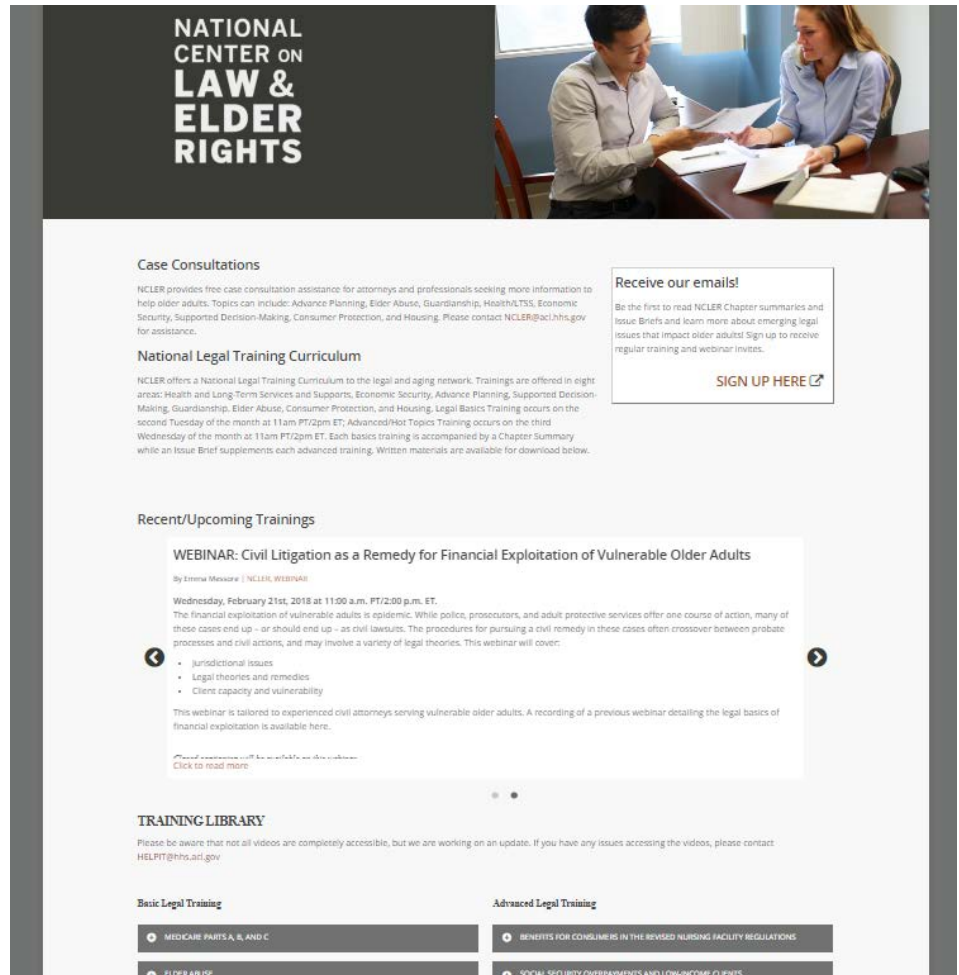
Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

Additional Resources

- Tracey Gronniger, tgronniger@justiceinaging.org
- Jenny Chung Mejia, jchungmejia@justiceinaging.org
- Regulations
 - 20 C.F.R. §§ 416.1201-416.1266
- Program Operations Manual System (POMS)
 - SI 01110.000-01150.210

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Recent/Upcoming Trainings

WEBINAR: Civil Litigation as a Remedy for Financial Exploitation of Vulnerable Older Adults
By [Krisna Messore](#) | [NCLER Webinar](#)
Wednesday, February 21st, 2018 at 11:00 a.m. PT/2:00 p.m. ET.
The financial exploitation of vulnerable adults is epidemic. While police, prosecutors, and adult protective services offer one course of action, many of these cases end up – or should end up – as civil lawsuits. The procedures for pursuing a civil remedy in these cases often crossover between probate processes and civil actions, and may involve a variety of legal theories. This webinar will cover:

- Jurisdictional issues
- Legal theories and remedies
- Client capacity and vulnerability

This webinar is tailored to experienced civil attorneys serving vulnerable older adults. A recording of a previous webinar detailing the legal basics of financial exploitation is available here.

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