

Legal Basics: Supplemental Security Income (SSI) Deeming

CHAPTER SUMMARY • December 2018

Trinh Phan and Tracey Gronniger, Justice in 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. SSI deeming is when income and resources belonging to persons who do not qualify for SSI are considered available to the person applying for or receiving SSI.
2. Deeming only applies to certain relationships: an individual living with their spouse, a minor child living with their parent, or an immigrant who has a sponsor.
3. Each relationship category for deeming has somewhat different rules. Rules differ on how to calculate deemed income and what items are excluded from deeming.
4. Understanding the basics is an important first step. While the details of deeming can be complex, understanding the basic concepts of deeming will increase your background knowledge of the SSI program and help with identifying issues that arise for clients.

Glossary

Deeming

When the income or resources of someone who is not eligible for SSI are considered available to the person applying for SSI.

Income

Anything received in cash or in-kind that can be used to meet needs for food and shelter.

Resources

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.

Social Security (also known as “Title II”)

A social insurance program with benefits based on an individual's work history, which can also provide auxiliary benefits for a wage earner's spouse and children.

Supplemental Security Income (SSI)

A means-tested program based on financial need. It provides cash assistance to people who are blind, disabled, or age 65 and older, and who have very low income and limited assets. Also known as “Title XVI.”

Deeming Applies in Limited Circumstances and May Lead to Denial of SSI Eligibility or a Reduction of the SSI Amount

Deeming is when the income or resources of someone who is not eligible for SSI are considered available to the person applying for SSI benefits.¹ Deeming only applies to three relationships:

1. An ineligible spouse living in the same household as an SSI spouse.
2. A parent living in the same household as an SSI-eligible child.
3. Certain immigrant sponsors for SSI immigrants.

The formula for determining the amount of the income and resources available to the individual is different in each of the three circumstances.

Where deeming applies, some of the income and resources of the deemor may be considered available to the person applying for or receiving SSI in order to determine 1) if the individual is under the income and resource limits to receive SSI and 2) the amount of the SSI benefit they will receive. Deeming applies at application, and it also applies at any change in circumstance that would lead to deeming, such as when an SSI recipient gets married. Where it applies, deeming typically leads to a reduction in the SSI benefit, or a denial or termination of SSI eligibility.

EXAMPLE

Carla's only income is SSI and only resource is \$500 in a bank account. Carla marries Jamie. Jamie earns \$1,500 per month from work and does not qualify for SSI. Social Security will now evaluate Jamie's income and resources under the deeming rules to determine if Carla remains eligible for SSI.

For example, if Jamie's only resource is a bank account containing \$3,000, the combined \$3,500 in both of their bank accounts would make Carla ineligible for SSI going forward, due to exceeding the resource limit.

Alternatively, if Jamie's only resource is a bank account containing \$500, the couple's combined resources of \$1,000 remains under the SSI resource limit, and Carla would continue to be eligible for SSI. However, Jamie's \$1,500 income from work would partially offset the amount of Carla's SSI monthly benefit after the marriage. Thus, while Carla would continue receiving SSI, the SSI benefit amount would decrease. See Section 2 for more information on calculation of the income offset.

PRACTICE TIP

Does deeming apply to Social Security disability recipients?

Deeming only applies to SSI. Someone who receives only a Title II benefit (Social Security retirement, disability or survivors benefits) is not affected by deeming. However, if someone receives both SSI and a Title II benefit, then deeming can apply to determine the person's eligibility for the SSI part of the benefit.

How Deeming Works

Both income and resources can be deemed to the person applying for or receiving SSI. General information on income and resource deeming is provided below for each of the relationships where deeming applies.

Spouse-to-spouse deeming

Marriage status can impact an individual's income and resources that are counted for SSI. This happens when an ineligible spouse's income and resources are deemed to the eligible spouse. Deeming only applies if the

spouses are living together. Deeming does not apply if the spouses are living in separate households,² although it will continue to apply if a spouse is only temporarily absent from the household.³

PRACTICE TIP

Spouse-to-spouse deeming vs. the rules for an eligible couple

Spousal deeming only applies when one spouse qualifies for SSI due to age, blindness or disability (the “eligible spouse”) and the other does not (the “ineligible spouse”). If both would qualify and they are living together, then they must apply for SSI as a couple. In that situation, the rules on counting of income and resources for eligible couples would apply.

Resources:

The general resource rule is: all of an ineligible spouse’s resources count for the SSI eligible spouse, unless a specific resource exclusion applies.⁴ For an eligible couple (both spouses qualify for SSI), the couple resource limit is \$3,000.⁵ When there is an ineligible spouse (only one spouse qualifies for SSI), that same \$3,000 couple resource limit is used. Social Security looks at the combined countable resources of both spouses and compares that total to the couple resource limit. If the amount does not exceed the couple resource limit (\$3,000), then the spouse applying for SSI is resource eligible for SSI.⁶

Income:

To determine the amount of income to deem from an ineligible spouse to an SSI eligible spouse, Social Security follows these steps:⁷

- ✓ **Step 1:** Determine the ineligible spouse’s income.
 - Social Security looks at both earned and unearned income. They do not count income that is excluded from spouse-to-spouse deeming.⁸
- ✓ **Step 2:** If there are children living in the household who do not qualify for SSI, Social Security may subtract an allocation for each child to reduce the ineligible spouse’s income.
 - If so, Social Security calculates the child allocation for each child and reduces the ineligible spouse’s countable income accordingly.
- ✓ **Step 3:** The spouse’s countable income from Step 2 is then compared to an allocation for the ineligible spouse to determine if income from the spouse will be deemed.
 - If the spouse’s remaining countable income is equal to or less than the difference between the federal benefit rate for an eligible couple (\$1,125 in 2018) and the federal benefit rate for an individual (\$750 in 2018), then no income from the spouse is deemed to the SSI eligible individual. Analysis ends here.
 - » **Example:** Joe is eligible for SSI, has no other income or resources, and receives the maximum federal benefit (\$750). Joe’s wife Karen does not qualify for SSI. Karen has countable income of \$200. In 2018, the difference between the federal benefit rate for an eligible couple and the federal benefit rate for an individual is \$375 (\$1,125 - \$750 = \$375). Because Karen only has \$200 in countable income, none of her income is deemed to Joe.

✓ **Step 4:** If the spouse's remaining countable income from Step 2 is *more* than the difference between the federal benefit rate for an eligible couple and the federal benefit rate for an individual, then Social Security will treat the spouses as an SSI eligible couple. Social Security will compute the couple's countable income according to the eligible couple rules. This means that the usual SSI income deductions can apply to reduce the ineligible spouse's remaining countable income, including the \$20 general income disregard and the earned income disregard (\$65 plus one-half of the remainder).

- The remainder after these deductions is the ineligible spouse's countable income that is deemed to the person applying for SSI.

Parent-to-child deeming

A parent's income and resources may deem to a child when: the child is under 18 and eligible for SSI and living with a parent who is not eligible for SSI. Deeming continues to apply if the child is temporarily absent from the household.⁹

Resources:

The resource limit for a child is the resource limit for an individual: \$2,000.¹⁰ Parental resources count toward the child's resource limit if the parent's resources exceed \$2,000 (if the child is living with one parent) or \$3,000 (if the child is living with two parents).¹¹

Parent-to-child deeming follows a similar process to that for spouse-to-spouse deeming. There are differences though, and it is important to review the rules and apply the deeming formulas accordingly.¹²

In states that make the option available, Social Security will waive parent-to-child deeming where:

- The child previously received SSI while in a medical treatment facility,
- The child is eligible for Medicaid under the state's home care plan, AND
- Applying deeming would make the child ineligible for SSI.¹³

In these situations, the child can be eligible for SSI at the reduced rate for individuals in a medical treatment facility and also eligible for Medicaid.

PRACTICE TIP

Does parent-to-child deeming stop at a certain age?

Yes, deeming for a child will stop the month after the child turns 18.¹⁴ From that point forward, the child is evaluated under the usual SSI rules for an individual. Note that while the parent's income and resources will no longer deem to the now adult child, if the parent helps to pay the food or shelter costs for the now adult child, the adult child's SSI benefit may be reduced due to receipt of in-kind support and maintenance.¹⁵

Sponsor-to-immigrant deeming

Deeming only applies to some sponsored immigrants, primarily those whose sponsors signed affidavits of support on or after December 1997.¹⁶ These "new affidavits" provide for sponsor deeming to continue until naturalization or until the immigrant has 40 quarters of covered employment, whichever comes first. Prior to December 1997, affidavits of support provided for only a three year period for sponsor deeming. Note that not all immigrants are sponsored; if an immigrant is not sponsored, then sponsor-to-immigrant deeming does not apply.

If sponsor-to-immigrant deeming applies, then it applies whether the immigrant is living with the sponsor or not. Unlike the spouse-to-spouse and parent-to-child deeming rules that generally only apply if the ineligible person is living with the SSI applicant or recipient, the sponsor deeming rules apply even when the sponsor lives in a different household.

In general, the process for sponsor-to-immigrant deeming is similar to that for spouse-to-spouse deeming. The amount deemed to the sponsored immigrant is determined by the countable income and resources of the sponsor and sponsor's spouse, minus a partial deduction for the sponsor and their dependents. There are a number of differences though, and it is important to review the rules and apply the deeming formulas accordingly.¹⁷

Exceptions to Sponsor Deeming:

For immigrants whose sponsors signed affidavits of support on or after December 1997, there are several exceptions to sponsor deeming:¹⁸

- immigrants who have been battered or subjected to extreme cruelty in the United States can be exempt from deeming for up to 12 months;¹⁹
- immigrants who have 40 qualifying quarters of work, as mentioned above;²⁰ and
- immigrants who would be unable to obtain food and shelter in the absence of the SSI payment (often called the “indigence exception”).²¹

Sponsor deeming also ends when the sponsored immigrant becomes a naturalized citizen, as mentioned above.²²

In particular, the indigence exception applies when sponsor deeming results in the loss or reduction of the immigrant's SSI benefit, and the immigrant is unable to obtain both food and shelter.²³ The immigrant must be living apart from the sponsor. The immigrant will be found to be unable to obtain both food and shelter if the immigrant's total income is less than the federal benefit rate and resources are under the applicable SSI resource limit. The indigence exception is granted for a 12-month period, which can be renewed.

Exclusions from Income Deeming

If something is not counted as income for the person applying for or receiving SSI, then it similarly will not count as income for the deeming spouse, parent, or sponsor.²⁴ In addition, certain items are excluded from counting as income for the purposes of deeming, such as: in many cases, the value of in-kind support and maintenance provided by the deeming spouse; in many cases, any public income maintenance payments and any income which was considered in figuring the amount of the payment; and payments to an ineligible spouse, ineligible parent, or ineligible child living in the same household, to provide in-home supportive services to the SSI eligible person.²⁵

Exclusions from Resource Deeming

The same resources that are excluded for the person applying for or receiving SSI are also excluded for deeming and will not count toward the resource limit for the person applying for or receiving SSI.²⁶ Some of the principal exclusions are:

- The home in which the SSI recipient resides and all contiguous land, regardless of value; one automobile regardless of value; personal or household goods

- Either set-aside burial funds of up to \$1,500, or life insurance with up to \$1,500 face value.
- A burial plot regardless of value; jointly owned property where the sale would cause undue hardship to the co-owner because of loss of housing; past-due Social Security and SSI payments, which are excluded from resources for nine months.
- Earned Income Tax Credit and Child Tax Credit, which are excluded from resources for nine months.

In addition and specific to the deeming process, pension funds that belong to a spouse (in spouse-to-spouse deeming) or parent (in parent-to-child deeming) are excluded from resource deeming.²⁷

EXAMPLE

Jeremy applies for SSI based on age. Jeremy's spouse is under 65 and not disabled or blind, and therefore does not qualify for SSI. Jeremy's spouse works and has a retirement account that spouse has not begun to draw from yet. Will the spouse's retirement account and wages affect Jeremy's eligibility for SSI?

The spouse's retirement account is excluded as a resource and does not affect Jeremy's eligibility. The spouse's wages may affect the SSI monthly benefit amount for Jeremy.

PRACTICE TIP

Appeal an incorrect deeming decision promptly.

When Social Security incorrectly deems income or resources it is important to promptly appeal the deeming decision. If the person is currently receiving SSI benefits, an incorrect deeming decision will typically result in a decrease or termination of the SSI benefit. In that situation, *Goldberg v. Kelly* protections must be afforded before the benefits can be suspended.²⁸ In practice, this means that the individual will continue receiving benefits until a decision on the appeal is issued, if the individual files an appeal within 10 days of receiving the initial notice from Social Security.²⁹

Conclusion

It is important to understand when Social Security can correctly deem income and resources to someone applying for or receiving SSI, to ensure that persons eligible for SSI can receive the benefit, and to ensure that any errors can be promptly corrected.

Additional Resources

- Trinh Phan, Justice in Aging, tphan@justiceinaging.org
- Tracey Gronniger, Justice in Aging, tgronniger@justiceinaging.org
- Regulations
 - » 20 C.F.R. §§ 416.1160 – 1169 (deeming of income)
 - » 20 C.F.R. §§ 416.1201 – 1204a (deeming of resources)
- Program Operations Manual System (POMS)
 - » [SI 01310.000](#) et seq. (general)
 - » [SI 01320.000](#) et seq. (deeming of income)
 - » [SI 01330.000](#) et seq. (deeming of resources)

» SI 00502.200-00502.280 (sponsor deeming)

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

This Chapter Summary was supported by a contract with the National Center on Law & Elder Rights, contract number HHSP233201650076A, from the U.S. Administration for Community Living, Department of Health and Human Services, Washington, D.C. 20201.

Endnotes

- 1 [20 C.F.R. §§ 416.1160](#) (income), [416.1202](#) (resources)
- 2 [20 C.F.R. § 416.1160\(a\)\(1\)](#)
- 3 [20 C.F.R. § 416.1167](#), [POMS SI 01310.165](#)
- 4 [20 C.F.R. § 416.1202\(a\)](#)
- 5 [20 C.F.R. § 416.1205](#)
- 6 [POMS SI 01330.110](#), [SI 01330.160](#)
- 7 [20 C.F.R. § 416.1163](#), [POMS SI 01320.400\(B\)\(1\)\(a-f\)](#)
- 8 See [20 C.F.R. § 416.1161\(a\)](#) and [POMS SI 01320.100](#) for information on exclusions
- 9 [20 C.F.R. § 416.1167](#), [POMS SI 01310.165](#)
- 10 [20 C.F.R. § 416.1205](#), [POMS SI 01330.260](#)
- 11 [20 C.F.R. § 416.1202\(b\)](#), [POMS SI 01330.200](#)
- 12 See [20 C.F.R. § 416.1165](#), [POMS SI 01320.500](#) et seq. and [SI 01330.200](#) et seq.
- 13 [POMS SI 01310.201](#) - [SI 0130.210](#)
- 14 [POMS SI 01310.115\(A\)\(2\)](#)
- 15 In-kind support and maintenance is food or shelter that someone else provides for an SSI recipient, which under SSI rules is counted as a type of unearned income that reduces the SSI benefit.
- 16 [POMS SI 00502.240](#)
- 17 See [POMS SI 01300.000](#) et seq. and [SI 00502.200](#) et seq.
- 18 [POMS SI 00502.240](#)
- 19 See also [POMS SI 00502.200\(A\)\(3\)\(a\)](#)
- 20 [POMS SI 00502.240\(D\)\(4\)](#)
- 21 See also [POMS SI 00502.200\(A\)\(3\)\(b\)](#), [SI 00502.280](#)
- 22 [POMS SI 00502.240\(E\)\(2\)](#)
- 23 [POMS SI 00502.280](#)
- 24 [POMS SI 01320.100](#)
- 25 Id.
- 26 [POMS SI 01330.001](#) et seq.
- 27 [POMS SI 01330.001](#), [SI 01330.120](#) and [SI 01330.220](#)
- 28 *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).
- 29 [20 C.F.R. § 416.1336](#), [POMS SI 02301.300](#). See also [Social Security Reconsideration Appeals](#)