

# Supplemental Security Income (SSI) for Older Adults: Post Eligibility Tips

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## 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 have focused our efforts 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, or SSI, is a means-tested benefit that requires an individual to continually meet the categorical and financial eligibility requirements of the program on a monthly basis.
2. SSI is a program with a complicated set of eligibility requirements. Common issues around income and resources can frequently lead to an individual's benefits being reduced or suspended by the Social Security Administration (SSA).
3. Pay attention to eligibility for older immigrants and people with limited English proficiency. Benefits may be limited for older immigrants depending on when they entered the country, their status, and other factors.
4. It is easier to prevent benefit suspension and termination than fix problems after benefits are cut off. Proactive advocacy efforts are always recommended.

## Introduction

Supplemental Security Income, or SSI, is a federal income benefit program administered by the Social Security Administration (SSA), an independent agency of the federal government. SSI provides a very basic income to older adults and people with disabilities who have little-to-no other income or resources. As our aging population grows and income inequality rises, more of our nation's seniors are becoming poorer. SSI is now more important than ever to people in every community around the country. Maintaining SSI benefits can be the difference between having barely enough to live on and being pushed into abject poverty.

## SSI Benefits Will Vary Based on an Individual's Particular Circumstances

The federal government provides a monthly cash grant for eligible SSI recipients, up to a maximum amount known as the Federal Benefit Rate (FBR). In 2018, the maximum FBR for an eligible individual is \$750 a month, which is only 74% of the official federal poverty level. This maximum grant amount is adjusted annually based on the federal Cost-of-Living Adjustment (COLA). In 2019, the maximum FBR for an individual will be \$771 a month.<sup>1</sup>

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1 SSI Federal Benefit Amounts, [www.ssa.gov/oact/cola/SSI.html](http://www.ssa.gov/oact/cola/SSI.html).

The actual SSI benefit paid to a given recipient depends on a number of factors: whether they are single or married, their living arrangement, what other income they have, and the state they live in. Some states—California, for example—provide a supplement to SSI benefits, which increases the maximum benefit level potentially available to eligible recipients in those states.<sup>2</sup>

## What is Required for Continued Eligibility for Supplemental Security Income (SSI)?

SSI applicants and recipients must meet several eligibility criteria at the time of their application and on an ongoing basis, including categorical eligibility, financial eligibility, and immigrant eligibility.

### Categorical Eligibility

To be eligible for SSI, individuals must satisfy one of these three categories:

- age (65 years or older),
- blindness, or
- disability.

In general, an applicant who is 65 years or older does not need to prove disability or blindness to be eligible for SSI benefits. There is a small group of older immigrants who must also meet the SSA disability standard to be considered eligible for SSI benefits.<sup>3</sup>

The definitions and determinations of disability for SSI purposes are different for adults and children. For an adult age 18 to 64, disability is defined as: 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.<sup>4</sup> The combined effect of a person's impairments must be "of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy."<sup>5</sup>

### Financial Eligibility

#### Income

Income, for SSI eligibility purposes, is a term of art. Income is defined as "anything you receive in cash or in kind that you can use to meet your needs for food and shelter;"<sup>6</sup> thus, if it cannot be used to obtain food or shelter, it is not considered income for SSI eligibility purposes. Examples of items not considered to be income include: proceeds of a loan, income tax refunds, and bills paid directly to the supplier by someone else for goods or services other than food or shelter.<sup>7</sup>

Only "countable income" affects SSI eligibility and the amount of the benefits to be paid. There are two categories of "countable income" for SSI purposes: unearned and earned income.

- **Unearned income** is defined by what it is not: it is not earned income. Of SSI recipients age 65 and older who have income, the overwhelming majority have only unearned income, and for the majority of

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2 Social Security Administration Program Operations Manual System ("POMS"), General Information about State Supplementation, SI 01401.001 ([secure.ssa.gov/poms.nsf/lnx/0501401001](https://secure.ssa.gov/poms.nsf/lnx/0501401001))

3 [8 U.S.C. § 1612\(a\)\(1\)](#)

4 [42 U.S.C. § 423\(d\)\(1\)\(A\)](#)

5 *Id.* [§ 423\(d\)\(2\)\(A\)](#)

6 *Id.* [§ 416.1102](#).

7 [20 C.F.R. § 416.1124](#)

those with unearned income, it is primarily Social Security benefits.<sup>8</sup> Pensions and money received from other sources are also examples of unearned income.

There is a particular non-cash type of unearned income common to SSI applicants and recipients called In-kind Support and Maintenance (ISM). ISM refers to food and/or shelter that someone else provides for an SSI recipient. It is important to emphasize that ISM only applies to food and/or shelter (i.e. assistance with non-food and non-shelter expenses, such as payments made by someone else for car loans or medical expenses, are not counted as income to the recipient).<sup>9</sup>

Also, items provided with the understanding that the individual will later repay, such as when a friend or relative provides food and shelter while the SSI application is pending, do not constitute ISM. One important exception to ISM is that food or shelter provided based on need by nonprofit organizations does not count as income for the recipient.

- **Earned income** includes gross wages, net earnings from self-employment, and payments for services performed as part of certain programs designed to help individuals become self-supporting.<sup>10</sup> Only 1.3% of SSI recipients age 65 and older have earned income.<sup>11</sup>

Given the strict SSI income limits and complex rules, it is important to understand what income is counted or excluded. Accurately assessing an individual's income eligibility is critical to ensuring they receive the correct amount of benefits. Misclassification of excluded income as countable is one way that individuals may be denied or lose their SSI benefits.

## Resources

Similar to income, there are strict limits and complex rules regarding resources and only countable resources affect SSI eligibility. An individual may not have more than **\$2,000 in countable resources**, or **\$3,000 for a couple**.<sup>12</sup> A resource is cash, other liquid assets, or any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance.<sup>13</sup>

- **Some resources are not counted for eligibility purposes.** There are a number of excluded resources that do not count toward the resource limit. Some of the key resource exclusions include: the home in which the SSI recipient resides and all contiguous land regardless of value; one automobile regardless of value; personal property or household goods; either burial funds and/or life insurance policies up to a \$1,500 combined value; a burial plot regardless of value; and jointly owned property where the sale would cause undue hardship to the co-owner because of loss of housing. Time-limited resource exclusions: past-due Social Security and SSI payments and Earned Income Tax Credit and Child Tax Credit are excluded from resources for nine months.<sup>14</sup>
- **Resources are generally valued** on the basis of the equity an individual has in the resource, meaning the market value minus any encumbrance on it.<sup>15</sup>

8 Social Security Administration, Annual Statistical Supplement to the Social Security Bulletin, 2017, Table 7.D1, available at [ssa.gov/policy/docs/statcomps/supplement/2017/supplement17.pdf](https://ssa.gov/policy/docs/statcomps/supplement/2017/supplement17.pdf)

9 For a more detailed discussion of In-kind support and maintenance, see the NCLER training on this topic available at [ncler.acl.gov/pdf/NCLER-In-Kind-Support-and-Maintenance-in-SSI-Issue-Brief.pdf](https://ncler.acl.gov/pdf/NCLER-In-Kind-Support-and-Maintenance-in-SSI-Issue-Brief.pdf) (Issue Brief) and [vimeo.com/229898004](https://vimeo.com/229898004) (webinar).

10 20 C.F.R. § 416.1110

11 Social Security Administration, Annual Statistical Supplement to the Social Security Bulletin, 2017, Table 7.D1, available at [ssa.gov/policy/docs/statcomps/supplement/2017/supplement17.pdf](https://ssa.gov/policy/docs/statcomps/supplement/2017/supplement17.pdf)

12 OASDI and SSI Program Rates and Limits, 2018, available at [ssa.gov/policy/docs/quickfacts/prog\\_highlights/RatesLimits2018.html](https://ssa.gov/policy/docs/quickfacts/prog_highlights/RatesLimits2018.html)

13 20 C.F.R. § 416.420

14 POMS, Excluded Resources, SI 01110.20 ([secure.ssa.gov/poms.nsf/lnx/0501110210](https://secure.ssa.gov/poms.nsf/lnx/0501110210))

15 POMS, Determining Equity Value, SI 01140.042 ([secure.ssa.gov/poms.nsf/lnx/0501140042](https://secure.ssa.gov/poms.nsf/lnx/0501140042)); What Values Apply to Resources, SI 01110.400 ([secure.ssa.gov/poms.nsf/lnx/0501110400](https://secure.ssa.gov/poms.nsf/lnx/0501110400)).

- **Resources are counted once a month** at the beginning of the first day of the month. Resources held in the middle of the month are irrelevant, although a period of ineligibility may be imposed for transfer of a resource, as discussed immediately below.
- **The resource transfer penalty can cause individuals to become ineligible for SSI benefits.** Given the low resource limits, when individuals have or obtain new resources, such as a second car or an inheritance, a natural instinct may be to disclaim or give away the resource so as not to risk going over the resource limit and losing SSI eligibility. However, an individual who transfers resources to another person for less than fair market value, such as disclaiming an inheritance or giving away a second car, will be ineligible for benefits for up to 36 months (i.e., 3 years).<sup>16</sup> Anything that fits within the SSI resource definition is a resource for purposes of the transfer penalty.

## Immigrant Eligibility for SSI is Very Limited But Available for Some

Before 1996, immigrant eligibility was very simple: lawful immigrants were eligible for SSI on the same basis as U.S. citizens. The Personal Responsibility Work Opportunity and Reconciliation Act of 1996 and the Balanced Budget Act of 1997 resulted in complex special requirements that greatly restricted immigrant eligibility for SSI benefits.<sup>17</sup> Any noncitizen who was receiving benefits on August 22, 1996, is grandfathered in, and the provisions of the 1996 legislation will not apply.

For every noncitizen, it is necessary to look to the individual's date of entry into the U.S., because one set of rules applies to those who entered before August 22, 1996, and another more restrictive set of rules applies to those who entered on or after that date. However, as a threshold matter for both groups, it is a prerequisite for eligibility that the individual be among a limited group of non-citizens who are considered "qualified aliens." This group includes lawful permanent residents (LPRs), refugees, asylees, persons granted withholding of deportation, Cuban-Haitian entrants, persons paroled into the U.S. for at least a year or more, and certain domestic violence survivors.

### PRACTICE TIP

SSA personnel are frequently unfamiliar with the details of the requirements for immigrants, resulting in inappropriate denials. Therefore, it is important for those assisting individuals with SSI to understand how the immigration rules apply to their individual client's specific circumstances and advocate on their behalf.

## Language Assistance Services Are Available from SSA

SSA policy is clear that it will provide an interpreter free-of-charge for anyone who prefers to do business with the agency in a language other than English. The same policy applies for deaf individuals as well. While SSA is a leader among federal agencies in its policy on oral interpretation services, its implementation on the ground varies greatly from one local office to another.

SSA staff should never require someone to provide their own interpreter or bring a family member to interpret. Of course, if an individual prefers to have a family member or friend serve as the interpreter, that is their right as long as the friend or family member is an adult, is proficient in English as well as the other language, and understands the obligations of an interpreter. If the individual is applying for disability benefits, it is also important that the interpreter be familiar with medical terms in both languages.

SSA has a multilingual gateway to its website with a large quantity of useful informational material in 17

<sup>16</sup> [42 U.S.C. § 1382b\(c\)](#); [20 C.F.R. § 416.1246](#); Social Security Administration POMS, What Is a Resource Transfer, SI 01150.001 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501150001](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150001)).

<sup>17</sup> [8 U.S.C § 1612\(a\)\(1\)](#).

different languages and American Sign Language.<sup>18</sup> When it comes to written notices affecting an individual's benefits, the agency is sadly lacking. SSA notices are consistently provided only in English, and often, but not always, also in Spanish. Written notices are never provided in any other language.

## Residence

All SSI recipients, including U.S. Citizens, must reside in one of the 50 states, the District of Columbia, or the Northern Mariana Islands.<sup>19</sup>

## Physical Presence in the U.S.

An individual who is outside of the United States for a full calendar month, or for 30 consecutive days or more, is no longer eligible for SSI until the individual has been back in the United States for 30 consecutive days following their time abroad.<sup>20</sup> This rule applies to everyone, not just immigrants, however it may be more likely to affect immigrants who wish to travel back to their home country to visit family or friends. Eligibility will not be affected by travel outside of the country that is less than a full calendar month or less than 30 consecutive days (though note that absence during the entire month of February will impact eligibility).

## Other Post-Eligibility Considerations Affecting Older Adults

### Institutionalization

Residence in an institution may affect an individual's eligibility, benefit amount, or both. SSA provides a chart that explains how to evaluate SSI eligibility and benefit amount based on the specific residences defined as institutions, which include hospitals, nursing homes, other medical facilities, prisons, and jails.<sup>21</sup> This rule only applies if an individual resides in an institution throughout an entire calendar month, so the counting of days is important. A common occurrence for older adult recipients is residence in a medical treatment facility (if Medicaid pays for more than 50% of the cost of care, then the federal benefit is reduced to \$30/month while an individual resides in the facility) or temporary institutionalization for medical care.<sup>22</sup> For individuals who will be in a medical facility for 90 days or less, they may be able to maintain their eligibility for SSI benefits if they submit a doctor certification of the length of stay and a statement about the individual need for the benefits to maintain their living arrangement in the community.<sup>23</sup>

## Using the Decision and Appeals Process to Help Prevent SSI Benefit Reductions or Suspensions

When a person's SSI benefits are reduced or suspended there is a four-step administrative decision and appeals process through SSA: initial determination, reconsideration, administrative law judge hearing, and appeals council. The process applies for decisions involving initial and ongoing eligibility and benefit amount, and differs somewhat for cases involving disability determinations.<sup>24</sup> At all stages of the appeal process, the individual has 60 days (plus 5 days for mailing) to file an appeal of an adverse decision, though an individual may be able to show that they have "good cause" for missing a deadline.<sup>25</sup>

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18 SSA multilingual gateway: [ssa.gov/site/languages/en](https://ssa.gov/site/languages/en).

19 [20 C.F.R. § 416.1603](#).

20 [20 C.F.R. § 416.1327](#); POMS Ineligibility due to Absence from the United States/Developing Presence, SI 00501.410 ([secure.ssa.gov/poms.nsf/lnx/0500501410](https://secure.ssa.gov/poms.nsf/lnx/0500501410))

21 Social Security Administration POMS, Residence in an Institution, SI 005100.001 ([secure.ssa.gov/poms.nsf/lnx/0500520001](https://secure.ssa.gov/poms.nsf/lnx/0500520001)).

22 *Id.* Determination of Applicability of \$30 Payment Limit, SI 00520.011 ([secure.ssa.gov/poms.nsf/lnx/0500520011](https://secure.ssa.gov/poms.nsf/lnx/0500520011)).

23 *Id.* Temporary Institutionalization (TI) Benefits, SI 00520.140 ([secure.ssa.gov/poms.nsf/lnx/0500520140](https://secure.ssa.gov/poms.nsf/lnx/0500520140))

24 [20 C.F.R. § 416.1402](#).

25 [20 C.F.R. §§ 416.1409, 416.1433, 416.1468](#).

## Step 1: Initial Determination

The initial determination is made in the local Social Security office, also known as a field or district office, except disability determinations, which are made by the state disability determination service under contract with the SSA. Every determination made by SSA should be communicated to an individual in a written notice that explains the reason(s) for the determination and states they have 60 plus 5 mailing days in which to appeal.<sup>26</sup>

## Step 2: Reconsideration

This first appeal step, referred to as a Request for Reconsideration, takes place at the local Social Security office or a regional program center. In the case of disability determinations, reconsideration takes place at the state disability determination service. The reconsideration process differs depending on whether the case involves a disability determination, an appeal of an initial denial of eligibility, or an adverse action (e.g. reduction, suspension, or termination) for someone already receiving benefits. In most cases, reconsideration comes in the form of a “case review,” a paper-record review not involving a personal appearance or an opportunity to present witnesses. *As required by the U.S. Supreme Court, a special procedure for reconsideration applies to SSI proposed suspensions or reductions in benefits.*<sup>27</sup> *In these cases, the SSI recipient is entitled to receive full benefit continuation pending a decision on reconsideration if the recipient files the appeal within 10 days (plus 5 days for mailing) of the date on the notice.*<sup>28</sup> In addition, an individual can choose from one of three options:

- (1) a case review
- (2) an in-person informal conference (involves face-to-face appearance before a decision-maker where a written summary of the conference becomes part of the case record), or
- (3) an in-person formal conference (same as the informal conference and includes the opportunity to request that documents and witnesses be subpoenaed).<sup>29</sup>

**Note:** *There is no opportunity for continued benefits beyond the reconsideration stage, except in the case of an appeal from an adverse Continuing Disability Review decision in disability cases.*

If possible, addressing problems at the Reconsideration stage may be an advocate’s most effective and efficient strategy for solving their client’s benefit issues. Take time to make a strong case at the reconsideration level. This can prevent the lengthy delays and administrative hurdles that commonly occur at the later stages of appeal.

### **PRACTICE TIP**

#### **File a Request for Reconsideration for both the overpayment notice and the benefit reduction/suspension notice**

Individuals may receive a notice from SSA saying they were overpaid in the past due to the same issue that causes their benefit reduction or suspension notice. These are two separate issues, however, one looking forward and one looking backward. File a separate Request for Reconsideration to appeal each type of notice.

<sup>26</sup> Social Security Administration POMS, SSI Appeals Considerations, SI 04010.020 ([secure.ssa.gov/poms.nsf/lnx/0504010020](https://secure.ssa.gov/poms.nsf/lnx/0504010020)).

<sup>27</sup> [Goldberg v. Kelly](#), 397 U.S. 254 (1970)

<sup>28</sup> [20 C.F.R. § 416.1336\(b\)](#).

<sup>29</sup> [20 C.F.R. § 416.1413](#).

### Step 3: Administrative Law Judge Hearing

If the claim is denied on reconsideration, the individual can file a further appeal for an evidentiary hearing before an Administrative Law Judge (ALJ) through SSA's Office of Hearings Operations.<sup>30</sup> At the ALJ hearing, the individual can present witnesses and can request the ALJ to subpoena witnesses and documents. It is extremely important that all relevant issues be raised at the ALJ hearing as it may not be possible to raise additional issues later in the process. ALJs, although employed by SSA, have a great deal of independence from the agency. Unlike the people who make initial and reconsideration decisions, ALJs are not bound by the agency policies, though they are bound by the regulations. Most individuals are (and should be) represented by an attorney or other advocate at the ALJ hearing.

### Step 4: Appeals Council

An individual can request Appeals Council review of an adverse ALJ decision. Review by the Appeals Council is discretionary, and in the overwhelming majority of cases, the Council simply denies review.<sup>31</sup> The Appeals Council is the last step within the SSA administrative appeal process.

### U.S. District Court

If an individual receives an adverse Appeals Council decision, or if the Appeals Council declines to review the case, they may go outside of SSA and appeal in federal court.<sup>32</sup>

## Conclusion

SSI benefits are vital, but maintaining benefits for eligible individuals can be a complex process. For SSI recipients who may not understand why their benefits are at risk at all, attention to the process is even more important. If advocates can offer assistance early in the process, it may be possible to prevent an SSI recipient's benefits from being suspended or reduced. Early action before benefits are suspended, and in particular at the Reconsideration stage of the appeals process, can help SSI recipients avoid protracted and more complicated appeals later on. Advocates should understand SSI program rules to ensure that the individuals continue to receive these vital benefits.

## Additional Resources

- Social Security Act: 42 U.S.C. §§ 1381-1385
- SSI Regulations: 20 C.F.R. §§ 416.101 – 2227
- Program Operations Manual System (POMS):
  - » Income
    - » POMS SI 00810.007 (Income Exclusions)
    - » POMS SI 00830.050 (Overview of Unearned Income Exclusions)
    - » POMS SI 00830.099 (Guide to Unearned Income Exclusions)
    - » POMS SI 00835.000 (Living Arrangements and In-Kind Support and Maintenance)
  - » Resource Exclusions

<sup>30</sup> [20 C.F.R. § 416.1429](#).

<sup>31</sup> [20 C.F.R. § 416.1481](#).

<sup>32</sup> [20 C.F.R. § 404.981](#)

- » POMS SI 01130.050 (Guide to Resources Exclusions)
- » POMS SI 01110. 210 (Excluded Resources)
- » Immigrant Eligibility and Residence
  - » POMS SI 00501.400 (Residence and Citizenship Requirement) and POMS SI 00502.000
- Social Security Administration:
  - » [Understanding Supplemental Security Income Guide](#)
- Justice in Aging:
  - » In-Kind Support in the SSI Program [webinar](#)
  - » Social Security Reconsideration Appeals [webinar](#)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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