

# Legal Basics: Supplemental Security Income (SSI) Resources

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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'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.

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

Supplemental Security Income (SSI) is a federal means-tested program administered by the Social Security Administration (SSA), based on financial need for seniors and people with disabilities. It provides cash assistance to people who are at least 65 years old, blind, or meet the Social Security standard of disability, and who have very low income and limited assets.

Eligibility for the Supplemental Security Income (SSI) program depends, in part, on an individual or couple having countable resources that are no more than the resource limit. Understanding the SSI resource rules is important because if the value of an individual's resources are too high, they will not be eligible for SSI, even if they meet all the other eligibility criteria.

Financial need is measured in terms of 1) income<sup>1</sup>, and 2) assets or resources. SSI has many complicated financial eligibility rules, including the treatment of assets or resources. These rules can be found in the Code of Federal Regulations (CFR) and SSA's Program Operations Manual System (POMS).

## Resources defined

A resource is defined as cash or 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 (food or shelter)<sup>2</sup>. Real property is land, including buildings or immovable objects attached permanently to the land and personal property is any property that is not real property, and includes items such as cars, household goods, life insurance policies,

<sup>1</sup> [20 CFR §416.1102](#)

<sup>2</sup> [Id. §416.1104](#)

jewelry, and tools. If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).<sup>3</sup> The resources of an SSI recipient may not exceed \$2,000 for an individual or \$3,000 for an eligible couple. The asset limits for the SSI program have not been updated since 1989.<sup>4</sup>

## How and when resources are counted

SSA generally counts resources based on the equity an individual has in the resource, meaning, the market value minus any encumbrances (e.g. mortgages, loans, liens, etc.) on it.<sup>5</sup> 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<sup>6</sup>, although a period of ineligibility may be imposed for transfer of a resource, as discussed below.

## Deeming of resources

Deeming, a term used by SSA, is when another person's income and/or resources may be considered available to the individual applying for or receiving SSI.<sup>7</sup> Deeming applies only to three relationships: those of a spouse to an SSI spouse living in the same household, a parent to an SSI child living in the same household, and an immigrant sponsor to certain sponsored SSI immigrants.<sup>8</sup> The formula for determining the amount of the resources available to the individual is different in each relationship. In certain circumstances, the deeming of resources may cause an individual to be over the resource limit and thereby ineligible for SSI benefits.

## Excluded resources

There are a number of excluded resources that do not count toward the SSI resource limit.<sup>9</sup> Some of the key resource exclusions include:

- **Home.** The home in which the SSI recipient resides and all contiguous land are excluded regardless of value. If the recipient has the intent to return to the home, no matter how unrealistic the intent, the home still is excluded. This is important for a residential care facility resident or a nursing facility resident who is prevented from moving home by a medical condition.
- **Automobile.** One automobile is excluded regardless of value.
- **Personal or Household Goods.** There is no limit on value.
- **Burial Funds.** Funds can go up to \$1,500 and must be separately identified and set aside.
- **Life Insurance.** All life insurance policies can have up to \$1,500 combined face value. This exclusion can be used in place of but not in addition to the burial funds.
- **Burial Plot.** A burial plot is excluded regardless of value. This is in addition to the burial reserve.

<sup>3</sup> [20 CFR §416.1201\(a\)\(1\)](#)

<sup>4</sup> *Id.* [§416.1205\(c\)](#)

<sup>5</sup> POMS SI 01140.042 ([secure.ssa.gov/poms.nsf/lnx/0501140042](#)), October 10, 2014; POMS SI 01110.400 ([secure.ssa.gov/poms.nsf/lnx/0501110400](#)), August 13, 2008.

<sup>6</sup> [20 CFR §416.1207](#); POMS SI 01110.600 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501110600](#)), October 26, 1995.

<sup>7</sup> [20 CFR §§416.1160\(a\)](#); [416.1202-1204](#)

<sup>8</sup> Not all immigrants are sponsored. Deeming applies only to some sponsored immigrants, primarily those whose sponsors signed affidavits of support on or after December 1997. These “new affidavits” provide for sponsor deeming to continue until naturalization or until the immigrant has 40 quarters of covered employment, whichever comes first. Earlier affidavits of support provided for sponsor deeming for only a three year period.

<sup>9</sup> [20 CFR §§416.1203-416.1204](#), [416.1210-416.1239](#), [416.1245](#), and [416.1247](#); POMS SI 01110.210 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501110210](#)), September 23, 2014.

- **Jointly Owned Property.** Where the sale would cause undue hardship to the co-owner because of loss of housing, jointly owned property is excluded.
- **Past-Due Social Security and SSI Payments.** These payments are excluded from resources for nine months following the month of receipt.
- **Earned Income Tax Credit and Child Tax Credit.** These payments are excluded from resources for nine months following the month of receipt.

## Common Problems with Resources for SSI Applicants and Recipients

Some of the more common resource problems for individuals receiving SSI include:

- Ownership interests in property where the recipient is not currently living;
- Receiving a lump sum settlement;
- Receiving an inheritance; and
- Becoming over-resourced due to excess burial funds and/or life insurance policies.

In certain circumstances, there are rules that exclude the counting of a resource toward the SSI resource limit.<sup>10</sup> Not all SSA staff are familiar with these exceptions, however, which results in wrongful suspensions or terminations of SSI benefits where the inappropriate counting of an excluded resource causes the individual to be over the resource limit.

### 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. Specific resource exclusion rules exempt certain excess real property, which would otherwise be a resource.<sup>11</sup>

One important resource exclusion rule applies when the sale of excess real property would result in the loss of housing for a co-owner.<sup>12</sup> To meet the requirements for this exclusion, the following must be true:

- The property is jointly owned by the individual and at least one other person,
- One (or more) of the other owners uses the property as their principal place of residence,
- The other owner(s) would have to move if the property were sold, and
- The other owner has no other readily available housing (e.g. the other owner does not own another house that is legally available for occupancy).

If these criteria are met, SSA will not count excess real property as a resource. However, if circumstances change in the future and the criteria no longer apply, SSA will count the value of the excess property toward the SSI recipient's resource limit.

<sup>10</sup> *Id.*

<sup>11</sup> POMS SI 01110.210 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501110210](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501110210)), September 23, 2014.

<sup>12</sup> [20 CFR §416.1245\(a\)](https://www.ecfr.gov/current/title-20/chapter-I/subchapter-A/part-416/section-416.1245(a)); POMS SI 01130.130 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501130130](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130130)), February 18, 2014.

## CASE EXAMPLE

George and Martha are married and live together in a house they co-own. George and Martha divorce, and George, a Supplemental Security Income (SSI) recipient, leaves the household with no intent to return. Martha has no other place to live. 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, SSA would not count the value of George's interest in the house as a resource as long as Martha lives there.

## Court awards and lump sum settlements

When an SSI recipient receives an award from a court, board of arbitration, or similar body, that award is considered unearned income.<sup>13</sup> This unearned income is subject to the general SSI rules regarding income and income exclusions. Similarly, although there is little formal guidance in the Regulations or the POMS on how lump sum settlements are treated for SSI purposes, the general SSI rules pertaining to income and resources typically apply: lump sum settlements are treated as income in the month of receipt, and thereafter as resources in all subsequent months.<sup>14</sup> However, unearned income does not include the expenses necessary to obtain that award. Therefore, for example, SSA will subtract the cost of legal fees from a payment obtained in connection with an accident.<sup>15</sup>

## 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 the \$2,000 limit on April 1, May 1, and June 1. The lump sum settlement will be treated as income in March and as a resource in April, May and June, making her ineligible for SSI benefits for those months.

In mid-June, Ms. Lee spent down the funds by using \$200 for utility bills, \$400 for a dentist bill, \$300 for car repairs, and \$100 for plumbing repairs, bringing her under the \$2,000 resource limit. Assuming all other eligibility criteria were met, she can become eligible again starting in July.

## Inheritances

An inheritance is cash, a right, or a noncash item received as the result of someone's death.<sup>16</sup> In general, SSI rules pertaining to income and resources tend to apply: the inheritance is income in the month of receipt, and thereafter a resource in all subsequent months. However, note that declining to accept or disclaiming a right of inheritance is considered a transfer of a resource for less than fair market value that will result in a period of ineligibility under the resource transfer penalty provisions discussed in the next section.

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.<sup>17</sup>

13 [20 CFR § 416.1121](#); POMS SI 00830.515 ([secure.ssa.gov/apps10/poms.nsf/lnx/0500830515](#)), August 26, 2014.

14 POMS SI 00810.030 ([secure.ssa.gov/apps10/poms.nsf/lnx/0500810030](#)), December 12, 2012; POMS SI 01120.005 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501120005](#)), September 26, 2014.

15 [20 CFR 416.1123\(b\)\(3\)](#); POMS SI 00830.100 ([secure.ssa.gov/apps10/poms.nsf/lnx/0500830100](#)), March 16, 2018.

16 [20 CFR § 416.1121](#); POMS SI 00830.550 ([secure.ssa.gov/poms.nsf/lnx/0500830550](#)), December 7, 2012.

17 POMS SI 01120.215 ([secure.ssa.gov/poms.nsf/lnx/0501120215](#)), July 10, 2009.

## Burial funds and/or life insurance policies

Generally, the individual and/or their spouse can set aside up to \$1,500 per person for burial expenses or life insurance policies.<sup>18</sup> If the individual has both, then the combined value of the burial expenses and the face value of life insurance policies will be excluded from the resource limit up to \$1,500 per person. If the amount is over the \$1,500 cap, however, some of the burial funds may count as a resource.<sup>19</sup> Because of the interplay between the rules for burial funds and life insurance, this resource exclusion can be particularly complicated where an individual has both burial funds and a life insurance policy. Advocates should be sure to do a careful analysis of the facts and seek additional guidance when this exception arises.

## SSI Resource Transfer Penalty

An SSI applicant or recipient who transfers resources to another person for less than fair market value could become ineligible for SSI benefits for up to 36 months.

### Resource transfer penalty defined

The SSI Resource Transfer Penalty only applies when an individual transfers a resource to another person for *less than* fair market value. If an individual transfers a resource for fair market value, it is not subject to the resource transfer penalty. However, it may be subject to other SSI income and resource rules.

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>20</sup> An individual making a gift of cash is also considered to be transferring a resource and will incur a period of ineligibility if, when added to the individual's other resources, they exceed the resource limit.

For individuals applying for SSI, SSA will look at the 36 month period prior to application to assess if any resource transfers for less than fair market value took place. Therefore, it is important that anyone considering applying for SSI, or anyone receiving SSI, be aware of this penalty. Anything that fits within the definition of a non-excluded SSI resource counts for purposes of the transfer penalty.

The period of disqualification is calculated by dividing the uncompensated value of the resource (i.e., the difference between the fair market value and what the individual actually received) by the monthly benefit rate applicable to the individual. The rounded down result gives the number of months for which the individual is ineligible. The period of ineligibility begins the first of the month following the transfer.

## CASE EXAMPLE

### How to calculate the resource transfer penalty

Mr. Zep decided in December 2017 that he was no longer able to drive. He sold one of his two cars to his granddaughter in that month for \$5,000. The car had a fair market value of \$12,000. In January 2018, Mr. Zep applied for SSI as an individual and is otherwise eligible for the full \$750 benefit. However, the transfer penalty applies in this case. The uncompensated value of selling the car is \$7,000 ( $\$12,000 - \$5,000 = \$7,000$ ). The duration of the penalty is determined by the amount of the uncompensated value (\$7,000) divided by the monthly benefit rate (\$750 in 2018). This yields 9.33 ( $\$7,000 \div \$750$ ), which is rounded down

18 [20 CFR §§416.1230-1231.](#)

19 Social Security Administration, Spotlight on Burial Funds, available at [ssa.gov/ssi/spotlights/spot-burial-funds.htm](https://ssa.gov/ssi/spotlights/spot-burial-funds.htm).

20 [20 C.F.R. §416.1246.](#)

to 9 months of ineligibility. Since the period of ineligibility begins on the first of the month following the transfer, Mr. Zep is ineligible beginning January 1, 2018 and will not become eligible until October 2018.

Individuals cannot simply transfer countable resources to gain eligibility for SSI. A common problem occurs when SSI recipients are notified by SSA that their benefits will be suspended because they are over the *resource limit*, but are told nothing about the *transfer penalty*. The recipients then give away the excess resource(s) under the impression this will help them retain their SSI benefits. Instead they then learn they will continue to be ineligible for an extended period because of the *transfer penalty*.

## PRACTICE TIP

### Transfer of Resources by Spend-Down<sup>21</sup>

Spending-down cash can be a valid transfer of resources and may be a way for individuals to retain eligibility while purchasing items and/or services they need. Generally, when individuals purchase items or services, they receive fair market value in return for the cash. In this situation, the transfer penalty does not apply. Individuals should keep records to demonstrate they paid the fair market value for items and services.

### Exceptions to the Resource Transfer Penalty

There are exceptions to the resource transfer penalty.<sup>22</sup> Here are some of the exceptions:

- **All Resources Returned.** If the resource is returned, there is no period of ineligibility, even for the period prior to the return of the resource.<sup>23</sup>
- **Transfers for a Purpose Other Than to Obtain SSI.** The presumption that a transfer is for the purpose of obtaining SSI can be overcome only by convincing evidence that the transfer was exclusively for another purpose.<sup>24</sup>
- **Transfer of a Resource that Would Have Been Excludable in the Month of the Transfer.** This exception allows for transfer of the home as long as the individual was residing there at the time of transfer.<sup>25</sup>
- **Undue Hardship.** This exception applies only where failure to receive SSI would result in loss of food or shelter, and the individual's total available funds do not exceed the applicable monthly payment rate for the individual's living arrangement.<sup>26</sup>
- **Transfer of a Small Amount.** This exception applies if the transferred amount, when combined with other resources, is less than the \$2,000 (\$3,000 for a couple) resource limit.<sup>27</sup>

Note that although excluded resources (*i.e.*, the first automobile) should *not* count as a resource for purposes of the transfer penalty, some advocates have indicated that SSA may nevertheless attempt to count such resources. In such cases, one of the exceptions above may also apply to the resource, thereby allowing it to be excluded anyway. If SSA counts a resource for purposes of the transfer penalty, depending on the facts of the specific case, advocates may consider appealing the decision with SSA, or may decide with their client that it is more prudent to simply have the resource returned or get the fair market value for it.

21 POMS SI 01150.007 ([secure.ssa.gov/poms.nsf/lnx/0501150007](https://secure.ssa.gov/poms.nsf/lnx/0501150007)), December 24, 2013.

22 POMS SI 01150.000 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501150000](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150000)), February 24, 2012.

23 POMS SI 01150.124 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501150124](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150124)), December 24, 2013.

24 POMS SI 01150.125 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501150125](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150125)), December 24, 2013.

25 POMS SI 01150.122 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501150122](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150122)), December 24, 2013.

26 POMS SI 01150.126 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501150126](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150126)), December 24, 2013.

27 POMS SI 01150.125 ([secure.ssa.gov/apps10/poms.nsf/lnx/0501150125](https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150125)), December 24, 2013.



Remember that the transfer penalty does not apply when individuals spend money on goods and services (at fair market value) for their own needs. In addition, when individuals have entered into a bona fide loan agreement, they will not be subject to the transfer penalty for using funds to repay that loan. If an individual has a legal obligation to repay a loan, such repayment is not considered a transfer for less than fair market value.

## Glossary

### CFR

Code of Federal Regulations. Social Security regulations have the force of law, however do not always reflect the most recent changes in the Social Security Act.

### Deeming

The process of considering another person's income or resources to be available to the SSI applicant/recipient.

### POMS

Program Operations Manual System. SSA's primary manual of policy and procedures for the agency's personnel in its local offices.

### SSI

Supplemental Security Income is 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."

## Conclusion

It is important that advocates and their clients understand the rules surrounding resources and their implications on eligibility for SSI benefits. Knowing how the rules work, including what resources are subject to exceptions from the rule, in addition to some of the common problems and strategies to prevent or resolve these issues, will allow you to help your clients avoid losing critical SSI benefits.

## Additional Resources

- Regulations
  - » 20 C.F.R. §§ 416.1201 – 416.1266
  - » [ecfr.io/Title-20/pt20.2.416#sp20.2.416.1](https://ecfr.io/Title-20/pt20.2.416#sp20.2.416.1)
- Program Operation Manual System (POMS)
  - » SI 01110.000 – SI 01150.210
  - » [secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restricttcategory=05011](https://secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restricttcategory=05011)

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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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