



# **Overview of Social Security Income & Resource Rules**

**Adriane S. Grace**

Attorney at Law

Law Office of Adriane S. Grace, PLLC

Phone: (972) 379-8167

[info@gracelawoffice.com](mailto:info@gracelawoffice.com)

© Adriane S. Grace 2023

# About Adriane S. Grace

---



- Attorney
  - 13+ years devoted to Social Security law
  - Former Attorney-Advisor to SSA Chief Administrative Appeals Judge
- Practice Areas
  - Estate Planning (Wills & Trusts & POAs, Special Needs Planning)
  - Probate & Estate Administration
  - Social Security Applications & Appeals
  - Guardianship and Counseling on Alternatives, Supports & Services, and Public Benefits

# What are we learning today?

---

- Income & Resource Rules for SSI Eligibility
- Tools for conserving excess resources and restoring SSI eligibility



# Social Security Program: Title 16

---

- Title XVI of the Social Security Act (T16)
  - Supplemental Security Income (SSI)
    - Disabled children under the age of 18
      - Parent/Step-Parent Income & Resource Deeming Rules Apply
        - » Child support counts (1/3 excluded)
    - Disabled adults with limited or no work history
    - Adult citizens age 65 or older (do not have to prove disability)
  - Limited Income & Resources



# Who is Eligible for Title 16 (SSI)?

---

- U.S. citizens and permanent residents
- Disabled children and adults with **limited income & resources**
- Income Limitations
  - “Countable Income” both earned and unearned
    - Earned income only: no more than \$1,913/month for individuals (\$2,827 for couples)
    - Unearned income or mix: no more than the federal benefit rate of \$943 per month for individual (\$1,415 for couples) for 2024
    - Earned income + Unearned income = Unearned income limit
  - Deemed Income that is Countable Income
    - Parent to Child
    - Spouse to Spouse
  - Support Payments

# Who is Eligible for SSI? (Resource)

---

- Resource Limits
  - limit of \$2,000 for single individual, \$3,000 if married
- Countable Resources
  - Resources of the individual and their spouse (if married) greater than \$2,000/\$3,000 limits
  - Countable Income that exceeds limits and isn't spent down (savings)
- Non-Countable Resources
  - Resources that are not counted against the claimant or are EXCLUDED under Federal Law



# What is Earned Income?

---

- Wages from Jobs (W2 employment)
- Net earnings from self-employment (1099 or other self-employment)
- Royalties
- Honoraria
- Sheltered Workshop Payments
- Reductions for Earned Income
  - \$1 for every \$2 earned over the first \$65 (there is also a \$20 general exclusion for both earned and unearned income)
  - SSI and Earnings Eligibility calculator:  
<https://www.ssa.gov/ssi/eligibility#:~:text=SSI%20is%20generally%20f%20individuals,benefits%2C%20unemployment%2C%20and%20pen%20sions.>



# What is Unearned Income?

---

- Worker's compensation
- Other SS benefits
- Unemployment
- Pensions
- Annuities
- Rent
- Support payments (Child support, alimony)
- Other: Gifts, Inheritances, In-Kind Support
- Reductions for Unearned Income
  - General exclusion for the first \$20
  - \$1 for every \$1 of unearned income



# What is Deeming?

---

- Children
  - Applies to Children under the age of 18
  - Income from Parents and Step-Parents residing in the household with the child is “Deemed” to the Child
  - Resources are also deemed (except for resources that are generally excluded)
  - Deeming stops the month after the child turns 18
- Spouses
  - Ineligible spouse (non-disabled spouse of the claimant) who lives in the same household
  - Spouse’s earned and unearned income is deemed to the disabled spouse because SSA expects spouse’s to take care of each other
  - Allocation for ineligible dependent children living in the household

# The ISM Rule

---

- ISM is “In Kind Support & Maintenance”
- Applies when disabled person is living in another person’s home and receiving assistance with
  - FOOD
  - AND
  - HOUSING
- Automatic 1/3 reduction to SSI monthly benefits
- Solution: Rental Agreement
  - Must be in writing
  - Must be for fair value of rent
  - Bona fide rental agreement: If rent is not paid, then landlord will evict tenant.

# Support Payment Rules

---

- Child Support
  - Under 18: 2/3 countable income to the disabled child
  - Over 18: 100% countable income to disabled adult child (child support payments paid after disabled child is 18)
  - Solution: support payments court-ordered to a SNT are NOT countable income
- Alimony
  - Alimony payments are considered unearned income and are 100% countable
  - Solution: support payments court-ordered to a SNT are NOT countable income

# Example: Child Support Reduction

**Box 1.**  
**Current computation for child support payments (in dollars)**

This example assumes that the child has no other income.

Monthly federal benefit rate for 2004	564.00
Average child support payment for June 2003	<b>199.00</b>
Minus 1/3 of the child support payment	- 66.33
Minus the \$20 general income exclusion	- 20.00
Total countable income	<u>= 112.67</u>
SSI benefit (564.00 - 112.67)	<b>451.33</b>
Total income available to child (199.00 + 451.33)	<u><b>650.33</b></u>

NOTE: This calculation is for the federal Supplemental Security Income payment only. Some states provide supplemental payments to children, enabling them to receive higher benefits.

From SSA website

# Income that is NOT Countable

---

- General Exclusion of \$20 and earned income exclusion of \$65
- SNAP benefits
- Assistance based on need funded by a state or local government or Indian tribe
- Income tax refunds
- Refundable advanced and other tax credits
- Grants, scholarships, fellowships, or gift used for tuition and books (must use within 9 months of receipt)
- Personal Loans received (“I owe you”)
- Expense Payments made by someone else on your behalf that are for things that are NOT food and housing related (e.g. medical bills or cable bills BUT NOT mortgage, rent, utilities, or groceries; BUT ALSO some SS field office may take a different view on this. *See Tools on ABLE accounts—using these accounts to avoid SSA unearned income claims.*)
- Disaster assistance

# SSI Reduction Examples

---

## EXAMPLE A – SSI Federal Benefit with only UNEARNED INCOME

Total monthly unearned income = \$300

$$\begin{array}{r} 1) \quad \$300 \text{ (Unearned income)} \\ \quad \underline{-20} \text{ (Not counted)} \\ \quad =\$280 \text{ (Countable income)} \end{array}$$

$$\begin{array}{r} 2) \quad \$914 \text{ (SSI Federal benefit rate)} \\ \quad \underline{-280} \text{ (Countable income)} \\ \quad =\$634 \text{ (SSI Federal benefit)} \end{array}$$

# SSI Reduction Examples

---

## EXAMPLE B – SSI Federal Benefit with only EARNED INCOME

Total monthly income = \$317 (Gross wages)

1) \$317 (Gross wages)

-20 (Not counted)

\$297

-65 (Not counted)

= \$232 divided by 1/2 = \$116 (Countable income)

2) \$914 (SSI Federal benefit rate)

-116 (Countable income)

= \$798 (SSI Federal benefit)

# Resources that Are NOT Countable

---

- Home (whether fixed or mobile) and adjacent land
- One vehicle
- Burial plots for the person and their immediate family and burial funds set aside of up to \$1500
- Personal property
- Life insurance policies with face value of \$1500 or less
- Grants, scholarships, fellowships and tuition & fee gifts (9 mos.)
- Assets of any kind that the individual DOES NOT HAVE
  - An ownership interest in; OR
  - The legal right or authority or power to liquidate; OR
  - The legal right to use the asset for their support and maintenance.



# Transfer of Resource Rules

---

- **RULE:** An invalidly transferred resource remains a resource to the “former” owner and, as such, is subject to being counted
- Resource that is **VALIDLY** transferred is not countable in the month following the **VALID** transfer
- Valid Transfers
  - Sale of property for FMV
  - Spend Down
  - CASH Gifts BUT not transfers of property for less than FMV
  - Adding another person to the deed of property
- **PENALTY** for invalid transfer: SSI ineligibility for up to **36 months**

# Tools for SSI Eligibility: Dealing With Excess Resources

---

1. Spend down
2. Accounts for SSI Back Payments
3. Supplemental Needs Trust (also called a “Special Needs” Trust or SNT)
4. ABLE Account



# Eligible Spend Down

---

- **RULE:** Spending-down cash can be a valid transfer of resources. Generally, when an individual purchases items or pays for services on the open market, he or she receives **fair market value** in return for the cash. The period of ineligibility does not apply to an individual who spends down cash resources **and gets fair market value in return.**
- Examples:
  - **Housing Expenses:** Mortgage/Rent, Remodeling of the home, Utilities
  - **Debt Pay off:** Credit cards, Medical Bills
  - Prepaid Funeral/Burial contract (\$1500 limit)
- Ineligible spend down: gifts & transfers of cash where less than FMV received

# SSI Back Payments: Rules

---

- **RULE 1:** SSI Back payments must be spent down within 9 months
  - Often, SSA will “chunk” the back pay so that the claimant receives the back pay in 3 separate payments spread out over a period of time to allow the claimant to spend down over a longer period of time
  - Tip: Use a separate account for the back payment to “track” the spend down
- **RULE 2:** “Dedicated Account” for Children under 18
  - Must be separate from the account used for the regular monthly benefit payment and can only be a checking, savings, or money market account (NO CDs, mutual funds, stocks, bonds, or trust accounts)
  - NO co-mingling with other funds
  - Title must be in child or show that it’s for child’s benefit only

# Benefits of a Special Needs Trust

---

- Conserve income and gifts from all sources while maintaining Medicaid and SSI eligibility
- Maximize Medicaid, SSI, and other public benefits while providing “supplemental” financial assistance
- Protect disabled adults from financial exploitation
- Provide for other family members after the disabled person’s death



# SNT: Master Pooled Trust

---

- Approved by Social Security as a “Supplemental Needs Trust”
- Pooled investing by a professional fiduciary
- Lower management fees than private banks
- Subaccounts can be opened and funded with either the disabled person’s money or money gifted by a parent, guardian, or other relative
- Professional trustee who handles all distributions and insures distributions do not harm the disabled person’s eligibility for Medicaid and SSI benefits
- Does not require an estate plan or an attorney!
- Low entry cost of \$600.00

# What is an ABLE Account?

---



- Texas Achieving a Better Life Experience Act
- Tax-advantaged savings accounts for disabled people
- Eligibility Rules:
  - Must be disabled under SSA disability rules
  - Disability started prior to age **26** (**NEW RULE as of Dec. 2022 increases age to 46 in the year 2026**)
  - Maximum yearly contributions from all sources tied to gift tax limits (\$17,000 for 2023)
  - Account balance allowed for SSI recipient: < \$100,000.00
  - Additional contributions permitted for working beneficiaries who aren't participating in certain retirement plan contributions
- Medicaid Payback Provision

# SNT vs. ABLE

---

## Pros of SNT

- Entire balance of trust exempt from resources rules
- No Medicaid payback provision if created and funded by parents and/or grandparents
- Can be created for anyone under 65 years of age

## Cons

- Distributions for “shelter” and/or food expenses will result in ISM (1/3) reduction to SSI benefit
- Medicaid payback provision on trust balance if funded by disabled person’s own money
- Costs of administration
- Requires a trustee to make distributions

## Benefits of ABLE

- Distributions for housing and food permitted
- Unlimited distributions for “qualified disability expenses” (education, housing, food, transportation, employment training, personal support, healthcare, legal fees, funeral & burial)
- No trustee or rep payee required
- Funds can be loaded on pre-paid debit card
- Low Account Fees

## Cons

- Must be disabled prior to age 26 (increases to 46 in 2026)
- Medicaid payback on account balances after disabled person dies
- Balance must stay under \$100,000.00 for SSI eligibility
- Annual contribution limited to \$17,000.00 in 2023



# Internet Resources

---

- Arc of Texas Master Pooled Trust
  - <https://www.thearcoftexas.org/mpt/enrollment/>
- Texas ABLE
  - <https://www.texasable.org/>
- Social Security Policy Manual on Income and Resources
  - Resource Rules:  
<https://secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restricttcategory=05011>
  - Income Rules:  
<https://secure.ssa.gov/apps10/poms.nsf/subchapterlist!openview&restricttcategory=05008>



# You did it! Questions?



**Adriane S. Grace**

Attorney at Law

Law Office of Adriane S. Grace, PLLC

Phone: (972) 379-8167

[adriane@gracelawoffice.com](mailto:adriane@gracelawoffice.com)