

Navigating Mainstream Benefits: SSDI and SSI (Part Two)

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Health, a program of The Law Foundation of Silicon Valley

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About the Law Foundation of Silicon Valley

- ▶ The Law Foundation provides free legal services in three subject areas: Health, Housing, and Children/Youth.
- ▶ Our Health practice focuses on providing legal services to people living with physical and mental health disabilities in a variety of practice areas including:
 - ▶ Mental Health Patients' Rights
 - ▶ Public Benefits, including Social Security and State/Local benefits such as Medi-Cal, General Assistance, CalFresh, etc.
 - ▶ Federal Student Loan Discharges
 - ▶ Name & Gender Marker Changes

Training Roadmap

- ▶ **Post-Eligibility Issues, including:**
 - ▶ Health insurance tied to Social Security benefits
 - ▶ Representative Payees
 - ▶ Living Arrangements and SSI
 - ▶ Continuing Disability Review
 - ▶ Incarceration
 - ▶ Working while Receiving Benefits
 - ▶ Overpayments

Before we begin...

- ▶ Social Security has lots of complex rules that are frustrating, confusing, and hard to understand.
 - ▶ You don't have to memorize all the information we are sharing with you today.
 - ▶ Our goal is to give you a lot of information so you can identify issues when they come up and know when to refer clients for help.
 - ▶ Bottom line: if your client gets a notice from Social Security that you don't understand or your client has a problem with their Social Security payments, we are here to help.
- ▶ Interacting with Social Security can be very difficult - *for everyone*.
 - ▶ This, unfortunately, is not something we can fix!

Hooray, your client was approved for
benefits!

Now, what?

Post-Eligibility Issues

Insurance Tied to Social Security Benefits - SSDI

- ▶ An individual is eligible for Medicare two years after entitlement to SSDI.
 - ▶ Entitlement to SSDI is 5 months after the date of the onset of the disability.
 - ▶ Therefore, an individual is *actually* entitled to Medicare 2 years and 5 months after the onset of the disability.
- ▶ Although an individual qualifies for Medicare two years after SSDI entitlement, Medicare coverage may come with a cost:
 - ▶ Medicare Part A (Hospital coverage): if an individual is fully insured (i.e. has worked 40 quarters), Medicare Part A is free. For persons on disability who are not fully insured, there is a premium of \$278 per month for persons with 30-39 work quarters and a premium of \$506 per month for person with fewer than 30 quarters. A deductible may also apply.
 - ▶ Medicare Part B (Outpatient coverage): individuals typically pay a part B premium of \$164.90. A deductible may also apply.
 - ▶ Medicare Part D (Prescription drug coverage): premiums for Part D vary depending on the plan purchased. Plan D also comes with a deductible.
- ▶ Persons who are low income may qualify for state sponsored Medicare Savings program, which will pay Part A and/or Part B premiums and deductibles.

Insurance Tied to Social Security Benefits - SSI

- ▶ An individual who is eligible for SSI is automatically eligible for, and enrolled in, SSI-linked Medi-Cal.
- ▶ After Social Security has approved an individual's application for SSI benefits, Social Security will automatically report the individual's Medi-Cal eligibility to the local Social Services office.
- ▶ Individuals who are approved for SSI *do not* need to apply for Medi-Cal separately.
- ▶ Medi-Cal coverage begins the same month that the SSI benefits begin.
- ▶ If an individual qualifies for Medi-Cal through SSI eligibility he or she will qualify for full-scope Medi-Cal coverage.

Representative Payees

- ▶ In some instances, Social Security decides that a beneficiary (a person receiving SSDI and/or SSI benefits) is incapable of managing their benefit payments.
- ▶ If Social Security has determined that a beneficiary is incapable of managing their benefits, a representative payee must be appointed.
 - ▶ It is recommended that a friend or family member serve as a payee.
 - ▶ If a beneficiary does not have a friend or family member to serve as a payee, Social Security looks for a qualified organization, who will serve as a payee for a monthly fee.
 - ▶ In San Jose, there is only one representative payee organization: Benefits Management Corporation (BMC). BMC typically charges beneficiaries approximately \$40 a month to manage benefits. The fee is deducted from the beneficiary's Social Security benefits.

Representative Payees, continued

- ▶ What does a representative payee do?
 - ▶ Receives benefits;
 - ▶ Pays for current needs;
 - ▶ Saves for future needs;
 - ▶ Provides spending money;
 - ▶ Keeps records;
 - ▶ Reports use of funds to Social Security;
 - ▶ Returns overpayments to Social Security.

- ▶ If a beneficiary has a representative payee but feels that they are capable of managing their own benefits, the beneficiary can file a request with Social Security to become their own rep payee.
 - ▶ The beneficiary will need to go to the local Social Security office in person to start the application process.
 - ▶ Social Security will process the application and will send a request to the beneficiary's doctor, asking if the beneficiary is mentally and physically capable of handling their benefits.
 - ▶ Our office has helpful information sheets that can be provided to interested clients, upon request.

SSI Living Arrangements

- ▶ How much SSI a person receives each month is based on their “living arrangement”.
 - ▶ For SSDI, it does not matter where a person lives; the amount will always be the same, unless there is an overpayment or some other reduction.
- ▶ Because of this, it is very important that clients notify SSA every time they move so SSA can update the living arrangement.
- ▶ If a person lives independently, does not rely on anyone else for help with paying their monthly expenses, and has their own cooking facilities, they will generally receive the full SSI benefit (\$1,133.73 for 2023).
 - ▶ “Independent living” includes: living alone; living with a spouse/minor children and no one outside the home is paying for food or shelter; or living with other people and paying the “fair share” of the food and shelter expenses.
- ▶ If a person lives independently and does not have access to cooking facilities, they will be eligible for the “homeless rate,” which is a slightly larger amount to account for needing to purchase restaurant meals (\$1,251.74 for 2023).
 - ▶ Staying at a shelter may still qualify a person for the “homeless rate” if 3 meals per day are not provided.

SSI Living Arrangements, continued

- ▶ SSA will reduce the amount of SSI a client receives if they:
 - ▶ Live in another person's home and pay less than their fair share of food/shelter costs;
 - ▶ Live in their own home/apartment and someone else pays for all or part of their food, rent, utilities, etc.;
 - ▶ *These are related to SSA's rules about "in-kind support and maintenance."*
- ▶ SSA will also reduce the amount of SSI a client receives if they are in a hospital or nursing facility for 30 days or more.
 - ▶ It is important to report hospitalizations of 30 days or more to Social Security.

SSI Living Arrangements, continued

In-Kind Support and Maintenance

- ▶ “In-Kind Support and Maintenance” (ISM) is food or shelter costs that someone else pays for someone who receives SSI.
 - ▶ Federal housing subsidies, food stamps, and home energy assistance payments do not count!
 - ▶ Shelter costs include utility payments, but not things like cell phones or cable.
- ▶ Under SSA’s ISM rules, if someone helps a client pay their rent, mortgage, food, or utilities, SSA reduces the amount of their SSI benefits.
 - ▶ For 2023, the monthly payment of SSI for people who SSA deems to receive ISM is *generally* \$833.89.
 - ▶ There are complicated rules about exactly how much SSI a person who receives ISM will be paid each month. For today’s training, the amount of SSI is not as important as understanding the general idea of when ISM will result in a benefit reduction.

SSI Living Arrangements, continued

In-Kind Support and Maintenance

- ▶ Joe lives alone in an apartment. Joe's brother pays Joe's full monthly rent amount of \$1,200. Will his SSI be reduced because of ISM?
- ▶ Maria lives alone in an apartment with a Section 8 voucher that requires her to pay 35% of her income towards rent. She pays her full rent portion on her own, using her SSI money. Maria's parents pay her cable TV bill. Will her SSI be reduced because of IKSM?
 - ▶ What if Maria's parents also pay her PG&E bill or buy her groceries?
- ▶ Brandon lives with his brother and two sisters in a home that his brother owns. The mortgage payment is \$3,000/month, utilities are \$300/month, and household food costs \$600. The total household expenses are \$3,900 for 4 people.
 - ▶ What is Brandon's "fair share" of the household expenses?
 - ▶ Will Brandon's SSI be reduced because he is receiving ISM?

Continuing Disability Review (CDR)

- ▶ SSA conducts CDRs approximately every three years.
 - ▶ May be more frequent if a disability is expected to improve.
- ▶ SSA will notify client by mail that they are reviewing their disability.
 - ▶ Client will have to fill out new questionnaires similar to the Disability Report, Function Report, etc., that they filled out at the initial application.
- ▶ Two levels of appeal, similar to initial application.

Continuing Disability Review, continued

- ▶ If SSA determines that a client's disability has ended, it will send a written "Notice of Disability Cessation."
 - ▶ **IMPORTANT!!!** The deadline for appealing and continuing to receive benefits while the appeal is pending is 15 days (10 days + 5 for mailing). Do everything possible to help the client submit the appeal within these 15 days to avoid a lapse in benefits.
 - ▶ Good cause for late filing is allowed, but may result in a lapse in benefits.
 - ▶ *Refer to Law Foundation if your client needs help with filing a late appeal of a disability cessation.*
 - ▶ Otherwise, the deadline for appeal (Request for Reconsideration) is 65 days.

Incarceration and SSDI Benefits

- ▶ SSDI and SSI payments generally are not payable for the months when an individual is incarcerated.
- ▶ If the client receives SSDI benefits:
 - ▶ The client's benefits will be suspended *if they are convicted of a criminal offense* and sent to jail or prison for more than 30 continuous days.
 - ▶ Pre-conviction incarceration does not count!
 - ▶ Incarcerations for probation/parole violations do count from the date of the order revoking probation/parole.
- ▶ The client's benefits can be reinstated starting with the month following the month of your release.
- ▶ Though clients cannot continue receiving SSDI benefits while they are incarcerated, their spouse and/or children will continue to receive benefits, as long as they are eligible.

Incarceration and SSI Benefits

- ▶ If the client receives SSI benefits:
 - ▶ Their payments are suspended if they are incarcerated for a full calendar month.
 - ▶ Unlike with SSDI, whether a client is convicted does not matter.
 - ▶ Their payments can be reinstated in the month they are released, **UNLESS** the incarceration lasts for 12 consecutive months or longer.
- ▶ It is important for the client to tell Social Security about when they are released, and provide documentation of the dates of incarceration.
- ▶ If the client is incarcerated for 12 months or longer, they unfortunately must re-apply for SSI benefits.

Working While Receiving SSI or SSDI

- ▶ Eligibility for SSI or SSDI is based on the inability to engage in “substantial gainful activity” (SGA)
 - ▶ Translation: if someone can earn \$1,470 or more per month through employment, SSA thinks that they are not disabled
- ▶ However, SSA provides certain limited protections to encourage people to try working
- ▶ Each program has different policies

SSI: Return to Work Rules

- ▶ SSI payments will be reduced by “countable income”
- ▶ SSA’s definition of “countable income”:
 - ▶ Find gross monthly earnings and subtract \$85;
 - ▶ Then, divide by 2
- ▶ Ex: Client makes \$500 per month at work:
 - ▶ Step 1: $\$500 - \$85 = \$415$
 - ▶ Step 2: $\$415 / 2 = \207.50
 - ▶ Step 3: Client’s SSI payment will be lowered by \$207.50 (Ex: SSI = $\$1,040.21 - \$207.50 = \$832.71$ (but SSA rounds down, so \$832))
- ▶ Because SSI checks are sent 2 months after a client “earns” the SSI, the SSI check will be reduced **2 months later**

SSI: Wage Reporting

- ▶ If a client is working while receiving SSI, it is very important that they report their gross wages for the past month by the 10th day of each month.
- ▶ Social Security will adjust upcoming payments accordingly.
- ▶ Late reporting may cause an underpayment or overpayment.
- ▶ Clients can take their pay stubs in person to the Social Security office.
- ▶ Social Security also has a smartphone app for SSI wage reporting.
- ▶ It's also important for clients to tell Social Security when they STOP working!



SSI Mobile Wage Reporting

Social Security Administration Finance

★★★★★ 3,485

Everyone

You don't have any devices.

Add to Wishlist

Install

Three screenshots of the SSI Mobile Wage Reporting app interface. The first screenshot shows the 'Terms of Service' screen with a list of terms and 'I Agree' and 'I Do Not Agree' buttons. The second screenshot shows the 'Reporting For...' screen with radio buttons for 'Myself', 'Other person(s)', and 'Both', and a 'Next' button. The third screenshot shows the 'Submission Complete' screen with a success message and 'Yes' and 'No' buttons.

Mobile Wage Reporting

Reporting For...

Submission Complete

OMB No. 0960-0715 Paperwork Reduction Act

Terms of Service

- I understand that this application contains U.S. Government information.
- I consent to the monitoring of my use of this application to ensure its appropriate use.
- I understand that it is a federal crime

I Agree I Do Not Agree

I am reporting wages earned by

Myself

Other person(s)

Both

Next

Your wage submission was successful.

You indicated that you have wages to report for someone else.

Do you want to submit those wages?

Yes No

SSI: Return to Work

Hypothetical:

- ▶ Tony receives \$1,040.21/month from SSI and decides he wants to try working. He gets a job as a peer mentor at a local agency.

In 2023, Tony's gross wages per month are:

- January: \$800
- February: \$950
- March: \$1000
- April: \$1300
- May: \$1350
- June: \$1400
- July: \$1400
- August: \$1400
- September: \$1400

Questions for discussion:

- Which months is Tony entitled to an SSI payment?
- Will Tony's SSI be automatically terminated because he works over SGA?
- What if Tony forgets to report all of these wages and doesn't remember to do so until sometime later?

SSDI: Return to Work Rules

- ▶ Much more complicated than SSI!
- ▶ The SSDI return to work process has several steps:
 - ▶ Trial Work Period
 - ▶ Extended Period of Eligibility
 - ▶ Expedited Reinstatement
 - ▶ Initial Reinstatement Period
 - ▶ New Trial Work Period (and so on...)

SSDI: Return to Work Rules

Trial Work Period

- ▶ The TWP allows a client on SSDI to test their ability to work for at least 9 months.
 - ▶ During the TWP, a client will receive their full SSDI benefit regardless of how high their earnings are, as long as they report their work income and continue to have a disabling impairment.
- ▶ When does the TWP start?
 - ▶ The TWP starts the first month a client earns over a certain amount in gross income.
 - ▶ 2023: \$1050
 - ▶ 2022: \$970
 - ▶ 2021: \$940
 - ▶ 2020: \$910
 - ▶ *And so on...*
 - ▶ The client can work and earn less than these amounts without consequence, but as soon as they earn this amount or more, the TWP begins.

SSDI: Return to Work Rules

Trial Work Period, continued

- ▶ How long does the TWP last?
 - ▶ This is where it starts getting tricky!
 - ▶ The TWP continues until a client accumulates nine TWP months within a 60-month (5-year) period.
 - ▶ The TWP months do not have to be consecutive.
- ▶ Medicare eligibility is unaffected during the TWP.
 - ▶ But, if income goes up, the client may be ineligible for certain Medicare subsidies

SSDI: Return to Work Rules

Trial Work Period, continued

Hypothetical: Gina's Work Earnings in 2023

- ▶ January: \$1,055
- ▶ February: \$200
- ▶ March: \$1,500
- ▶ April: \$900
- ▶ May: \$0
- ▶ June: \$0
- ▶ July: \$1,100
- ▶ August: \$1,120
- ▶ September: \$975
- ▶ October: \$890
- ▶ November: \$930
- ▶ December: \$1,500

WHAT ARE GINA'S TRIAL WORK
PERIOD MONTHS?

HAS GINA ACCUMULATED NINE TWP
MONTHS?

SSDI: Return to Work Rules

Extended Period of Eligibility

- ▶ What happens after the TWP ends? The EPE!
- ▶ The EPE is 36 consecutive months after the TWP ends (whether or not the client works each of the 36 months)
 - ▶ Triggered by the end of the TWP (Month #9)
 - ▶ Keeps going until reach month 36
- ▶ Client continues to get full SSDI benefit as long as gross earnings (before taxes) are below \$1,470 per month (“Substantial Gainful Employment”/SGA in 2022)
- ▶ For each month that the client’s gross income is over \$1,470, they are not eligible for SSDI.

SSDI: Return to Work Rules

Extended Period of Eligibility, continued

- ▶ The EPE is “all-or-nothing” (like an on/off switch):
 - ▶ If a client earns above SGA (\$1,470),
 - ▶ No longer eligible for SSDI.
 - ▶ We advise clients to try to keep their gross wages around \$1,350, just to be on the safe side.
- ▶ BUT there is a 3-month grace period: SSDI payments continue the 1st month earnings greater than SGA & the next 2 months
- ▶ If earnings drop below SGA again during the 36-month EPE, SSDI can restart after the client reports lower/no income to SSA.
- ▶ Overpayments are common - it takes SSA time to process work activity reports, & rules are confusing.
- ▶ Clients should keep copies of all pay stubs!

SSDI: Return to Work Rules

Extended Period of Eligibility, continued

Hypothetical: Gina 9-month TWP expires in December 2022. In 2023, she earned the following amounts at work:

- ▶ January: \$950
- ▶ February: \$1,400
- ▶ March: \$1,370
- ▶ April: \$1,400
- ▶ May: \$1,100
- ▶ June: \$850

Questions:

1. What months did Gina go over SGA? (\$1,350)
2. What months was Gina entitled to an SSDI payment?

SSDI: Return to Work Rules

Expedited Reinstatement

- ▶ If, after the 9-month TWP *and* 36-month EPE, Gina works over SGA, her SSDI will be terminated.
- ▶ At this point, Gina can ask for “Expedited Reinstatement” if her wages drop below SGA at any point within the 5 years after the 36-month EPE ends.
- ▶ This is like a new application for benefits.
 - ▶ While it is somewhat faster than an actual new application, the process can still be lengthy because SSA will do a new disability determination using less strict standards.
 - ▶ After applying for EXR, Gina can receive up to 6 months of provisional SSDI benefits while the application is pending. If the application process takes more than 6 months, Gina does not get payments during those months.
- ▶ If Gina’s EXR is approved, a new cycle of TWP/EPE begins after 24 months of SSDI payments during what is called the Initial Reinstatement Period.

SSDI: Wage Reporting

- ▶ As with SSI, it is best to proactively report wages to SSA.
- ▶ Ways to report:
 - ▶ Walk pay stubs into the field office; or
 - ▶ Report online via “My Account” on the SSA website; there is no app for SSDI recipients to report wages.
- ▶ Also remember to report when work stops!

Return to Work: Bottom Line

- ▶ ***Report the income when it is earned!***
- ▶ Don't try to hide it from Social Security, especially if it is not “under the table.”
- ▶ Social Security conducts periodic work reviews and will pull IRS records.
 - ▶ SSA will find out about all taxable income at some point, regardless of whether a client reports it!
 - ▶ This could result in a huge overpayment and/or suspension of benefits.

Overpayments

- ▶ Overpayments can occur for various reasons.
 - ▶ SSDI overpayments are typically caused by an individual going back to work and earning more than the substantial gainful activity limit. This would occur after a person had used up their trial work period.
 - ▶ SSI overpayments may be caused by a change in living arrangements, a change in income, having excess assets, leaving the country, or becoming incarcerated.
- ▶ If a person receives a notice of overpayment he or she does have a right to challenge the overpayment:
 - ▶ File a request for reconsideration
 - ▶ File a request for waiver of overpayment
 - ▶ File a request for a change in repayment rate

Overpayments - Request for Reconsideration

- ▶ Filing a Request for Reconsideration:
 - ▶ Deadlines for Social Security overpayment appeals/requests for hearing are always 60 days + 5 days for mailing (65 days).
 - ▶ Count from the date on the notice.
 - ▶ A Request for Reconsideration concerning an overpayment can be filed if the client:
 - ▶ Disagrees with the fact that you were overpaid; or
 - ▶ Disagrees with the amount of the overpayment
 - ▶ Social Security will take another look at the reason for the overpayment and the calculation of the overpayment. The client may be entitled to a personal conference with Social Security to discuss the overpayment.
 - ▶ If Social Security denies the Request for Reconsideration, the client is entitled to ask for a hearing with an Administrative Law Judge.

Overpayments - Request for Waiver or Change in Repayment Rate

- ▶ Filing a request for waiver or change in repayment rate:
 - ▶ The client can file a request for waiver of overpayment or for change in repayment rate at any time after notice of the overpayment, even if they have already begun paying back the overpayment.
 - ▶ A request for a waiver of overpayment can be filed if the client:
 - ▶ Is not at fault for the overpayment; AND
 - ▶ Cannot afford to pay back the overpayment.
 - ▶ A request for change in repayment rate should be based on showing Social Security how much the client can pay towards the overpayment, based on their income and expenses:
 - ▶ For SSDI overpayments, Social Security aims to collect an overpayment within 36 months. This means that Social Security takes the amount of overpayment and divides that by 36 months to determine their ideal monthly repayment rate.
 - ▶ With respect to SSI overpayments, Social Security defaults to a withholding of 10% of the SSI benefit.
 - ▶ However, clients can often negotiate repayment rates as low as \$20 per month.
 - ▶ If Social Security denies the request for waiver and/or your request for change in repayment rate, the client is entitled to ask for a hearing with an Administrative Law Judge. **The deadline for request for hearing is always 60 days + 5 days for mailing (65 days).** The 65 days are based on the date of the denial notice.

Overpayment - reporting changes and handling overpayments

▶ Hypothetical:

- ▶ Sarah receives SSDI benefits in the amount of \$900 and SSI benefits in the amount of \$233.73, for total of \$1,133.73 in monthly Social Security benefits.
- ▶ *Sarah gets married. Does she need to report her marriage to Social Security?*
- ▶ While Sarah is disabled and cannot work, her husband has a job and receives monthly paychecks. *Does Sarah need to report her husband's earnings to Social Security?*
- ▶ Sarah was previously married to an abusive spouse, who lied and told Sarah that he was not working and did not have any earnings. She continued to receive SSI benefits for the duration of the marriage.
- ▶ Once Social Security learns about Sarah's previous and current marriage and her ex-husband and her husband's wages this will likely impact Sarah's SSI entitlement. *If Sarah receives an overpayment notice, what options does she have?*
 - ▶ *What arguments can Sarah make if she files for reconsideration?*
 - ▶ *What arguments can Sarah make if she files for waiver?*

Conclusion:

When to Refer Cases to the Law Foundation

- ▶ Initial Eligibility Appeals: we will assist clients with filing appeal paperwork at both the Reconsideration and ALJ stages and do a “merit review” to determine whether we will represent the client.
 - ▶ *Remember!* 65-day deadline from date on notice.
 - ▶ For most cases at the Reconsideration level, we assist clients with filling out the appeal paperwork and ask them to come back if they are denied and need to request an ALJ hearing.
 - ▶ Note: the Law Foundation does not assist clients with filling out initial applications.
- ▶ Benefit Terminations: same as above.
 - ▶ *Remember!* 10-day deadline for clients to appeal CDR termination and continue receiving benefits during the appeal. If the 10-day deadline is approaching, it is best to send the client directly to the SSA office to appeal in person.
- ▶ Benefit Reductions: you can refer all benefit reductions.
- ▶ Overpayments: you can refer all overpayments.
 - ▶ Due to resource limitations, we prioritize overpayments over \$10,000, but can provide counsel & advice regarding other overpayments.

*** We cannot guarantee full representation to all clients in all matters. For all cases, we conduct a merit review before agreeing to represent the client. We provide varying levels of service, including counsel & advice, filling out paperwork, and full representation. ***

Conclusion:

How to Refer Clients to the Law Foundation

- ▶ There are multiple ways to refer clients to the Law Foundation:
 - ▶ Fax a referral form to (408) 886-3850
 - ▶ Email a referral form to healthintake@lawfoundation.org
 - ▶ Online Referrals: <https://tinyurl.com/yd9aw5fc>
 - ▶ Have your client call our intake line: 408-280-2420;
 - ▶ Have your client walk into our office: 4 N. 2nd Street #1300 (we hope to open our office back up in June 2022);
 - ▶ Have your client attend our office hours at the VHHP clinics: Valley Specialty Center (Mondays 1-4), VHHP Re-Entry clinic (1st and 3rd Wednesdays of the month 1-4), VHHP Hope clinic (1st and 4th Thursdays 1 - 4), and VHHP Alexian clinic (Fridays 9-12).

Thank you!