

What Exceptional Parents Need to Know About the SSI Parent-to-Child Deeming Rules

If you have a child with special needs, you naturally want to know about what public benefits are available to help your child reach his or her full potential. The most basic public benefit in this country for people with disabilities is “Supplemental Security Income” (SSI). As noted in previous articles in this series, the importance of SSI eligibility is not so much the few hundred dollars of benefits paid each month to cover the recipient’s basic needs of food, clothing, and shelter, but the fact that, in most states throughout the country, eligibility for even \$1.00 of SSI automatically brings with it full Medicaid benefits.

But if your minor child with special needs is living with you, can that child be eligible for SSI? Probably not, because of a concept in SSI known as “deeming.” This two-part article will discuss the SSI deeming rules as they apply to both resources and income in the parent-and-child situation.¹ Before discussing this concept, however, a bit of background may be helpful.

The Four Basic Public Benefit Programs

While there are a number of public benefit programs servicing children with disabilities, the four most common are Supplemental Security Income (SSI), Medicaid, Social Security Disability (SSD), and Medicare. It is important to keep in mind that SSI is not “Social Security” and should not be confused with SSD. That many people do confuse these two programs is understandable. Both are federal benefit programs with nearly identical

initials; both SSD and SSI are payable to the same three categories of persons—the aged (age 65 or over), the blind, and the disabled; and both are run by the Social Security Administration (SSA).

However, this is where the similarity ends. SSD is an insurance program; it pays benefits to those who have worked long enough and paid sufficient “premiums” into the system to become “fully insured.” It is like Medicare in this regard. Eligibility for either Medicare or SSD has nothing to do with a person’s wealth. For example, an SSD recipient who wins the state lottery would not on this account lose eligibility for benefits, since an influx of millions of dollars does not in itself make that person able to earn a living by gainful employment.²

the amount of resources and income that a person can have and still be eligible for SSI or Medicaid. The myriad rules that govern SSI eligibility are set forth in their manual known as the “Program Operations Manual System” or POMS.³

The SSI “Deeming” Rules

It is because of the interaction between this “means-tested” aspect of SSI and the SSI “deeming” rules that minor children with disabilities living with you are probably not going to be eligible for SSI even though they have little or nothing in their own name. This is because your child’s SSI eligibility in such situations depends not only on his or her resources and income, but on your resources income as well.⁴

The practice by the SSA of treating a

In the parent-to-child context, the policy behind deeming is based on the general responsibility of parents to provide basic food, clothing and shelter for their minor children living with them, and in particular on their responsibility to share their income and resources with a minor child receiving SSI.

SSI, on the other hand, is a “needs-based” public benefits program. It is like Medicaid in this regard. That is to say, eligibility for both SSI and Medicaid requires not only that a person be aged, blind or disabled, but also that the person be “poor.” There are strict rules limiting

portion of the parents’ resources and income as available to their child in determining the child’s eligibility for SSI is known as “deeming.” In the parent-to-child context, the policy behind deeming is based on the general responsibility of

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As set forth in detail in the POMS, parent-to-child deeming applies in cases in which an unmarried child 6 under the age of 18 (or under age 22 if a student) is living with a parent or parents (or a parent and step-parent). At least one of the parents must be ineligible for SSI, and at least one of the children living with the parent or parents must be eligible for SSI.⁷

Deeming of Resources

As noted above, both the resources and

Deeming of Income

The POMS recognize that it would not be equitable to deem the entire amount of the ineligible parent's income to the child without some provision to permit the parent to meet his or her own needs and those of ineligible children in the household. (SI 01310.110.A) The amount of the parent's income that is deemed to the child is determined by a fairly complicated formula.

First, the parent's income is broken down into two major categories: "earned" and "unearned." Earned Income is generally any income received directly as a result of work efforts by the parent, primarily gross wages and net self-employment income. Unearned Income is any income that is not "earned," and would include such things

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the income of parents are subject to deeming. However, not all resources are "countable." For deeming purposes, any resource excluded for SSI eligible individuals is also excluded for SSI ineligible parents. Examples of excluded resources that parents are allowed to own include most commonly a residence (regardless of value), a car, household furnishings, and property used in a trade or business. In addition, a single parent can exclude \$2,000, and a couple can exclude \$3,000, of otherwise countable resources.

An eligible child may also exclude up to \$2,000 of resources.⁸ Thus, a household with two ineligible parents and one eligible child could exclude a total of \$5,000 of otherwise countable resources.

In addition, the deeming rules exclude pension funds such as IRAs owned by an ineligible parent or spouse from consideration, even though they are not excluded for SSI eligible individuals.⁹

as interest, rent, dividends, annuity payments, unemployment benefits, and SSD payments.

Next, SSI allows a "General Income Exclusion" of \$20 from the parent's unearned income. (If no unearned exists this exclusion is applied to the parental earned income.)

SSI is more generous regarding the parents' earned income. An "Earned Income Exclusion" of \$65 is taken off the top. (If there is no parental earned income this exclusion does not apply and cannot be applied to unearned parental income). After this, half of the remaining earned income is excluded.

Next, the parents are permitted to set aside an "allocation" for the support of each child under the age of 18 living with them who is not eligible for SSI. The amount of the allocation is the difference between the SSI Federal Benefit Rate (FBR) for a couple and the FBR for a sin-

gle SSI recipient, minus any income the child has. (SI 01320.630.B.1) In 2005 the FBR for a couple is \$869 and the single FBR is \$579, so the difference (\$869-\$579) is \$290. Therefore, during 2005 an "allocation" of \$290 applies to the parent's income for each ineligible child living in the household below 18 years old.

Finally, SSI permits an allocation for each parent who is ineligible for SSI. (As noted above, if there is no ineligible parent, deeming does not apply in the first place.) The amount that can be excluded from income is the FBR for a single SSI recipient in the case of a single ineligible parent, or the FBR for an SSI eligible couple for two ineligible parents (or an ineligible parent and ineligible spouse). In 2005 a single ineligible parent would exclude \$579, and two ineligible parents (or a parent and a spouse) would exclude \$869.

Attached at the end of this article is an example of how these income-deeming rules work.

Deeming and Special Needs Trusts: A Cautionary Tale

As far as SSI is concerned, the legal rights and responsibilities of parents end when their child attains age 18. And in the context of SSI, it is important for parents to keep in mind that deeming no longer applies when their child turns 18.¹⁰ Therefore, if the deemed income or resources of the parent was the only thing keeping the child from being eligible for SSI (and, more importantly, Medicaid) upon turning age 18.

This fact can prove to be a trap for an unwary attorney in situations in which a child under 18 comes into money (for example, as a result of money from a personal injury or medical malpractice action). In such cases, unless the money is put into a Special Needs Trust, the child might be barred from SSI and Medicaid upon turning age 18, with potentially disastrous consequences. A trial attorney can do a superb job of getting a settlement for a client, only to

find him or herself going from “hero to zero” in the client’s eyes when the large settlement proceeds are quickly exhausted by medical bills and the client discovers that, had such funds been placed in a Special Needs Trust, this result could have been avoided.

Massachusetts elder law attorney and Special Needs Alliance member Neal Winston gives the following example from his own experience to illustrate this point:

“A nationally known litigation attorney worked many years to settle a very difficult birth medical-malpractice case for \$1-2 million. The parents regarded that litigator as a hero.† The plaintiff, a young woman, will be a life-long quadriplegic requiring a personal†care attendant (and Medicaid) every day when she gets old enough to move out of her home or her parents are no longer able to take care of her.† At the time of the settlement, the plaintiff was 14 years old and lived with her parents, who had typical middle class income and assets, thus disqualifying their daughter for SSI and Medicaid under the deeming rules. The trial attorney structured the settlement [that is, put the entire amount into an annuity], naming the plaintiff as beneficiary. When the plaintiff reached age 18 and deeming no longer applied, she applied for SSI and Medicaid. She was denied for SSI outright, and had a huge spend-down for Medicaid every month, virtually the entire structured payment. The litigator was no longer a hero, and the parents were thinking about suing the litigator if this could not be worked out.”

Attorney Winston became involved, created a Special Needs Trust and luckily was able to convince the insurer to assign the annuity to the Special Needs Trust, with the result that the client got SSI and Medicaid. But how much better it would have been for everyone if the significance of the plaintiff turning aged 18 had been recognized in the first instance. Had the multi-million dollar settlement proceeds been placed in a Special Needs Trust originally, the transition to SSI and

Medicaid could have been accomplished smoothly, without the added stress to the plaintiff and her family (and without the malpractice risk to the attorney).

1 Two other situations in which the SSI “deeming” rules apply—spouse-to-spouse and sponsor-to-alien—are not discussed in this article.

2 For various reasons, including child labor laws, minor children with disabilities typically do not have sufficient work credits of their own to qualify for Social Security Disability. They can, however, be eligible for Social Security dependent’s or survivor’s benefits based on the work record of a disabled or deceased parent.

3 The POMS is available online at the SSA website, www.ssa.gov. As an indication of the size and detail of this rulebook, if printed out it would come to over 55,000 pages.

4 In the world of SSI, “income” is anything a person receives in a particular month (and not necessarily cash) that can be used to provide food, clothing or shelter. “Resources” are income that a person keeps beyond one month and has an ownership interest in.

5 Note: The SSI deeming rules apply whether or not the parents’ money is actually provided to their child or not.

6 If the child is married, then the spouse-to-spouse deeming rules apply instead.

7 There are some limited exceptions to the “living with” requirement. For example, a child “temporarily absent,” or living at school but who returns home on weekends and holidays, is still considered to be “living with” the parent or parents. Generally, if the child continues to be subject to parental control, deeming continues to apply.

8 Because there are no “child-to-parent” or “child-to-child” deeming rules, ineligible children below the age of 18 have no resource limits; their resources (for example, a college trust fund set up by a grandparent not available to the parents or other siblings) are not count-

ed toward the resource limits of their parents’ or SSI eligible siblings.

9 There is a special exemption (known as a “Katie Beckett waiver”) that suspends the parent-to-child deeming rules in cases for a minor child living at home if that child had previously received SSI while in a medical facility, and the child’s disability would require institutionalization were it not for the parents’ extraordinary services that permit the child to remain at home. In such circumstances all of the parents’ income and resources are excluded from consideration.

10 More precisely, SSI considers a child “attains age 18” the day before the child’s 18th birthday. Deeming ends the first day of the month following the month the child attains age 18. (SI 01310.115) 