

Navigating Mainstream Benefits: SSDI and SSI (Part Two)

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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 mental health disabilities and/or HIV/AIDS in a variety of practice areas including:
 - ▶ Mental Health Patients' Rights
 - ▶ Public Benefits, including Social Security, Medi-Cal, General Assistance, CalFresh, etc.

Training Roadmap

- ▶ **Post-Eligibility Issues, including:**
 - ▶ Health insurance tied to Social Security benefits
 - ▶ Representative Payees
 - ▶ Living Arrangements and SSI
 - ▶ 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:
 - ▶ Part A (Hospital coverage): if an individual is fully insured Medicare Part A is free.
 - ▶ Part B (Outpatient coverage): individuals on SSDI typically pay a part B premium of \$170.10.
 - ▶ Part D (Prescription drug coverage): premiums for Part D vary depending on the plan purchased.

Insurance Tied to Social Security Benefits - SSDI

- ▶ Individuals who are interested in comparing Medicare Plans may contact Sourcewise, which runs the Health Insurance Counseling & Advocacy Program (HICAP).
 - ▶ Online: <https://mysourcewise.com/>
 - ▶ Main Office: Santa Clara (408) 350-3200
 - ▶ South County Office: Morgan Hill (408) 762-7362
- ▶ Persons who are low income may qualify for a 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.
- ▶ 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.

Representative Payees

- ▶ In some instances, Social Security decides that a benefit recipient 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.

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.

Representative Payees, continued

- ▶ 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.

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 2022, the monthly payment of SSI for people who SSA deems to receive ISM is generally \$764.25.

Incarceration and SSDI Benefits

- ▶ SSDI and SSI payments generally are not payable for the months when an individual is incarcerated.
- ▶ The client's benefits can be reinstated starting with the month following the month of client's release.

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 \$1,350 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 prior month by the 10th day of the following 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



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.

SSDI: Return to Work Rules

Trial Work Period

- ▶ When does the TWP start?
 - ▶ The TWP starts the first month a client earns over a certain amount in gross income.
 - ▶ 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

Extended Period of Eligibility

- ▶ What happens after the TWP ends? The EPE!
- ▶ The EPE is 36 consecutive months after the TWP ends
 - ▶ 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 are below \$1,350 per month (“Substantial Gainful Employment”/SGA in 2022)
- ▶ For each month that the client’s gross income is over \$1,350, they are not eligible for SSDI.

SSDI: Return to Work Rules

Extended Period of Eligibility, continued

- ▶ The EPE is “all-or-nothing”:
 - ▶ If a client earns above SGA (\$1,350),
 - ▶ No longer eligible for SSDI.
- ▶ 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

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.
- ▶ 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.

Overpayments

- ▶ 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).
 - ▶ 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
 - ▶ 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

- ▶ Filing a request for waiver:
 - ▶ The client can file a request for waiver of overpayment 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.

Overpayments - Request Change in Repayment Rate

- ▶ Filing a request for change in repayment rate:
 - ▶ The client can file a request 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 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.

Conclusion:

How to Refer Cases to the Law Foundation

- ▶ There are multiple ways to refer clients to the Law Foundation:
 - ▶ Fax CCP referral form to (408) 886-3850
 - ▶ Email the CCP referral form to healthintake@lawfoundation.org
 - ▶ Online Referrals: <https://tinyurl.com/yd9aw5fc>
 - ▶ Have your client call our intake line: 408-280-2420.