

THE CHANGING FACE OF PUBLIC BENEFITS

2020 NATIONAL CONFERENCE
SPECIAL NEEDS TRUSTS
STETSON UNIVERSITY COLLEGE OF LAW

STIMULUS CHECKS – NOT INCOME, NOT RESOURCE FOR 12 MONTHS

- 26 U.S.C. Sec. 6409
- Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

PUBLIC ASSISTANCE PROGRAMS

- For the purpose of providing a minimum degree of economic security to persons in need
- “Public assistance programs complement other programs for economic security by supplying basic maintenance to needy persons for whom benefits are not available or are insufficient...[w]hether the volume of need is larger or smaller, public assistance should meet effectively whatever need exists.”

VERNACULAR

- **Entitlement:** benefits which the recipient invested in while working, e.g. social security retirement; Medicare; social security disability (social insurance programs)
- **Means-tested:** benefits which the recipient receives by virtue of meeting prescribed income and asset requirements (social welfare programs)
- Both entitlement and means-tested programs have additional eligibility requirements

PROGRAMS THAT PROVIDE INCOME

- Social Security Retirement (Retirement Insurance Benefits – RIB)
- Social Security Disability Insurance (SSDI or DIB)
 - Child Disability Benefits (CDB)
- Supplemental Security Income (SSI)
- State Supplemental Payments (SSP or OSS)
- VA benefit programs

HOW MUCH INCOME?

- Social Security Retirement – based on income and years of work
- Social Security Disability Insurance – based on income and years of work
 - Child Disability Benefits – 50% of disabled or retired parent's income; 75% of deceased parent's income
- Supplemental Security Income – set annual
- Optional State Supplementation – state formulas
- VA benefits -

NON-ECONOMIC ELIGIBILITY FOR SSI AND MEDICAID

- Age
 - Under 65
- Blindness
 - Central visual acuity of 20/200 in the better eye with the use of a corrective lens
- Disability
 - Physical illness
 - Mental impairment

DISABILITY DEFINED

- Inability to engage in substantial gainful activity (SGA) as a result of a physical or mental impairment which is expected to last continuously for at least 12 months or to result in death.
- SGA – an impairment so severe that the individual can't do the work he or she previously did, but also can't engage in any other type of work which exists in the national economy, considering the individual's age, education and work experience. Regardless of where the work might be located and whether the individual would be hired.

WHO DECIDES?

- Social Security Administration
 - May contract out disability determinations to the state
- State agencies

DISABLED – BUT ELIGIBLE?

- Disability determined in affirmative – is there a benefit payable?
 - SSDI?
 - SSI?
- How much will it be?

QUARTERS OF COVERAGE - QC

- QC is a unit of coverage – part of SSDI/SSI formula
- Can earn four per year
- Must earn a minimum amount in the quarter to make it qualifying quarter
 - 2020 – must earn \$1410 in a single quarter
- Disability insured status – earned at least 20 QC in the last 10 years and 40 QC total
 - Younger people need fewer QCs

SUPPLEMENTAL SECURITY INCOME

- Monthly income for those with:
 - No work history;
 - Insufficient QC; or
 - Got paid under the table
- 2020 Monthly benefit amount is \$783
 - Can be reduced by earnings, others who provide ISM

MEDICAL CARE

- Medicare – our clients needs supports and services, in addition to doctors and tests
- Medicare pays mostly doctors, therapists, hospitals, tests – direct and acute medical care.
- Medicaid is a source of payment for supports and services – housekeeping, transportation, personal hygiene, meal preparation, prescription monitoring, assistive devices, companionship, therapies, group homes, nursing homes...

MEDICARE

- Medicare is an entitlement for those who paid into the Medicare Trust Fund.
- Can purchase Medicare if didn't pay in.
- Available to SSDI recipients 24 months after the month in which first SSDI check is received
- Available to Child Disability Benefit beneficiaries – those disabled prior to age 22, 24 months after CDB eligibility is awarded

MEDICAID

- Means-tested
- For persons with disabilities but insufficient work history
- Available immediately when SSI disability determination is approved
- One name, many different programs
- Mandatory eligible people and services
- Optionally eligible people and services (plus waiver populations)

DISABILITY AND CHILDREN

- Under 18 can receive SSI and Medicaid, not SSDI or Medicare
- Disability standard is:
 - “medically determinable physical or mental impairment which results in marked and severe functional limitations” lasting continuously at least 12 months or expected to result in death
 - Often the case with SNT beneficiaries with birth injuries, illnesses or accidents

MEANS-TESTING

- Refers to financial eligibility criteria
 - Income
 - Resources/Assets
- In some cases, parental income and assets could be attributed to a child
- Spousal income and assets attributed to disabled spouse
- The attribution is known as “deeming”

MEANS-TESTED PROGRAMS

- Medicaid
- Supplemental Security Income
- VA benefits
- Food stamps
- Public housing

SSI AND MEDICAID

- SSI eligibility criteria largely followed by Medicaid per federal law
- Need at least \$1 of SSI income monthly to continue qualifying for Medicaid
- SSI eligible individuals often also Medicaid eligible
 - Automatically (§1634 states, 33 states and DC)
 - After approval, make separate Medicaid application using SSI criteria ("SSI States")
 - Must apply separately because use own more restrictive eligibility criteria (§209b states)

HOW MUCH SSI

- \$783 is 2020 maximum benefit
- Up to \$20 of miscellaneous income per month "disregarded"
- If working, first \$65 of earnings is disregarded, and $\frac{1}{2}$ the amount over \$65
 - Example: Henry earns \$800 per month. In determining his SSI benefit, the first \$65 is disregarded, so Henry's earnings are now calculated at \$735. One-half of \$735 is disregarded, countable earnings are now \$382.50. Subtracting \$382.50 from the full amount of \$783 - \$400.50. Henry receives \$400.50 from SSI for this month.
 - Income must be reported monthly

ISM AND PMV

- In-Kind Support and Maintenance
 - 3d party pays room and board, subject to VTR
 - VTR reduces SSI by $\frac{1}{3d}$
- Presumed Maximum Value
 - 3d party pays either room or board
 - $\frac{1}{3}$ FBR plus \$20 is the maximum reduction

REDUCTIONS FOR CASH

- Cash given to an SSI recipient must be reported and reduces the monthly benefit \$ for \$
 - Aunt Louise sends Henry \$100 VISA gift card for his birthday.
 - Henry's benefit is reduced to \$683
 - Gift cards and any cards or certificates redeemable for cash are counted as cash
 - Restaurant gift cards may be treated as food and result in PMV

MEDICAID BENEFITS

- Traditional medical care
 - Certain populations
 - Expansion states
- Long Term Care
 - Supports
 - Services
- 75 million Americans enrolled

MEDICAID STATE PLANS

- Drawn up in 1972
- Mandatory populations
- Mandatory services
- Optional populations
- Optional services
- WAIVERS – amendments to state plans

MEDICAID WAIVERS

- Section 1115
 - Permit “demonstration” projects aimed at providing more targeted or efficient service delivery
- Section 1915(b) and 1915(c)
 - Provision of home and community-based services for states where not in original state plans
- Waivers must be budget-neutral

COVID INSPIRED WAIVERS

- Section 1135 Waivers
- Florida was first state to request 1135 waivers
- To remove administrative burdens and expand access to needed services
- Includes:
 - Waiver of prior authorizations/pre-approval for certain services;
 - Extend Fair Hearing time frame (period during which a Fair Hearing could be requested) up to 120 additional days
 - Permits delays in issuing Fair Hearing decisions.

APPENDIX “K”

- Stand-alone Appendix for states during emergencies to request amendments to existing 1915(c) waivers
- Waives 3-day prior hospitalization stay and 60-day spell-of-illness (Medicare) when related to COVID
- Eliminates deductibles, co-payments, co-insurance and other Medicaid cost sharing charges
- Waives some service limits

ELIGIBILITY - MEDICAL

- Made by designated state agency
- Physician records, other medical records
- Activities of daily living:
 - Taking medications, dress, bathe, toileting/continence, ambulation, transferring, eating without being fed

ELIGIBILITY - INCOME

- 24 states have caps on monthly income
- Caps apply to LTCSS, not to all programs
- Income caps seek to discourage applicants, save states money
- Income Trusts:
 - "Qualified Income Trust" or "QIT"
 - a/k/a "Miller Trust"

ELIGIBILITY - RESOURCES

- \$2,000 individual
- \$3,000 couple
- Community Spouse:
 - \$128,640; or
 - One-half of couple's countable asset;
 - Minimum amount of \$25,728

RESOURCE EXCLUSIONS

- Homestead
 - 2020 Equity caps - \$595,000 or \$893,000
- One automobile
- Irrevocable funeral and burial expenses or a burial fund account of \$1500 held in a separate bank account
- Cash value aggregate FACE value not exceeding \$1,500
- Household goods and personal effects

TRANSFERS AND LOOK BACKS

- May not give away resources in order to qualify
- Measured by fair market value
- Look-back 60 months (5 years) at transfers which occurred
- Transfer can't be penalized unless it was for purposes of Medicaid qualification
- Penalty = a number of months of ineligibility based on amount of transfer; begins to run when applicant is otherwise eligible for benefits

EXEPTION TO TRANSFER PENALTY

- 42 USC § 1396p(c)(2)(B)(iii) and (iv)
- Transfers made to an individual with a permanent disability for the sole benefit of that individual; or to a trust, including a trust created in conformance with 1396p(d)(4), for the sole benefit of an individual under the age of 65 who is disabled shall not result in ineligibility for medical assistance.

MEDICAID ESTATE RECOVERY

- Mandatory – see 42 U.S.C. § 1396p
- In general, limited to amounts paid by state Medicaid agency for individuals who received long term care services from age 55
- HOWEVER – for SNT 1st party trust beneficiaries, ALL payments made during the beneficiary's lifetime are subject to estate recovery

STATE SUPPLEMENTAL PAYMENTS

- Provided to help SSI recipients meet the needs not fully covered by SSI
- States without SSP: AZ, MI, ND, WV, NMI
- States with SSP administered through SSA: CA, DE, DC, HI, IA, MI, MN, NV, NJ, PA, RI, VT
- All other states administer their own programs

GETTING SSP

- Other than SSA administered states, must file separate application
- States decide how much – between \$10 - \$400 per state
- Often limited to those who are living in certain settings such as care homes, assisted living and nursing homes
- Based on living arrangements, income and county of residence

HUD PUBLIC HOUSING

- Privately owned subsidized housing
- Public housing complexes subsidized
- Housing Choice Voucher (Sec. 8) – find your own housing
- Income determinations made based upon the median income for the area in which an applicant lives
- Long waiting lists
