

# **The Nuts and Bolts of SSI and SSDI**

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## **Proving Disability Under the Social Security Act - An Overview of the Disability Determination and Appeal Processes**

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STETSON LAW

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\*Member: National Academy of Elder Law Attorneys  
National Organization of Social Security Claimants Representatives  
Special Needs Alliance Advisory Council

# **A word about these slides:**

**An attempt to present the “nuts and bolts” of SSI and SSDI in 50 minutes is akin to attempting to present the nuts and bolts about the tax code in 50 minutes. You can draw your own conclusions. What follows is, literally, the “tip of the iceberg.” While it is not possible to teach all there is to know about Social Security disability law in two weeks, much less, one hour, the goal here is to help you become familiar with the basic contours of the program by outlining what is required to prove a disability claim, what evidence will be needed to sustain a disability claim, and the process for appealing denials of such claims.**

**The goal is not so much to turn you into expert advocates after less than one hour of presentation, but rather, to show you the possibilities and to show you enough, so that you can begin to recognize when any of your clients might qualify for a disability benefit, and what needs to be done to initiate a claim for a disability benefit. Today’s presentation will focus on Part V, Disability Benefits. However, basic familiarity with the remaining sections, and in particular, Part IV (overview of Title XVI), Part VI (Representative Payees), and Part VII (Authorized Representatives) is essential in order to be able to represent a claimant on a disability claim.**

**Avram Sacks, October 2023**

**I wish to gratefully acknowledge John Whitelaw, Esq., Advocacy Director, Community Legal Aid Society, Inc, of Delaware, Tracey Gronniger, Esq., Justice in Aging, and Kate Lang, Justice in Aging, from whose materials on SSI, I borrowed heavily for the SSI portion of this presentation.**

# Roadmap for Today's Presentation

- **Quick Summary**
  - Definition of Disability
  - Types of Benefits
  - Five-Step Disability Determination Process
  - Appeal Process
  - Forms to File
- **Case Studies**

# Slide Outline

- **Insured vs Means Tested Benefits (Differences between Titles II and XVI)**
- **Overview of Title II**
- **Coverage (Who is insured?)**
- **Overview of Title XVI – Asset and Income Limitations**
- **The Disability Determination and Appeals Processes**
- **Post-Award Issues**
  - **PERCs**
  - **Work & Trial Work Period**
  - **Age 18 redeterminations**
  - **CDB termination**
- **Representative Payees**
- **Representation of Claimants**
- **Case Studies**

# **Part I**

## **INTRODUCTION**

**Insured vs. Means-tested Benefits  
Title II Overview**

# INSURED vs. MEANS-TESTED BENEFITS

- **Insured vs. Means-tested benefits**
- Overview of Title II and “juggling” SSI, DIB & CDB
  - Insured Status
  - Types of Benefits (eligibility)
    - Retirement
    - Spousal
    - Child
    - Mother or Father
  - Overview of Title XVI
  - Disability Benefits
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	INSURED	MEANS TESTED
<b>TYPES OF CASH BENEFITS</b>	(TITLE II)  RIB WIB CIB  CDB  SSDI DIB CDB DWB	(TITLE XVI)  <b>SSI – Minor Child (0-17)</b> (Income of household is deemed to child)  <b>SSI – Aged Adult Disabled Adult</b> (Spousal income deemed; parent income not deemed)
<b>HEALTH BENEFITS</b>	(TITLE XVIII) <b>Medicare</b> (Age 65 or disabled)	(TITLE XIX) <b>Medicaid</b>

# INSURED vs. MEANS-TESTED BENEFITS

## Insured vs. Means-tested benefits

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## RSDI

- Administered by Social Security Administration (SSA)
- Disability standard used to determine eligibility for Social Security Disability Insurance (SSDI)
- Retirement (62-70)
- Employment-based social insurance program
- Funded through payroll (FICA) taxes, paid into Social Security trust funds
- Title II of the Social Security Act

## Supplemental Security Income (SSI)

- Administered by Social Security Administration (SSA)
- Disability standard used to determine eligibility for SSI disability
- Age (65)
- Strictly need-based, “means-tested” program
- Funded by general fund taxes
- Title XVI of the Social Security Act

# OVERVIEW OF TITLE II

- Entitlement based on credit build-up

- Coverage
- Tax on earnings (which dictate benefit levels) (FICA/SECA)

- Benefits types

- Old-Age (RIB)
- Disability (DIB)
- Dependents of retired or disabled workers
  - Wife's or Husband's Benefits
  - Divorced Spouse's Benefits
  - Child's Benefits (CIB & CDB)
- Survivors Benefits
  - Widow or Widower (WIB)
  - Disabled Widow(er)/Surviving Spouse (DWB)
  - Surviving Divorced Spouse
  - Dependent Child (CIB)
  - Mother or Father
  - Parents
- Lump-Sum Death Benefit

## Benefit Amount

- \* PIA (+DRCs if any)
- 100% of PIA
- \* 50% of PIA
- \* 50% of PIA
- 50% of PIA
- \* Decedent's benefit amt
- 71.5% of PIA
- \* Decedent's benefit amt
- 75% of PIA
- 75% of PIA
- 82.5% (1 parent); 75%(2 parents)
- \$255

\* Reduced if claimed prior to full retirement age

→ **Insured vs. Means-tested benefits**

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# TITLE II vs TITLE XVI

## GLOSSARY OF BENEFIT TYPES AND THEIR ACRONYMS

### Insured vs. Means-tested benefits

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**RIB – Retirement Insurance Benefit.** Payable to an insured wage earner on his/her earnings record as a retirement benefit. Full benefit payable at full retirement age. May be claimed as early as age 62.

**WIB – Widow(er)’s Insurance Benefit.** Payable to widow(er) or surviving divorced widow(er) of insured wage earner. Full benefit payable at full retirement age. May be claimed as early as age 60.

**Mother’s/Father’s Benefit.** Payable to surviving spouse of insured wage earner if surviving spouse has in his/her care a minor or disabled adult child of the deceased wage earner. Benefit amount is 75% of the full benefit (Primary Insurance Amount or PIA) of the deceased wage earner.

**CIB – Child’s Insurance Benefit.** Payable to minor or disabled adult child of insured wage earner who is entitled to a retirement or disability insurance benefit, or who is deceased. CDB (see below) is a type of CIB. Benefit amount is 50% of the PIA of the insured wage earner if the wage earner is alive, and 75% of the PIA of a deceased insured wage earner.

# TITLE II vs TITLE XVI

## GLOSSARY OF BENEFIT TYPES AND THEIR ACRONYMS

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**SSDI – Social Security Disability Insurance.** Refers to any one of three types of insured disability benefits: DIB, CDB, DWB.

**DIB – Disability Insurance Benefits.** Payable to an insured wage earner on his/her earnings record if the wage earner is disabled as defined under the Social Security Act. Benefit amount is the PIA of the wage earner.

**CDB – Child’s Disability Benefit.** Payable to a disabled child, age 18 or older, of an insured wage earner, if the child is disabled prior to age 22 and continuously disabled since age 22, but only if the wage earner is entitled to a retirement or disability insurance benefit, or, is deceased. Benefit amount is 50% (wage earner is alive) or 75% (wage earner is deceased) of wage earner’s PIA.

**DWB – Disabled Widow(er)’s Benefit.** Payable to disabled widow(er) of deceased wage earner if widow(er) is between ages 50 and 60. Benefit is 72.5% of the full benefit of the deceased wage earner.

**SSI – Supplemental Security Income.** Means tested benefit payable if claimant is disabled or at age 65 and meets the income and asset limitations imposed on SSI beneficiaries.



# TITLE II and TITLE XVI

## (Simple Overview – Lightning Version)




### DEFINITION OF DISABILITY

**Disability under the Social Security Act – functional incapacity due to diagnosed condition. Must be based on medical evidence.**

**“Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”**

**It’s not the underlying medical impairment that is required to last 12 months, it’s the inability to engage in SGA by reason of the impairment**

**SSA § 223(d)(1)(A)**

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# TITLE II and TITLE XVI

## (Simple Overview – Lightning Version)



### TYPES OF BENEFITS

**SSI (means tested); SSDI (insured – includes DIB, CDB, DWB)**

**SSI - countable resources under \$2,000**

**ANY income not otherwise exempt reduces SSI benefit**

**unearned income: dollar for dollar after first \$20**

**earned income: \$1 for every \$2 of earned income after first \$65**


**SSDI - *someone* must be insured**

**DIB: the wage earner**

**CDB: a parent who is either retired, disabled or deceased**

**DWB: deceased spouse where survivor is age 50 – 59**

**- minimum of 6 QCs (up to age 24), by age 30, need 20 of past 40 QCs**

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# TITLE II and TITLE XVI

## (Simple Overview – Lightning Version)



### **FIVE STEP DISABILITY DETERMINATION PROCESS**

**Approach towards proof of case requires understanding of the nature of the process**


**On paper: non-adversarial**

**In practice: very adversarial**

**A culture of benefit denial**

**It is a “win” to be able to deny a claim**

**Agency clerks leave no stone unturned to deny a claim**

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# TITLE II and TITLE XVI


## (Simple Overview – Lightning Version)



### **FIVE STEP DISABILITY DETERMINATION PROCESS**

1. no SGA for 12 months; SGA = monthly dollar amount (\$1470 in 2023)
2. “severe” impairment (Is the impairment more than a slight inconvenience?)
3. Is the impairment in the Listing of Impairments? (20 CFR Part 404, Subpart P, Appendix 1 – criteria for enumerated impairments)
4. Does claimant have Residual Functional Capacity for “past relevant work?”
5. Given the claimant’s RFC, are there any jobs in the national economy available to the claimant in significant numbers?

**About step 1: Test is on *countable* income. IRWEs, subsidies, special conditions, UWEs are not countable**


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# TITLE II and TITLE XVI

## (Simple Overview – Lightning Version)



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**About step 3: 14 body systems for adults and for children**  
**Sec. 12: Mental impairment listings:**

**“A” criteria – symptoms of the conditions**

**“B” criteria – 4 domains of functionality**

- 1. understand, remember or apply information**
- 2. interact with others**
- 3. concentrate, persist, or maintain pace**
- 4. adapt or manage oneself**

**ability to function in each domain independently, appropriately, effectively, and on a sustained basis is measured:**

**no limitation**

**mild**

**(ability to function is slightly limited)**

**moderate**

**(ability to function is “fair”)**

**marked**

**(ability to function is seriously limited)**

**extreme**


**(unable to function at all)**



# TITLE II and TITLE XVI

## (Simple Overview – Lightning Version)



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**“C” Criteria: 2 yrs of medical treatment with only marginal adjustment (minimal capacity to adapt to environment or to demands not part of daily life)**

### **APPEAL PROCESS:**

**Must file within 60 days (actually 65, allowing 5 days for mail delivery)**  
**Must exhaust administration remedies before filing in USDC**

**Initial Determination**  
**Request for Reconsideration**  
**Request for Hearing**  
**Appeals Council**

**Federal Court**






# TITLE II and TITLE XVI

## (Simple Overview – Lightning Version)



**FORMS TO FILE:** see <https://www.ssa.gov/forms/>

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Initial Determination:	file online, or...
SSA-16	Application for DIB
SSA-4	Application for CDB
SSA-5	Application for Mother’s or Father’s Benefit
SSA-8000	Application for SSI
SSA-827	Authorization to Disclose Information
SSA-3368	Disability Report
SSA-3373	Function Report (self)
SSA-3380	Function Report (third party)
SSA-3369	Work History Report
SSA-1696	Appointment of Representative
SSA-3288	Consent for Release of Information (from SSA)
SSA-973	Witness statement
—	Fee Agreement or Fee contract
—	Authorization to Disclose to Attorney

# TITLE II and TITLE XVI

## (Simple Overview – Lightning Version)



### FORMS TO FILE (cont.):

**Request for Reconsideration:      File online or...**

**SSA-561  
SSA-3441  
SSA-827**

**Request for Reconsideration  
Disability Report – Appeal  
Authorization for Release of Information**

**Request for Hearing:                      File online, or....**

**HA-501  
SSA-3441  
SSA-827**

**Disability Report – Appeal  
Authorization for Release of Information**

**Appeals Council                              File online, or....**

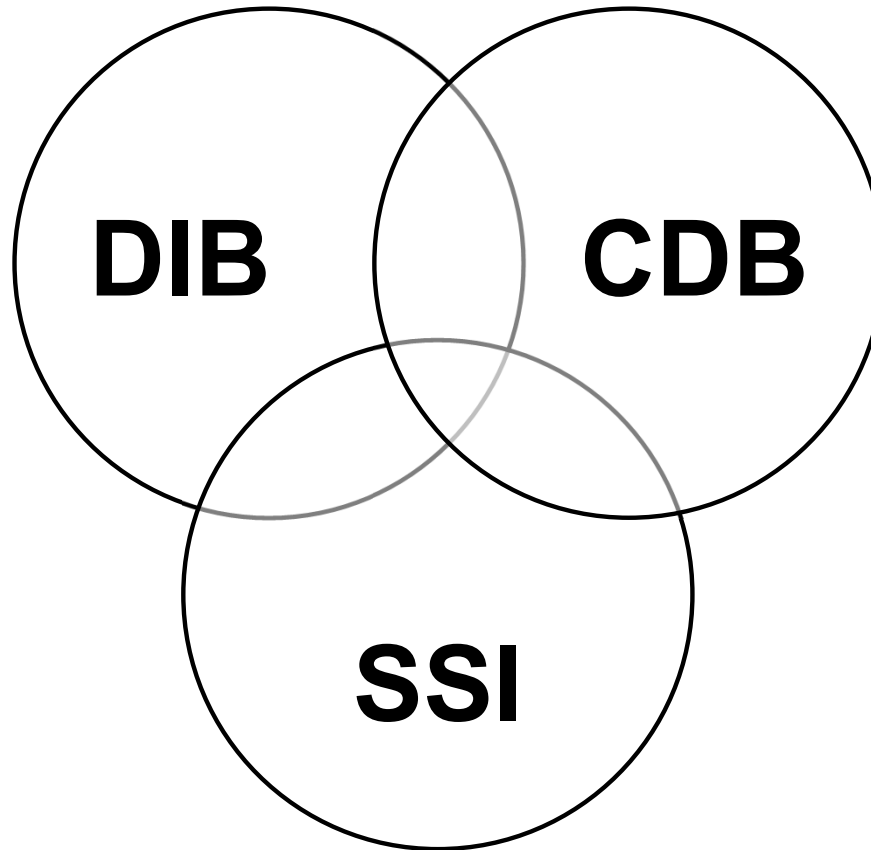
**HA-520**

**Request for Review of Hearing Officer**

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# TITLE II and TITLE XVI (Disability Benefit Combinations)

Disabled children profiles: some may receive two or three types of benefits:



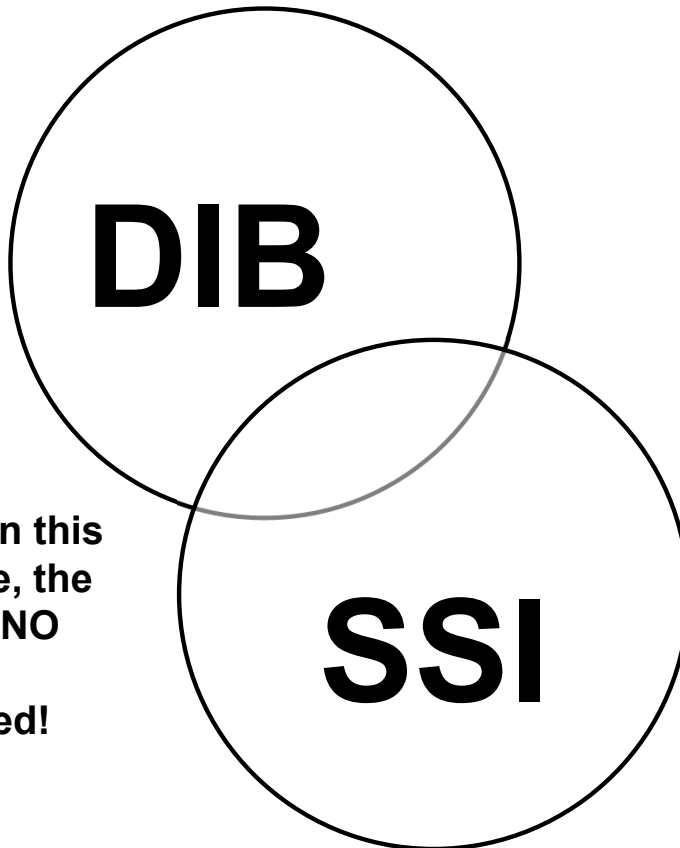
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# TITLE II and TITLE XVI (Disability Benefit Combinations)

## DIB + SSI

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**NOTE: in this example, the child is NO longer employed!**



Assume DIB = \$470

Assume Unreduced SSI = \$914

Total Benefit:

DIB is always paid first.

DIB = unearned income for SSI purposes

Countable unearned income =

$$\$470 - \$20 = \$450$$

= amount by which SSI is offset

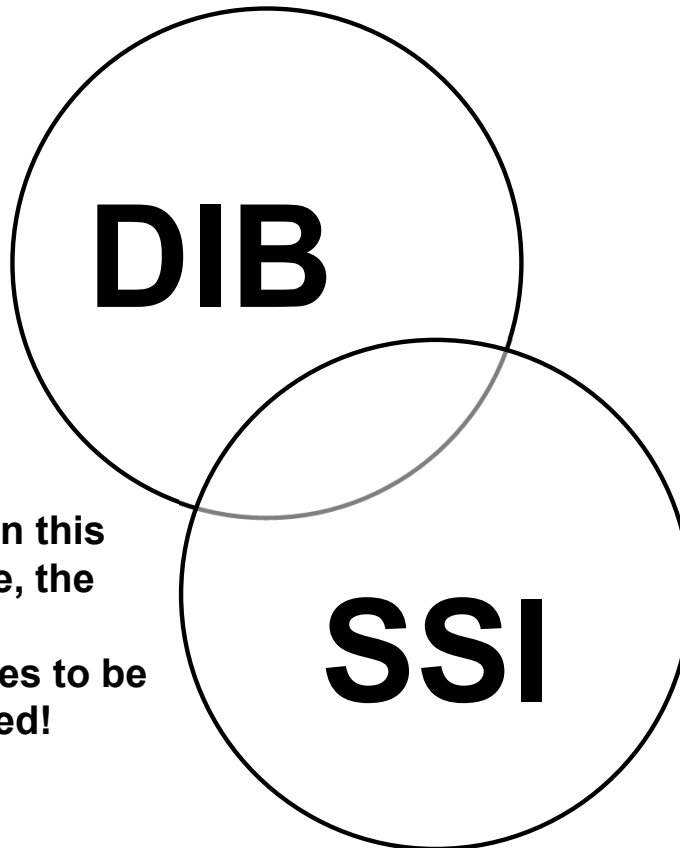
$$\text{SSI} = \$914 - 450 = \$464$$

$$\text{TOTAL BENEFIT} = \$470 + \$464 = \$934$$

# TITLE II and TITLE XVI (Disability Benefit Combinations)

## DIB + SSI

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**NOTE: in this example, the worker continues to be employed!**

Assume DIB = \$470; \$525 in gross wages

Assume Unreduced SSI = \$914

Total Benefit:

DIB is always paid first.  
DIB = unearned income for SSI purposes  
Countable unearned income =

$$\begin{aligned} \$470 - \$20 &= \$450 \\ &= \text{amount by which DIB offsets SSI} \end{aligned}$$

Countable unearned income =

$$\begin{aligned} \$525 - \$65 &= \$460 \\ \text{Reduction} &= \$460/2 = \$230 \end{aligned}$$

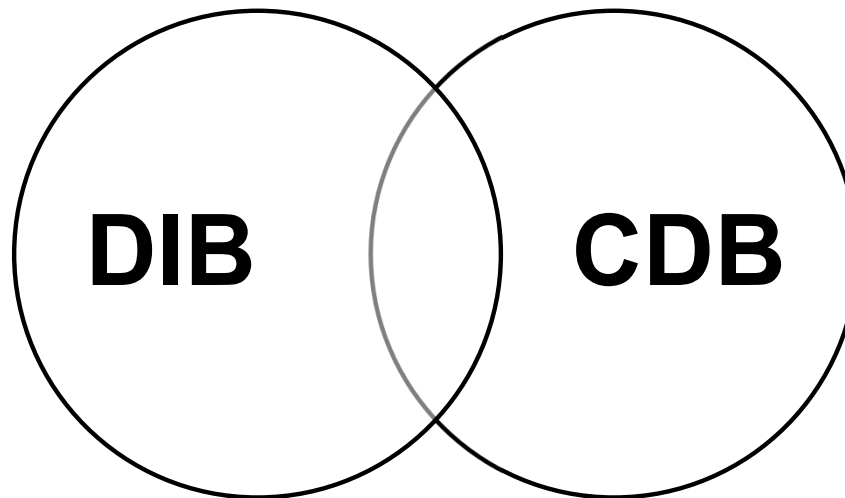
$$\text{SSI} = \$914 - 450 - \$230 = \$234$$

$$\text{TOTAL BENEFIT} = \$470 + \$234 = \$704$$

# TITLE II and TITLE XVI (Disability Benefit Combinations)

Disabled children profiles: DIB + CDB

RIB = \$2,800
CDB = \$1,400



Thus, in our scenario:

If DIB = \$470, then....

$CDB = \$1,400 - 470 = \$930.$

Total Title II benefits =

$\$470 + \$930 = \$1,400$

No SSI:

SSI of \$794 is offset by countable unearned income of \$1,380 (after \$20 gen inc exclusion)

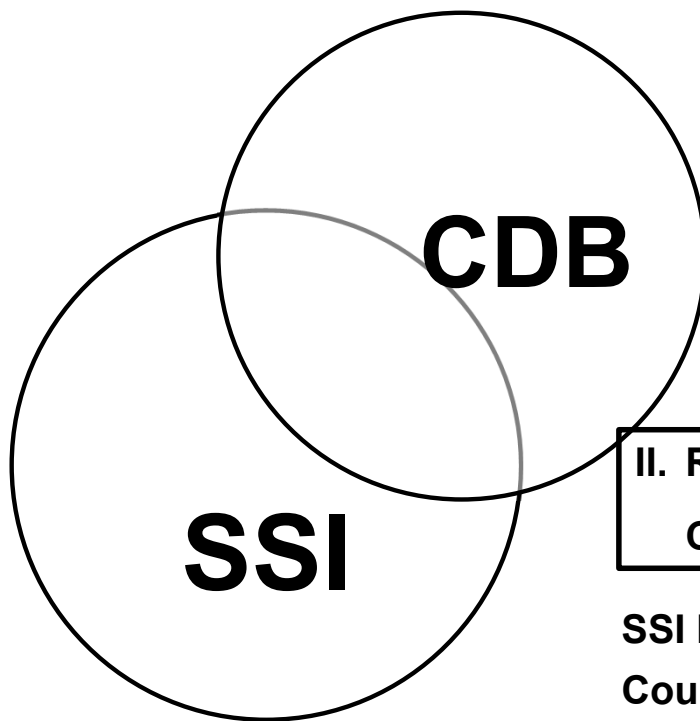
**DIB: Amount payable on one's own earnings record**  
**This amount is always paid first.**  
**In our scenario, DIB = \$470**

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Disabled children profiles: SSI + CDB

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**I. RIB = \$2,800**  
**CDB = \$1,400**

**SSI before offset = \$914**  
**Countable income = CDB - \$20 = \$1,400 - \$20 = \$1,380**  
**Thus, SSI reduced to 0.**  
**Total benefits = \$1,400 (CDB only!)**

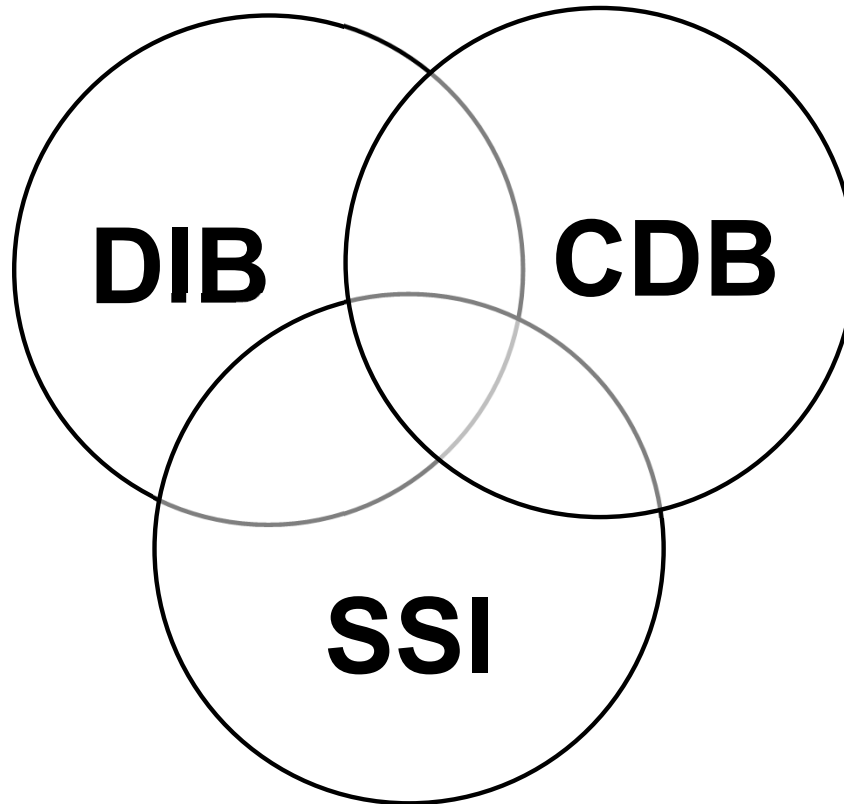
**II. RIB = \$1,500**  
**CDB = \$ 750**

**SSI before offset = \$914**  
**Countable income = CDB - \$20 = \$750 - \$20 = \$730**  
**SSI = \$914 - 730 = \$184.**  
**Total benefits = \$750 (CDB) + \$184 (SSI) = \$934**

# TITLE II and TITLE XVI (Disability Benefit Combinations)

Disabled children profiles: DIB + CDB + SSI

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I. RIB	=	\$1,400
CDB	=	\$ 700
DIB	=	\$ 450

DIB of \$450 is paid first

CDB offset by DIB:

$$\text{CDB} = \$700 - \$450 = \$250$$

$$\text{TOTAL Title II} = \$450 + \$250 = \$700$$

SSI offset by countable income of  
 $\$700 - \$20 = \$680$

$$\text{SSI} = \$914 - \$680 = \$234$$

$$\text{Total Benefit} = \$450 + \$250 + \$234 = \$934$$



# **Part II**

# **INSURED STATUS**

# INSURED STATUS

## Crediting Quarters of Coverage

- Insured vs. Means-tested benefits
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- **Individual must meet insured status requirements before benefits may be paid**
- **For 1979 and subsequent years, the earnings requirement for a quarter of coverage is subject to automatic annual increases to account for increases in average annual wages**

<i>Year</i>	<i>Amount Required</i>
2000	780
2001	830
2002	870
2003	890
2004	900
2005	920
2006	970
2007	1,000
2008	1,050
2009	1,090
2010	1,120
2011	1,120
2012	1,130
2013	1,160
2014	1,200
2015	1,220

<i>Year</i>	<i>Amount Required</i>
2016	1,260
2017	1,000
2018	1,200
2019	1,600
2020	1,410
2021	1,470
2022	1,510
2023	1,640

# INSURED STATUS

- Insured vs. Means-tested benefits
- Overview of Title II and “juggling” SSI, DIB & CDB
- **Insured Status**
- Types of Benefits (eligibility)
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- **Permanently Insured**
- **Fully Insured**
- **Currently Insured**

# INSURED STATUS


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- For most benefits a worker must be fully insured
- **40 quarters (10 years) insures for life (“permanently insured”)**
- **If individual dies or becomes disabled prior to age 62:**
  - **Count number of years after age 21 and stop with the year before death or disability (exclude years for which any part was included in a period of disability for disability benefit purposes)**
  - **Need one quarter for each year**
  - **A minimum of six quarters is required**

# INSURED STATUS

## Insured Status for Disability Benefits

- Fully insured
- **20 quarters of coverage (“credits”) during the 40-quarter period ending with the quarter disability began**
- **If disabled before age 31, earned quarters of coverage for at least half of the period beginning with the quarter after the quarter in which the claimant attained age 21 and ending with the quarter in which he or she became disabled**
  - **A minimum of six quarters is required (up through the quarter in which age 24 is attained, only 6 quarters are ever required to be insured)**
  - **Provision not applicable where disability is on account of blindness**

- 
- Insured vs. Means-tested benefits
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# INSURED STATUS

## Insured Status for Disability Benefits

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**Simplified method prior to age 31:**

**Before age 24: need credit for 1½ yrs of work in the 3 yr period ending when disability begins**


**Age 24-30: Need credit for working half the time between age 21 and the disability onset date**

# INSURED STATUS

## Currently Insured

**May be used as alternative to fully insured status for the following:**

- **Lump-sum death benefits**
- **Widower/widower's benefits and, in some cases, surviving divorced spouse if either is caring for a child entitled to benefits if the child is under age 16 or disabled**
- **Surviving child, grandchild or stepchild of a deceased worker under certain circumstances**

- 
- Insured vs. Means-tested benefits
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# INSURED STATUS

## Currently Insured

**Currently insured status met if individual has at least 6 QCs during any of the following:**

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- **The 13 quarter period ending with the quarter of death**
- **The 13 quarter period ending with the quarter in which s/he became entitled to RIB**
- **The 13 quarter period ending with the quarter in which s/he became entitled to DIB**


**Note: May not count any quarter included in a period of disability unless it was a quarter of coverage.**



# INSURED STATUS

## Crediting Quarters of Coverage

- **After 1977, quarters are earned per year based on total wages for the year and are not assigned to a specific quarter unless necessary to meet eligibility requirements**
- **Quarters that may not be counted:**
  - **After one's death**
  - **Have not begun**
  - **After disability begins, unless it is the first or last quarter of period**

- 
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**[20 CFR §404.143; §404.146]**


# **Part III**

## **TYPES OF BENEFITS**

# TYPES OF BENEFITS (Eligibility)

## Retirement Benefits

- **Fully insured** (40 quarters insures for life [“permanently insured”])
  - Must be earned through “covered” employment
    - Excluded: work for which FICA/SECA not paid  
state/local government employment (some)  
school districts (some)
  - If individual dies or become disabled prior to age 62:
    - Count number of years after age 21 and stop with the year before death or disability (exclude years for which any part was included in a period of disability for disability benefit purposes)
    - Need one quarter for each year
    - A minimum of six quarters is required

- 
- Insured vs. Means-tested benefits
  - Overview of Title II and “juggling” SSI, DIB & CDB
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# TYPES OF BENEFITS (Eligibility)

## Retirement Benefits

- **Full Benefit = Primary Insurance Amount (PIA)**
  - Payable at “Full Retirement Age”
  - FRA is increasing from age 65 to age 67

**Age 65 – born prior to Jan 2, 1938**

**Age 66 – born 1.2.1943 – 1.1.1955**

**Age 67 – born 1.2.1960 or later**

**Increases by 2 months per year:**

**1938 – 1943 and 1955 – 1960.**

- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Retirement Benefits

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If birth date is...	Then full retirement age is...
1/2/38-1/1/39 (age 62 in 2000)	65 years and 2 months
1/2/39-1/1/40 (age 62 in 2001)	65 years and 4 months
1/2/40-1/1/41 (age 62 in 2002)	65 years and 6 months
1/2/41-1/1/42 (age 62 in 2003)	65 years and 8 months
1/2/42-1/1/43 (age 62 in 2004)	65 years and 10 months
1/2/43-1/1/55 (age 62 in 2005-2016)	66 years
1/2/55-1/1/56 (age 62 in 2017)	66 years and 2 months
1/2/56-1/1/57 (age 62 in 2018)	66 years and 4 months
1/2/57-1/1/58 (age 62 in 2019)	66 years and 6 months
1/2/58-1/1/59 (age 62 in 2020)	66 years and 8 months
1/2/59-1/1/60 (age 62 in 2021)	66 years and 10 months
1/2/60 and later (age 62 in 2022 and beyond)	67 years

# TYPES OF BENEFITS (Eligibility)

## Retirement Benefits

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- **Benefit based on highest 35 years of “indexed” earnings**
- **Complex statutory formula that returns higher proportion of pre-retirement earnings to workers with lower life time earnings**
- **Based only on earnings subject to Social Security tax (FICA or SECA)**
  - **excludes some government workers and foreign employment)**
  - **Aliens in U.S. need work authorization after 2004. SSN issued prior to 2004 may be used to credit earnings.**

**Can apply in person, or (preferably) online. May also submit written application (SSA-1)**

# TYPES OF BENEFITS (Eligibility)

## Spousal Benefits (Husband's or Wife's Benefits)

- Insured vs. Means-tested benefits
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- **Spouse or divorced spouse of individual "entitled" to retirement or disability benefits**  
**"Entitled" means individual is eligible for a benefit AND has applied for it.**
- **Age 62 or child of number holder (NH) (under 16, unless child is disabled) in**

**NOTE: If child is "in care" there is**

- **No actuarial reduction, and**
- **Benefits available prior to age 62**

# TYPES OF BENEFITS (Eligibility)


## Spousal Benefits (Husband's or Wife's Benefits)

- **Divorced spouse**

- **Payment does not reduce benefits of others receiving benefits on same account**
- **Available only if own benefit is smaller**

- **Deemed spouse [20 CFR §404.346]**

- **Good faith**
- **Marriage valid but for legal impediment**

- 
- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Spousal Benefits (Husband's or Wife's Benefits)

- **Divorced spouse**

- **Married for at least 10 years prior to finalization of divorce;**
- **“Ex” must be “entitled” (filed for benefits); if not, then “ex” must be at least 62, and divorced at least for two years**
- **Not married, unless remarried to another person who is entitled to widow(er)'s, mother's, father's, CDB, divorced spouse's or parent's benefits, or to number holder [POMS RS §00202.045]**
- **At least 62 (Benefits are NOT payable to a divorced spouse under age 62 based on having an entitled child of NH in care –**

- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Spousal Benefits (Husband's or Wife's Benefits)

- Insured vs. Means-tested benefits
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- **Not entitled on own account or is entitled but PIA is less than ½ of PIA of insured spouse**
- **Who is a spouse [SSA §216(b), (f)]**
  - **Parent of the insured's child, or**
  - **Married to insured for at least one year prior to application, or**
  - **Entitled to benefit, as follows, in month prior to marriage: spousal, widow(er)'s, parents, or child's benefit**

# TYPES OF BENEFITS (Eligibility)

## Spousal Benefits (Husband's or Wife's Benefits)

- **Who is a child “in care”?** [20 CFR §§ 404.348, 404.349; POMS §RS 01310.000]

a. **living WITH parent for at least 30 days, and**

- physically disabled and it is necessary for parent to perform personal services for him or her, or
- mentally disabled and parent actively supervise his or her activities and parent makes important decisions about his or her needs, either alone or with help from spouse, or

b. **living apart from parent, and the child is mentally disabled, and the parent supervises his or her activities, make important decisions about his or her needs, and helps in his or her upbringing and development.**


**NOTE:** If the development and training of the child is exclusively controlled by the custodian, even though paid for by the claimant, the child is not in the claimant's care. There must be at least a joint sharing of responsibility for the child's upbringing and training. – RS 01310.035B.2.b

- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

- Child of individual entitled to retirement or disability benefits, or deceased individual fully or currently insured
- **Unmarried**
- **Under age 18, or**
  - **Under 19 and full-time student**
  - **18 or older and has disability that began prior to age 22 (Disabled Adult Child — “DAC”)**

- 
- Insured vs. Means-tested benefits
  - Overview of Title II and “juggling” SSI, DIB & CDB
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# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

### Four Primary Considerations

1. Insured status of wage earner

2. Relationship to wage earner

3. Age of child

4. Dependency on wage earner

- Insured vs. Means-tested benefits
- Overview of Title II and "juggling" SSI, DIB & CDB
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# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

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### 1. Insured Status of Parent

- For most benefits a worker must be “fully” insured
- 40 quarters (10 years) insures for life (“permanently insured”)
- If parent dies or becomes disabled prior to age 62:
  - Count number of years after age 21 and stop with the year before death or disability (exclude years for which any part was included in a period of disability for disability benefit purposes)
  - Need one quarter for each year
  - A minimum of six quarters is required

# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

- Insured vs. Means-tested benefits
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## 2. Child Status – Who is a “child?”

**Natural legitimate child**

**Legitimated child**

**Legally adopted child**

**Equitably adopted child**

**Illegitimate child w/ inheritance rights**

**Step-child**

**Child of invalid ceremonial marriage**

**Child of void or voidable marriage**

**Child under state intestacy laws**

**Grandchild or step-grandchild of number holder (NH is the insured) or spouse (Child's natural or adoptive parents either deceased or disabled in month NH became entitled to RIB, DIB or died or NH's period of disb began until entitled to RIB, DIB or death)**

# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

### 2. Child Status – Who is a “child?” (cont.)

#### Child under §216(h)(3) of the Act

- alternative to child status under state law
- parent states in writing that person is his/her son/daughter, or
- court decree of parentage, or
- subject to court order of support
- all of which must be at least one year prior to FRA or entitlement to RIB or DIB or before death of the insured individual
- Insured individual must have been living with OR contributing to ½ support of child

- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

### 3. Age of Child (and marital status)

- Under age 18, or
  - Under 19 and full-time student, or
  - 18 or older and has disability that began prior to age 22 (Disabled Adult Child – “DAC” aka Child Disability Beneficiary – “CDB”)
- Unmarried
- Exceptions: annulment  
marriage ends before application

- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

### 4. Dependency requirement

- At time of application, at time of death, at time insured became disabled, at time insured became entitled to benefits
- Dependency is presumed except as follows:
  - Legally adopted child by someone other than insured during insured's lifetime:  
adoption cannot have cut off inheritance rights  
insured must have been living with or provided 1/2 support.

- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CIB - including CDB)

### 4. Dependency requirement (cont.)

– Dependency is presumed except as follows (cont.):

- **Stepchild**

**show one half support**

- **Equitably adopted child**

**NH must be living with or contributing regularly and substantially to child's support**

- **Grandchild/Stepgrandchild**

**NH must be living with and providing one-half support**

- Insured vs. Means-tested benefits
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# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CDB only)

- Insured vs. Means-tested benefits
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- **CDB vs DAC (one and the same)**
- **Disabled child under 18 would be eligible like any other child if parent is retired, disabled, or deceased (CIB)**
- **Disabled child over 18 eligible if parent upon whom child is dependent is retired, disabled or deceased (CDB)**
- **Must be unmarried and dependent upon primary wage earner**
  - **If filing for re-entitlement to CDB, must be "never married" since last entitlement**  
**But, there is an annulment or voided marriage exception at POMS § RS 00203.015B. May be entitled on other parent's record, however.**

# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CDB only)

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- **Generally, must show (continuous ?) disability from prior to age 22 (two days before anniversary of date of birth;**

# TYPES OF BENEFITS (Eligibility)

## Child's Benefits (CDB only)

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- **No 5-month waiting period [POMS DI §10115.025]**
- **6 months retroactive benefits / 12 mos if on record of parent entitled to DIB Any work since then must either be**
  - **Unsuccessful work attempt**
  - **Not substantial work activity**
  - **Not gainful work activity after deducting impairment related work expenses and averaging earnings or**
  - **Subsidized**

# TYPES OF BENEFITS (Eligibility)

## Mother's or Father's Benefits

- **Surviving spouse or surviving divorced spouse**
- **Each of the following must be met:**
  - **Has in care, at time of filing, child of insured entitled to child's insurance benefits (CIB), under age 16 or disabled**
  - **Is not married**
  - **Is not entitled to widow's or widower's benefits or RIB > full mother's or father's benefit**

- Insured vs. Means-tested benefits
- Overview of Title II and "juggling" SSI, DIB & CDB
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# TYPES OF BENEFITS (Eligibility)

## Mother's or Father's Benefits

- Applicant need not be at age 60
- Also payable to surviving divorced spouse
- **Benefit terminates when**
  - **Child attains age 16, unless disabled**
  - **Beneficiary dies, becomes entitled to widow's or widower's benefits, becomes entitled to old-age benefit  $\geq \frac{3}{4}$  of PIA of deceased person's PIA; or**
  - **There is no child entitled to child's benefits**
  - **Beneficiary remarries, unless remarriage is to another person already receiving benefit**

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# **Part IV**

## **TITLE XVI OVERVIEW**

# Title II vs. Title XVI Benefits

- Insured vs. Means-tested benefits
- Overview of Title II and “juggling” SSI, DIB & CDB
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## Title II

**Eligibility:**

**Work Record  
“Lawful presence” (in U.S.)  
requirement.**

**Resource limitation: None**

**Unearned income    None**

## SSI

**Means tested**

**US Citizen or eligible alien.** (Largest category includes refugees and asylees, but only for 7 years. These are complex rules and not all rules are in the POMS. Must check statute and regulations.

**\$2,000 single; \$3,000 couple\* See POMS § SI 01110.210 for list of exclusions.**

**\$20 disregarded. See POMS § SI 00830.099 for list of exclusions. Remainder is deducted from benefit amount.**

# Title II vs. Title XVI Benefits

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	Title II	SSI
<b>Earned income limit:</b>	<b>SGA</b> 2022: (\$1,350/\$2,260) 2023: (\$1,470/\$2,460) non-blind / blind	<b>\$65/mo, then \$1 for \$2 reduction</b> <b>More liberal rules to encourage work. Exclude IRWEs and subsidized amounts</b>
<b>Disability standard:</b>	<b>Same for both</b>	
<b>Payment source:</b>	<b>Title II trust fund</b>	<b>General revenue</b>
<b>Payment amount:</b>	<b>Work record</b>	<b>Congressional limits (Single: \$841 (2022), \$914 (2023); Couple: \$1,261 (2022), \$1,371 (2023))</b>
<b>Retroactivity:</b>	<b>12 months prior to date of app.</b>	<b>Only from 1<sup>st</sup> of month after mo. all reqs. met</b>
<b>Waiting period:</b>	<b>Five months</b>	<b>1<sup>st</sup> of month after month all requirements are met</b>

# Title II vs. Title XVI Benefits

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	Title II	SSI
<b>Payment to child as dependent:</b>	<b>Yes if under age 18 or age 19 if still in h.s.</b>	<b>No, but may get welfare. Some states add money for children.</b>
<b>Payment to disabled child:</b>	<b>Yes if child over 18 and disability began prior to age 22</b>	<b>Under 18 if asset and income limitations met*</b>

**\* Be aware of deeming rules. If a child is under 18, unmarried, and living at home with parents who do not receive SSI, the SSA may consider a portion of the parents’ income and resources as if they were available to the child. Some of the income may not be countable, but income and assets above specified thresholds will disqualify a child for SSI eligibility. See chart at <http://www.socialsecurity.gov/ssi/text-child-ussi.htm>**

# Who is Eligible for SSI?

- Insured vs. Means-tested benefits
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- Specific Category
  - Blind or disabled, or
  - Age 65 or older
- Income/Resources
  - Limited income, and
  - Limited resources
- Residence/Status
  - Resides in one of the 50 states, DC, or Northern Mariana Islands (not Puerto Rico)
  - Many categories of immigrants are not eligible for SSI
  - Rules for people in institutions (public/medical)

# Overview of SSI

## Counting Income vs. Resources

Need to think of funds twice for SSI purposes:

- Consider funds received in a month under **income** rules
- Funds not spent down in month of receipt considered under **resource** rules in subsequent months (UNLESS exempted from counting as resource)

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# Overview of SSI

## Income – What Counts?

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- Anything received, in cash or in-kind, that can be used to meet needs for food and shelter
- General types of income
  - Earned income
  - Unearned income
  - In-Kind Support and Maintenance (ISM)

# Overview of SSI

## Earned Income

- Insured vs. Means-tested benefits
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- Income from work is treated more favorably than unearned income.
- Earned income is:
  - Wages
  - Net self-employment income
  - In-kind payment (e.g., free rent for work)
  - Royalties and honoraria



# Overview of SSI

## Earned Income Disregard

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To estimate countable wages -

$\frac{1}{2}$  of gross wages paid in a month

- **Recipient of \$914 in SSI takes part-time job paying \$1285 per month.**
- **Countable earnings are \$1285 - \$85 (\$65 + \$20) divided by 2 = \$600.**
- **The new SSI payment will be \$914 - \$600 = \$314 per month. Total monthly income is \$1,599.**

**Some SSI recipients are eligible for additional deductions for work-related expenses.**

# Overview of SSI

## Unearned Income

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- Unearned income is all income that is not earned, including:
  - Annuities and pensions
  - Monthly benefit payments (Social Security retirement and disability benefits, VA benefits, Worker’s Compensation, and Unemployment benefits)
  - Alimony, child support
  - Dividends, interest
  - Rental income

# Overview of SSI

## Unearned Income Exclusions

- \$20 general exclusion
- Unearned income with specific exclusions:
  - Gross rental income may be reduced by expenses needed to earn it.
  - One-third of child support is not counted.
    - Child support is normally income to the child for whom paid.

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# Overview of SSI

## Unearned Income – In-kind Support and Maintenance (ISM)

- Insured vs. Means-tested benefits
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- ISM is treated as a type of unearned income.
- ISM applies when an SSI recipient receives food and shelter for free or at a cost less than fair market value.

# Overview of SSI

## Unearned Income – In-kind Support and Maintenance (ISM)

### What Counts as Food and Shelter?

- Food (but not food purchased with SNAP benefits)
- Rent
- Mortgage
- Real property taxes
- Utilities (gas, electricity, water, sewer, trash, heating fuel)

- Insured vs. Means-tested benefits
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# Overview of SSI

## Unearned Income – In-kind Support and Maintenance (ISM)

### Benefits Reduced by One Third

If you encounter SSI recipient receiving \$609 per month OR \$629 per month, think "ISM reduction"

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# Overview of SSI

## Unearned Income – In-kind Support and Maintenance (ISM)

### Avoiding the ISM Reduction

If beneficiary pays rent of at least 1/3 the FBR + \$20 there is NO reduction for ISM in the Seventh Circuit!!

- Should have written rental agreement
- Set up ABLE account to “churn” the payments.

- Insured vs. Means-tested benefits
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# Overview of SSI

## Unearned Income – Contributions of Third Parties

- Insured vs. Means-tested benefits
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- Cash given to SSI recipients is countable unearned income.
- Bills paid directly to the vendor for food or shelter are countable in-kind income.
- Other bills paid directly to the vendor do **not** result in countable income.
  - Ex: car payments, car insurance, phone



# Overview of SSI

## Resources – Definitions and Limits

- Insured vs. Means-tested benefits
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- A countable resource is cash on hand and equity value of personal and real property that the individual:
  - has an ownership interest in;
  - has the legal right to convert to cash; and
  - is not legally restricted from using for support.
- Not current month’s income
- \$2,000 individual, \$3,000 married couple

# Overview of SSI

## Resources – Non-Countable Resources

- Insured vs. Means-tested benefits
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- Home the recipient owns and lives in
- One vehicle, used for transportation, per family
- Ordinary household furnishings and personal property
- Certain burial funds
- Irrevocable burial contracts

# Overview of SSI

## Resources – Common Problems With Resources

- Insured vs. Means-tested benefits
- Overview of Title II and “juggling” SSI, DIB & CDB
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- Inheritances
- Lottery winnings
- Personal injury settlements
- Real estate where not living, including property in another country

**Exception:** JOINTLY owned real estate where co-owner resides, has no other shelter and refuses to sell

# Overview of SSI

## Resources – Spending Down

- Insured vs. Means-tested benefits
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- Spending down cash to mitigate potential period of ineligibility due to being over-resource limit
- Funds must be spent on the needs of SSI recipient
- Keep records re: any purchase made to show fair market value received

# Overview of SSI

## Resources – Transfer of Asset Penalty

- Insured vs. Means-tested benefits
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- Funds or property transferred for less than fair market value will result in “transfer of assets penalty” - ineligibility for a maximum of 36 mos.
- Some exceptions apply
  - Including Undue Hardship

# Overview of SSI

## Resources – Transfer of Asset Penalty

### Example:

- In Dec 2022, Mr. Levy decided that he was no longer able to drive, so sold one of his two cars for \$5,000 to his son. The car had FMV of \$12,000.
- In May 2023, Mr. Levy applied for SSI as an individual and is otherwise eligible for the full SSI monthly benefit of \$914.
- Transfer penalty applies:
  - Uncompensated value of car: \$7,000 (\$12,000-\$5,000)
  - Duration of penalty: 7 months ( $\$7,000 \div \$914 = 7.65$ )
- Mr. Levy's period of ineligibility: Jan 2023-July 2023

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# Overview of SSI

## Residing in an Institution

- Insured vs. Means-tested benefits
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- Residents of public institutions for full calendar month (including jail/prison) are **not** eligible for SSI.
- Residents of medical institutions for full calendar month eligible for \$30/month.
- Recipients likely to leave medical institution within three months can continue to receive full amount of SSI.

# Overview of SSI

## Suspension vs. Termination

- Insured vs. Means-tested benefits
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- SSI ineligibility for a non-disability reason does not immediately result in termination of entitlement to SSI. It results in suspension of payment.
- Suspension for 12 consecutive months results in termination of entitlement.
- Be wary of RETROACTIVE terminations.



# **Part V**

# **DISABILITY BENEFITS**

# DIB, CDB, SSI – TITLES II & XVI

## Definition of Disability

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- “Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”
- It’s not the underlying medical impairment that is required to last 12 months, it’s the inability to engage in SGA by reason of the impairment

- *Barnhart v. Walton*, 35 US 212 (2002)

# DISABILITY – TITLE XVI

## Definition of Disability for Minor Children

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- Special definition under SSI for children under 18:
- An individual under age 18 is disabled for SSI purposes if “that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”
- However, if child engages in SGA, can’t be disabled.

# DISABILITY – TITLE XVI

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### Determination of Disability:

- **Three Steps**

1. **Is claimant performing SGA?**
2. **Does claimant have a severe impairment or combination of impairments?**
3. **Does child’s impairment meet or equal the severity of an impairment set forth in the Listing of Impairments (20 CFR Part 404, Subpart P, App. 1) [see also “Bluebook” here:  
<http://www.ssa.gov/disability/professionals/bluebook/ChildhoodListings.htm>]**

**SSA §1614(a)(3)(C)(i). [42 USC 1382c(a)(3)(C)(i)]**

# DISABILITY – TITLE XVI

## Definition of Disability for Minor Children

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### Determination of Disability (cont.):

- **No steps 4 or 5**
- **Three parts to step 3**
  1. **Does impairment meet a listed impairment?**
  2. **Does impairment equal a listed impairment?**
  3. **Does impairment functionally equal a listed impairment?**
- **Analysis looks at six domains of functioning**

To functionally equal a listed impairment, an impairment will be considered to be listing level severity if it results in “marked” limitations in at least two domains of functioning or an “extreme” limitation in at least one domain of functioning.

20 CFR §§416.926a(a),416.926a(d), and 416.926a(e)(2).

POMS § DI 25225.000, et seq.

# DISABILITY – TITLE XVI

## Definition of Disability for Minor Children

### Determination of Disability (cont.):

- **Analysis looks at six domains of functioning (cont.)**
  - (1) **Acquiring and using information,**
  - (2) **Attending and completing tasks,**
  - (3) **Interaction and relating with others,**
  - (4) **Moving about and manipulating objects**
  - (5) **Caring for yourself,**
  - (6) **Health and physical well-being**

POMS § DI 25225.006, SSR 09-1p

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# DISABILITY – TITLE XVI

## Definition of Disability for Minor Children

### Determination of Disability (cont.):

- **Age 18 Redeterminations (POMS §§ DI 23570.000, et seq., and 33025.075)**
  - **Functional Equivalence no longer applies**
  - **Adult rules apply: child must either meet or equal a listing at step 3 or be found disabled at Step 5 of the Sequential Evaluation**
  - **SSR 11-2p (Documenting and Evaluating Disability in Young Adults)**
  - **If terminated, must appeal within 10 days to ensure continued benefits (may need to be repaid if found not disabled)**
  - **If no longer disabled benefits may continue if in vocational rehab [20 CFR §416.1388]**

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process

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1. Can claimant engage in SGA?

2022: \$1,350 (non-blind) / \$2,260 (blind) / mo. 2023: \$1,470 / \$2,460/mo.

2. Is impairment severe?

3. Does claimant “meet” or “equal” one of the impairments listed in 20 CFR Part 404, Subpart P, Appendix 1? Special listings for minor children (SSI claimants)

4. Does claimant have residual functional capacity to engage in past relevant work

5. If unable to perform past relevant work, is claimant able to perform work for which there are a significant number of jobs, nationally?



# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 1

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### Step 1. Substantial Gainful Activity

- Benefits will be denied if claimant is working
- Presumption of nondisability arises if earnings > “substantial gainful activity” threshold

- Current threshold (2022): \$1,350 (non blind) 2,260 (blind)  
(2023): \$1,470 (non-blind) 2,460 (blind)

See <http://www.socialsecurity.gov/oact/COLA/sga.html>

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 1

### Step 1. Substantial Gainful Activity (cont.)

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- Includes illegal activity
- Work performed under special accommodations, in sheltered workshop, as member of Federal advisory panel, may be excluded
- Earnings counted for SGA purposes may be reduced if pay is subsidized (pay is greater than market value of work) or if “special conditions” are present.
- Earnings reduced by amount of any impairment-related work expense (drugs, modified vehicle, medical devices, etc.)

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 1

### Step 1. Substantial Gainful Activity (cont.)

- Practice Tips re SGA

SGA is presumed to be as of when paid and not as of when earned, but is counted as of when earned if period for when paid is demonstrated (obtain pay stubs to identify pay period)

Obtain assessment from employer to determine if employment supports were necessary; if there was extra supervision, more breaks, slower pace, etc.  
Determine if subsidy was provided

Make sure client is aware of thresholds if client is currently working

Average earnings if work is continuous, without change in work patterns, SGA levels have not changed, and monthly earnings fluctuate

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 2

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### Step 2. Severity of Impairment

- Intent is to weed out frivolous claims
- Any reduction in residual functional capacity (RFC) satisfies requirement that there be a severe medically determinable impairment
- “Does the individual’s impairment or combination of impairments significantly limit a claimant’s physical or mental ability to do basic work without consideration of age, education, and work experience

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 2

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### Step 2. Severity of Impairment (cont.)

- “Basic work” means walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, handling, seeing, hearing, speaking, use of judgment, responding to supervision and co-workers, dealing with routine changes in work setting
- Slight abnormalities do not qualify
- However, once a reduction of claimant’s RFC has been proven, then no further proof needed to show a significant limitation of ability to perform “basic work activities.”

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 2

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### Step 2. Severity of Impairment (cont.)

- There HAS to be a medically determinable impairment; qualifies if doctor has enough information to make a diagnosis
- “Combination of Impairments” – Administration must consider combination of all impairments, whether individually severe or not
- Step 2 denials usually unsound.

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

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### Step 3. Listed Impairment

- Finding of disability if claimant “meets” or “equals” one of the impairments listed in 20 CFR Part 404, Subpart P, Appendix 1
- Listing of Impairments describes for each major body system, impairments, in terms of clinical observation and laboratory test results, that are considered severe enough to prevent a person from engaging in any substantial gainful activity. – For each listed impairment, required medical criteria are listed
- Comparable listings for childhood impairments
- If disability found here, there is no inquiry to do past work or any other work

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

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### Step 3. Listed Impairment (cont.)

- What is “medical equivalence?”
  - a. If client has none of the findings for a listing, but has other findings that is of equal medical significance, or
  - b. Client has all of the findings, but one or more is not as severe as the listing requires, but has other findings that is of equal medical significance, or
  - c. Client has impairment not described in Appendix 1, but may be as severe as one that is closely analogous in the Appendix
  - d. Client has a combination of impairments, of which not one meets a listing, but together, the impairments are medically equivalent [20 CFR §404.1526(b)]



# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

### Step 3. Listed Impairment (cont.)

- Entitlement to disability based on drug addiction or alcoholism ended with 1996 legislation
  - Payments must be paid to Rep. Payee in cases where otherwise disabled worker has alcoholism or drug addiction and is unable to manage their benefits [SSA §205(j)]
- Disabled widows, widowers, and surviving divorced spouses, age 50 and over, who are disabled may receive benefits based on the account of an insured spouse
- Disabled children, 18 or older, if disability began prior to age 22 (excluding alcoholism or drug addiction)

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

### Step 3. Listed Impairment (cont.)

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- Mental Impairments (Listing §12.00) — “A”, “B”, and “C” paragraphs
  - Revised September 26, 2016, effective January 17, 2017
  - “A” criteria relate to medical findings (symptoms, signs, laboratory findings)
  - B & C: describe impairment-related functional limitations (that are the result of the impairment described) that are incompatible with the ability to do any substantial gainful activity
  - Must fulfill both “A” criteria as well as “B” or “C” criteria except for 12.05 (Intellectual disability)(only A or B)

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

### Step 3. Listed Impairment (cont.)

- Mental Impairments (“A”, “B”, and “C” paragraphs, cont.)
  - “C” criteria appear only in 12.02 (organic mental disorders), 12.03 (psychotic disorders); 12.04 (Depressive, bipolar and related disorders); 12.06 (anxiety disorders); 12.15 (trauma and stressor-related disorders)
  - B relates to 4 areas of functionality (except in 12.05)

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

### Step 3. Listed Impairment (cont.)

- Mental Impairments (“A”, “B”, and “C” paragraphs, cont.)

– For “B” criteria: extreme limitation of one, or marked limitation of two, of the following areas of mental functioning:

1. Understand, remember, or apply information.
2. Interact with others.
3. Concentrate, persist, or maintain pace.
4. Adapt or manage oneself.

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

### Step 3. Listed Impairment (cont.)

- Mental Impairments (“A”, “B”, and “C” paragraphs, cont.)

- The five-point rating scale for the “B” criteria:

- No limitation (or none).* You are able to function in this area independently, appropriately, effectively, and on a sustained basis.
- Mild limitation.* Your functioning in this area independently, appropriately, effectively, and on a sustained basis is slightly limited.
- Moderate limitation.* Your functioning in this area independently, appropriately, effectively, and on a sustained basis is fair.
- Marked limitation.* Your functioning in this area **independently**, appropriately, effectively, and **on a sustained basis** is seriously limited.
- Extreme limitation.* You are not able to function in this area independently, appropriately, effectively, and on a sustained basis.

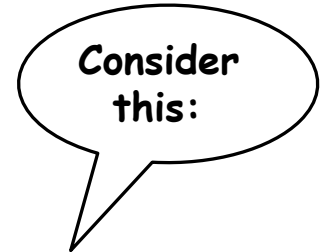
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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

### Step 3. Listed Impairment (cont.)

- Mental Impairments (“A”, “B”, and “C” paragraphs, cont.)
  - Example:



Charlie has a high IQ. Was in gifted classes during high school and received a full college scholarship to an engineering school. But, he cannot remember simple instructions for doing laundry or cooking food. He is also unwilling to leave home without his mother or grandmother. The clothes he wears are often mismatched, and he would prefer to keep putting on the same old clothes. Charlie is unable to go to the store to buy food or shop on his own because he becomes overwhelmed to the point of paralysis when he is approaches a checkout counter. Is Charlie potentially disabled under the Social Security Act?

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 3

### Step 3. Listed Impairment (cont.)

- When there is a medically determinable severe mental impairment that does not satisfy the diagnostic description or the requirements of the paragraph A criteria of the relevant listing, the assessment of the paragraph B and C criteria is critical to a determination of equivalence
- Listing 12.05, Intellectual Disability
  - Diagnostic criteria in introductory paragraph
  - Paras. A-D – only one is needed

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 4

### Step 4. Past Relevant Work

- Claimant has burden of proof that s/he is incapable of “past relevant work
- Requirements:
  - Must have been performed within 15 years of adjudication or within 15 years prior to date last insured [20 CFR §404.1565(a)]
  - Must be SGA [20 CFR §404.1565(a)] but can be part time [SSR 96-8p]
  - Must have been of sufficient duration in order for claimant to have “developed the facility needed for average performance” [SSR 82-62]

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 4

### Step 4. Past Relevant Work (cont.)

- Applies even if work no longer exists
  - *Barnhart v. Thomas*, 540 US 20, 124 SCt 376 (2003)
- As actually performed (AAP)
  - Burden on claimant to show
- As generally performed (AGP) (See Dictionary of Occupational Titles)
  - Agency’s burden to show, but
  - Claimant’s burden to rebut Agency’s proposed AGP
  - DOT can be wrong – see SSR 00-4p
  - VE may rely on DOT for AGP even when VE knows DOT is wrong

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 4

### Step 4. Past Relevant Work (cont.)

- If claimant can perform past relevant work, given RFC, claimant is not disabled
- Claimant has burden of proof [20 CFR §404.1545]
  - To present evidence of impairment
  - To show how it affects claimant's functioning
  - Actual assessment performed by state agency, hearing officer or ALJ [20 CFR §404.1546]

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

### Step 5. Vocational Adjustment to Other Work

- 20 CFR §404.1560(c)
- Claimant unable to perform past relevant work
- Burden of proof shifts to Administration to show that given claimant's age, education and RFC, other jobs exist in significant numbers in national economy that claimant can perform
- RFC's interaction with vocational adaptability considered along 3 axis: age, education, work experience

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

### Step 5. Vocational Adjustment to Other Work (cont.)

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- Age – 3 categories: [20 CFR §404.1563]
  - Younger individual (under 50)
  - Closely approaching advanced age (50-54)
  - Advanced age (age 55 and over)
- Education (grade may not equal education; check school records; obtain achievement testing if necessary) [20 CFR §404.1564]
- Work experience (unskilled, semi-skilled, skilled) [20 CFR §§404.1565, 404.1568]

# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

### Step 5. Vocational Adjustment to Other Work (cont.)

- No disability if, given age, education and RFC, claimant can perform a significant number of other jobs in the national economy
- Work in national economy classified according to exertional and skill level
- Exertional Levels: sedentary, light, medium, heavy, very heavy.  
[20 CFR 404.1567]
  - Medium work: lift 50 lbs at a time; 25 lbs frequently standing/walking 6 out of 8 hrs frequent bending/stooping

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

### Step 5. Vocational Adjustment to Other Work (cont.)

- Exertional Levels (cont.)
  - Light Work: lift up to 20 lbs; 10 lbs frequently standing/walking 6 out of 8 hrs
  - Sedentary work: lift no more than 10 lbs frequent lifting of files, small tools standing/walking 2 out 8 hrs. sitting 6 out of 8 hrs
  - SSR 83-10 defines exertional levels; clarifies how medical-vocational rules address capability to perform other work

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

### Step 5. Vocational Adjustment to Other Work (cont.)

- Availability of significant number of jobs in national economy given limitations of age, education, and skill level determined either through
  - Regulatory tables (the Medical-Vocational Guidelines, aka the “grids”) [20 CFR Part 404, Subpart P, Appendix 2], (use only if all limitations are physical), or
  - Vocational expert
    - Required where claimant’s RFC falls between rules described in grids (grids then used as “framework for decision-making) or
    - there is combination of exertional vs. nonexertional impairments

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

**Example of Medical-Vocational Guidelines at 20 C.F.R. Part 404, Subpart P, Appendix 2.**

**There are three tables: one for each exertional capacity level (sedentary, light and medium)**

**[https://www.ssa.gov/OP\\_Home/cfr20/404/404-app-p02.htm](https://www.ssa.gov/OP_Home/cfr20/404/404-app-p02.htm)**

**Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)**

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled
201.02	.....do	.....do	Skilled or semiskilled—skills not transferable <sup>1</sup>	Do.
201.03	.....do	.....do	Skilled or semiskilled—skills transferable <sup>1</sup>	Not disabled
201.04	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup>	Unskilled or none	Disabled
201.05	.....do	High school graduate or more—provides for direct entry into skilled work <sup>2</sup>	.....do	Not disabled
201.06	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup>	Skilled or semiskilled—skills not transferable <sup>1</sup>	Disabled
201.07	.....do	.....do	Skilled or semiskilled—skills transferable <sup>1</sup>	Not disabled
201.08	.....do	High school graduate or more—provides for direct entry into skilled work <sup>2</sup>	Skilled or semiskilled—skills not transferable <sup>1</sup>	Do.
201.09	Closely approaching advanced age	Limited or less	Unskilled or none	Disabled
201.10	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
201.11	.....do	.....do	Skilled or semiskilled—skills transferable	Not disabled
201.12	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>3</sup>	Unskilled or none	Disabled
201.13	.....do	High school graduate or more—provides for direct entry into skilled work <sup>3</sup>	.....do	Not disabled
201.14	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>3</sup>	Skilled or semiskilled—skills not transferable	Disabled
201.15	.....do	.....do	Skilled or semiskilled—skills transferable	Not disabled
201.16	.....do	High school graduate or more—provides for direct entry into skilled work <sup>3</sup>	Skilled or semiskilled—skills not transferable	Do.



# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

### Step 5. Vocational Adjustment to Other Work (cont.)

Some Notes:

– Six ways to be found not disabled:

- Working at SGA level
- Has no medically determinable impairment
- Impairment fails to significantly limit physical or mental ability to perform basic work activity
- Fails to meet 12 – month duration requirement
- Is capable of past relevant work
- Is capable of other work

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# DIB, CDB, SSI – TITLES II and XVI

## Disability Determination Process – Step 5

### Step 5. Vocational Adjustment to Other Work (cont.)

#### – Disabled but not eligible

- Failure to follow prescribed treatment without good cause [20 CFR §404.1530]

Treatment must be “clearly expected” to restore ability to do work (SSR 82-59)

- If drug addiction or alcoholism is “a contributing factor material to the determination of disability” [42 USC §423(d)(2)(C)]

Would claimant still be disabled if claimant stopped using drugs or alcohol? [20 CFR §404.1535(b)(1)]

Note: SSA regs re drug addiction or alcoholism at 20 CFR §§404.1536 – 404.1541 are now obsolete; Listing 12.09 (addiction) removed by Sept 2016 revision to regs.

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# APPLICATION AND APPEALS PROCESS

## 1. Initial Application

## 2. Reconsideration

## 3. Hearing before Administrative Law Judge

## 4. Appeals Council

## 5. Appeal to U.S. District Court

**NOTE:** In all cases, time limit for appeal is 60 days from date of notice, plus 5 days allowed for mail. There are exceptions for “good cause.” POMS § GN 03101.020.

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# APPLICATION AND APPEALS PROCESS

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A word about agency “culture” ....

# APPLICATION AND APPEALS PROCESS

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- <http://www.ssa.gov/onlineservices/> (SSA website)
- Check date last insured (DLI) against alleged onset date (AOD)  
DLI relevant for DIB claims (claimants over 30: must of earned 20 of past 40 quarters; under 30: must have earned ½ of quarters between age 22 and date AOD)
- Paper, online, or teleclaim
  - Provide client’s SSN and say client wishes to make teleclaim for disability benefits (may also be asked for client’s mother’s maiden name and place of client’s birth)
  - SSA will set up time and date for full interview
  - Decision in 90-120 days
  - Preponderance of the evidence standard

# APPLICATION AND APPEALS PROCESS

## 1. Initial Application (cont.)

### – Useful forms

- SSA 1696 – appointment as representative
- SSA 16-F6 – Application for Soc. Sec. disability benefits
- SSA 3368-BK – Disability Report (adult)
- SSA 3369-BK – 15-year work history
- SSA-3373 – Functional Report (self)
- SSA-3380 – 3<sup>rd</sup> party
- SSA 827 – Authorization to release information

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# APPLICATION AND APPEALS PROCESS

## 1. Initial Application (cont.)

- May be made retroactively effective 12 months [SSA §223(b)] prior to application date
- 5-month waiting period (title II); may not begin more than 17 mos. prior to application filing date  
**Compassionate Allowance Determinations**
  - Fast tracks applications for people with stage IV cancer, and severely debilitating, fatal diseases
  - See POMS §DI 23022.080 for full list
  - Decision within 6-8 days according to press release

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# APPLICATION AND APPEALS PROCESS

## 1. Initial Application (cont.)

### CHECKLIST OF USEFUL INFORMATION WHEN APPLYING FOR BENEFITS

- SSNs of disabled worker, his/her spouse, and dependents
- Date condition began
- Concise statement of why the impairment(s) prevents claimant from working
- Information concerning current job, if any, including the date of return to work and the name of the employer. Explore if IRWEs (income-related work expenses) incurred, and if work subsidies are present.
- Complete list of names, addresses, and phone numbers of all doctors, hospitals, or other medical facilities from which claimant received treatment or tests related to the disabling condition

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# APPLICATION AND APPEALS PROCESS

## 1. Initial Application (cont.)

### CHECKLIST OF USEFUL INFORMATION WHEN APPLYING FOR BENEFITS

- Hospital, clinic, and/or Medicaid ID numbers
- Claim number for any other disability benefits claimant has applied for or receives
- A list of medications now taken, including names and dosages
- Any restrictions claimant's doctor has placed on the disabled individual
- Work history and daily activities
- Check for conflict with other claims (ADA)
- School history: IEPs, school psychologist evaluations, therapeutic day schools!

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# APPLICATION AND APPEALS PROCESS

## 1. Initial Application (cont.)

### ADDITIONAL CHECKLIST WHEN APPLYING FOR SSI BENEFITS

- Insured vs. Means-tested benefits
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- Check for assets to confirm asset limitation eligibility (\$2,000 for singles; \$3,000 for eligible couple)
  - Checking and Savings Account
  - Trusts
  - Stocks
  - IRA accounts
  - Savings Bonds
  - See POMS § SI 01100.000, et seq. Re resources. Many exceptions listed
- Check for all income including “ISM” (In-kind support and maintenance, i.e., room and board)
  - Unearned income reduces benefit dollar for dollar after first \$20
  - Earned income reduces benefit \$1 for every \$2 after first \$65
  - See POMS § SI 00800.000, et seq. Many exceptions listed.

# APPLICATION AND APPEALS PROCESS

## 1. Initial Application (cont.)

- Electronic Records Express [www.ssa.gov/ere/](http://www.ssa.gov/ere/)
  - Provides electronic options for submitting health and school records relating to disability claims
  - Benefits:
    - Saves copying and postage costs
    - Eliminates mail transit time
    - Expedites processing
  - Medical providers, school professionals and claimant reps may submit
  - Sign up by calling 1.866.691.3061 or send e-mail to [electronic-records-express@ssa.gov](mailto:electronic-records-express@ssa.gov)

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## 2. Reconsideration [20 CFR §404.907]

- File SSA 561- Request for Reconsideration
- Due within 60 days (+ 5 days for mailing) of notice of determination
- “Prototype states”: Step skipped in 10 states due to SSA experiment (This ended June 26, 2020!)
  - Alabama, Alaska, Colorado, Louisiana, Michigan, Missouri, New Hampshire, Pennsylvania, parts of New York and California
  - Initial determination will tell claimant to appeal by requesting a hearing
- Process takes about 90 days

## 3. Hearing before Administrative Law Judge

- 20 CFR §§404.929 – 404.961
- Must be requested within 60 days (+ 5 for mailing) of notice of denial
- Form HA 501
- May be in person or via video teleconference

# APPLICATION AND APPEALS PROCESS

## 3. Hearing before Administrative Law Judge (cont.)

- Slightly less than ½ of all appeals granted; ¼ of all initial claims allowed at this level; takes about 200 - 320 days
- Prior to Hearing
  - Review file; many are now in electronic or CD format
  - Obtain evidence from attending and treating physicians
  - “All Evidence Rule” – 80 Fed Reg 14828 (Mar. 20, 2015); 20 C.F.R. §§ 404.1512(c); 404.1740; 405.331; 416.912(c); 416.1435, 416.1540.
    - Representative has duty to submit ALL evidence that “relates” to claim – unfavorable as well as favorable!
    - Must ensure that evidence is not duplicative – 20 C.F.R. §§ 404.1512(c); 416.912(c)

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# APPLICATION AND APPEALS PROCESS

## 3. Hearing before Administrative Law Judge (cont.)

### – Prior to Hearing (cont.)

- All evidence must be submitted at least five business days prior to hearing (HALLEX I-2-6-58) There are exceptions. See 81 Fed Reg 90987 at 90988, Dec. 16, 2016; 20 C.F.R. §§ 404.935(b) and 416.1435(b)

NOTE: Some ALJs will require pre-hearing memos 5 days in advance of hearing, citing this rule. Solution: if ALJ refuses to accept memo, read entire memo into the record.

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# APPLICATION AND APPEALS PROCESS

## 3. Hearing before Administrative Law Judge (cont.)

### – Prior to Hearing (cont.)

- Submit evidence with 2-5 page pre-hearing memo asking for favorable decision on the record, if a strong case
  - Identify 3 reasons why ALJ should rule for claimant; 3 reasons why claimant can't perform past relevant work; 3 reasons why other work can't be performed at step 5
  - Argue, “preponderance of the evidence shows...”
  - Be careful: could undermine claim if law or fact is misstated; ensure summary is not a concession
  - Address adverse evidence
  - Explain significance of individual medical opinions

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# APPLICATION AND APPEALS PROCESS

## 3. Hearing before Administrative Law Judge (cont.)

### – Hearing

- Prepare client and witnesses
- Review file with client
- Short opening statement
- Direct examination
  - Show limitations caused by impairments
  - Cover pain (type, degree, frequency, duration, caused by, consequences (memory, task completion, concentration))
  - Corroborating testimony
- Cross examine experts (medical expert, vocational expert)
- Closing statement (unless ALJ hints otherwise – “I’ve heard enough”)

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# APPLICATION AND APPEALS PROCESS

## 3. Hearing before Administrative Law Judge (cont.)

### – Post-Hearing

- Post-Hearing Memorandum

- Ask ALJ for additional time in which to submit memorandum
- Hearing may not have allowed for full presentation
- Use to submit rebuttal evidence re ME and VE testimony
- Post-Hearing Evidence [20 CFR §404.953; HALLEX §1-2-6-78]

- Favorable

- Decision becomes final in 60 days (+ 5 days for mail)
- In Title XVI claims, favorable decision does not usually address non-disability factors, such as resource and income limits; PERC conference will be scheduled. (See slide 99.)
- Even if favorable, later award may be withheld if claimant returns to work or becomes over-resourced in a Title XVI claim

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# APPLICATION AND APPEALS PROCESS

## 3. Hearing before Administrative Law Judge (cont.)

### – Post-Hearing

- Favorable (cont.)

- Award letter will state how much everyone gets and when Medicare starts (25<sup>th</sup> month of benefit entitlement) [42 CFR §§406.12(d)(1); 407.17]

- Unfavorable

- Check for procedural/substantive errors
- ALJ's duty to develop record
- Treating physician rule
- Consideration of all impairments
- Send copy to treating physician for review of medical rationale; ask for letter to accompany appeal
- Discuss with client
- Must decide whether to appeal or file new claim. Can't do both unless filing under different benefit or title. SSR 11-1p

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## 4. Appeals Council

- 20 CFR §§404.966 – 404.982
- File HA 520, Request for Review of Hearing Decision within 65 days after date unfavorable notice is received
  - Will consider new and material evidence relating to period prior to date of ALJ decision but only under limited circumstances as described in 20 CFR §§ 404.970(b) and 416.1470(b); must submit new evidence under all evidence rule
  - May reverse, modify or affirm ALJ’s decision
  - Refusal to accept review makes ALJ’s decision the final administrative decision
  - Cannot appeal to Federal court without this exhaustion of administrative remedies

## 5. Appeal to U.S. District Court

- Must be filed within 65 days (60 days + 5 days for mail) of decision or refusal to review

# DOCUMENTING DISABILITY

## Practical Tips

### Obtaining Medical Records:

- **SSA will request documentation from medical sources listed on application. Will not follow up if ignored.**
- **SSA will generally only require record from previous 12 months**
- **Follow up with medical providers to ensure that all documentation to support claim is provided. Obtain HIPAA-compliant release from client.**
- **Sample at <https://www.hhs.gov/sites/default/files/forms/ihs810.pdf>. (This is from HHS, but is used for the Indian Health Service)**
- **Free records to attorneys in SS cases mandated by state law in:**

Arizona

Kentucky

Nevada

Oregon

Connecticut

Massachusetts

New York

Texas

Illinois (as of 1.1.22)

Nebraska

Ohio

Vermont

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# DOCUMENTING DISABILITY

## Practical Tips

### Obtaining Medical Records (cont):

- **Upload records to claim file via Electronic Records Express (ERE) (sign up via <https://www.ssa.gov/ere/?tl=5>)**
- **Have client provide you with** Complete list of names, addresses, and phone numbers of all doctors, hospitals, or other medical facilities from which claimant received treatment or tests related to the disabling condition
- Obtain all hospital, clinic and Medicare/Medicaid ID numbers

### Other Documentation:

- Claim number for any other disability benefits claimant has applied for or receives
- A list of medications now taken, including names and dosages

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# DOCUMENTING DISABILITY

## Practical Tips

### Other Documentation (cont.)

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- Any restrictions claimant’s doctor has placed on the disabled individual
  - Physical Residual Functional Capacity Assessment (Form SSA – 4734BK)
  - Mental Residual Functional Capacity Assessment (Form SSA-4734-F4-SUP)
- Work history and daily activities
- Check for conflict with other claims (ADA); (UC)

# DOCUMENTING DISABILITY

## Practical Tips

### Other Documentation (cont.)

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- **OBTAIN NARRATIVE FROM TREATING DOC IN SELECTED CASES**

If medical records do not clearly establish that a claimant meets or equals a “listed impairment”....

Reach out to treating physician to determine if he or she is willing to write a narrative that identifies how the claimant meets or equals the criteria.

Example: Individuals with Autism Spectrum Disorder who are “high functioning.”

Tests do not identify if an individual has “marked” or “extreme” limitations in any of the four domains of functionality. But, a treating psychologist or psychiatrist who is provided with the definitions of these domains of functionality, along with the definitions for the five-point rating scale may be willing to write a report that indicates how he would rate his or her patient

# DOCUMENTING DISABILITY

## Additional Tips for CDB Cases

### TRY TO OBTAIN FINDING OF DISABILITY PRIOR TO AGE 22 EVEN IF BENEFIT IS LOW!

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- **Goal is to preserve eligibility for CDB**
- **Must establish disability prior to age 22**
- **Child may run out of money later on; CDB will last for life of child**
- **Apply 3 months prior to age 18**
- **Be careful that earnings do not exceed SGA!!**

**Difficult Choices: Not always clear that child will need CDB**



# DOCUMENTING DISABILITY

## Additional Tips for CDB Cases

### Document while child is still young

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- Early intervention assessments
  - Interdisciplinary team (OT, PT, nurses, speech pathologists, social workers, educators, physicians)
  - SSR 09-2p
  - EI test results – 20 CFR Part 404, Subpart P, App. 1 §112.00.D.13
- School Assessments – Subpart P, App. 1, §112.D.8-10
  - Psychological tests
  - IQ tests
    - validity from 1 to four years depending upon age and score.
    - Stabilizes by age 16

# DOCUMENTING DISABILITY

## Additional Tips for CDB Cases

### Document while child is still young (cont.)

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- Individualized Family Service Plans (IFSPs) and Individualized Education Plans (IEPs)
  - IFSPs (birth to age 3)
    - PL 99-457 (Educ. For All Handicapped Children Amendments of 1986)
  - IEPs (age 3-21, including transition plan for children age 14 and older)
    - Amendment to IDEA by Individuals with Disabilities Improvement Act of 2004, PL 108-446, 20 USC §1414; CFR §300.320—300.328
    - Provided under IDEA since 2004 to ensure child with special needs receives specialized instruction and services
    - Must be in writing and meet child’s educational needs arising from disability

# DOCUMENTING DISABILITY

## Additional Tips for CDB Cases

### Document while child is still young (cont.)

- Individualized Family Service Plans (IFSPs) and Individualized Education Plans (IEPs) (cont.)

- IEPs (cont.)

- Requires documentation of measurable growth

- 13 categories of impairments:

Autism	Mental Retardation	Speech or lang. disb.
Deaf-blindness	Multiple Disabilities	Traumatic Brain Injury
Deafness	Orthopedic impairment	Visual Impairment
Emotional Disturbance	Other health impairment	
Hearing Impairment	Specific learning disability	

- Insured vs. Means-tested benefits
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# DOCUMENTING DISABILITY

## Additional Tips for CDB Cases

### Document while child is still young (cont.)

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- Individualized Family Service Plans (IFSPs) and Individualized Education Plans (IEPs) (cont.)
  - Each plan contains:
    - Present level of development or educational performance
    - Goals and specific objectives for child development
    - Services needed by child; supports and accommodations
    - Required setting or placement
- Section 504 Plans
  - Rehabilitation Act of 1973, §504 (29 USC §701)
  - Ensures that disabled child receives accommodations
  - Written report and specialized instruction not required

# DOCUMENTING DISABILITY

## Additional Tips for CDB Cases

### Document while child is still young (cont.)

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- Teacher Questionnaires (SSA 5665-BK)
  - Rates students on 1-5 scale in six domains used in making functional equivalence evaluations

# POST ELIGIBILITY ISSUES

## PERCs – Pre Effectuation Review Contact

- Insured vs. Means-tested benefits
- Overview of Title II and “juggling” SSI, DIB & CDB
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- Applies to Title XVI cases, only
- Scheduled after notice of disability allowance
- Ensures claimant still meets the income and asset limitations of SSI.
- SSA routinely fails to notify representatives that conference is scheduled. Representative should attend.
- Used to determine if representative payee is needed
- See POMS § SI 00603.030, et seq.
- Will check for ISM (in-kind support and maintenance, i.e. room and board). Can reduce benefit by up to 1/3 the benefit rate. See POMS § SI 00835.000, et seq. Consider rental agreement in 2<sup>nd</sup>, 7<sup>th</sup> US Circuits, and in Texas. See POMS § SI 00835.380 and 20 C.F.R. § 416.1130.

# POST ELIGIBILITY ISSUES

## Work and Trial Work Period

- Insured vs. Means-tested benefits
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- Impact of working after benefit entitlement
  - **MUST NOTIFY SSA IF BENEFICIARY RETURNS TO WORK**
  - Need to maintain careful records
  - Avoid going over SGA (when “earned” and not when “paid”)
  - Different considerations for Title II vs Title XVI
- Title II & Title XVI
  - Countable income for SGA and TWP purposes reduced by **IRWEs** (20 CFR § 404.1576; POMS §DI 10520.000, et seq.) and **Subsidies** (20 CFR §404.1574(a)(2); POMS § DI 10505.010) (note: a “subsidy” will reduce earnings for SGA purposes, but is still counted as earned income that will reduce SSI after first \$65)
  - Expedited Reinstatement (EXR) (if requested within 60 months from month benefits stopped due to SGA)

# POST ELIGIBILITY ISSUES

## Work and Trial Work Period

- Title II only
  - Trial Work Period
    - Tests ability to work
    - Benefits paid during TWP regardless of earnings amount
    - Earnings in excess of stated threshold, lower than SGA will trigger a “Trial Work Month.” 2022 threshold = \$970; 2023 threshold = \$1,050
    - DIB or CDB terminates after 9 TWMs within a rolling 60-month period
    - Following benefit termination month, benefits continued to be paid for at least two more months regardless of earnings
    - Benefits stop thereafter whenever earnings exceed the SGA level

- Insured vs. Means-tested benefits
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# POST ELIGIBILITY ISSUES

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- Title II only (cont.)
  - Extended Period of Eligibility (EPE)
    - Automatic reinstatement if earnings < SGA within 36 months of benefit termination
    - But note, benefits always reinstated if earnings < SGA in CDB cases
- Expedited Reinstatement (EXR)
  - Allows for reinstatement of DIB or SSI if medical condition no longer permits worker to perform SGA within 60 months of prior termination
  - Time limit can be extended for good cause
  - Unable to work at SGA due to medical condition
  - Current impairment the same as or related to current impairment
  - Is disabled based on application of medical improvement standard
  - Allows for 6 mos. of provisional benefits during medical review

# POST ELIGIBILITY ISSUES

## Work and SSI

- Title XVI only
  - \$65 earned income exclusion
  - Reduction of \$1 for every \$2 of earned income over \$65
  - SSA Section 1619(a) exemption
    - Allows for SSI payments when earnings exceed SGA so long as income and asset tests continue to be met. (Thus no Trial Work Period or Extended Period of Eligibility for SSI beneficiaries.)

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# POST ELIGIBILITY ISSUES

## Work and SSI

- Title XVI only (cont).
  - SSA Section 1619(b) exemption
    - Allows for continuation of Medicaid even if income from work reduces SSI to zero
    - Beneficiary must still be blind or disabled
    - Non-receipt of SSI must be due to earned income reducing the benefit to zero
    - Beneficiary must be inhibited from continuing employment without Medicaid
    - Earnings are insufficient to permit beneficiary to obtain comparable insurance
    - Beneficiary must demonstrate a need for Medicaid through use of medical services during prior 12 months or expected use over next 12 months

- Insured vs. Means-tested benefits
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# POST ELIGIBILITY ISSUES

## Benefit Termination

### Age 18 Redeterminations

- Apply 3 months prior to age 18
- All childhood recipients of SSI must be reevaluated upon turning age 18 to determine if the recipient continues to be disabled under the adult definition of disability
- See SSR 11-2p
- Uses disability standard for adults filing new claims

- Insured vs. Means-tested benefits
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# POST ELIGIBILITY ISSUES

## Benefit Termination

### Age 18 Redeterminations (cont.)

- Assessment of residual functional capacity (RFC)
- Functioning in educational programs
- Job placement experience
  - Accommodations
  - Ability to sustain placement
  - Extra help
  - Setting structure
- Insured status
  - Need 6 quarters of coverage within the 12 – quarter period preceding disability (up to age 24) [20 CFR §404.130]
  - May derive from unsuccessful work attempts

- Insured vs. Means-tested benefits
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# POST ELIGIBILITY ISSUES

## Benefit Termination

### Age 18 Redeterminations (cont.)

- Continued payments for young adults in Vocational Rehab or similar program even if transition to CDB disallowed
  - Ticket to Work
  - IEP for student age 18-21
  - Applies to person age 18 or older whose disability ended as a result of redetermination

- Insured vs. Means-tested benefits
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# POST ELIGIBILITY ISSUES

## Benefit Termination — CDB

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- Third month following month disability ends unless in approved vocational rehab, employment, or other support services
- Finalization of divorce between parent and step-parent, if entitled on account of step-parent
- Marriage, unless if > 18 and marriage is to person entitled to Title II benefits other than child beneficiary under 18 or under 19 and a full-time student (Marriage to SSI beneficiary will terminate CDB!)

**SSA Redbook provides detailed information on employment supports for people with disabilities (<http://www.ssa.gov/redbook/eng/main.htm>)**



## Part VI



# REPRESENTATIVE PAYEES

CAUTION



# REPRESENTATIVE PAYEES

## Rep Payees vs. Representatives

These are NOT the same.

**Representatives represent and advocate for claimants before the SSA**

**Representative payees receive benefit payments on behalf of beneficiaries who are unable to manage their financial affairs. Rep payees must use the benefits to provide for the beneficiary's needs. Cannot be paid for the "service" unless an organizational rep payee (POMS § GN 00506.001, et seq.)**

**See POMS § GN 00502.114 re: representative payee's duties and responsibilities**

**Need to have separate "rep payee" account for benefits only and report events that could impact beneficiary's entitlement!**

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# REPRESENTATIVE PAYEES

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- Person or organization selected by the Soc. Sec. Admn. to receive benefits on behalf of a beneficiary (See POMS § GN 00502.105 for preferred order of selection chart.)
- Selected if the SSA “has determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.”
  - 20 CFR 404.2001(a), 416.601(a)
  - POMS § GN 00500.000, et seq.
- Rep Payee Application – SSA-11, POMS GN 00502.107

# REPRESENTATIVE PAYEES

- Must provide annual accounting (spouses and parents exempt; see POMS § GN 00605.015)
- Only organizations may charge a fee (POMS §§ GN 00506.001, 00506.100)
- Penalties for misuse of funds [Social Security Protection Act of 2004, PL 108-203]
- Commissioner required to reissue benefits where funds misused by organizational payee or individual payee representing 15 or more beneficiaries

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# REPRESENTATIVE PAYEES

- Beneficiary may not have access to payee account (POMS § GN 02402.055)
- Advance Designation: See POMS §GN 00502.085
- Form SSA-4547
- Advisory only
- Only capable claimants may exercise option; others will trigger a call to the beneficiary

- Insured vs. Means-tested benefits
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[SSA §§205(j); 1631(a)(2); 20 CFR §§ 404.2001– 404.2065; 416.601– 416.665.]

**Remember who is the client. If beneficiary is not under guardianship and is not a minor, make sure client wants to have a rep payee!**



## Part VII



# AUTHORIZED REPRESENTATIVES

CAUTION

# REPRESENTING CLIENTS BEFORE THE SSA

## Authorization Requirement

### PROPER AUTHORIZATION IS REQUIRED:

- Insured vs. Means-tested benefits
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- Must be in writing (form SSA-1696 or “equivalent”)
- Only claimant or claimant’s guardian or parent (if claimant is a minor) may appoint or revoke a representative (POMS §GN 03910.040A)
- Minor may appoint if SSA has determined minor will be his/her own payee per §GN 00502.070)
- **Representative payees and POAs have NO authority to appoint a representative**
- Effective the date the client signs the notice of appointment (POMS §GN 03910.040B.2)

# REPRESENTATION OF CLIENTS BEFORE THE SSA

## Who may be a representative?

[POMS §GN 03910.020]

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- Attorneys
- Non-Attorneys (if known to have a “good character and reputations” and “capable of giving valuable help to the claimant in connection with the claim”)
- Must be an individual (if firm is appointed, the atty who signed the form will be the representative)
- There can be multiple representatives

# REPRESENTATION OF CLIENTS BEFORE THE SSA

## Who is not a representative?

[POMS §GN 03910.020B.4]

The following are not acting as representatives unless specifically appointed to be a rep

- Representative payee; benefits manager
- Interpreter
- Executor; administrator of an estate
- Legal Guardian

- Insured vs. Means-tested benefits
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# REPRESENTATION OF CLIENTS BEFORE SSA

## FORMS TO BE SUBMITTED:

- SSA-1696 (Appointment of Representative)

**NOTE: This is the OLD form.**

**DO NOT USE!!!**

Form SSA-1696-U4 (03-2018) UF Discontinue Prior Editions Social Security Administration		Please read the instructions before completing the form.		Page 5 of 9 OMB No. 0960-0527
Name (Claimant) (Print or Type)		Social Security Number		
Wage Earner (if Different)		Social Security Number		
<b>Part 1 - Claimant's Appointment of Representation</b>				
I appoint this individual, _____ to act as my representative in connection with my claim(s) or asserted right(s) under: <input type="checkbox"/> Title II (RSDI) <input type="checkbox"/> Title XVI (SSI) <input type="checkbox"/> Title XVIII (Medicare) <input type="checkbox"/> Title VIII (SVB)				
This individual may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).				
<input type="checkbox"/> I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks, partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.				
<input type="checkbox"/> I appoint, or I now have, more than one representative. My principal representative is: Name of Principal Representative _____				
Signature (Claimant)		Address _____		
Telephone Number (with Area Code)		Fax Number (with Area Code)		Date
<b>Part 2 - Representative's Acceptance of Appointment</b>				
I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part 3 satisfies this requirement.)				
<b>Check one:</b> <input type="checkbox"/> I am an attorney <input type="checkbox"/> I am a non-attorney eligible for direct payment under SSA law. <input type="checkbox"/> I am a non-attorney not eligible for direct payment.				
I am now or have previously been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. <input type="checkbox"/> Yes <input type="checkbox"/> No				
I am now or have previously been disqualified from participating in or appearing before a Federal program or agency. <input type="checkbox"/> Yes <input type="checkbox"/> No				
<b>I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.</b>				
Signature (Representative)		Address _____		
Telephone Number (with Area Code)		Fax Number (with Area Code)		Date
<b>Part 3 - Fee Arrangement</b> (Select an option, sign and date this section.)				
<input type="checkbox"/> <b>I am charging a fee and requesting direct payment</b> of the fee from withheld past-due benefits. (SSA <u>must</u> authorize the fee unless a regulatory exception applies.)				
<input type="checkbox"/> <b>I am charging a fee but waiving direct payment</b> of the fee from withheld past-due benefits - I do not qualify for or do not request direct payment. (SSA <u>must</u> authorize the fee unless a regulatory exception applies.)				
<input type="checkbox"/> <b>I am waiving fees and expenses from the claimant and any auxiliary beneficiaries</b> - By checking this block I certify that my fee will be paid by a third-party entity or government agency, and that the claimant and any auxiliary beneficiaries are free of all liability, directly or indirectly, in whole or in part, to pay any fee or expenses to me or anyone as a result of their claim(s) or asserted right(s). (SSA <u>does not</u> need to authorize the fee if a third-party entity or a government agency will pay from its funds the fee and any expenses for this appointment. Do not check this block if a third-party individual will pay the fee.)				
<input type="checkbox"/> <b>I am waiving fees from any source</b> - I am waiving my right to charge and collect any fee, under sections 206 and 1631 (d)(2) of the Social Security Act. I release my client and any auxiliary beneficiaries from any obligations, contractual or otherwise, which may be owed to me for services provided in connection with their claim(s) or asserted right(s).				
Signature (Representative)		Date _____		
File Copy				





# REPRESENTATION OF CLIENTS BEFORE SSA

- This is the only page on which signatures need to be placed
- Wet signature or FAX?

Can be faxed

Attorney should hold on to wet signature

Form SSA-1696 (09-2019) UF Page 6 of 6

Claimant's Social Security Number Appointed Representative's Rep ID

-

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**Section 6 - Claim Type** *(Claimant or Representative)*

I appoint the individual named in Section 4 to act as my representative in connection with my claim(s) or asserted right(s) under Title 2 (RSDI), Title 16 (SSI), Title 18 (Medicare Coverage), and Title 8 (SVB) of the Social Security Act, as presently amended, specifically for the issues identified below: *(Check all that apply)*

Claim/Appeal for Title 2 Disability Benefits  
 Claim/Appeal for Title 16  
 Concurrent Title 2 and Title 16  
 Claim/Appeal for Retirement Benefits  
 Claim/Appeal for Title 18 (Medicare), 8 (Special Veteran's Benefits)  
 Continuing Disability Review (CDR)  
 Post-Entitlement Issue (a new issue you raise after eligibility for other benefits)

\_\_\_\_\_  
 (E.g., benefit amount, month of entitlement, representative payee, suspension, termination, overpayment)

---

**Section 7 - Fee Arrangement** *(Representative Only)*

Check one box below:

**I will request a fee and direct payment of this fee.** Select this box if you are eligible for direct payment and want us to withhold a portion of the past-due benefits to pay you the fee we may authorize. *(We must authorize the fee.)*  
 **I will request a fee but not direct payment.** Select this box if you are not eligible for direct payment from the past-due benefits, or if you do not want direct payment. You must collect any fee we may authorize on your own. *(We must authorize the fee.)*  
 **I waive the right to receive a fee from the claimant, any auxiliary beneficiaries or any other individual.** Select this box if you certify that an entity, or a Federal, state, county, or city government agency will pay the fee and any expenses from its funds. The claimant, auxiliary beneficiaries, or other individuals must not be liable for the fee, directly or indirectly, in whole or in part, or any expenses. *(We do not need to authorize the fee if all regulatory conditions apply.)*  
 **I waive the right to a fee.**

---

**Section 8 - Signatures** *(Claimant and Representative)*

Representative's Signature	Date
Claimant's Signature	Date

**Part VIII**

**CASE STUDIES**

# **CASE STUDY 1**

## **The Golds! – Child’s Disability Benefits and SSI**

**You are approached by a couple in their 50s with a disabled child at age 16. A financial planner told them that their daughter should qualify for a disability benefit. How do you respond?**

**Harry Gold, a successful physician, and his wife, Janis, a school teacher, were advised by their financial planner that their disabled daughter, Laura, should qualify for a disability benefit. Laura has spina bifida, suffers from a loss of bowel and bladder control, and must use a wheelchair. She has slightly above average intelligence and hopes to attend college, but she is home schooled by her mother and tutors. A financial planner informed the Golds that their daughter is “definitely” disabled and should therefore qualify for a disability benefit. The Golds have retained you for end of life planning, and ask you if you can help them obtain a disability benefit for their daughter. They have an old will and a sizeable estate, but nothing else. How do you respond?**

# **CASE STUDY 1**

## **The Golds! – Child’s Disability Benefits and SSI**

**Is Laura disabled? What benefit will Laura qualify for at this time?**

**There is no question that the Golds will need an updated will, powers of attorney, and trust planning. But, their daughter will have to wait until she reaches age 18 before she will be able to apply for an SSI benefit. Laura cannot qualify at this time for a disability benefit under Title II: both parents are living and neither one is entitled to a retirement or disability benefit. To qualify for a Title XVI benefit, not only must Laura meet the income and asset limitations for an SSI benefit, so, too, must her parents meet those same provisions under the deeming provision, which deems to a child XVI applicant, the income and assets of the parents. However, Laura’s parents are well off, and her father continue to work as a physician. Thus, Laura cannot qualify at this time for SSI. Advise Laura and her parents to seek a disability determination for SSI when Laura reaches age 18.**

# **CASE STUDY 2**

## **The Stones! – Child’s Disability Benefits and SSI**

**You are approached by a couple in their 60s with a disabled child at age 23. Mostly, they want to know when they should file for Social Security retirement benefits. How do you respond?**

**David and Lisa Stone, ages 65 and 63, respectively, have come to you for advice. They have a son, Arthur, age 23, who has been diagnosed as being on the autism spectrum and with ADHD. He has what used to be termed, “high functioning Asperger’s Syndrome.” Arthur has had IEPs since fourth grade. He is very bright. However, even though he has an IQ of 130, he has very slow processing, placing him in the 2nd percentile in the population for processing. Arthur is easily agitated, frequently gets into arguments, engages in socially unacceptable talk (he has no “self-filter”), and cannot focus for too long on an assigned task.**



# **CASE STUDY 2**

## **The Stones! – Child’s Disability Benefits and SSI**

**Arthur graduated high school at age 18, and tried college, but was failing most of his classes by the end of the first year. When Arthur was 22, in November 2020, a close family friend gave him a job in his brokerage firm, earning \$2,000/mo. At first, he worked as a receptionist and as a messenger boy, but he would get into arguments with customers, so he was put to work in the mail room, but he took twice as long to do the work that a typical worker would require to perform the same tasks, he needed constant supervision, and frequent retraining. After Arthur worked in the position for 14 months (to Dec 2021), the family friend finally had to let him go.**

**Arthur talks about finding a job, but spends most of the day reading and playing video games. He takes medication twice daily, but his parents must frequently remind him to take his**

# **CASE STUDY 2**

## **The Stones! – Child’s Disability Benefits and SSI**

**medication, change his clothes, and take showers. He is regularly seen by a therapist and psychiatrist.**

**David and Lisa know that their son will never be able to manage his money and perhaps, not even his life. Thus, they have set up a special needs trust for their son. Additionally, Arthur’s grandmother wants to leave a significant portion of her \$300,000 estate to Arthur. David, who earns \$150,000/year, plans to retire next month when he reaches his FRA at age 66 and two months and would like to file for Social Security at that time. Lisa, who earns \$35,000/year would like to continue to work, but could retire if she had to. Arthur’s 23rd birthday was in November 2021. He is not under guardianship.**

# **CASE STUDY 2**

## **The Stones! – Child’s Disability Benefits and SSI**

**Should David apply for RIB? David has only asked about RIB and has never considered any kind of disability benefit for Arthur. What do you say to David?**

# **CASE STUDY 2**

## **The Stones! – Child’s Disability Benefits and SSI**

- **Should Arthur apply for SSI or CDB, both or neither one? Does it matter for which he applies, first? Who is the client?**
- **What problems, if any, will Arthur have applying for CDB?**
- **Will Arthur qualify for DIB?**
- **When should David apply for benefits?**
- **Are there any concerns with respect to grandma’s desire to leave a portion of her estate to Arthur?**

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 1. Should Arthur apply for SSI or CDB or both? Does it matter for which he applies, first?

An SSI claim is treated as an application for a Title II benefit (POMS § SI 00601.035) unless the claimant is already entitled to a Title II benefit. But, Arthur will only qualify for a Title II benefit if one of his parents applies for RIB. Applying now for RIB will trigger an award of CDB for Arthur, and start the 24-month “Medicare clock.” But, it will also result in reduced RIB benefits if either parent files at this time. If Arthur hadn’t worked, he would not have earned work credits and thus, it might have been advisable in that situation for Lisa to quit work and file for RIB. (Due to David’s high earnings, it would not be advisable for him to file now for RIB as it would result in significantly less lifetime benefits for David and for Lisa, were she to survive him and receive a widow’s benefit. Benefits increase at the rate of 2/3% per month for each month a claim for RIB is delayed, up to age 70. However, only benefit claiming software accurately determine the best claiming strategy.) In this case Arthur is insured for DIB as he has six quarters of coverage before age 24, the minimum number of quarters necessary to be insured. **Thus, Arthur should simultaneously file for both SSI and DIB.**

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 1. Should Arthur apply for SSI or CDB or both? Does it matter for which he applies, first? (cont.)

But, if Arthur files simultaneously for SSI and DIB, will that result in him being found entitled, first for the higher DIB and thus lose his opportunity to qualify for SSI and the Medicaid entitlement that goes along with that? Were he to not first qualify for Medicaid, he would have to wait 24 months before qualifying for Medicare and would thus, potentially, be without health insurance for nearly two years. However, **claims may be submitted together.** If an SSI claim is filed simultaneously with a Title II claim, POMS § SI 02006.005 requires that the SSI claim be adjudicated first so as to ensure that the claimant does not lose his or her initial entitlement to Medicaid.

Additionally, **when a claimant first qualifies for SSI and then loses it to a higher CDB, Medicaid will continue.** [SSA §1634(c); 42 USC §1383c(c).] But, there is no such protection for DIB. However, the DIB benefit may not be higher than the current income limit for other ways to get Medicaid ( e.g. Healthy Horizons, 100% of FPIL, which is \$1,132.50/mo in 2022, Medical Assistance for Workers with Disabilities (MAWD) if working as little as an hour per week, and if countable income is less than 250% of FPIL, which is \$2,831.25/mo.), HCBS waiver, which is

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 1. Should Arthur apply for SSI or CDB or both? Does it matter for which he applies, first? (cont.)

\$2,523. or various Medicare cost savings programs: QMB, SLMB, QI). See Pennsylvania Health Project Summary of 2022 Income and Resource Limits for Medicaid and Other Health Programs at <https://www.phlp.org/uploads/attachments/ckysvsk2apaxwtru8zjpfmek3-2022-monthly-income-and-resource-limits-for-medicaid-and-other-health-programs.pdf>)

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 2. What problems, if any, will Arthur have applying for CDB?

Must establish disability prior to age 22. Disability must be continuous. (This is NOT a statutory requirement. It is bad caselaw.) Does work for family friend, which was above the SGA level, preclude eligibility? Not necessarily. Pay was above market rate for actual work performed. Employment was more of a “subsidy” and, with the constant supervision, was more like a “sheltered workshop” situation. College failure and IEPs help to demonstrate condition prior to age 22. [20 CFR §404.1573(c); subsidized amounts deducted from SGA per POMS §§DI 10505.001C and 10505.010]

Should arrange for employer to indicate that a subsidy is provided via form SSA-3033 (<https://www.ssa.gov/forms/ssa-3033.pdf>)



# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 3. On what basis would Arthur qualify for a disability benefit under Title II or Title XVI?

#### Listing of Impairment 12.10 – Autism Spectrum Disorder

“A” criteria: diagnosis based on testing, showing deficits in verbal communication and social interaction; restricted interests and behaviors.

“B” criteria: **needs extreme limitation of one or “marked” limitations in two** of the following areas:

1. Understand, remember or apply information (difficulty in remembering instructions)
2. Interact with others (unable to interact with others in socially acceptable manner)
3. Concentrate, persist, or maintain pace (cannot maintain pace for competitive employment)
4. Adapt or manage oneself (unable to take care of self in terms of waking up, taking meds, getting to work.)

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 3. On what basis would Arthur qualify for a disability benefit under Title II or Title XVI?

#### Listing of Impairment 12.10 – Autism Spectrum Disorder

The degree of functional incapacity in each of these four domains is ranked on a five point scale at §12.00F2:

- a. *No limitation (or none)*. You are able to function in this area **independently**, appropriately, effectively, and on a sustained basis.
- b. *Mild limitation*. Your functioning in this area **independently**, appropriately, effectively, and on a sustained basis is **slightly limited**.
- c. *Moderate limitation*. Your functioning in this area **independently**, appropriately, effectively, and on a sustained basis is **fair**.
- Need 2** d. *Marked limitation*. Your functioning in this area **independently**, appropriately, effectively, and on a sustained basis is **seriously limited**.
- Need 1** e. *Extreme limitation*. You are not able to function in this area **independently**, appropriately, effectively, and on a sustained basis

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 3. (cont.) ADHD? See Listing 12.11 –Neurodevelopmental disorders

See 12.00B9, intro par., which requires evidence of condition in childhood required

“A” criteria: 1, 2, or 3: (1) One or both of (a) Frequent distractibility, difficulty sustaining attention, and organizing tasks, or (b) hyperactive and impulsive behavior; (2) Significant difficulties in learning and using academic skills; or (3) recurrent motor movement or vocalization. + “B” criteria (same as for ASD in 12.10.)

### 4. What evidence supports a claim for disability?

Diagnostic tests

Medications

History of therapy

Employer statements

Narratives from relatives

IEPs and school failures

# CASE STUDY 2

## CASE STUDY 1 (The Stones!) – Child’s Disability Benefits and SSI

### 5. Is Arthur insured for DIB, and, if so, will DIB torpedo is SSI eligibility?

Quarters of coverage:	Year	Earnings Needed for a Quarter of Coverage	Earnings	Earned Quarters
	2021	\$1,470	\$24,000	4
	2020	\$1,410	\$4,000	2

Total quarters = 6.      Quarters needed at age 23: 6.      Thus, Arthur is insured for DIB as of Jan 2022

What is DIB amount?      DIB = PIA.

To calculate PIA, must first calculate Average Monthly Earnings. Total monthly earnings for 2020 and 2021 = \$28,000.  
Average monthly earnings = \$28,000 / 24 = \$1,166.66

$PIA = (.9 * X) + (.32 (Y - X)) + .15 * (AME - Y)$       X and Y are bend points. 2022 bend points = \$1,024 and \$6,172

Arthur’s PIA =  $(.9 * 1,024) + (.32 * (\$1,166.66 - \$1,024)) = \$921.6 + \$45.65 = \$967.2512$ , which is rounded down to \$967.20

At first glance, the DIB will totally offset the SSI. However, the SSI will be established first and thus, at least until DIB starts, after the 5-mo waiting period, Arthur will qualify for Medicaid. (Note: there is NO 5-mo. waiting period for CDB.)

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### 6. When should David apply for benefits for himself?

Benefit claiming software should be used to assess optimal claiming strategy to maximize household benefits. If David is a high wage earner, it may be more advantageous for David to delay his claim and earn DRCs. When David applies for RIB, Arthur can then apply for CDB. ALJ will not likely consider period prior to date of claim, thus pre-age 22 disability will have to be established when claim for CDB is filed unless a claimant has worked and is insured for DIB at the time of the SSI claim. Even then, a period of disability may not be established prior to the date insured status is established. In this case, Arthur did not begin working until age 22. Thus, while his SSI claim may trigger a DIB claim, it will not establish a period of disability prior to age 22. Note that an ALJ’s determination on an SSI claim only, after age 22, establishes disability as of the date of the SSI claim. It is not administrative res judicata with respect to establishing a period of disability prior to age 22 since ALJ did not consider disability prior to date of the SSI claim. Should also consider if Lisa should file first by running data through software in order to determine maximization strategy.

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### **7. Are there any concerns with respect to grandma’s desire to leave a portion of her estate to Arthur?**

Grandma should not leave estate to Arthur as it will cause him to have an excess resource. Subsequent transfer to trust would result in need to establish a first-party (d)(4)(A) trust, with a Medicaid payback provision. Grandma should write check to SNT trust and NOT to grandson. Will should instruct that any devise or legacy goes to the trust and not to Arthur.

### **8. Can you give advice without petitioning the SSA for fee approval?**

Yes. SSA Opinion Letter (May 14, 1982) sent to NOSSCR where SSA approved of practice of charging a fee to evaluate a case. SSA says this is NOT “services.” (see slide 269). There is no representation here before the agency. But, if you file a claim, you cannot charge for representation without SSA approval per SSA §206; POMS §GN03920.001, et seq.

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

**9. If a disability claim is to be filed for Arthur, who signs the authorization form for representation and the fee contract?**

Arthur is not under guardianship, thus Arthur is the ONLY person who can authorize representation. He must sign form SSA-1696. If fees are to be paid through the fee agreement process (withheld fee contingent on winning the claim) only Arthur need sign the fee agreement. However, if a fee petition process is used (no withheld fee), it is best to have two signatures: one from the client and one from a guarantor. In this case, Arthur would sign as the client and a parent could sign the fee contract as a guarantor. The contract should make clear that it is Arthur that is being represented, not the guarantor. If you also represent the parent/guarantor on a consultation and the parent has signed as a guarantor, you will need to make clear to both the client and the guarantor that you may have to withdraw if there is a conflict of interests that cannot be resolved.

# CASE STUDY 2

## The Stones! – Child’s Disability Benefits and SSI

### **10. Arthur’s parents want one of them to be a representative payee for Arthur. How do you proceed?**

Because Arthur is your client, you need to find out from Arthur if he wants one of his parents to be a representative payee. You should explain to Arthur what a representative payee does, that he will have not control over the benefit payment, but that he will also be able to let someone else take responsibility for ensuring that he does not incur an overpayment, either through having excess resources or through having earned income in excess of the Substantial Gainful Activity levels. If Arthur does not want to have a representative payee and if you believe that it is in Arthur’s best interest to have a representative payee, you have a duty to explain to Arthur why you believe so. However, ultimately, unless and until Arthur agrees to have a representative payee and that the representative payee should be a parent, it would be a conflict of interest for you to pursue a representative payee application on behalf of Arthur’s parents.



# **CASE STUDY 3**

## **The Tate's – SSI and CDB**

**Anna Tate is 43, widowed, and takes care of her disabled minor child, Oliver. Oliver is highly intelligent, but has spina bifida, is unable to walk for more than short distances, and is incontinent. Anna's deceased spouse and Oliver's father, Harry, died when Oliver was young. Oliver is now at age 15 and both Oliver and Anna receive Social Security benefits on Harry's account: Oliver receives a Child's Insurance Benefit while Anna receives a Mother's benefit. Each benefit is in the amount of \$1,500. Anna received a notice that her benefit will end when Oliver reaches age 16, and she wants to know if Oliver should apply for SSI. What do you advise?**

# **CASE STUDY 3**

## **The Tate's – SSI and CDB**

### **1. May Oliver apply for SSI?**

**He may apply, but his mother's income and assets will be imputed to him in order to assess if he qualifies for SSI. If he does not qualify for SSI now, he should file a claim under Title XVI when he reaches age 18. Although CDB is higher, SSI will likely be adjudicated and applied before it is offset by the CDB. If approved, then SSI will pay for Medicare Part D.**

### **2. May Anna do anything to stop the loss of her mother's benefit?**

**Yes. Apply for continuation of the benefit due to Oliver's disability.**

**Child-in-care benefits are payable to parent with minor child under age 16 OR with disabled child.**

**POMS § RS 00208.005**

**Five months prior to age 16, system will generate notice to parent to determine if benefit can continue due to having a disabled child in care. (POMS § GN 00502.075B.1) Benefit will then automatically convert to CDB at age 18, if disability determination at age 16 is favorable.**

## ABBREVIATIONS & GLOSSARY

Actuarial reduction – Reduction to benefit amount on account of payment prior to full retirement age

AIME – Average Indexed Monthly Earnings. Highest 35 years of indexed earnings, divided by number of months in those years.

Break even point – Total number of months required to reach point at which cumulative full benefit equals cumulative reduced benefit.

COLA – cost-of-living adjustment. Percentage increase in the Consumer Price Index from the third quarter of prior year to third quarter of current year. Applied to existing benefits beginning with December payment, received in January. Announced annually in mid-October.

CDB – Child’s Disability Benefits. Formerly known as “DAC” – Disabled Adult Child.

CIB – Child’s Insurance Benefits

DIB – Disability Insurance Benefits

DOB – date of birth

DRC – Delayed Retirement Credit

EPE – Extended Period of Eligibility

EXR – Expedited Reinstatement

FICA – Federal Insurance Contributions Act

FRA – Full retirement age

GPO – Government Pension Offset. Provides for reduction of a benefit received on work record of another person when beneficiary also receives pension based on beneficiary’s own non-covered earnings.

H – husband

IEP – Individual Educational Plan

MFB – Maximum Family Benefits. Maximum amount of benefits payable to a family based on one work record.

## ABBREVIATIONS & GLOSSARY

Non-covered earnings – earnings not subject to tax under FICA or SECA. Includes some state and local government employment, including some public school districts. Also includes foreign employment not subject to tax under FICA or SECA.

PDB – Public Disability Benefit

PIA – Primary Insurance Amount. Unreduced benefit amount based on one’s own work record. Usually, this amount is the amount paid as a disability benefit or as a retirement benefit at full retirement age (plus cost-of-living adjustments from age 62).

POMS – Program Operations Manual System. Internal operating manual of the Social Security Administration.

Real Rate of Return (RRR) – Amount one expects to earn over inflation from an investment of similar quality to Social Security. Indicator: TIPS rate. (TIPS = Treasury Inflation-Protected Securities).  $TIPS\ rate + inflation\ rate = conservative\ estimate\ of\ nominal\ return\ one\ would\ expect\ to\ achieve\ in\ an\ investment\ of\ similar\ quality\ to\ Social\ Security.$

RIB – Retirement Insurance Benefits. Retirement benefit paid on one’s own work record. A.k.a “Old-Age Benefits.”

SECA – Self Employment Contributions Act

SSA – Social Security Administration; Social Security Act

W - wife

WC – Worker’s Compensation

WEP – Windfall Elimination Provision. Provides for reduction of RIB based on receipt of pension based on non-covered earnings.

WIB – widow(er)’s insurance benefits