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INTRODUCTION

This manual is designed to provide background for advocates representing children on claims for disability benefits under the Supplemental Security Income (SSI) program before the Social Security Administration (SSA). The Manual provides an overall view of the rules covering the childhood disability program. However, because the rules may change from time to time, advocates should always check citations listed in these materials before relying on them.

This manual is designed so that advocates can turn to specific sections for guidance.

Chapter One--Overview--provides a history of the children's SSI program, overview of the Social Security Administration, and sources of law applicable to childhood SSI claims.

Chapter Two--SSI Eligibility--discusses SSI income and resource eligibility and rules affecting immigrant children seeking benefits.

Chapter Three--Disability Standard for Children--discusses the three-step sequential evaluation used by SSA to determine childhood disability.

Chapter Four-Applying Functional Equivalence--discusses the concept of functional equivalence, the integral part of the childhood SSI disability standard in greater detail.

Chapter Five--Redeterminations and Appeals--discusses SSA's administrative appeal process including how appeals are filed, filing deadlines, and the circumstances under which SSI benefits may be paid for children whose ongoing SSI eligibility is being reviewed.

Chapter Six--Preparing a Children's SSI Disability Case for Hearing--gives an overview of administrative hearings and outlines an approach for advocates to use in doing these hearings.

Chapter Seven--SSI Post-eligibility Issues--discusses issues that may arise after a child has been found disabled and eligible for SSI benefits.

The Appendix contains relevant regulations and other documents from SSA that are helpful in representing children in SSI claims.

I. OVERVIEW

A. SSI Childhood Disability Program in General

Supplemental Security Income, also known as SSI or Title XVI, is a federally financed and administered needs-based program that serves low-income elderly, and persons who are blind or disabled. SSI provides a national income level benefit ($564 in 2004). That payment level is adjusted yearly to reflect changes in the cost of living. The federal SSI benefit is supplemented by many states by additional cash assistance provided to certain classes of SSI recipients.

1. Creation of the Childhood SSI Disability Program

The children's SSI program was created in 1972. Initially, childhood disability was defined in relation to the definition of disability for adults. The SSI definition of disability for adults in the Social Security Act provides that an adult is disabled if s/he is unable “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 twelve months.” Accordingly, the definition of disability for children (i.e., individuals under the age of 18) provided that a child was disabled for purposes of eligibility for SSI if he or she “suffer[ed] from any medically determinable physical or mental impairment of comparable severity” to an impairment(s) that would make an adult disabled.

Until 1990, if a child was not working, the disability determination was decided based on whether or not the child's impairment(s) met or equaled the severity of one of the listed impairments in the Listings of Impairments, just as was done for adults.[1] However, adults who did not show a listed medical impairment could be found disabled under an alternative test—by

showing that there was no work they could do based on their medical impairments, age, education, and work experience. SSA did not provide an additional disability test for children, nor did it consider a child's functional limitations, unless the particular listing being applied in a particular case set contained functional limitation requirements. (Most listings did not address function).

2. *Sullivan v. Zebley*

[1] The Listings of Impairments ("the Listings") describe, for each of the major body systems, impairments for children that are considered disabling. The Listings are found at 20 C.F.R. Part 404, Subpt. P, App. 1.

On February 20, 1990, in *Sullivan v. Zebley,*[2] the Supreme Court decided that the ``listings-only'' approach SSA had used to deny childhood SSI disability claims did not carry out the ``comparable severity'' standard in the Social Security Act because the listings did not provide for an assessment of a child's overall functional impairment. The Court held that, under the comparable severity standard, child SSI applicants were entitled to an assessment as part of the disability determination process, comparable to adults who have impairments that do not meet or equal the severity of a listing and who receive such an individualized assessment. The Court found that, whereas adults who are not found to be disabled under the Listing still have the opportunity to show that they are disabled by showing that there is no work they can do based on their age, education, work experience, and medical impairments, no similar opportunity existed for children. The Court concluded that SSA needed to apply some type of functional analysis to children's disability claims.

The Court also addressed various aspects of the way in which SSA used the Listing in evaluating childhood disability claims. The Court stated that the policies for establishing whether a child's impairment(s) was equivalent in severity to a listed impairment “exclude[d] claimants who have unlisted impairments or combinations of impairments that do not fulfill all the criteria for any one listed impairment.” The Court was also concerned that all claimants be given an opportunity for an assessment of their functional limitations, including the effects of their symptoms, in establishing medical equivalence.

As a result of *Zebley*, SSA revised its childhood disability rules.[3] In those revised rules (since superseded by statutory changes), SSA defined the term “comparable severity” in terms of the impact of an impairment or a combination of impairments on a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. The rules also provided that each child whose impairment(s) did not meet or medically or functionally equal the requirements for any listing would have an “individualized functional assessment” (IFA), an evaluation of the impact of the child's impairment(s) on his or her overall ability to function independently, appropriately, and effectively in an age-appropriate manner.

SSA, in those rules, created a four step sequential evaluation to assess childhood disability. At the first step, SSA looked to see if the child was working (engaging in substantial gainful activity). If yes, disability was denied.

At the second step, SSA looked to see if the child had medically

determinable impairment or combination of impairments that was "severe", that is, more than a slight abnormality or a combination of slight abnormalities that caused more than minimal limitation in a child's ability to function independently, appropriately, and effectively in an age-appropriate manner.

[2] 493 U.S. 521 (1990).

[3] The rules were first published in the Federal Register on February 11, 1991 (56 FR 5534) as a final rule with a request for comments. Following consideration of public comments, SSA published a final rule in the Federal Register on September 9, 1993. (58 FR 47532).

If the child had a severe impairment, SSA proceeded to step three and applied the listings. In so doing, SSA expanded the rules for determining equivalence to the Listing, adding a component that required assessment of the child"s functioning. The new "functional equivalence" rule responded to *Zebley's* concerns about SSA"s use of the Listings in childhood cases. Functional equivalence provided that, if a child's impairment(s) did not meet or medically equal the severity of any listed impairment, SSA would assess the child's functional limitations and compare those limitations with the disabling functional consequences of any listed impairment, without regard to whether the listed impairment chosen for comparison was medically "related" to the child's impairment(s). For example, functional equivalence permits comparison of the functional limitations caused by a physical impairment with the functional limitations establishing disability in the mental disorders listings.

Last, for those children whose impairments were not of listing-level severity, the rules resulting from *Zebley* included an entirely new fourth

step--the Individualized Functional Assessment--in the sequential evaluation process for children. SSA used the IFA to assess whether a child's severe impairment(s), while not of listing-level severity, was nonetheless of “comparable severity” to an impairment(s) that would disable an adult.

The IFA addressed the functional impact of a child's impairment(s) in six broad areas of functioning, which SSA called domains and behaviors, such as cognition, communication, and motor abilities. These domains and behaviors were intended to encompass and reflect all the things that a child may do at any particular age, and were, therefore, intended to include all of a child's functioning. If an IFA showed that a child's impairment(s) substantially reduced his or her ability to function independently, appropriately, and effectively in an age-appropriate manner, and the impairment(s) had lasted, or would last at least 12 months, or result in death. SSA found the impairment(s) to be of comparable severity to an impairment that would result in disability in an adult, and the child would, therefore, be considered disabled. For most children, the rules provided examples of how “marked” and “moderate” limitations in the domains and behaviors would indicate whether there was a substantial reduction in functioning. A “marked” limitation in one domain and a “moderate” limitation in another domain, or “moderate” limitations in three domains would generally, though not invariably, result in a finding of disability.

3. The Welfare Act and Interim Final Regulations

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (welfare act)[4] provides a new statutory definition of disability for children claiming SSI benefits and directs SSA to make changes in the

way it evaluates childhood disability claims.

Under the new law, a child's impairment or combination of impairments must cause more serious impairment-related limitations than the old law and SSA's prior regulations required. Specifically, the welfare act creates a definition of disability for children separate from that for adults. The ``comparable severity'' criterion in the Act was repealed and replaced with a definition that requires in relevant part that a child is disabled if s/he has a medically determinable physical or mental impairment, which results in marked and severe functional limitations.[5]

The welfare act made numerous other changes to the childhood SSI program including:

- SSA was directed to remove references to maladaptive behavior in the personal/behavioral domain from listings 112.00C2 and 112.02B2c(2) of the childhood mental disorders listings.[6]

- SSA was directed to discontinue the IFA for children in 20 CFR 416.924d and 416.924e.[7]

- Within 1 year after the date of enactment, SSA was required to redetermine the eligibility of individuals under the age of 18 who were

eligible for SSI based on disability as of August 22, 1996, and whose eligibility may terminate by reason of the new law.[8]

• The medical improvement review standard for determining continuing eligibility for children (known as continuing disability reviews or CDRs) was revised to conform to the new definition of disability for children.[9]

• Not less frequently than once every 3 years, SSA must conduct a CDR for any childhood disability recipient eligible by reason of an impairment(s) which is likely to improve. At SSA's option, it may also perform CDRs for children whose impairments are unlikely to improve.[10]

• SSA must redetermine the eligibility of individuals who were eligible for SSI based on disability in the month before the month in which they attained age 18 using the rules for determining initial eligibility for adults.[11]

• SSA must conduct a CDR not later than 12 months after the birth of the child for any child whose low birth weight is a contributing factor material to the determination that the child was disabled.[12]

• SSA must pay any past-due SSI benefits that total more than six times the maximum monthly SSI amount into a dedicated savings account that is administered by the child's representative payee and the funds may only be used for expenses that benefit the child.[13]

[4] Pub. Law No. 104-193 enacted August 22, 1996.

[5] 42 U.S.C. § 1382c(a)(3)(C)(i), as amended by Pub. L. No. 104-193, § 211(a).

[6] Pub. L. 104-193, § 211(b) (1).

[7] Pub. L. 104-193, § 211(b) (2).

[8] Pub. L. 104-193, § 211(d)(2). SSA's deadline to complete redeterminations was extended to February 22, 1998. Balanced Budget Act of 1997, Pub. L. 105-33.

[9] *Id.* at Pub. L. 104-193, § 211(c).

To implement the Welfare Act's changes to the childhood disability standard, SSA issued final interim rules on February 11, 1997.[14]

4. Final Childhood Disability Regulations

Ending a chapter that began in 1996 when Congress changed the statutory childhood SSI definition of disability, SSA issued final regulations on the childhood SSI disability standard on September 11, 2000.[15] The final regulations did two major things.

First, they restated and reinforced general guidelines that apply to all childhood disability determinations; chief among them being that, in assessing disability, a child with functional limitations resulting from medical impairments must be compared to children without such limitations to assess the degree of limitation of functioning.

[10] *Id.* at § 212(a).

[11] *Id.* at § 212(b).

[12] *Id.* at § 212(c).

[13] *Id.* at § 213.

[14] 62 Fed. Reg. 6408 (Feb. 11, 1997).

[15] 65 Fed. Reg. 54747-54790 (Sept. 11, 2000).

Second, the final regulations reworked the functional equivalence process by completely delinking it from the Listings of Impairments (the “Listings”); reducing from four to one the ways in which a child’s medical impairments may functionally equal the childhood Listings of Impairments; and defining six new domains in which all children’s functional limitations are assessed.

The final regulations did not, however, change the standard for showing disability. SSA continued to define the statutory standard of “marked and severe functional limitations” to mean marked limitations in two areas (or domains) of functioning, or an extreme limitation in one area (or domain) of functioning.[16]

B. Social Security Administration in General

SSA is a federal agency that has responsibility for administering the SSI program.

SSA District Offices or field offices are the point of public entry to SSI for most persons. District Office personnel:

- take applications and appeals;
- receive and develop evidence;

- make preliminary decisions on nondisability claims; and

- offer public information.

SSA operates a national “800” number (1-800-772-1213) that individuals can call to obtain information about SSI benefits, and initiate applications for benefits and appeals of adverse decisions.

SSA also has a website, www.socialsecurity.gov, that contains information about its programs, copies of forms, and its rules and regulations.

SSA usually delegates the making of initial disability determinations to state agencies. State Disability Determination Services (DDS) agencies contract with SSA to develop evidence of disability and make the disability determination. At a state DDS, a team of doctors and lay disability examiners develop and review the medical and other evidence to make the disability decision. SSA District Offices refer disability cases to DDS agencies to make disability determinations.

[16] 20 C.F.R. § 416.926a(a).

Offices of Hearings and Appeals hear appeals of disability denials issued by the state DDS agencies. The OHAs are staffed with Administrative Law

Judges (ALJs) who hear disability appeals and issue decisions. OHA offices are located throughout the United States.

The Appeals Council, part of OHA, sits in Arlington, Virginia and reviews requests for review of unfavorable decisions issued by ALJs. The Appeals Council also reviews decisions granting benefits in some cases by initiating own motion review.

C. Sources of Law

1. Social Security Act

The SSI program was created by statute ("the Social Security Act").[17] The Social Security Act gives the Commissioner of the Social Security Administration the power to promulgate regulations and rulings to further govern entitlement to SSI benefits.

The Commissioner issues several different types of governing regulations and rules. The first are federal regulations, which are promulgated pursuant to notice and comment provisions of the Administrative Procedure Act. The second are Social Security Rulings and Acquiescence Rulings. The third are the POMS (Program Operations Manual System) and the HALLEX.

2. Case Law

The federal courts interpret SSI statutes and regulations through the

appeal process. SSA must apply U.S. Supreme Court decisions in all determinations. It must also apply U.S. Circuit Court of Appeals decisions to claims decided in the states covered by Circuit Courts of Appeals unless the government appeals or relitigates the issues. SSA gives notice that it is applying circuit court precedent, when that precedent differs from the Commissioner's interpretation of a statute or rule, through issuance of acquiescence rulings.[18]

3. Federal Regulations

The Commissioner is charged with establishing by regulation, "uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disability .... "[19] Federal regulations governing the SSI program are set forth at 20 C.F.R. Parts 404 and 416. They are binding on all components of SSA and must be given binding effect by reviewing courts. Current SSI regulations are available on the SSA website (www.socialsecurity.gov) under the homepage category “Our Program Rules.”

[17] 42 U.S.C. § 1381 et seq.

[18] 20 C.F.R. § 416.1485.

[19] 42 U.S.C. § 421(k).

4. Social Security Rulings and Acquiescence Rulings

Social Security Rulings are issued periodically by SSA and interpret SSA regulations. Current rulings are available on the SSA website (www.socialsecurity.gov) under the homepage category “Our Program

Rules."

5. POMS and the HALLEX

The POMS (rules that apply to the DDSs) and HALLEX (rules that apply to the Offices of Hearings and Appeals) offer further guidance on interpretation and application of SSI regulations. However, they are not binding on the Commissioner.[20] The POMS and HALLEX are available on the SSA website (www.socialsecurity.gov) under the homepage category "Our Program Rules."

[20] *Schweiker v. Hansen*, 450 U.S. 785 (1981).

II. SSI ELIGIBILITY

To be eligible for SSI, an applicant must satisfy all the following five criteria: a) categorical eligibility; b) residence; c) citizenship or qualified alien status; d) resource eligibility; and e) income eligibility.[21]

A. Categorical Eligibility

To be eligible for SSI, an applicant must be in one of the following categories:

- Age 65 Or Older; or

- Blind (defined as corrected vision no better than 20/200 or limited to a visual field of 20 degrees in the better eye); or

- Disabled Adult (defined as person age 18 or older who is unable to engage in substantial gainful activity due to a medically determinable mental and/or physical impairment, which has lasted or is expected to last for at least 12 months or result in death); or

- Disabled Child (defined as person under age 18 who has a medically determinable mental and/or physical impairment that results in marked and severe functional limitations and which has lasted or is expected to last for at least 12 months or result in death).[22]

B. Residence

To be eligible for SSI, an applicant must reside in the United States or the Northern Marianas Islands for at least 30 days.[23]

A recipient who leaves the United States for 30 days or more in a row loses SSI eligibility and is not eligible for SSI until she or he has returned to the United States and has remained in the U.S. for 30 days in a row.

C. Citizenship and Qualified Noncitizen Status

To be eligible for SSI, an individual must be a U.S. citizen or an eligible noncitizen. Only certain categories of noncitizens are potentially eligible for SSI.[24]

[21] 20 C.F.R. § 416.202.

[22] 20 C.F.R. § 416.202(a)

[23] 20 C.F.R. §§ 416.202(a); 416.1603.

For purposes of SSI, SSA considers the following groups to be **citizens** of the United States:

- persons born in the United States, Puerto Rico, Guam, or the Virgin Islands;[25]

- persons born in American Samoa, Swains Island, and the Northern Marianas Islands (although these persons are U.S. nationals, they are treated as U.S. citizens for SSI purposes);[26]

- persons who become naturalized U.S. citizens by filing an application for naturalization through the Immigration and Naturalization Service.[27]

Congress, acting in 1996 and 1997, made many noncitizens ineligible for SSI benefits.[28] The following **noncitizens** are eligible for SSI:[29]

- noncitizens who are lawfully residing in the United States and who were receiving SSI benefits on August 22, 1996;[30]

- noncitizens who are lawfully residing in the United States on August 22, 1996 and who meet the SSA blindness or disability standard;[31]

- refugees admitted under § 207 of the Immigration Nationality Act (INA) for the

first seven years after their admission to the United States;[32]

- asylees admitted under § 208 of the INA for 7 years after asylum status is granted;[33]

• individuals granting withholding of deportation, under § 243 of the INA for seven

[24] 20 C.F.R. § 416.1600.

[25] 20 C.F.R. § 416.1600(a); 416.1610(d).

[26] *Id.*

[27] 20 C.F.R. § 416.1610(a)(3).

[28] Welfare Act at § 402, as amended by the Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 5301-5306.

[29] This is a non-exhaustive list of noncitizens potentially eligible for SSI. Advocates should refer to 8 U.S.C. § 1612, for a complete list of noncitizens potentially eligible for SSI.

[30] 8 U.S.C. § 1612(1)(2)(E).

[31] 8 U.S.C. § 1612(a)(2)(F).

[32] *Id.* at 8 U.S.C. § 1612(a)(2)(A)(i)(I), as amended by Pub. L. No. 105-33, § 5302(a).

years after that status is granted;[34]

• individuals granted status as Haitian and Cuban entrants for seven years after such status is granted;[35]

• legal permanent residents who have earned or can be credited with 40 qualifying

quarters of coverage as defined by Title II of the Social Security Act;[36] and

• noncitizens who are lawfully residing in any State and are veterans of the United

States armed services with a discharge characterized as an honorable discharge

and not on account of alienage; on active duty in the United States armed services; and the spouses and unmarried dependent children of veterans and persons on

active duty.[37]

All other noncitizens are ineligible for SSI.

D. Financial Eligibility--Resources

To be eligible for SSI, a child cannot have resources attributable to him or her valued at more than $2000. In valuing a child's resources, SSA looks at the child's family's resources. Parents are allowed to have a certain amount in countable resources--$2000 for one custodial parent and $3000 for two custodial parents. Any parental resources greater than these limits are deemed to be available to the child.

[33] *Id.* at 8 U.S.C. § 1612(a)(2)(A)(i)(II), as amended by Pub. L. No. 105-33, § 5302(a).

[34] *Id.* at 8 U.S.C. § 1612(a)(2)(A)(i)(III).

[35] 8 U.S.C. § 1612(a)(2)(A)(i)(IV).

[36] *Id.* at § 402(a)(2)(B). Qualifying quarters of coverage includes: a) all of the qualifying quarters of coverage worked by a parent of a legal permanent resident (LPR) while that LPR was under the age of 18; and b) all of the qualifying quarters of coverage worked by a spouse of the LPR during their marriage so long as the LPR remains married to the spouse, or the spouse is deceased. Effective January 1, 1997, no qualifying quarters of coverage can be credited to a noncitizen if she or he, or his or her parents or spouse (for quarters credited from them) was receiving any Federal means-tested public benefit for the period covered by the quarter.

[37] *Id.* at § 402(a)(2)(C).

1. Resource Deeming--Parent to Child

In resource deeming, SSA “deems “or treats the countable resources of SSI ineligible parents living with the child as if they were available to their SSI eligible children, even if the resources are not actually available.

All the usual resource exclusions noted below apply in determining countable resources for deeming purposes. Additionally, funds in an IRA or other work-related pension plan of a parent who is not eligible for SSI are excluded from countable resources for parent to child deeming.[38]

Remember that both the parent(s) and the child with a disability have resource limits, although only one set of resource exclusions applies. The child’s countable resource limit is $2000. This is added to the SSI ineligible parents for the following cumulative limits:

[38] 20 C.F.R. § 416.1202(b).

Family Composition	Cumulative esource Limit
	R
Child, not living with arent(s)	
	$2000

p

$4000

Child, living with one parent (and siblings, if any, who re not SSI eligible)

a

$5000

Child, living with both parents, or one parent and stepparent (and siblings, if any, who are not SSI eligible)

2. Definition of a Resource

A resource is cash on hand, other personal property, or real property that:

- an individual owns or in which an individual has an ownership interest; the individual has the legal right, authority, or power to dispose of the resource or to liquidate it and convert it to cash; and

- the individual is not legally restricted from using the resource for support and maintenance.[39]

3. Valuation of Resources

The value of a resource is generally the amount of the individual=s equity

in the property. Equity value is defined as the price at which the item can be reasonably expected to sell for on the open market in the particular geographic area, minus any emcumbrances (e.g. loans, liens, etc.).[40]

4. Resource Limits

The SSI resource limit is $2000 in countable resources for an individual and $3000 for an eligible couple.[41] Countable resources equal the applicant=s total resources minus the value of excludable resources. If countable resources exceed the SSI resource limit, the SSI applicant or recipient is financially ineligible for SSI. SSI eligibility may be reestablished once the excess resources have been reduced below the resource limit. Thus, for a child with two parents living in his or her household, the family's resource limit is $5000--$3000 for the parents and $2000 for the child.

5. Timing

Resource determinations for SSI eligibility are based on the resources that an individual has at the first moment of the first of the month for which SSI eligibility determination is being made.[42] Example: Lisa, an SSI recipient, has $3000 in countable resources on July 1, 1997. She is not eligible for SSI for the month of July, even if she reduces her countable resources below the $2000 limit before the end of the month.

Money received by an individual is income in the month it is received and a resource in the following month, if retained.[43] Example: Gary, a child SSI recipient, receives $4000 in a lawsuit settlement in August 2003.

These funds will be counted under the income rules to determine his SSI eligibility and SSI benefit amount in August. Any amount still remaining on September 1, 2003 counts towards Gary's countable resource limit for September.

[39] 20 C.F.R. § 416.1201.

[40] 20 C.F.R. § 416.1201(c)(2).

[41] 20 C.F.R. § 416.1205.

[42] 20 C.F.R. § 416.1207(d).

[43] *See e.g.* 20 C.F.R. § 416.1201(a)(3).

6. Countable Resources

Not all resources are counted. Examples of resources that are counted are:

- cash on hand (that is not income for the month in which eligibility is being assessed);[44]

- money in savings accounts, checking, or credit union accounts;[45]

- stocks and bonds;[46]

- certificates of deposit;[47]

- U.S. savings bonds;[48]

- land or property upon which the individual does not reside;[49] and

- life insurance policies with a face value of over $1500.[50]

A resource may be countable even if there is a financial penalty for accessing it. The amount that is countable is the amount that could be accessed at the time of consideration. Example: Steve, who is applying for SSI, has a life insurance policy that has a cash-out value of $3000, far less than the policy would be worth if he died. Under SSA policy, Steve would be required to cash out the life insurance policy, and use the amount over $2000 before he could become eligible for SSI.

7. Excluded (Noncountable) Resources

Examples of resources that are not counted in determining SSI eligibility are:

• the home in which the person lives, and the contiguous property on which it stands;[51]

• one car, regardless of value, if used for work or to get to medical services and appointments or if it is specially modified to transport a disabled person.[52] If a car cannot be excluded for these reasons, SSA will exclude its current market value up to $4500 (any excess will count toward the applicable resource limit).[53] Only one car per SSI recipient may receive the benefit of this exclusion, regardless of whether more than one car would fit these criteria);[54]

• personal or household goods valued at under $2000;[55]

• life insurance policies whose face value is under $1500;[56]

• burial funds of $1500 or less, if the person does not own any excluded life insurance (see above)(these funds must be specifically identified as burial funds and set aside in a separate account);[57]

• burial plots or spaces (an individual may have both burial spaces and burial funds)[58]

• property used for self support;[59]

• the proceeds from the sale of a home, if the proceeds are used within 3 months to purchase another residence;[60]

• retroactive lump sum payments of SSI or Social Security benefits for 6 months after receipt; and

• resources identified as necessary to fulfill a Plan to Achieve Self Support (PASS).[61]

8. Jointly Held Accounts at Financial Institutions

[44] 20 C.F.R. § 416.1201(b).

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*.

[49] 20 C.F.R. §§ 416.1201(c); 416.1210(a).

[50] 20 C.F.R. § 416.1230.

[51] 20 C.F.R. §§ 416.1210(a); 416.1212.

[52] 20 C.F.R. § 416.1218(b)(1).

[53] 20 C.F.R. § 416.1218(b)(2).

[54] 20 C.F.R. § 416.1218(b)(3).

[55] 20 C.F.R. § 416.1216.

[56] 20 C.F.R. § 416.1230.

[57] 20 C.F.R. § 416.1231(b).

[58] 20 C.F.R. § 416.1231(b).

[59] 20 C.F.R. §§ 416.1220; 416.1222.

[60] 20 C.F.R. § 416.1212(d).

[61] 20 C.F.R. §§ 416.1225-1227.

If an SSI recipient is the only named holder, SSA presumes sole ownership in the holder and does not allow the holder to rebut the presumption.[62] This is a change from prior SSA policy that allowed SSI recipients to prove that they were not the actual owners of the funds.

If there are joint holders and only one holder is an SSI applicant or

recipient, SSA presumes sole ownership in the SSI applicant or recipient. If more than one joint holder is an SSI applicant or recipient, SSA presumes equal shares ownership in the SSI applicants or recipients. SSA allows persons to rebut both of these presumptions.

[62] 20 C.F.R. § 416.1208(b) & (c)

E. Financial Eligibility--Income

The amount of SSI benefits paid to a child with a disability are based on the child's monthly income (e.g., child support or Social Security surviving child benefits) if any, and the child's family's income.

1. Income Deeming--Parent to Child

The income of SSI ineligible parent(s) living with an SSI eligible child is deemed to the child to determine the child's income eligibility and payment amount. The deemed income is considered available to the SSI recipient, whether or not it is actually available. The deemed income will be deducted from the maximum SSI benefit to which the child is entitled, along with the child's countable income, if any.[63]

Parent to child deeming applies only if the child meets all of the following:

- is under 18 years of age;

- is not married;

- is not the head of household;

- lives at home (the deeming rules generally apply to a child who is attending school away from home, but who comes home on some weekends or holidays, and which is subject to parental control); and

- lives with parents who are not SSI eligible, or receiving some other need-based public welfare benefit (e.g. TANF).

A Parent to Child income deeming sheet with 2004 income limits is included in the Appendix. The deeming rules are set forth in the POMS at § SI 01320.500.

2. Definition of Income

Income is anything an individual receives in cash or in kind that could be used either directly, or by conversion, to meet basic needs for food, clothing, or shelter.[64] Almost all income is countable, although there are certain income deductions and exclusions. Countable income reduces the maximum benefit amount to which an SSI recipient would otherwise be entitled. If large enough, countable income can reduce the benefit amount to -0-, making the individual financially ineligible for SSI.

3. Types of Income

[63] 20 C.F.R. § 416.1160.

[64] 20 C.F.R. § 416.1102.

SSA considers income in the following categories:

- Unearned income--income from nonwork sources, including alimony, child support, pensions, annuities, rents, interest from bank accounts, social security benefits, VA benefits, worker's compensation benefits, unemployment benefits, prizes, awards, gifts, and inheritances.[65]

- Earned income--income from work, including wages, salary, tips, commissions, bonuses paid through employment or self-employment.[66]

• In-Kind Income--an SSI recipient=s receipt of food, clothing, or shelter for free or at reduced charge; SSA counts the value the item received as in-kind income.[67] SSA does not count the value of free or low cost goods or services that are not food, shelter, or clothing, e.g. entertainment, car maintenance, medical supplies, etc.

• Garnished Income--Income that is not available because it has been garnished is counted as available to an SSI recipient or parent of an SSI recipient, even though it is not available.[68]

• Overpayment Recovery--Money withheld from an SSI monthly payment as a result of recovery of an overpayment from SSI or from other benefits (Social Security, VA, Railroad Retirement Benefits, workers' compensation, etc.) is counted as if the individual actually received it.[69]

4. Basic Income Counting Rules

Income is counted as income in the month that it is received, and, if retained, counted as a resource in the following month or months. Income is counted on a calendar month basis. The higher the monthly income, the lower the SSI benefit, until the SSI benefit reaches -0- and eligibility is terminated or denied. Eligibility can be reestablished in the following month (or a later month) when the income drops below the SSI monthly

payment amount ($564 for an individual in 2004).

5. Income Exclusions

[65] 20 C.F.R. § 416.1121.

[66] 20 C.F.R. § 416.1110.

[67] 20 C.F.R. § 416.1130.

[68] 20 C.F.R. § 416.1123(b)(2).

[69] 20 C.F.R. § 416.1123(b)(1).

Certain types of income are not considered income and are excluded in determining financial eligibility for SSI benefits. Examples of excluded income[70] are:

- income tax refunds;

- proceeds of a loan (however, if the proceeds are not spent in the month received, they will be counted as a resource in the following month);

- bills paid by others for goods and services that are not food, shelter,

or clothing.

weatherization assistance;

- any portion of a grant, scholarship or fellowship used for paying tuition, fees, or other necessary education expenses;

- one-third of child support paid by an absent parent;

- assistance based on need provided by a state or local government, including rent subsidies;

- in-kind income based on need provided by nonprofit organizations;

impairment related work expenses;

- domestic commercial airline tickets received as gifts, as long as they are not cashed in; and

- income earned by a blind or disabled student, up to $400 per month; and

- food stamps.

6. Income Deductions

After applying all applicable income exclusions, SSA applies the following income deductions to calculate countable monthly income. Countable monthly income is subtracted from the maximum SSI monthly grant amount to determine the amount of SSI benefits to which an individual is entitled.

- General/Unearned Income Deduction--Deduct $20 of unearned income, or if there is no or less than $20 of unearned income, the remainder of the $20 deduction from earned income;[71] and

- Earned Income Deduction--Deduct $65 plus 2 the remainder of gross monthly earned income.[72]

7. Retrospective Monthly Accounting

[70] 20 C.F.R. § 416.1124.

[71] 20 C.F.R. § 416.1124(c)(12).

[72] 20 C.F.R. §§ 416.1112(c)(5) & (7).

SSA uses a monthly system of calculating both eligibility for SSI and the amount of SSI benefits to be paid. SSA follows the following rules:

- eligibility determinations are based on current month=s income; and

- payment amount determinations are based on the monthly income received two months prior to the payment month. During the first two months of SSI eligibility, special rules apply.[73]

[73] 20 C.F.R. § 416.410

III. DISABILITY STANDARD FOR CHILDREN

A. Statutory Standard

The statutory SSI childhood disability standard provides as follows:

(i) an individual under the age of 18 shall be considered disabled for purposes of this title 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; and (ii) notwithstanding clause (i), no individual under the age of 18 who engages in substantial gainful activity ... may be considered disabled. (emphasis added)[74]

B. "Marked and Severe Functional Limitations"

While the statutory standard does not define the phrase “marked and severe functional limitations” with precision, SSA has, in its final regulations,[75] defined its parameters as follows:

- the phrase does not mean a "marked" impairment plus a "severe" impairment; and

- "marked and severe functional limitations" is defined to be listings-level severity--a child's impairment(s) must meet, medically equal, or functionally equal the severity of a listed impairment, as set forth in the Listings of Impairments, 20 C.F.R. Part 404, Subpt. P, App. 1.

C. The Sequential Evaluation for Children

SSA now uses a three-step sequential evaluation to determine childhood disability. It is set forth below:[76]

1. Is the child working (engaging in substantial gainful activity)?[77] If yes, deny the claim. If no, go to step 2.

[74] 42 U.S.C. § 1382c(a)(3)(C)(i), as amended by Pub. L. No. 104-193, § 211(a).

[75] 62 Fed. Reg. 6411-12 (Feb. 11, 1997)(interim final rules).

[76] 20 C.F.R. § 416.924.

[77] The SSA rules on substantial gainful activity are set forth at 20 C.F.R. §§ 416.971-76.

2. Does the child have a medically determinable impairment or combination of impairments that is severe? [78] If no, deny the claim. If yes, go to step 3.

3. Does the child's impairment(s):

1) meet the requirements of a listed impairment in the Listing of Impairments in 20 C.F.R. Part 404, Subpt. P, App. 1;[79] or

2) medically equal the requirements of a listed impairment in the Listing of Impairments in 20 C.F.R. Part 404, Subpt. P, App. 1;[80] or

3) are the functional limitations caused by the impairment(s) the same as the disabling functional limitations of any listing, and therefore, functionally equivalent to that listing.

If yes, the child is disabled. If no, the child is not disabled.

[78] A “severe” impairment is defined at 20 C.F.R. § 416.924(c).

[79] The Listing of Impairments (“the Listings”), 20 C.F.R. § 416.924(d), describe, for each of the major body systems, impairments for children that cause marked and severe functional limitations. 20 C.F.R. § 416.925(a).

[80] A medical impairment or combination of impairments is medically equivalent “if the medical findings are at least equal in severity and duration to the listed findings.” 20 C.F.R. § 416.926(a).

IV. GENERAL GUIDELINES FOR EVALUATING CHILDHOOD DISABILITY

The childhood regulations set forth general guidelines for determining childhood disability. These guidelines are crucial in deciding childhood disability because they:

- identify evidence relevant to the childhood disability determination;

- explain how a child's functioning is to be evaluated; and

- provide guidance on the weight to be given to certain types of evidence. Advocates must be familiar with these concepts.

A. Evidence Relevant To The Disability Determination

The final regulations require SSA to consider all relevant information in a child's case--both medical and nonmedical.[81] SSA defines the sources from which it will accept evidence of a medically determinable impairment or combination of impairments. The following are "acceptable medical sources:" licensed physicians (medical or osteopathic doctors); licensed or certified psychologists (including school psychologists, or other licensed or certified individuals with other titles who perform the same function as a school psychologist in a school setting, for purposes of establishing mental retardation, learning disabilities, and borderline intellectual functioning only); licensed optometrists (for the measurement of visual acuity and visual fields); qualified speech-language pathologists (for purposes of establishing speech or language impairments only); and physical, occupational, and rehabilitation therapists as "acceptable

medical sources.[82]

Once there is evidence that a child has a medically determinable impairment or combination of impairments, SSA must consider all other relevant evidence to determine how those impairments impact functioning "compared to children [of the same age] who do not have impairments."[83] Potential sources for such evidence include, in addition to medical providers: parents and caregivers; early intervention and preschool programs; educators; public and private social welfare agency personnel; daycare workers; and friends and neighbors.[84]

B. How A Child's Functioning Is To Be Evaluated

The cornerstone of childhood disability determinations is that, in assessing a child's functional limitations, his or her activities are to be compared to the activities of children the child's age who do not have medical impairments. The final regulations state as follows:

[81] 20 C.F.R. § 416.924a(a).

[82] 20 C.F.R. § 416.913(a) and 20 C.F.R. § 416.924a(a).

[83] 20 C.F.R. § 416.913(d).

[84] 20 C.F.R. § 416.913(d).

When we evaluate your functioning, we will look at whether you do the things that other children your age typically do or whether you have limitations and restrictions because of your medically determinable impairment(s). We will also look at how well you do the activities and how much help you need from your family, teachers, or others. Information about what you can and cannot do, and how you function on a day-to-day basis at home, school, and in the community, allows us to compare your activities to the activities of children your age who do not have

impairments.[85]

C. Factors Relevant To the Childhood Disability Determination

[85] 20 C.F.R. § 416.924a(b)(3)(i)(emphasis added).

In comparing a child who has applied for SSI to other children his or her age who do not have medical impairments, SSA decision makers must consider whether factors are present that either mask functional limitations, or cause or exacerbate functional limitations themselves.

To put it a different way, SSA stated in training materials as follows:

To evaluate the extent to which a child's independent functioning is compromised by his or her impairment(s), we consider whether the child needs a person, a medication, a treatment, a device, or a setting to make functioning possible, or to improve his or her functioning. The more intensive or extensive the help received, the less independent the child is functioning, and the greater weight this factor has in the rating of limitations.[86]

1. "The Standards Used by the Person Who Gave Us the Information"

In assessing how a child is functioning, SSA has made clear that the standard of comparison used is critical:

We compare a child's functioning to the functioning of other children the same age who do not have impairments, so we need to know whether that is the standard of comparison used by any source of information. For example, a special education teacher says a child is "doing well," without indicating whether she means doing well compared to her expectations for the child, or compared to other children in the special education class, or compared to children the same age who do not have impairments (which

is what we need), we need to clarify the teacher's response.[87]

2. Extra Help, Adaptations, Structured or Supportive Settings

SSA decision makers must consider, in assessing the severity of functional limitations, the amount of help or adaptations a child requires and the impact of structured or supportive settings. In so doing, decision makers are to consider the following: a) the range of activities a child does; b) the child's ability to do them independently, including any prompting the child requires to begin, carry through, and complete those activities; c) the pace at which the child does those activities; d) how much effort the child needs to do those activities; and e) how long the child is able to sustain such activities.[88]

a. Extra Help

SSA decision makers are required to consider any extra help that a child requires to do age-appropriate activities.[89] Training materials elaborate on this point:

[86] SSA, Childhood Questions and Answers ("QA Compendium"), at § IV-1 (May 11, 2001).

[87] QA Compendium at § IV-5.

[88] 20 C.F.R. § 416.924a(b)(5).

[89] 20 C.F.R. § 416.924a(b)(5)(i).

The key word is "extra." As with every other aspect of these rules, the guidance on "extra help" is based on comparing a child's functioning to that of children of the same age who do not have impairments. In other words, we consider the help a child needs to be "extra" only to the extent that it is more help than a child of the same age without an impairment

would be expected to need ....

The “extra help” rule is one of several factors we stress in these regulations to help you consider the big picture of a child’s functioning. The point is that a child who is “able” to function may need so much assistance in doing so that the need indicates a limitation. Both the extent of extra help and the response to it are important factors to consider. If the assistance required is significant, this may indicate the presence of a marked or extreme limitation.

A real life example that we used in the 1998 training concerned a 9-year-old who had in the past injured himself, his classmates, and his family. To prevent more such behavior, this child required “wraparound” services; i.e., a person who stayed with him most of the time to make sure he didn’t do any further harm. Because the child hadn’t injured anybody recently, the adjudicator did not establish an extreme limitation. But when you step back and consider the extraordinary help the child needed to keep him from injuring himself or someone else, it should be evident that the child had a very serious (i.e., extreme) limitation.

In making the disability determination or decision, you are required to assess how a child would function without the extra help.[90]

b. Adaptations

SSA decision makers must also consider the nature and extent of any adaptations that a child uses to function. Adaptations include assistive devices or appliances and range from eyeglasses and hearing aids to orthotic devices to devices for self-care activities such as bathing, feeding, toileting, and dressing. In deciding disability, SSA decision makers must consider the degree to which the adaptation enables the child to function compared to other children of the same age who do not have impairments; the child’s ability to use the adaptation on a sustained basis; and any functional limitations that nevertheless persist.[91] However, unlike

with extra help and structured or supportive settings, SSA will not consider how a child functions without adaptations. Instead, the focus is on how the child functions with any adaptations, including limitations caused or exacerbated by the adaptation.

c. Structured or Supportive Settings

[90] QA Compendium at § IV-2.

Health & Dis[91] 20 C.F.R. § 416.924a(b)(5)(iii).

A child with a serious impairment(s) may spend some or all of his or her time in a structured or supportive setting beyond what a child without such an impairment(s) normally requires. SSA decision makers must consider how that child would function outside of the structured or supportive setting.

The final regulations define a “structured or supportive setting” as any of the following:

- the child’s home in which family members or other people (e.g., visiting nurses or home health workers) make adjustments to accommodate the child’s impairment(s);
- the child’s classroom at school, whether it is a regular classroom in which the child is accommodated or a special classroom; and
- a residential facility or school where the child lives for a period of time.[92]

The final regulations point out that such a structured or supportive setting may minimize signs and symptoms of the child’s impairment(s) and help to improve his or her functioning while he or she is in it, even though the child’s signs, symptoms, and functional limitations might worsen outside

this type of setting. As a result, SSA considers the child's need for a structured setting, and the degree of limitation in functioning that the child has or would have outside the structured setting.

In addition, a child may have activities structured in such a way as to minimize stress and reduce the symptoms or signs of the child's impairment(s). The child may continue to have persistent pain, fatigue, decreased energy, or other symptoms or signs, although at a lesser level of severity. SSA must consider whether such a child is more limited in functioning than symptoms and signs would indicate.

[92] 20 C.F.R. § 416.924a(b)(5)(iv)(B).

Therefore, if a child's symptoms or signs are controlled or reduced in a structured setting, SSA must consider how the child would function without that structure or support and compare that to how a child of the same age without such impairments would function. SSA's training materials state that obligation as follows:

Q: Why am I required to consider how a child would function outside a structured or supportive setting?

A: All children require structure and support, but children with impairments may require more structure and support to function than children of the same age without impairments. A child with an impairment(s) may be able to perform activities that are typical for his or age group only because he or she gets high levels of personal attention, support, monitoring, or discipline in a structured or supportive setting.

You must compare the child's functioning to that of children who do not have impairments, and children without impairments function *without* the sorts of unusual structure and support described above. Therefore, to properly evaluate a child's functioning you must know how she or he functions, or would function, outside of such settings ....

For example, a child in special education classes may function well in that context, but you must assess how the child functions, or would function, in ordinary settings in a mainstream classroom. A child with serious behavior problems may function will within a structured setting, but the behavior may not be controlled outside of such a setting. This may indicate the presence of limitations in one or more domains although the child does not show those limitations (or does not show them to their full degree) because of the structured classroom setting.

In making the disability determination or decision, we are required to assess how a child would function without the structured or supportive setting and use those findings to assess whether the child's limitations are marked or extreme.[93]

SSA's training materials add that if there is no "outside" information on how a child would function outside of a structured setting because the child is always in a structured setting, "that fact alone tells us that the child is probably quite limited."[94]

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