

# SSI Transfer Penalty: Walk Through a Case

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About Community Legal Aid Society

Community Legal Aid Society, Inc. (CLASI) is a statewide, nonprofit law firm in Delaware whose mission is to combat injustice through creative and persistent advocacy on behalf of vulnerable and underserved Delawareans. CLASI is also Delaware's designated Protection and Advocacy agency for individuals with disabilities.

# About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBT individuals, and people with limited English proficiency.

# What We'll Cover

- SSI Transfer Penalty Overview
- Exceptions to the Transfer Penalty
- Scenario 1: Maria Batista
- Scenario 2: Adam Watkins
- Practice Tips

# Transfer Penalty Overview

# Supplemental Security Income

- Administered by the Social Security Administration (SSA)
- Needs-based, “means-tested” program
  - Limited income and resources
- Basic-needs level income for seniors (65+ years) or people with disabilities
- Title XVI of the Social Security Act



# Resources

## SSI Resource Limit

- At or under \$2,000 for an individual
- At or under \$3,000 for a couple

20 C.F.R. §416.1105

POMS SI 01110.000

# Excluded Resources

- Home the recipient owns and lives in
- One vehicle
- Household furnishings and personal property
- Burial funds/Irrevocable burial contracts/Burial plot
- Life insurance policies (up to \$1,500 cash surrender value)

POMS SI 01110.210

# Past NCLER Resources

- [Webinar: Legal Basics: SSI Resources](#)
- [Chapter Summary: Legal Basics: SSI Resources](#)

# Transfer Penalty

- Transfer penalty applies when SSI applicant or recipient transfers a **non-excluded resource** to another person for less than fair market value
  - **Transfer of cash counts**
- Transfer period: Transfer occurring any time in the prior **36 months**

POMS SI 01150.001 et seq.

# Transfer Penalty Cont.

- Consequence: Ineligibility for up to 36 months, depending on the value of the transfer
  - Period of ineligibility is calculated by dividing uncompensated value of resource by monthly federal benefit rate (FBR) applicable to the individual. Rounded down result is number of months the individual is ineligible.

20 C.F.R. §416.1246

POMS SI 01150.110 - .111

# Exceptions to the Transfer Penalty

# Exceptions

- Transfer to a Trust
- Transfer of a Home
- Non-Home Transfer to Certain Family Members
- Resource Returned
- Transfer for Purpose Other Than to Obtain SSI
- Undue Hardship

POMS SI 01150.120 – 01150.126

# Transfer to a Trust

- Special needs trust for blind/disabled individual under age 65, including claimant/recipient
- Special needs trust for blind/disabled child of any age

POMS SI 01150.121



# Transfer of Home

- Spouse
- Child under 21
- Blind/disabled child of any age
- Sibling with ownership interest residing in home for at least 1 year prior to transferor's institutionalization
- Child residing in home for at least 2 years prior to transferor's institutionalization, providing care

POMS SI 01150.122

# Non-Home Transfer

- Spouse
- Blind/disabled child

POMS SI 01150.123

# Resource Returned

- Must reacquire same percentage ownership interest
- Returned in same month; returned in subsequent month

POMS SI 01150.124

# For Purpose Other Than to Obtain SSI

- Rebuttable presumption that transfer made to keep or obtain SSI eligibility
- Must present “convincing evidence”

POMS SI 01150.125

# Undue Hardship

- Failure to receive SSI would result in the loss of food or shelter; and
- Available funds (income and liquid resources) do not exceed monthly benefit amount.

POMS SI 01150.126

# Scenario 1: Maria Batista

# Maria Batista

- 70 years old, receiving SSI for 5 years
- Bought house with son Luis 20 years ago, as “joint tenants”
- Thought of herself as lending her credit history to enable Luis to buy house
- Luis has always paid mortgage, other expenses
- Maria currently renting apartment in senior building

# Maria Batista Cont.

- July 8, 2019 Notice of Planned Action, suspending SSI benefits for being over resource limit
- July 10<sup>th</sup> Notice of Overpayment for \$16,340
- Executes Quitclaim deed
- August 26<sup>th</sup> Notice – ineligible for SSI for 36 months due to transfer penalty
- September 5<sup>th</sup> – comes to your office



# Scenario 2: Adam Watkins

# Adam Watkins

- Receiving SSI for several years
- Early 2019: personal injury settlement of \$5,000
- Spent \$1,000 on self
- Gave \$3,500 to relatives
- No receipts
- Notice of Planned Action suspending SSI benefits for being over resource limit

# Practice Tips

- Often present initially as resource limit problem
- 12 months of suspension → termination
- SSA incorrectly imposes penalty for transfer of excluded resource
- Challenge valuations
- Joint bank accounts – rebuttable presumption
  - [NCLER Practice Tip](#)

# Spending Down

- Spending down to mitigate potential period of ineligibility due to being over resource limit without triggering transfer penalty
- Funds must be spent on the needs of SSI recipient
- Keep records re: any purchase made to show fair market value received

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# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).