

SSI Transfer Penalty: Walk Through a Case

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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, LGBTQ individuals, and people with limited English proficiency.

Community Legal Aid Society, Inc.

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.

Introduction

Enacted under Title XVI of the Social Security Act, Supplemental Security Income (SSI) is a federal means-tested program administered by the Social Security Administration (SSA), that provides modest financial assistance for people who are unable to work enough to meet their basic needs, including seniors and people with disabilities. It provides cash assistance to people who are at least 65 years old, blind, or meet the Social Security standard of disability, and have very low income and limited assets. Eligibility for SSI depends, in part, on an individual or couple having countable resources that are no more than the resource limit of \$2,000 for an individual or \$3,000 for an eligible couple. In addition to stringent income and resource limits, there are other restrictions that involve citizenship, residence, and institutionalization that are not covered here.

There are a number of excluded resources that do not count toward the SSI resource limit.¹ Some of the key resource exclusions include:

- **Home:** the home in which the SSI recipient resides (or has temporarily left but intends to return) and all contiguous land are excluded, regardless of value.²
- **Automobile:** one automobile is excluded regardless of value.³
- **Personal or Household Goods:** there is no limit on value.⁴
- **Burial Funds and Burial Contracts:** burial funds can go up to \$1,500 and must be separately identified and set aside. If a pre-paid burial contract cannot be revoked and cannot be sold without significant hardship, it is not a resource.⁵

1 20 CFR §§416.1203-416.1204, 416.1210-416.1239, 416.1245, and 416.1247; POMS SI 01110.210 (secure.ssa.gov/apps10/poms.nsf/lnx/0501110210), Dec. 15, 2008.

2 POMS SI 01130.100 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130100) Feb. 12, 2010.

3 POMS SI 01130.200 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130200) May 31, 2018.

4 POMS SI 01130.430 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130430) Dec. 13, 2013.

5 POMS SI 01130.410 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130410) Nov. 14, 2013; POMS SI 01130.420 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130420) June 17, 2011.

- **Burial Plot:** a burial plot is excluded regardless of value. This is in addition to burial funds.⁶
- **Life Insurance:** all life insurance policies can have up to \$1,500 combined face value. This exclusion can be used in place of but not in addition to the burial funds. The resource value of a life insurance policy is its cash surrender value, not its face value. Term life insurance policies may or may not have a cash surrender value; whole life insurance policies always have a cash surrender value.⁷
- **Jointly Owned Property:** when the co-owner refuses to sell the property in question, and the sale would cause undue hardship to the co-owner because of loss of housing, jointly owned property is excluded.⁸
- **Past-Due Social Security and SSI Payments:** these payments are excluded from resources for nine months following the month of receipt.⁹
- **Earned Income Tax Credit and Child Tax Credit:** these payments are excluded from resources for twelve months following the month of receipt.¹⁰

SSI Resource Transfer Penalty

An SSI applicant or recipient who transfers a non-excluded resource to another person for less than fair market value could become ineligible for SSI benefits for up to 36 months. Individuals cannot simply transfer countable resources to gain eligibility for SSI. A common problem occurs when SSI recipients are notified by SSA that their benefits will be suspended because they are over the resource limit, but are told nothing about the transfer penalty. The recipients then give away the excess resource(s) under the impression this will help them retain their SSI benefits. Instead, when they return to SSA and explain that they have disposed of the resource by giving it away, they then learn they will continue to be ineligible for an extended period because of the transfer penalty.

The SSI transfer penalty only applies when an individual transfers a non-excluded, or countable, resource to another person for less than fair market value. If an individual transfers or otherwise disposes of a resource for fair market value, they are not subject to the resource transfer penalty. However, other SSI income and resource rules may affect eligibility.

Given the low resource limits, when individuals have or obtain new resources, such as a second car, an inheritance, or a personal injury settlement, a natural instinct may be to disclaim or give away the resource so as not to risk going over the resource limit and losing SSI eligibility. Disclaiming an available resource is considered the same as transferring that resource for less than fair market value and can lead to a period of ineligibility of up to 36 months depending upon the value of the resource that has been disavowed.¹¹ An individual making a gift of cash is also considered to be transferring a resource and will incur a period of ineligibility if the amount transferred when added to the individual's other resources exceeds the resource limit.

The period of ineligibility is calculated by dividing the uncompensated value of the resource (i.e., the difference between the equity the individual has in the resource and what the individual actually received) by the full monthly benefit rate applicable to the individual. If the SSI payment includes a federally administered supplement, that amount is also included. The rounded down result gives the number of months for which the individual is ineligible. The period of ineligibility begins the first of the month following the transfer.

6 POMS SI 01130.400 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130400) July 20, 2009.

7 POMS SI 01130.300 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130300) Nov. 14, 2013.

8 POMS SI 01130.130 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130130) Dec. 21, 2012.

9 POMS SI 01130.600 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130600) May 31, 2009.

10 POMS SI 01130.676 (secure.ssa.gov/apps10/poms.nsf/lnx/0501130676) August 11, 2014.

11 20 CFR §416.1246; POMS SI 01150.110 (secure.ssa.gov/apps10/poms.nsf/lnx/0501150110), Oct. 30, 2008, and POMS SI 01150.111 (secure.ssa.gov/apps10/poms.nsf/lnx/0501150111) May 6, 2011.

For individuals applying for SSI, SSA will look at the 36-month period prior to application to determine if any resource transfers for less than fair market value took place. Therefore, it is important that anyone considering applying for SSI, or anyone receiving SSI, be aware of this penalty. Anything that fits within the definition of a non-excluded SSI resource counts for purposes of the transfer penalty.

PRACTICE TIP

These cases do not always appear to be uncompensated transfer cases at first. For example, an individual may seek your help because they have received a suspension or termination notice from SSA on the basis that a resource (e.g. property, bank account, settlement, etc.) puts them over the resource limit. However, when meeting with you, they inform you that they received that resource 18 months ago and promptly disposed of it by giving to their relative. SSA is unaware that they made that transfer. Because SSA was unaware of the resource until recently, the actual suspension/termination just occurred.

Exceptions to the Resource Transfer Penalty

There are exceptions to the imposition of the resource transfer penalty.¹² Here are some of the exceptions:

- **Undue Hardship**
 - » This exception applies where failure to receive SSI would result in loss of food or shelter, and the individual's total available funds do not exceed the applicable monthly payment rate for the individual's living arrangement.¹³
- **Non-Home Transfers to Certain Family Members**
 - » The penalty does not apply if a non-home resource was transferred to a spouse or to a child of any age who is blind or disabled.¹⁴
- **All Resources Returned**
 - » If the resource is returned, the transfer penalty will not be imposed, even for the period prior to the return of the resource. However, the individual will likely be ineligible for being over the resource limit.¹⁵
- **Transfers for a Purpose Other Than to Obtain SSI**
 - » The presumption that a transfer is for the purpose of obtaining SSI can be overcome only by convincing evidence that the transfer was exclusively for another purpose.¹⁶
- **Transfer of a Resource that Would Have Been Excludable in the Month of the Transfer**
 - » This exception allows for transfer of the home as long as the individual was residing there at the time of transfer, and the property is transferred to certain family members.¹⁷
- **Transfer of a Small Amount**
 - » This exception applies if the transferred amount, when combined with other resources, is less than the \$2,000 (\$3,000 for a couple) resource limit.¹⁸

12 POMS SI 01150.120 (secure.ssa.gov/apps10/poms.nsf/lrx/0501150120) August 23, 2000.

13 POMS SI 01150.126 (secure.ssa.gov/apps10/poms.nsf/lrx/0501150126) July 20, 2009.

14 POMS SI 01150.123 (secure.ssa.gov/apps10/poms.nsf/lrx/0501150123) Dec. 24, 2013.

15 POMS SI 01150.124 (secure.ssa.gov/apps10/poms.nsf/lrx/0501150124) Dec. 24, 2013.

16 POMS SI 01150.125 (secure.ssa.gov/apps10/poms.nsf/lrx/0501150125) Dec. 24, 2013.

17 POMS SI 01150.122 (secure.ssa.gov/apps10/poms.nsf/lrx/0501150122) Dec. 24, 2013.

18 POMS SI 01150.125.F (secure.ssa.gov/apps10/poms.nsf/lrx/0501150125) Dec. 24, 2013.

SCENARIO 1: MARIA BATISTA

In 1999, when Maria Batista was 50 years old, she and her son, Luis, bought a house together as joint tenants, with both parties on the deed and mortgage. Luis provided the funds for the down payment and Maria never paid the mortgage or other expenses for the house, and never thought of it in practical terms as hers—she considered herself to be lending her credit history so her son could buy a home.

They lived there together until Luis got married; then he and his new wife bought a new house together. Maria lived in the first house alone for one year, paying money each month to Luis to cover the expenses for the house. Then she had a major heart attack and moved in with Luis and his wife for a few years, but did not apply for SSI. When they had their second child, Maria moved into an apartment building for low-income seniors. Luis continued to rent out the house they owned jointly, keeping the income and paying the mortgage, insurance, property taxes, and other expenses for the house.

After she turned 65 in 2015, Maria applied for SSI benefits. After learning about the house through a real property data match, SSA issued a notice of planned action suspending Maria's SSI benefits for being over the resource limit on July 8, 2019. They also issued a notice of overpayment for \$16,340 on July 10, 2019. Maria went in to the local SSA office where they told her about how they discovered the house. Maria then quitclaimed her interest in the home to her son, thinking this would solve the problem. When Maria brought the quitclaim deed to SSA, they then issued a notice on August 26, 2019 stating she would be ineligible for SSI for three years because of the transfer penalty. She comes into your office on September 5, 2019. She is now 70 years old, in poor health, and has no other source of income.

- *What do you need to know to determine if the transfer of the property to Luis fits an exception to the penalty rule?*
 - » You would want to know if Luis is disabled. Otherwise, you would be limited to the undue hardship exception. The process for determining whether Luis would be considered “disabled” is the same as an initial application to SSA for disability benefits.
- *Is there a possible argument to explore that Maria does not have actual ownership of the house, and thus it should never have been considered her resource?*
 - » This would depend on state law, and whether there is any way to rebut ownership of real property even if an individual's name is listed on the deed. SSA has a procedure for SSI applicants and recipients to rebut the presumption that they have access to funds in a jointly owned bank account,¹⁹ but no procedure to rebut the presumption that they jointly own real property when they are listed on a deed.
- *Would it change anything if the house in question was located in a different country?*
 - » While the location of the property in another country may significantly complicate documentation, it does not change how the property is counted as a resource or the transfer penalty.

SCENARIO 2: ADAM WATKINS

Adam Watkins has been on SSI for several years because of his severe mental and physical problems. In early 2019, he received a small personal injury settlement of \$5,000. After receiving the funds, he spent approximately \$1,000 on personal items, furniture, and a trip to Atlantic City. He also gave about \$3,500 of the remaining money away to relatives who had helped him over the years. He has no receipts. He is seeking help because he just received a notice of planned action from SSA that his SSI benefits will be

¹⁹ 20 CFR § 416.1208(c)(4); POMS SI 01140.205 (secure.ssa.gov/poms.nsf/lnx/0501140205) Dec. 16, 2013.

suspended because he is over the resource limit. Mr. Watkins lives in rental housing and his monthly rent plus utilities is \$500. He has a bank account with \$500 in it.

- ***What if the money had been received in early 2018?***
 - » If Mr. Watkins received the settlement and spent the money in early 2018, this date would implicate the 12 month rule and heighten the importance of appealing.
- ***What if Mr. Watkins lives with relatives?***
 - » If Mr. Watkins were living with relatives, it would make proving undue hardship significantly more difficult. SSA does deny undue hardship claims on the basis that those living with relatives may not face loss of shelter.
- ***How do you document the money given to relatives?***
 - » There is no set method for documenting what an individual did with the money. You could use declarations or statements set out on Form SSA-795 to provide information about the money given to relatives.

Related Issues

- **The 12-month rule:** If the suspension of SSI benefits lasts for more than 12 months, the individual will be terminated from the SSI program and will have to re-apply. This rule is important, especially in re-establishing eligibility for individuals who receive SSI based on disability rather than age, as they will have to go through the disability determination process all over again. Therefore, if the transfer of asset penalty is for more than 12 months, the individual will be faced with having to re-prove disability and not simply show that the penalty period has ended. There are certain narrow exceptions to the 12 month rule, including if an appeal of the suspension/termination is pending at any level of the appeals process. Note that the 12 months begins with the date of ineligibility, which can be retroactive from the date of the notice.²⁰
- **Excluded resources:** Note that although excluded resources (i.e., the first automobile) should not count as a resource for purposes of the transfer penalty, some advocates have indicated that SSA may nevertheless attempt to count such resources and impose the transfer penalty. In such cases, one of the exceptions above may also apply to the resource, thereby allowing it to be excluded anyway. If SSA counts a resource for purposes of the transfer penalty, depending on the facts of the specific case, advocates may consider appealing the decision with SSA, or may decide with their client that it is more prudent to simply have the resource returned or get the fair market value for it.
- **Challenge valuations:** Do not assume SSA has correctly determined the equity value of the claimant's interest, especially with regard to real estate. Do not forget about liens or encumbrances on real property when calculating an individual's equity in the property. You may need to get your own appraisals done to challenge SSA's valuation. On many occasions, clients have zero or negative equity in the asset.
- **Joint bank accounts:** Individuals frequently have their names on bank accounts without understanding the ramifications for their SSI benefits. They do not understand that having their name on the account means that SSA will count the funds in the account against them, even if they do not subjectively believe that the money is theirs. While SSA presumes that all individuals on an account own the funds in a joint bank account, there are ways to rebut this presumption if the individual did not actually contribute funds to the account and if the funds are not used to benefit them. These provisions allow a claimant to rebut the presumption that they own the funds in a joint account.²¹

20 POMS SI 02301.205 (secure.ssa.gov/poms.nsf/lnx/0502301205) July 22, 2008.

21 POMS SI 01140.205 (secure.ssa.gov/apps10/poms.nsf/lnx/0501140205) Dec. 16, 2013.

- **Spending down:** Remember that the transfer penalty does not apply when individuals spend money on goods and services (at fair market value) for their own needs.²² Spending down cash can be a valid transfer of resources and may be a way for individuals to retain eligibility while purchasing items and/or services they need. Generally, when individuals purchases items or services, they receive fair market value in return for the cash. In this situation, the transfer penalty does not apply. Individuals should keep records to demonstrate they paid the fair market value for items and services.

How an individual spends this money is not relevant for SSA purposes. Taking a trip, for example, is permissible. The biggest problem most individuals face is documentation of the expenditure. While receipts are obviously preferred, do not let the absence of such documentation deter you from putting together information that explains how the funds were expended.

Additional Resources

- Regulations
 - » 20 C.F.R. § 416.1246
- Program Operations Manual System (POMS)
 - » SI 01150.001 – SI 01150.150
- NCLER trainings:
 - » [Legal Basics: Supplemental Security Income](#)
 - » [Legal Basics: Supplemental Security Income Resources](#)
 - » [Supplemental Security Income \(SSI\) for Older Adults: Post Eligibility Tips](#)

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

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22 POMS SI 01150.007 (secure.ssa.gov/apps10/poms.nsf/lnx/0501150007) Feb. 24, 2012.