SSI Resource Transfer Penalty

NATIONAL CENTER ON LAW & ELDER RIGHTS

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Background

Enacted under Title XVI of the Social Security Act, Supplemental Security Income (SSI) is a supplemental program to the Social Security system that provides modest financial assistance for people who are unable to work enough to meet their basic needs, including older adults with low or no Social Security or pension income, and younger people with significant disabilities. 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.

There are a number of excluded resources that do not count toward the SSI resource limit.[1] 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.

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.[2] 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.

What Advocates Need to Know to Help Clients

- **Recognizing a transfer penalty case**: These cases do not always appear to be a transfer penalty case at first blush. For example, a client who receives SSI may seek your help because they have received a suspension notice from Social Security Administration (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, the client informs you that they received that resource nine 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 just occurred.
- **Spending down:** Remember that the transfer penalty does not apply when an individual spends

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 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.

money on goods and services (at fair market value) for their own needs.[3] Spending down cash can be a valid transfer of resources and may be a way for SSI recipients to retain or restore eligibility while purchasing items and/or services they need. Generally, when individuals purchase items or services, they receive fair market value in return for the cash. In this situation, the transfer penalty does not apply. Individuals must 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. There is no set method for proving that funds have been expended. While receipts are obviously preferred, do not let the absence of such documentation deter you from putting together an explanation for how the funds were expended.

- **Excluded resources:** Note that although an excluded resource 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 to the transfer penalty may also apply to the resource, thereby allowing it to be excluded anyway.[4] 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.
- **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.[5]

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3 POMS SI 01150.007 (secure.ssa.gov/apps10/poms.nsf/lnx/0501150007) Feb. 24, 2012.
4 POMS SI 01150.120 (secure.ssa.gov/apps10/poms.nsf/lnx/0501150120) August 23, 2000.
5 POMS SI 02301.205 (secure.ssa.gov/poms.nsf/lnx/0502301205) July 22, 2008.