



Adult Disability Benefits

By Margaret Spaziani, Esq.

June 2017

The Social Security Administration's definition of disability for an adult is a physical or mental impairment that keeps a person from performing any "substantial" work and is expected to last 12 months or result in death. The definition for children is a physical or mental impairment that results in marked and severe functional limitations and is expected to last 12 months or result in death.

Both Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) use the same definition of disability. SSI is needs based. SSDI is entitlements based. Disability is determined through evaluation by a medical team based on medical records, other relevant records of the disability, functional assessments, and in some cases SSA authorized medical examinations.

Some differences between SSI and SSDI are income and resources. In connection with SSI, for 2017, income must be under \$766.25 to apply. For SSDI income must be under \$1,170. Resources are assessed for SSI and must fall under \$2,000. Resources are not assessed for SSDI. Moreover, SSI comes with Medicaid. SSDI comes with Medicare, 24 months after eligibility.

SSI can be paid to person over age 65 as well as to persons who meet the definition for disability or visual impairment, provided those persons are also income eligible. SSDI can be paid to blind/disabled workers who have paid Social Security taxes and their eligible dependents (minor children, widow(er), disabled adult children) as well as the disabled adult children of deceased or retired worker.

A common benefits scenario for a person with a lifelong disability consists of the person receiving SSI at age 18. Then an addition of or conversion to SSDI when a parent retires, dies or becomes permanently disabled with benefits based on the parent's work record. If the SSDI amount is higher than the SSI grant, the recipient will lose SSI and Medicaid. However there is a possible eligibility for county administered Medicaid program (NJ Care/ABD, Disabled Adult Child/DAC or NJ WorkAbility).

Medicaid Eligibility for SSDI Beneficiaries consists of NJ Care/ABD Medicaid (\$1,005-single, \$1,353-couple), NJ WorkAbility Medicaid (Ticket to Work),

For More Information Contact:

Timothy J. Dengler, Esq.
tdengler@ghclaw.com

Margaret A. Spaziani, Esq.
mspaziani@ghclaw.com

About Giordano, Halleran & Ciesla:

Giordano, Halleran & Ciesla is a multi-specialty law firm dedicated to providing sophisticated, complex legal services and solutions. The attorneys maintain personal relationships and gather in-depth knowledge of clients' businesses and industries to construct both sound legal advice and effective strategies to resolve business issues. With a focus on responsiveness and producing results with outstanding value to their clients' bottom line, the firm provides experienced legal representation in a wide variety of practice areas, including: Corporate and Business; Creditors' Rights and Bankruptcy; Environmental; Healthcare; Intellectual Property and Technology; Labor and Employment; Litigation; Real Estate, Land Use and Development; and Trusts and Estates.

DAC Medicaid (Disabled Adult Child) (lost SSI due to eligibility for SSDI on parent's record), Pickle Amendment (lost SSI due to SSDI COLA), 1619B Medicaid (lost SSI due to annual wages up to \$34,656 – 2017 threshold in NJ), Widow/Widower (lost SSI due to Widow benefit) and Waiver programs: \$2,205 monthly income (2017).

A person is considered "Dual Eligible" when they receive both SSI and SSDI and/or receive both Medicare and Medicaid. Medicaid is always the last payer to all other insurance coverage including Medicare and employer provided plans.

If a person is ineligible for DAC Medicaid because they started receiving SSDI benefits as a disabled child on a parent's record without having been on SSI first, usually because the parent died or retired before the child reached age 18, the Division of Developmental Disability (DDD) recognizes that person as a "non-DAC". Non-DACs were not terminated from DDD services when DDD started requiring Medicaid in 2013. Non-DACs are now likely to be Medicaid eligible under the Supports Program waiver income limits.

Medicaid Eligibility Countable Assets consist of cash, bank accounts, insurance policy value and bonds. NJ Care Medicaid allows up to \$4,000 in countable assets, NJ WorkAbility allows up to \$20,000 (IRA's exempt), DAC Medicaid and SSI Medicaid allows up to \$2,000, and Waiver Medicaid programs (including DDD Supports Program Waiver and Community Care Waiver) allows up to \$2,000.

Medicaid Exempt Assets include the following: Special needs trusts; ABLE accounts; CHOICES funeral trusts (irrevocable); IRA and 401K (exempt only for NJ WorkAbility Medicaid; Qualified income trusts (for MLTSS) and primary residence and vehicle.

If you are working then your work affects your SSI benefits. There is a formula used for deducting wages from SSI until your grant zeros out: \$20 of earned or unearned income and the first \$65 of earned income is disregarded, then \$1 for every \$2 in gross wages deducted from SSI grant. For an SSI student under age 22 that attends 12 hours/week or college 8 hours/week, the wage exclusion is \$1,790-/month and up to \$7,200/Year (2017 figures).

Like SSI, if you are working then your work affects your SSDI benefits. SSDI must stay below SGA (Substantial Gainful Activity) level of \$1,170/month (2017 non-blind figure) or eventually the individual will no longer be considered disabled and will be cut off. SSDI benefit will not be affected during a 9-month Trial Work Period when monthly earnings are \$840 or more in 2017. After the 9 month Trial Work Period months are used up, the benefit will be \$0 for every month when the SGA of \$1,170 is exceeded.

Employed disability beneficiaries should report wages periodically to Social Security to avoid situations of overpayments and underpayments.

For more information please contact our office or NJ WINS at 732-528-8080, X204. NJ WINS provides free benefits consultations to SSI and SSDI beneficiaries on how ages will affect disability benefits and will advise on use of relevant work incentives to decrease countable earnings.



GIORDANO, HALLERAN & CIESLA

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

125 Half Mile Road, Suite 300
Red Bank, NJ 07701
(732) 741-3900

441 East State Street
Trenton, NJ 08608
(609) 695-3900

One Gateway Center
Suite 2600
Newark, NJ 07012
(973) 353-8413

1250 Broadway, 36th Floor
New York, NY 10001
(646) 475-8065

The material provided in this newsletter is intended to be used as general information and should not replace the advice of your attorney.

ALL RIGHTS RESERVED © 2017
GIORDANO, HALLERAN & CIESLA, P.C.