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 populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.
Agenda

• What is Supplemental Security Income (SSI)?
• What counts as a resource for SSI?
• What are some common problems with resources for those applying for and receiving SSI?
• What is the transfer penalty?
• What are the exceptions to the transfer penalty?
• What are some practice tips for helping individuals with resource problems?
Supplemental Security Income (SSI)

What is the Supplemental Security Income program?
What counts as a resource for SSI?
Supplemental Security Income (SSI)

- Administered by the Social Security Administration (SSA)
- Needs-based, “means-tested” program
  - limited income and resources
- Seniors (65+ years) and people with disabilities
- Funded by general fund taxes
- Title XVI of the Social Security Act
Basic Eligibility

• **Specific Category**
  • Blind or disabled, or
  • aged 65 or older

• **Income/Resources**
  • Limited income, and
  • Limited resources

• **Status**
  • U.S. citizen, or in one of limited categories of immigrants
Resources

What is a resource?
“Anything available to use for support and maintenance”
Resources

Resource Limit (maximum allowed value of a person’s resources):

• At or under $2,000 for an individual
• At or under $3,000 for a couple
Excluded Resources

• Home SSI recipient lives in and the land it is on
• Household goods and personal property
• One vehicle
• Burial plot/irrevocable burial contract
• Burial funds and/or life insurance (up to $1,500)
• Retroactive SSA benefits up to 9 months after receipt
How and When Resources are Counted

• **How Resources are Counted**
  • Based on *equity* individual has in the resource

• **When Resources are Counted**
  • Once a month
  • At the beginning of the first day of the month following receipt
  • Resources held only in the middle of the month are not counted
Deeming of Resources

• Deeming: income or resources of person ineligible for SSI are considered to be available to the individual applying for or receiving SSI

• Deeming only applies to three relationships:
  • Spouse (living in same household)
  • Parent of child under 18 (living in same household)
  • Sponsor of certain sponsored immigrants
Common Problems

What are some common problems with resources for those applying for and receiving SSI?
Common Resource Problems

• **Some common resource problems:**
  - Property where the SSI recipient is not currently living
  - Court Awards and Lump Sum Settlements
  - Inheritances
  - Burial Funds and/or Life Insurance Policies

• **In some cases, the resource may be excluded**
Property where the SSI Recipient is not Currently Living

• Due to a variety of life circumstances, an SSI recipient may have an ownership interest in property where they are not currently living.
• Resource exclusion rules exempt certain excess real property
Excess Real Property Resource Exclusion: Loss of Housing for Co-Owner (1 of 3)

- Exclusion applies when the sale of excess real property would result in loss of housing for co-owner:
  - Where property is jointly owned by the individual and at least one other person,
  - One (or more) of the owners uses the property as their principal place of residence,
  - The other owner(s) would have to move if the property were sold; AND
  - No other readily available housing
Excess Real Property Resource Exclusion: Loss of Housing for Co-Owner (2 of 3)

Case Example:
George and Martha are married and live together in a house they co-own. George and Martha divorce, and George, an SSI recipient, leaves the household with no intent to return. Martha has no other place to live if they sell the house.

*Will George’s ownership interest in house be counted as a resource for SSI purposes?*
Will George’s ownership interest in house be counted as a resource for SSI purposes?

Although George has ownership interest in a house that he no longer lives in, it would impose an undue hardship on Martha if he sold the house. Therefore, the value of George’s interest in the house would not be counted as a resource as long as Martha lives there.
Court Awards and Lump Sum Settlements
(1 of 3)

• **Court Awards**
  • An award from a court, board of arbitration, or similar body is considered unearned income, then resource

• **Lump Sum Settlements**
  • General SSI rules pertaining to income and resources typically apply

**Note:** unearned income does not include expenses necessary to obtain the award or settlement (e.g. legal fees connected with an award or settlement are not counted).
Court Awards and Lump Sum Settlements (2 of 3)

Case Example:

Ms. Lee, an SSI recipient, received a lump sum settlement for $10,000 from a car accident claim into her bank account in March.

Ms. Lee’s bank records show resources over $2,000 on April 1, May 1, and June 1.

In mid-June, Ms. Lee spent down funds, bringing her under the $2,000 resource limit.

How will Ms. Lee’s SSI benefits be affected by receipt of the lump sum settlement from her car accident?
Court Awards and Lump Sum Settlements (3 of 3)

How will Ms. Lee’s SSI benefits be affected by receipt of the lump sum settlement from her car accident?

The lump sum settlement will be treated as income in March, and as a resource in April, May, and June, making Ms. Lee ineligible for SSI benefits for those months.

Assuming all other eligibility criteria met, Ms. Lee can become eligible again starting in July.
Inheritances

• Inheritance defined: cash, a right, or noncash item received as the result of someone’s death

• In general, SSI rules related to income and resources apply: inheritance is income in month of receipt, and a then a resource in all subsequent months, BUT...
Inheritances (cont.)

• ...declining to accept or disclaiming a right of inheritance is a transfer of a resources for less than fair market value and will result in a period of ineligibility under resource transfer penalty

• An ownership interest in an unprobated estate may be a resource if an individual:
  • Is an heir or relative of the deceased; or
  • Receives any income from the property; or
  • Under state intestacy laws, acquired rights in the property due to the death of the deceased
Burial Funds and/or Life Insurance Policies

• Generally, individual and/or spouse can set aside up to $1,500 per person in burial fund or life insurance policy

• Irrevocable Prepaid Contracts
Transfer Penalty

What is the transfer penalty?
Resource Transfer Penalty
(1 of 3)

• Resource transfer penalty only applies when individual transfers a non-excluded resource to another for less than fair market value
  • Transfer of cash also counts
• Transfer Period: transfer occurring any time in the prior 36 months
• Transfer Penalty: 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 benefit rate. Rounded down result is number of months the individual is ineligible.
Resource Transfer Penalty
(2 of 3)

• Individuals cannot transfer countable resources to gain eligibility for SSI

• Common problem:
  • SSI recipient is notified by SSA that their benefits will be suspended due to being over resource limit, but are not informed about resource transfer penalty
  • Recipient gives away excess resource(s) thinking it will help them retain SSI benefits
  • Instead, they will be continue to be ineligible for extended period of time because of the penalty
Resource Transfer Penalty (3 of 3)

Case Example:
In Dec 2017, Mr. Zep decided that he was no longer able to drive, so sold one of his two cars for $5,000. The car had FMV of $12,000.
In Jan 2018, Mr. Zep applied for SSI as an individual and is otherwise eligible for the full SSI monthly benefit of $750.

Transfer penalty applies:
- Uncompensated value of car: $7,000 ($12,000 - $5,000)
- Duration of penalty: 9 months ($7,000 ÷ $750 = 9.33)
- Mr. Zep’s period of ineligibility: Jan 2018 - Sept 2018
Spending Down

- Spending-down cash can be a valid transfer of resources that helps to mitigate potential period of ineligibility due to being over resource limit
- Important that any purchases made receive fair market value in return, and be for benefit of SSI recipient
- Keep records to document what money was spent
Exceptions

What are the exceptions to the transfer penalty?
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
Other Exceptions

• Transfer to a Trust
• Transfer of a Home
• Non-Home Transfer to Certain Family Members
• All Resources Returned
• Transfer for Purpose Other Than to Obtain SSI
Practice Tips

What are some practice tips for helping individuals with resource problems?
Tips to Avoid Problems

• Report changes in resources within 10 days after end of month in which change occurred.

• Ensure any resource transfer is well documented and that the individual receives fair market value.

• Gather all relevant documentation to show how money was spent down.
Tell Sympathetic Story

Important to have a compelling narrative that demonstrates individual is not trying to “game” the system.
Challenge Assumptions

• Do not assume SSA has correctly determined the value of the interest, especially with regard to real estate.
• Do not forget about liens/encumbrances on property.
• Get appraisals. On many occasions, individuals have zero or negative equity in the asset.
Retroactive Suspensions

• If SSI recipient is suspended for more than 12 months (including retroactive suspension), then terminated - has to start all over again and reapply.

• Not a big issue for individuals over 65; major issue for those who are receiving SSI based upon disability

• Example: Notice dated October 1, 2017, cut off retroactive to August 1, 2016, because SSI recipient has been over the resource limit back to that date.
Questions?

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