Top Ten "Must Know" Issues on Supplemental Security Income

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In my practice, it is very common to receive a call about a notice from the Social Security Administration ("SSA") concerning a reduction, elimination or other modification of Supplemental Security Income ("SSI") benefits. This is, of course, a troubling experience for the SSI beneficiary and the representative payee. In many cases, the reduction in benefits has been caused by an honest mistake or a misunderstanding of basic eligibility issues.

In an effort to shed some light on this subject for SSI beneficiaries and SSI representative payees, I've compiled what I consider to be the top ten basic things to understand in order to be in the best position to avoid an unnecessary reduction or elimination of SSI benefits. This is, of course, not an all-inclusive list. There is a myriad of facts and circumstances that can give rise to a reduction of benefits or a loss of eligibility. This is my top ten list of common issues to be aware of with regard to SSI eligibility.

1. Categorical eligibility. In order to receive SSI, you must be either 65 years or considered disabled. Categorical eligibility of disability is subject to review by SSA depending on the nature of the underlying physical or mental impairment. Monthly earnings which are in excess of a certain amount give rise to a presumption that the beneficiary is no longer disabled. In 2010, this monthly amount is $1,000 for non-blind, disabled beneficiaries. If there is a record of earned income in excess of $1,000, it is very likely SSI benefits will be discontinued because SSA will believe that the beneficiary is no longer considered disabled.

2. Financial eligibility - Income. Financial eligibility is based on low countable income and few countable resources. Income can be earned (e.g., wages and self-employment from work activity), unearned (e.g. gifts, trust distributions, certain government benefits, in-kind support and maintenance, food and shelter paid by others), and deemed income from parents to a minor child, or healthy or younger spouse to a disabled or elderly spouse. To the extent money can be used for the benefit of an SSI beneficiary without becoming income, this should be done. For example, money in a trust that pays for health club membership directly to the health club is not countable income for SSI financial eligibility. But if the money was given to the SSI beneficiary and she or he paid the health club directly, the money given directly to the SSI beneficiary would be countable income.

3. Financial eligibility – Resources Resources are all assets owned by the SSI beneficiary. Many resources are not counted – a home, a car, household goods and personal effects, and some special exceptions such as a pre-need burial contract. Generally, an SSI beneficiary may not have more than $2,000 in assets or $3,000 if a member of a married couple both of whom are eligible for SSI benefits. Any amount over the resource limit, however small, will result in financial ineligibility.

4. Monthly determinations of financial eligibility. SSA considers each month to be a separate eligibility period. It is not uncommon to go in and out of financial eligibility multiple times during a year due to fluctuations in the living situation, income, and variations in pay periods.

5. Regular Redeterminations. SSA staff conducts initial determinations of financial eligibility. Continuing financial eligibility is dependent on, in part, the obligation of SSI beneficiaries and/or representative payees to promptly report changes by the 10th day of the month following the month in which the change occurred. When this occurs, the benefits are adjusted in the third month.

6. Duty to report. The SSI beneficiary, or his or her Representative Payee, is under a continuing obligation to, in a timely manner, report changes that would in any way affect the claimant's continuing eligibility for benefits, or the amount of those benefits. Items to be immediately reported include: *a.* Moving or changing address; *b.* Anyone moving into or out of the SSI beneficiary's household; *c.* Changes in income or earnings of the SSI beneficiary, her or his spouse or her or his parents (if under age 18 years). *d.* Changes in resources of the household. *e.* Any in-kind support and maintenance assistance the SSI beneficiary begins to receive. *f.* Any income or gifts from friends or relatives. *g.* If the SSI beneficiary's spouse or anyone in the household dies. *h.* If the SSI beneficiary gets married, separated or divorced. *i.* If the SSI beneficiary changes his or her name. *j.* If the SSI beneficiary becomes eligible for other benefits or payments, whether or not they are received. *k.* If the SSI beneficiary enters or leaves an institution, such as a hospital, nursing home, prison or jail. *l.* If the SSI beneficiary no longer lives in the United States. *m.* If a warrant has been issued for the arrest of an SSI beneficiary for a crime or attempted crime that is punishable by imprisonment for one year or longer, that is a felony. *n.* Any changes in school attendance from SSI beneficiaries under age 22. *o.* Any changes in the immigration status of the SSI beneficiary. *p.* If the SSI beneficiary no longer is disabled and is capable of engaging in work, e.g. able to engage in substantial gainful activity. *q.* If the SSI beneficiary is unable to keep a scheduled appointment with SSA.

7. Failure to report. Unless there is a specific intent not to report changes to SSA, the failure to report will involve civil penalties. Usually this involves a loss of benefits and, in some situations, a repayment order for benefits paid during the months of ineligibility. Obviously the best way to avoid any kind of civil or criminal liability is to report the changes to SSA before it finds out about the changes on its own.

8. Co-mingling of assets. All jointly owned resources are considered fully available to the SSI beneficiary. So, for example, if a Representative Payee puts the SSI beneficiary's name on the Representative Payee's account, the FULL amount in the joint asset is considered owned by the SSI beneficiary. If this amount goes over the $2,000 limit applicable to an unmarried SSI beneficiary, financial eligibility will be lost.

9. Gifts from well-intentioned relatives. Any resource purchased in the name of an SSI beneficiary is considered a resource of the SSI beneficiary, even though the resource may not be in the possession of the SSI beneficiary. For example, if a well-meaning family member purchases a U.S. Savings Bond in the name of the SSI beneficiary but doesn't tell the SSI beneficiary or the Representative Payee, the U.S. Savings Bond is still a resource which affects SSI financial eligibility.

10. Appeal Rights. All SSI beneficiaries have appeal rights when SSI is reduced or eliminated. The SSA is required to give all SSI beneficiaries and their Representative Payee notice of these rights. The time to appeal varies depending on what is being appealed. Therefore, one must NOT ignore any notice of termination of SSI benefits. Failure to file an appeal in a timely manner can have result in an unnecessary termination of benefits or loss of challenging an incorrect decision by SSA.

As noted above, this list is not exhaustive. This list is, however, illustrative of the care that must be taken by SSI beneficiaries and Representative Payees in maintaining SSI eligibility. Detailed information on SSI and the duties of Representative Payees can be found at www.socialsecurity.gov.

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