



SSI and SSDI Basics

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Sources Of Law, Policy, & Procedure

- Most available online at www.socialsecurity.gov/regulations other materials at www.masslegalservices.org.
- **United States Code** (U.S.C.). Contains the federal statutes that created the SSI (42 U.S.C. §1381 et. seq.) and SSDI (42 U.S.C. §402 et. seq.) programs.
- **Code of Federal Regulations** (C.F.R.). Contains the federal regulations implementing the SSI (20 C.F.R. § 416 et seq.) and SSDI (20 C.F.R. § 404 et. seq.) programs.



Sources Of Law, Policy, & Procedure

- **Case law.** Decisions of the Federal District Courts, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court.
- **Social Security Rulings (SSR).** Statements of policy and interpretations adopted by SSA based on federal court and administrative decisions, policy statements, and opinions of SSA's Office of General Counsel. Rulings are published in the Federal Register and are binding on all components of SSA, although they do not have the force of law.
- **Acquiescence Rulings** explain how SSA will apply decisions of the U.S. Circuit Courts of Appeals that are at odds with SSA's national policies.

Sources Of Law, Policy, & Procedure



- **Program Operations Manual System (POMS)** provides guidelines for day-to-day operations in SSA's district offices and at Disability Determination Services (DDS). The POMS does not have the force of law and cannot be used where it conflicts with the statute or regulations.

<https://secure.ssa.gov/poms.nsf/Home?readform>

- **Hearings, Appeals and Litigation Law Manual (HALLEX)** is published by the SSA Office of Hearings and Appeals (OHA) to define procedures for carrying out policy and provide guidance for processing and adjudicating claims at the ALJ hearing, Appeals Council, and federal court levels.

https://www.ssa.gov/OP_Home/hallex/hallex.html



What is the Social Security Administration (SSA)?

- SSA is a federal agency that administers two cash benefit programs for elders and people with disabilities.
 - Social Security Insurance – Title II
 - 20 CFR 404.000 et seq.
 - Supplemental Security Income – Title XVI
 - 20 CFR 416.000 et seq.



SSA Components

- **SSA District Offices (DO) or Field Offices (FO)** - claims representatives take applications and appeals, make decisions on non-disability issues. 30 FOs in MA.
 - FO locator - <https://www.ssa.gov/locator/>
- **Disability Determination Services (DDS)** - state agency under contract with SSA - lay disability examiners and DDS doctors develop evidence and make the disability decision. MA DDS is part of Mass. Rehabilitation Commission (now known as MassAbility). 2 DDS locations in MA.
 - <https://www.mass.gov/info-details/determine-disability-benefits>



SSA Components

- **Office of Hearings Operations (OHO)** - Administrative Law Judges. Massachusetts OHOs: Boston, Lawrence, Springfield.
 - <https://www.ssa.gov/appeals/>
- **Appeals Council** – National – in VA.
- **10 Regional offices** which oversee the District Offices. Massachusetts is in Region I.
 - <https://www.ssa.gov/boston/MA.htm>

What is SSDI?

(Social Security Disability Insurance)



- SSDI is a Social Security **insurance** program that pays a monthly cash benefit to **adults** (18 & older) who are:
 - **Disabled** = same adult definition of disability as with SSI (for adults), AND
 - **Insured** = worked and earned Social Security credits by paying FICA taxes close to disability onset. For most adults, this means working for about 5 of the last 10 years before becoming disabled.
- SSDI is **not “needs-based** and has **no income or asset limits**.



Earning Credits to Become Insured for SSDI

- Earn 1 credit for \$1730 earned in 2024. (\$6920 earned = 4 credits.)
 - \$1810 p/quarter in 2025 (\$7240 max per year).
- Maximum of 4 credits/year.
- Must pay FICA taxes. No credits for “under the table” work.
- Special SSDI Rule for Young Adults:
 - adults under age 31 need fewer credits for insured status. 20 CFR 404. 130(c) & (d).



Social Security Insurance Benefits Overview

- Retirement Insurance Benefits (RIB) - insured workers at retirement age.
 - Full benefit at full retirement age (FRA)
 - Permanently reduced benefit for early retirement (between 62 and FRA)
- Dependents and Survivors benefits for certain close relatives of 1) insured deceased wage earners or 2) insured wage earners eligible for SSDI or RIB.

SSDI – Overview Benefit Amount



- Monthly benefit payment, called Primary Insurance Amount (PIA), is dependent on work and wage history and is unique to each worker. The maximum benefit in 2024 is \$3822/mo (average SSDI benefit is @\$1537).
- Dependent's benefits totaling up to approximately 50% of the worker's insurance payment will be paid to the eligible dependents. "Family Maximum" limits total payments.



SSDI – Overview

Continued

- Benefits are payable, after application is filed, beginning 5 months after the “onset date,” but not more than 1 year prior to the date of application.
 - ALS (only) is exempt from 5 month waiting period as of 7/23/2020.
- Since December 1, 1996, must have “lawful presence” status to receive SSDI. POMS RS 00204.000 *et seq*

SSDI – Overview

Medicare



- Medicare will provide health care coverage to retired workers upon retirement. Disabled beneficiaries will begin Medicare coverage in month 25 of SSDI eligibility.
- People with ALS or end stage renal disease do not have to wait for Medicare coverage.

What is SSI?

(Supplemental Security Income)



SSI is a “needs-based” benefit

- Categorical Eligibility
 - Aged (65 and older)
 - Blind children & adults
 - Disabled children & adults
- Low income – Countable income less than the maximum SSI payable to that individual.
- Low Resources – Countable resources of less than \$2000 for an individual and \$3000 for a married couple.



SSI Overview

Residence & Citizenship

- Resident of U.S. and state
- U.S. Citizen or
- Alien status requirements for benefits payable after December 1, 1996.
 - POMS SI 00502.100



SSI Benefit Overview

- Pays a monthly cash benefit depending upon the recipient's categorical status and living arrangement.
- The maximum monthly payment is set each January by the Social Security Administration
- **Benefit Amount** determined by deducting countable income from maximum payment for individual's category and living arrangement.

SSI - Overview

Continued

- Earliest possible payment date is the first of the month after the month of application.
 - 20 CFR 416.330 POMS SI 00601.009
- Medicaid (MassHealth) coverage is awarded automatically upon the award of disability and payment status.



SSI Benefit Amount

- The monthly Federal Benefit Rate (FBR) increases in January due to the annual COLA.
- The FBR in 2024 is \$943 for an eligible individual, \$1415 for an eligible couple.
 - \$967 and \$1450 in 2025.
- Massachusetts supplements the FBR.



State Supplement Program Payment (SSP)

- Effective April 1, 2012, Massachusetts switched from federal to state administration of its SSI state supplement.
- “SSI” now means the SSI Federal Benefit Rate (FBR)
- “SSP” refers to the state supplement.
- SSA’s COLA does not apply to the SSP



SSP, continued

- Applications still go through SSA.
- SSA determines FBR eligibility and sends notice with SSA appeal rights.
- SSA shares disability and financial eligibility with SSP.
- SSP program determines SSP eligibility and sends SSP appeal rights.



SSP, continued

- SSP will determine disability for those not financially eligible for the SSI FBR for a reason other than a Social Security Insurance benefit.
- Those eligible for FBR will receive 2 checks, one from SSA, one from SSP.
- Those eligible for SSP only will receive 1 check from SSP.



SSP, continued

- SSP regulations are at 106 CMR 327.010 – 327.090
 - <https://www.mass.gov/files/documents/2019/05/03/327.pdf>
- SSP customer Service Center, 877-863-1128
 - Website, www.mass.gov/hhs/ssp



SSI/SSP Maximum Amounts for 2024

- For the SSI/SSP maximum benefit amounts for Massachusetts in 2024, see Exhibit A of the outline, SSDI and SSI Benefits in your online materials.



SSI Basics – Income Eligibility

- Income = “anything you receive in cash or in kind that you can use to meet your needs for food and shelter.” 20 CFR 416.1100
 - Income generally **counted in month of receipt.**
 - Counted towards asset limit if retained in subsequent month.
 - 20 CFR 416.1207(d).



SSI Income vs SSI Resource Counting

- **Think of income twice for SSI purposes.**
- Consider funds received in a month under the income counting rules.
- Funds **not spent down** in the month of receipt go towards countable resources in subsequent months, unless specifically excepted from resource counting.



SSI Income Rules

- Types of Income:
 - Earned. From employment (favored)
 - Unearned. From other sources, e.g., SSDI, alimony, pension, unemployment worker's comp, inheritance.
 - Deemed. A portion of the income of a parent, spouse, or sponsor.
 - In-kind. food(not after 9/30/24), or shelter received at no or reduced cost, capped at $\frac{1}{3}$ FBR + \$20 (\$334.33 in 2024).

Examples of Income That Does **Not** Count



- Income tax refunds
- Loans (spent in month received)
- **3rd party payment directly to the vendor for other than food & shelter-related items.**
- Federal student assistance, including work-study and Pell grants
- EITC and Child Tax Credit payments
- 20 CFR 416.1103

Examples of Unearned Income



- Annuities, pensions, and other periodic payments, incl. SSDI and Unemployment
- Alimony, child support (1/3 excluded for kids under age 18)
- Dividends, interest
- Gifts, prizes
- Rental income
- Inheritances
- Deemed income
- 20 CFR 416.1121. Guide at POMS SI 00830.999

Unearned Income Exclusions



- Only a \$20 general exclusion is applied to total unearned income. 20 CFR 416.1124a
- Certain types of unearned income have their own exclusions:
 - Gross rental income may be reduced by expenses needed to earn it
 - Deemed income reduced by exclusions included in deeming formulas



Unearned Income Example

- Ana receives \$620 per month in SSDI. Is she potentially eligible for any SSI?
- Yes. If eligible for the maximum SSI payable on the basis of disability (\$943 in 2024), she'll receive \$343 in SSI.
 - Here's the math: $\$943$ (SSI FBR) - $\$600$ (countable SSDI) = $\$343$.
- She'll also receive \$114.39 from SSP.

Not All Unearned Income is Counted



- Examples:
- Free medical care and services
- Income used to replace a resource (e.g., insurance proceeds)
- Income tax refunds
- Proceeds of a loan
- 20 CFR 416.1124 See also POMS SI 00815.000.

More

Unearned Income Exclusions

- Replacement of income lost or stolen
- Federal or state housing subsidies, e.g., Section 8 voucher
- Mass. Veterans Services payments— POMS SI BOS 00830.175
- SNAP (Food Stamps)
 - SI 00830.099, Unearned Income Exclusion Guide, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500830099>



TAFDC and SSI

106 CMR 204.140, 204.250

- Mass.TAFDC doesn't count SSI as income and does not include the SSI recipient in the TAFDC grant size (neither the income nor the assets of the SSI recipient count.)
- SSI applicant must report receipt of TAFDC and SSI eligibility to DTA.
- SSA deducts the TAFDC increment for one person (about \$100 p/mo) until the SSI recipient is removed from the TAFDC assistance unit. POMS SI BOS 00830.405



EAEDC and SSI

- Massachusetts has an “interim assistance” agreement with SSA, permitting reimbursement from the retroactive SSI award for EAEDC received while the SSI application was pending.
- 20 CFR 416.1901-.1922, POMS SI 02003.000 *et seq*



In-Kind Support and Maintenance (ISM)

- In-kind income rules (ISM) reduce the SSI benefit when the recipient receives certain basic expenses free or at reduced cost from inside or outside the household. 20 CFR 416.1130.
 - **Prior to 9/30/24**, these expenses were included in in-kind income calculations –food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, garbage collection.
 - **Effective 9/30/24** food is not included in in-kind income calculations.



Recent Changes in In-Kind Income (ISM) Rules

- Effective 9.30.24 –
- Food eliminated from in-kind income calculations.
- SNAP added to definition of Public Assistance (PA) household.
- Definition of “business arrangement” for rent changed to an amount “at least 1/3 of SSI federal benefit rate plus \$20”. (\$324.33 in 2024)



Effect PA Household Definition Changes on ISM

- Changes to definition of Public Assistance (PA) Household (HH) effective 9/30/24:
 - SNAP added as a Public Income Maintenance (PIM) payment, and
 - Requirement that all HH members must receive a PIM changes to **at least one**.
- Where PA HH applies –
 - No inside ISM counting applies, and
 - Neither the PIM payments nor the income used to determine PIM eligibility is included in spousal or parent to child deeming.



Effect of ISM Changes on 1/3 Reduction Rule

- This rule, aka, Household of Another Living Arrangement, reduces the SSI FBR by 1/3.
 - Applies where the SSI recipient lives in another's household, does not have rental liability, and receives shelter and meals from within the household. 20 CFR 416.1131 - .1133.
 - Effective 9/30/24, it does not apply where the recipient does not receive **ALL meals** from within the household.
 - In-kind income reduction may still apply under the Presumed Maximum Value (PMV) rule for shelter.



Effect of Business Agreement Change on Rental ISM

- Where the 1/3 Reduction Rule does not apply, the Presumed Maximum Value (PMV) Rule may apply for shelter received free or at reduced cost. 20 CFR 416.1140-.1141.
- Pre 9/30/24, food and/or shelter related costs received free or below current market value were valued at the lesser of current market value or 1/3 of the SSI FBR plus \$20 (\$334.33 in 2024).
- Effective 9/30/24,
 - Food no longer counts as ISM, and
 - ISM does not apply to rent where the SSI recipient has rental liability and pays at least the value of the Presumed Maximum Value Rule (\$334.33).
 - **Caution**, SSA had not yet made clear as of this writing who has rental liability and the extent of the application of this change.

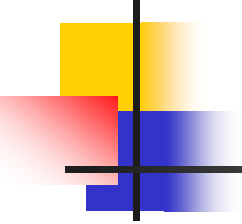


Earned Income

- Income from work is treated more favorably than unearned income.
- Earned income includes:
 - Wages
 - Net self employment income
 - In-kind payment (e.g., free rent for work)
 - Royalties and Honoraria
 - 20 CFR 416.1110

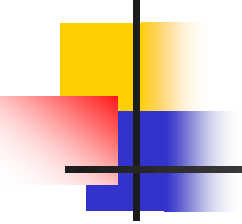
SSI and Work – Effect of Wages

- For SSI, gross monthly wages count when paid/received. 20 CFR 416.1111(a).
- To compute countable monthly wages, deduct \$65 plus $\frac{1}{2}$ of the remainder from gross monthly wages. 20 CFR 416.1112(c)(5) & (7).
- SSI recipients may also deduct the \$20 “general income disregard” from wages, if not used on “unearned” income. 20 CFR 416.1112(c)(4).
- **A good estimate of countable wages is $\frac{1}{2}$ of gross monthly wages.**



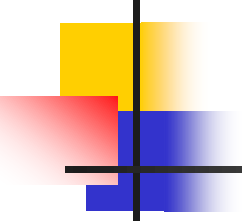
SSI and Work – Effect of Wages Example 1

- Carmen receives \$1057.39 in SSI (\$943) & SSP (\$114.39) disability benefits in 2024. She has no other income.
- She takes a job paying \$1085 in gross wages per month.
- What will be the effect on her SSI?
- What must Carmen do when she takes this job?



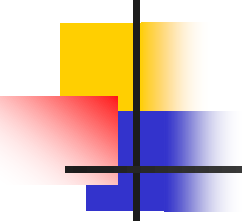
SSI and Work – Effect of Wages Example 1

- \$500 of Carmen's gross monthly wages is countable [$\$1085 - \85] divided by 2 = \$500].
- Carmen's SSI/SSP benefit will be \$557.39 ($\$943 - \$500 = \443 SSI + \$114.39 SSP) = \$557.39).
- Her total gross monthly income will be \$1642.39 ($\$1085 + \557.39).



SSI and Work – Effect of Wages Example 2

- Joe receives \$520 in SSDI and \$557.39 in SSI/SSP (\$443 SSI + \$114.39 SSP) benefits per month in 2024.
- He also takes a job paying \$1085 per month in gross wages.
- These wages make him SSI ineligible.
- See the math on next slide.



SSI and Work – Effect of Wages Example 2

- $\$520 \text{ SSDI} - \$20 = \$500 \text{ countable SSDI}$
- $\$1085 \text{ gross wages} - \$65 = \$1020$.
 $\$1020 \text{ divided by } 2 = \$510 \text{ countable wages.}$
- $\$500 + \$510 = \$1010$, more than the SSI/SSP ($\$557.39$) for which Joe was eligible.
- Now Joe's total gross monthly income is $\$1605$ ($\$520 + \1085).
- Joe likely remains eligible for MassHealth.
- Joe must consider the SSDI, as well as the SSI work incentives.



SSI Benefits and Work Self Employment Income

- SSA starts with **net** self employment to calculate the amount of SSI the individual would otherwise be eligible to receive.
- 20 CFR 416.110(b), 416.1111(6).



SSI Benefits and Work IRWE Deductions

- Impairment Related Work Expenses (IRWEs) may be deducted to determine countable gross monthly wages and countable net self-employment income.
20 CFR 416.1112
- IRWE deductions are in addition other permitted earned income deductions



SSI Benefits and Work IRWE Deductions

- IRWEs are:
 - impairment related items and services
 - needed in order to work
 - out of pocket, i.e., paid by the individual and not reimbursed by any source.
 - paid in a month when individual worked.
 - 20 CFR 416.976. POMS 10520.000.

IRWE Examples



- Attendant care services provided at work or at home to prepare for work.
- Transportation costs required by disability.
- Durable medical equipment.
- Service or support animal costs



IRWE Examples

- Residential modifications to permit access, if employed outside the home
- If self-employed, modifications to create an interior workspace
- Medications/treatment necessary to control a condition to permit work.
- Non-medical equipment where necessary to control a condition, e.g., air conditioner for respiratory condition.



SSI Benefits and Work BWE Deductions

- Blind Work Expense (BWE) deductions are available to SSI recipients eligible on the basis of blindness.
- BWEs are in addition to other permitted earned income deductions.
- 20 CFR 416.1112(c)(8). POMS SI 00820.535.



SSI Benefits and Work BWE Deductions

- Examples of BWEs (POMS SI 00820.555):
 - service animal expenses;
 - transportation to and from work;
 - taxes;
 - attendant care services;
 - visual aids;
 - translation of materials into Braille;
 - lunches;
 - professional association dues.

Work SSI and SSI Benefits

Student Earned Income Deduction



- The student earned income deduction is for SSI recipients who:
 - are under age 22, and
 - are regularly attending school.
 - 20 CFR 416.1112(c)(3). POMS SI 00820.510.

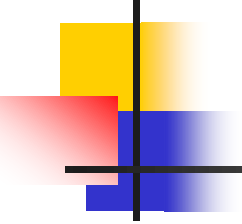
Work SSI and SSI Benefits

Student Earned Income Deduction



- Regularly attending school means:
 - For grades 7-12, attending at least 12 hrs per week;
 - For college or vocational program, attending at least 8 hrs per week.
- 20 CFR 416.1861.

SSI Benefits and Work Student Earned Income Deduction



- In 2024, the student earned income deduction is \$2290 p/mo, up to a max. of \$9230 p/calendar year.
 - \$2350 p/mo., \$9460 p/cal.yr in 2025.
- These amts indexed to the yearly COLA.
- This deduction is **in addition** to other permitted earned income deductions.



AmeriCorps, NCCC & CNCS Program Payments

Certain payments from the following programs may be excluded from SSI income counting:

- Americorps State and National
- Americorps NCCC
- Americorps VISTA
- University Year for Action
- Other National Community Service Programs
- See 20 CFR 416.1112(c)(10), 416.1124(b), POMS SI 00830.537, SI 00830.610 for the details.

Federal Educational Assistance



- All student financial assistance received under Title IV of the Higher Education Act of 1965, or under BIA Student Assistance Programs, is **excluded from income and resources, regardless of use.** Title IV programs include: Pell Grants; federal work study programs; Upward Bound, and others specified in **POMS SI 00830.455.**

Other Educational Assistance



- Any portion of a grant, scholarship, or fellowship used for paying tuition, fees, or other necessary education expenses is not countable income. 20 CFR 416.1124(c)(3).
- Any grant scholarship, fellowship, or gift for the cost of tuition or fees does not count as a resource for nine months. 20 CFR 416.1210(u), 416.1250.



Plan to Achieve Self-Support (PASS)

- Set aside income and resources to use to achieve an occupational goal.
- Occupational goal must be feasible.
- PASS must be in writing and include budget (& business plan if self-employment).
- If PASS is approved by SSA & followed, income and resources in PASS don't count for SSI. 20 CFR 416.1112(c)(9), 416.1210(f).



SSI Resource Eligibility

- SSI limits the amount of countable resources an SSI recipient can own.
- An individual recipient can hold only \$2000 in countable resources.
- A married couple can hold only \$3000 in countable resources.



Countable Resources

- A resource is cash on hand, other personal property, or real property that an individual:
 - owns or has an ownership interest in;
 - has the legal right to dispose of and convert to cash; and
 - is not legally restricted from using for support
- **Income remaining after the month received becomes a resource (unless the type of income involved is specifically excluded).**
- 20 C.F.R. 416.1201

Examples of Excluded Resources



- The home that the individual lives in.
- Household goods and personal effects.
- An automobile of any value if used for work or medical appointments/services.
- Retroactive SSI/SSDI for 9 months.
- Earned Income Tax Credit for 12 mos.
- Federal student aid, including work-study.
- PASS protected income and resources.

Examples of Excluded Resources



- Income producing property (PESS) (limited to \$6000)
- Whole life insurance (face value less than \$1500)
- Burial funds (up to \$1500)
- Burial spaces (unlimited value)
- ABLE Acct amts under \$100,000, POMS SI 01130.740
- See POMS SI 01130.050 Guide to excluded Resources.
<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130050>



Pandemic-Related Financial Assistance

- Certain pandemic related financial assistance is not counted as income or as a resource, including stimulus payments and unemployment benefits. See EM EM-20014 REV 9 (8/10/2023) and EM-21050 REV 5 (8/10/2023) linked below.
- <https://secure.ssa.gov/apps10/reference.nsf/links/08102023112858AM>
- <https://secure.ssa.gov/apps10/reference.nsf/links/08102023115021AM>



12 Month Exclusion - Certain Tax Refunds and Credits

- Effective for amounts received after 12/31/09, Federal Income Tax Refunds, EITC, CTC, Making Work Pay (MWP), First Time and Deemed First Time Homebuyers' Tax Credits are excluded from countable assets from for 12 months from the month of receipt, pursuant to the JCA (12/2010).
- Prior to this change, the exclusions were: 9 months for Federal Income Tax returns, EITC and CTC; 2 months for MWP; and no exclusion for First Time and Deemed First Time Homebuyers' Tax Credits.
- POMS SI 01130.676



Suspense v. Termination

- SSI ineligibility for a non-disability reason (e.g., income or resources) does not immediately result in eligibility termination; it results in suspense of benefits instead.
 - 20 CFR 416.1320 - .1336
- Suspense for 12 consecutive months results in termination. 20 CFR 416.1335
- The difference is that a termination requires a reapplication to regain eligibility.



Transfer Of Assets

- Any resource that is transferred for less than fair market value will result in a “transfer of assets penalty” causing ineligibility for a maximum of 36 months.
- POMS SI 01150.000 et seq.



Non-Citizen SSI Eligibility Criteria

- Prior to 8/26/96 PRUCOL (Permanently Residing Under Color of Law) was the standard. Now eligibility is much more limited.
- Eligibility depends on the immigrant's status and date of entry into the U.S. Three basic groups of aliens.



(1) Noncitizens Receiving SSI on 8/22/96

- All noncitizens who were "receiving" SSI on 8/22/96 are "grandfathered" into the SSI program, as long as they meet at least PRUCOL and remain otherwise eligible.
- POMS SI 00502.153, SI 00502.155.



(2) Noncitizens Who Entered Prior to 8/22/96

Eligible for SSI **IF** they:

- were "lawfully residing" on 8/22/96;
AND
- are now "qualified aliens;" **AND**
- are now "disabled" or blind (regardless of age)

POMS SI 00502.142.

Definition of "Qualified Aliens"

- **"QUALIFIED ALIENS"** include legal permanent residents (including Amerasians), asylees, refugees, persons granted withholding of deportation (now called cancellation of removal), Cuban/Haitian entrants, persons granted parole status for a period of at least 1 year, and battered spouses with a pending or approved spousal visa or petition for relief under VAWA and whose need for benefits has a substantial connection to the battering and who no longer live with their batterers.
- POMS SI 00502.100A.



Definition of “Lawfully Residing”

- **A U.S. Resident** = establishes residency in the U.S. with the intent to continue living within the geographic limits of the U.S., **AND**
- **“Lawfully Present”** = inspected & admitted to U.S. & no violation of terms of admission. Includes most legal *nonimmigrants*.

POMS SI 00502.142B.2



(3) Non-Citizens who Enter After 8/22/96

Must meet one of the following to be SSI eligible:

- LPRs, **BUT** only those with 40 quarters of coverage **AND** after 5 years in the U.S., POMS SI 00502.135; **OR**
- refugees, asylees and persons granted withholding of deportation, **BUT ONLY** for the **FIRST 7 YEARS** in those statuses, POMS SI 00502.130; **OR**
- honorably discharged veterans and active duty armed services personnel who are "qualified aliens" and their spouses and unmarried, dependent children. POMS SI 00502.140.



Public Charge Policy Changes

- Public charge changes were in place from 2/24/2020 – 3/9/2021 that increased the effect of receipt of public benefits on immigrants' eligibility for LPR status or to re-enter to the U.S. after an absence of 6 mos.
- These changes were rescinded effective 3/9/2021. The Public Charge policies what were put into place in 1999 are again effective.
 - For more info and to keep up with developments: <https://www.masslegalservices.org/publiccharge>



SSI and SSDI Reporting Responsibilities

- Benefit recipients have a duty to report any changes that might affect their benefit eligibility.
- Report no later than the 10th of the month after the month in which the change occurs.
- SSI recipients can report wages using telephone or mobile wage reporting.
- SSI & SSDI recipients can report wages through *my* Social Security portal at ssa.gov

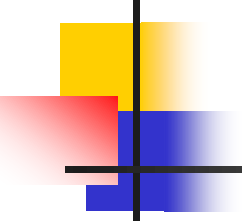
Adult Definition of Disability



- The inability to engage in any substantial gainful activity (SGA) by reason of medically determinable physical and/or mental impairment(s) which can be expected to last for a continuous period of not less than 12 months or result in death.
- 20 CFR 404.1505, 416.905

5-Step Sequential Analysis

20 CFR 404.1520, 416.920



- STEP 1. Is the applicant engaging in Substantial Gainful Activity (SGA)?
- STEP 2. Does the applicant have a severe impairment?
- STEP 3. Does the applicant suffer from an impairment which meets or equals the severity of a listed impairment?



5-Steps - Continued

- STEP 4. Does claimant have the residual functional capacity (RFC) to perform his/her past relevant work (work performed in the last 15 years)?
- STEP 5. Does the claimant have the RFC to perform any other work that exists in significant numbers in the national economy? Burden of proof shifts to SSA at step 5.



Step 1 - Substantial Gainful Activity (SGA)

- Substantial = perform significant physical or mental duties productive in nature.
- Gainful = work usually done for pay or profit, whether or not it's realized.
- Significant duties = have a degree of economic value. Work performed in one's own household tasks, and non-paying work on hobbies, training, school, clubs, social programs, etc. does not = SGA in and of itself.
- 20 CFR 404.1574-.1576, 416.974-.976



SGA (cont.)

- Look at **average gross** monthly earnings. If countable gross earnings go over threshold, SGA presumed. Part-time work can be SGA.
- The SGA threshold changes every year. In 2024 it's \$1550 gross/mo. Those eligible on the basis of disability (\$1620 in 2025.)
- The 2024 SGA threshold for those legally blind is \$2590. (\$2700 in 2025).
 - **Note:** there is no SGA test for blind SSI applicants at application.
- See POMS DI 10501.015 for prior SGA thresholds.
- If self-employed, look at net income after business deductions; value of work to business.



There's More to SGA than the SGA Numbers

- Unsuccessful Work Attempts (UWA) are not SGA. UWA if work stops or earnings go below SGA due to impairment or removal of special conditions within 6 months.
 - 20 CFR 404.1574(c), 416.974(c)
- Countable earnings may be reduced by:
 - Subsidies, 20 CFR 404.1574(a)(2), 416.974(a)(2),
 - Special conditions, 20 CFR 404.1573(c), 416.973(c), and
 - Impairment Related Work Expenses, 20 CFR 404.1576, 416.976.
- Pay not work performed, i.e., sick and/or vacation pay.
 - POMS DI 10505.010

Step 2 – Severity

20 CFR 404.1521-.1523, 416.921-.923

- Not severe = a slight abnormality that would have no more than a minimal effect on an individual's ability to work even if he or she were of advanced age, had minimal education, and limited work experience.
- *McDonald v. Sec'y HHS*, 795 F.2d 1118 (1st Cir. 1986). SSR 85-28, 96-3p.



Step 2 – Severity – cont'd

- “Severity” test is *de minimis* test
- All impairments must be considered in combination to determine whether the severity test is met – regardless of whether any impairment considered alone is severe.



Step 3 – Listing of Impairments

- 20 CFR Appendix 1 to Subpart P of Part 404.
- 14 body systems.
- Medical criteria described that presume functional limitations that preclude work.
- If medical documentation that impairments meet or equal these criteria, disability finding required. No vocational analysis.



Step 3 – Listing of Impairments – cont'd

- Medical listings serve to screen in the most severe impairments
- Medical criteria presume functional limitations that prevent work
- Medical documentation of the listed criteria = allowance, without individual consideration of functional limitations – except for mental impairments
- **Be sure to review the recently revised (1/17/17) mental impairment listings and helpful headnotes.**
- 20 CFR 404.1524 - .1526, 416.925 - .926



Step 3 - Proving Claimant Meets or Equals a Listing

- Medical records from acceptable medical source.
- Narrative letter or detailed, listing-based form from doctor. Conclusions must be supported by medical findings in records. Psychiatrist & therapist can co-sign.
- Send letter to doctor requesting letter, include copy of the listings for guidance. Follow up with phone call.

Step 4 – Evidence Issues

20 CFR 404.1560(b), 416.960(b), .965(a)

- Given medically determinable impairments, does claimant have the RFC (Residual Functional Capacity) to return to past relevant work (**PRW**)?
 - Work done at SGA level in the 5 yrs before onset of disability. (Prior to 9/30/24, it was 15 yrs.)
- Compare skill, strength requirements of past work with current RFC.
- Claimant has burden to prove. Don't forget this step at hearing, even if DDS determined that claimant could not do PRW.

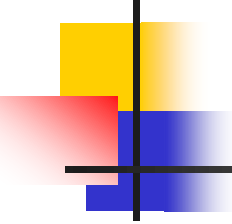


Step 4 - Continued

- PRW, whether part-time or full-time, must have been done at SGA level.
- Irrelevant that past work is now obsolete. *Barnhart v. Thomas*, 540 U.S. 20, 124 S.Ct. 376 (2003).
- If PRW done in a foreign country, the issue is whether claimant could perform the work as it was done there. Language issue, lack of U.S. equivalent irrelevant. SSR 82-40.

Residual Functional Capacity (RFC)

20 CFR 404.1545, 416.945



- Maximum ability to do sustained work-related physical and mental activities in a work setting, on a **regular and continuing basis**, despite limitations caused by their impairment(s) and related symptoms. See SSRs 96-8p, 96-9p.
- “Regular and continuing basis” means 8 hours/day 5 days/week or equivalent.
- Must consider total limiting effects of all impairments, even non-severe ones and all relevant evidence in the record. Based on medical evidence and other evidence re: functional limitations.



Physical RFC Components

20 CFR 404.1545(b), 416.945(b)

- Exertional limitations:
 - Standing, sitting, walking
 - Alternating sitting and standing
 - Lifting
 - Pushing, pulling

- Postural limitations
 - Balancing
 - Climbing
 - Stooping, bending, kneeling, crouching, crawling

Physical RFC Components – cont'd

- Manipulative limitations
 - Reaching
 - Handling (gross manipulation)
 - Fingering (fine manipulation)
 - Feeling (skin receptors)
- Visual limitations
- Communicative limitations
 - Speaking, hearing



Physical RFC Components – 20 CFR 404.1545(d), 416.945(d)

- Environmental limitations
 - Cold, heat
 - Wetness, humidity
 - Dust
 - Noise
 - Vibrations
 - Fumes, odors
 - Heights



Measuring Physical RFC

- Occasionally = can do very little, up to 1/3 of day (up to about 2 hours in 8-hr. day)
- Frequently = can do about 2/3 of day (about 6 hours in 8-hr. day)
- SSR 96-9p

Exertional Demands of Work



- Sedentary
- Light
- Medium
- Heavy
- 20 CFR 404.1567, 416.967



Physical Demands of Full Range of Sedentary Work

- Lifting no more than 10 pounds at a time and occasionally to lift or carry articles like docket files, ledgers, and small tools.
- Occasional walking and standing (no more than about 2 hours of an 8-hr. workday).
- Sitting about 6 hours of an 8-hour workday.
- 20 CFR 404.1567(a), 416.967(a)



Mental RFC Components

20 CFR 404.945(c), 416.945(c)

- Nonexertional Activities:
 - Concentrating
 - Remembering
 - Understanding
 - Carrying out simple instructions
 - Responding appropriately to supervision
 - Getting along with co-workers
- SSRs 85-15, 96-9p



Absenteeism and Time Off Task Considerations

- Will the claimant be absent beyond the employer's toleration?
- Will the claimant be 'off task' due to pain, medical treatment, mental health interference, outside of lunch periods and scheduled breaks?
- Will absenteeism and/or time off limit ability to perform work tasks on sustained basis as required by SSR 96-8p, 96-9p.

Absenteeism and Time Off Task Case Law



- Recent examples of case law on this topic –
- *Sacilowski v. Saul*, 959 F.3d 431 (1st Cir. 2020)
- *Conrad Kijakazi*, ---F.Supp.3d---, 2023 WL 2743306 (D.MA 2023)
- *Lopez-Lopez v. Colvin*, 138 F.Supp.3d 96 (D.MA 2015)



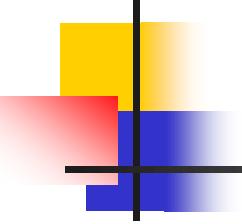
Step 5 Considerations

- Final step in the sequential analysis
- Considers whether the individual can perform other work in the economy
- SSA uses “Grids” for exertional impairments
- Individual analysis required for solely or significant non-exertional impairments.



Step 5 Factors

- Residual functional capacity (mental and physical, exertional and nonexertional)
- Age, 20 CFR 404.1563, 416.963
- Education, 20 CFR 404.1564, 416.964
- Past relevant work experience, 20CFR416.967
 - strength requirements
 - skill level
- Transferable skills, 20 CFR 404.1568, 416.968
- Ability to Communicate in English (Step 5 only)



Step 5 Evidence Issues

20 CFR 404.1560(c), 416.960(c)

- If past work precluded, SSA has burden to prove there is other work available in significant numbers in national economy that claimant could do considering RFC, age, education & transferable work skills.
- SSA usually needs vocational expert to testify to jobs available and skill level and physical and mental demands of these jobs.



Step 5 Evidence Issues

- BUT, claimant's burden to prove claimant's RFC, age, education, work skills, and other vocational limitations that erode the occupational base.
- ALJ weighs evidence and determines claimant's RFC and other vocational limitations. ALJ then matches RFC and vocational limitations with jobs identified by vocational expert.



Basic Mental Demands of Competitive Work

- These mental activities are generally required by competitive, remunerative, unskilled work:
 - Understanding, remembering, and carrying out simple instructions.
 - Making judgments that are commensurate with the functions of unskilled work--i.e., simple work-related decisions.
 - Responding appropriately to supervision, co-workers and usual work situations.
 - Dealing with changes in a routine work setting.
SSR 96-9p, SSR 85-15, SSR 85-16



Basic Mental Demands of Competitive Work - Continued

- A substantial loss of ability to meet any one of several basic work-related mental activities on a sustained basis will substantially erode the unskilled sedentary occupational base and would justify a finding of disability.
- SSR 85-15, SSR 96-9p.



Stress

- **No such thing as a “low stress job.”**
- Stress “is not a job characteristic, but rather, reflects an individual’s subjective response to particular situation.” *Lancellotta v. Secy HHS*, 806 F.2d 284 (1st Cir. 1986). SSR 85-15.
- Need individualized inquiry into what job attributes are likely to produce stress in the claimant and whether jobs exist in the economy that do not possess these attributes.

Pain

20 CFR 404.1529, 416.929

- Pain can cause both exertional and nonexertional RFC limitations (e.g., inability to sit & problems concentrating).
- Must be medically determinable impairment, established using medically acceptable clinical and laboratory diagnostic techniques, that can reasonably be expected to produce the pain alleged. *Avery v. Secy HHS*, 797 F.2d 19 (1st Cir.1986).



Pain - continued

- If the severity of the pain alleged is greater than indicated by the objective medical evidence, ALJ must then consider all the available evidence, medical and other, that reflects on the impairment and resulting limitations of function.
- "Other" evidence that may be used to show the severity of pain includes chiropractors, as well as "lay" sources, like family & friends, employers, counselors, etc.

Resources for Symptom Analysis



- 20 CFR 404.1529, 416.929
- Social Security Ruling (SSR) 16-3p
- *Avery v. Secy HHS*, 797 F.2d 19 (1st Cir.1986)
- *Rose v. Shalala*, 34 F.3d 13 (1st Cir. 1994).
- *Johnson v. Astrue*, 597 F.3d 409 (1st Cir. 2009).
- *Sherry v. Saul*, 518 F.Supp.3d 590 (D.R.I. 2021)
- *Devine v. Kijakazi*, 627 F.Supp.3d 10 (D.MA. 2022)



Summary - Step Five

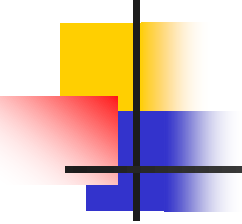
Individualized Determination

- If there other work in significant numbers in the economy that the claimant can do considering her RFC, age, education, work history and ability to communicate in English?
- **Bottom Line** – Does claimant have mental and physical RFC to do a sedentary unskilled job on a sustained, regular, and continuing basis?



Drug Abuse and Alcoholism (DAA)

- DAA eliminated as a basis of disability eligibility for SSI and SSDI when DAA is “material” to the disability determination. Effective 3/29/96 for new applications; 1/1/97 for those on benefits.
- ***Does not automatically disqualify people with a substance abuse history or current habit, or people with disabilities caused by DAA (e.g., organic brain damage, liver disease).***



Disability Analysis for DAA

SSR 13-2p

- Step 1 - Is claimant disabled, considering all impairments, including any DAA?
- Step 2 - Is there medical evidence of a DAA condition?
- Step 3 - Is DAA material to the disability determination? I.E. Would the claimant still be disabled without consideration of DAA impairments and limitations?

Definition of Disability for Children



- The child must have a medically determinable physical or mental impairment or combination of impairments that results in marked and severe functional limitations and which can be expected to last in death or which has lasted or can be expected to last for at least 12 months.



Disability Analysis for Children (1)

- Medical (MD) documentation of mental and/or physical conditions or illness,
- That have lasted or expected to last at least one year, and
- That result in marked and severe limitations in age appropriate function (mental and/or physical)



Sequential Disability Analysis for Children

- Is the child performing SGA?
- Does the child have an impairment or combination of impairments that are more than non-severe (*de minimis* test)?
- Do the child's impairments meet or equal the severity of a listed impairment?
 - medically meet a listed impairment?
 - medical equivalence to a listed impairment? or
 - functional equivalence to the listings.
- 20 CFR 416. 924, .924a, .926



Children's Listed Impairments

- Does the child's condition manifest the specific findings described in the medical and functional criteria of one of the SSA listed impairments?
- **Example - 107.05 Sickle cell disease. With:**
 - A. Recent, recurrent severe vaso-occlusive crises; or
 - B. A major visceral complication in the 12 months prior to application; or
 - C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or
 - D. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or
 - E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in 104.02, 111.00ff, or 112.00ff.



Domains of Function for Functional Equivalence

- Acquiring and using information
- Attending and completing tasks
- Interacting and relating with others
- Caring for oneself
- Moving about and manipulating objects
- Health and physical well-being
- **See SSRs 09-1p – 09-8p**



Severity Level Required

- Eligibility requires marked level functional limitations in 2 domains or extreme functional limitation in 1 domain.
- “Marked” means that the impairment(s) seriously affect the child’s ability to function in a domain.
- “Extreme” means that the impairment(s) very seriously affect the child’s ability to function in a domain.



Other Factors to Consider

- Symptoms such such as pain, fatigue, decreased energy, anxiety;
- Age appropriate functioning;
- Combined effects of multiple impairments
- **Ability to initiate, sustain and complete activities in age appropriate manner;**
- Amount of help or adaptations needed;
- **Effects of structured or supportive settings;**



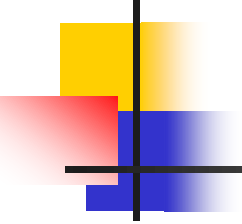
Other Factors to Consider

- Unusual settings, i.e. testing settings;
- Participation in early intervention and other school programs;
- Impact of chronic illness and limitations that interfere with activities over time;
- Effects of treatment, including medications and therapies.



Evidence Issues for Claims Filed Before 3/27/17

- **Slides 121 through 124** apply only to claims filed before **3/27/17**.
 - Filed before 3/27/17 and in the administrative appeals process, including remanded claims.
- Final rules published at 82 FR 5844 (1/18/17) made substantial revisions to the rules for evaluating evidence for claims filed on or after 3/27/17.



Evidence Issues for Claims Filed Prior to 3/27/2017

- To establish a diagnosis, need evidence from Acceptable Medical Source (AMS):
 - Doctors, licensed psychologists, SLPs
- BUT other evidence, especially from professional sources is very important, especially as to nature & severity of functional limitations.
- 20 CFR 404.1502, 416.902, POMS DI 22505.003.

Treating Physician Rule

Claims Filed Prior to 3/27/17



- If medical opinion is from acceptable treating source (M.D. or Ph.D.), and
- Opinion is well-supported by medically acceptable clinical & laboratory diagnostic techniques, and
- Opinion is not inconsistent with other substantial evidence in the record,
- Then, treating source opinion is given controlling weight.
- 20 CFR 404.1527, 416.927.

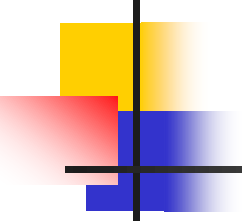


Other Sources of Evidence

Claims Filed Prior to 3/27/17

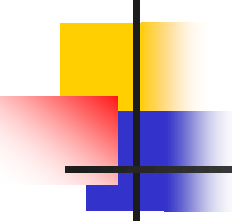
Other Sources of Evidence for nature & severity of limitations:

- Therapists
- Nurse practitioners
- Teachers
- Early intervention providers
- Counselors
- Rehabilitation specialists
- Lay sources:
 - Family, friends



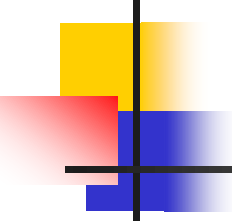
Evidence Issues: The Bottom Line Prior to 3/27/2017

- For claims filed **before 3/27/17**, all evidence should be considered and weighed.
- Weight given depends on
 - Credibility, and
 - Support.
 - 20 CFR 404.1513, .1527, 416.913, .927.
POMS DI 24503.035



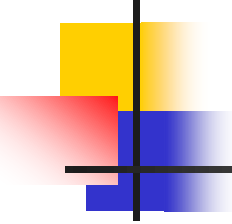
Evidence Evaluation Rules: Claims Filed 3/27/17 & Later

- The definition of Acceptable Medical Source has been expanded to include Advance Practice Registered Nurse Practitioners.
 - 20 CFR 404.1502(a)(6),(7),(8), 416.902(a)(6),(7),(8).
- Evidence from all licensed health care workers must be considered and that consideration must be articulated (explained).
 - 20 CFR 404.1520c(a)&(b), 416.920c (a)&(b).



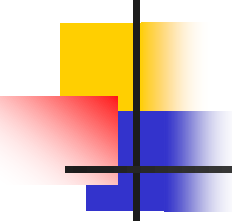
Evidence Evaluation Rules: Claims Filed 3/27/17 & Later

- 'Weigh' & 'weight' no longer used.
- Medical opinion considered on **persuasiveness**
- Five factors of persuasiveness, in order of importance.
 - Consistency
 - Supportability
 - Relationship with the claimant
 - Specialization
 - Other factors
 - 20 CFR 404.1420c, 416.920c.



Evidence Evaluation Rules: Claims Filed 3/27/17 & Later

- Adjudicators must explain the persuasiveness of all medical opinions from all medical sources whether or not the medical source is an AMS.
- Must explain supportability & consistency.
- Must discuss other factors when 2 or more medical opinions or prior administrative medical findings about the same issue are equally well-supported & consistent but not exactly the same.
- 20 CFR 404.1520c(b)(3), 416.920c(b)(3)



Evidence Evaluation Rules: Claims Filed 3/27/17 & Later

- No deference or any specific evidentiary weight applies to medical opinions, including controlling weight.
 - “Treating physician” rule eliminated.
- Adjudicators will “articulate” the persuasiveness of medical opinions.
- All medical opinions are essentially on the same footing.
- 20 CFR 404.1520c(a)&(b), 416.920c(a)&(b).



Resources for Persuasiveness Evaluations

- Oakes v. Kijakazi, 70 F.4th 207 (4th Cir. 2023)
- Devine v. Kijakazi, 627 F.Supp.3d 10 (D.MA 2022)
- Jackson v. Kijakazi, 588 F.3d 558 (S.D.NY 2022)
- Balotti V, Commissioner, 605 F.3d 610 (S.D.NY 2022)
- Daniels v. Kijakazi, 617 F.3d 180 (S.D. NY 2022)
- Navedo v. Kijakazi, 616 F.3d 332 (S.D.NY 2022)
- Loucks v. Kijakazi, No.21-1749 (2nd Cir.2022)
- McDonald v. Kijakazi, 5:20-cv-222-SPF (D.N.H. 2021)



Regulations and SSRs on Symptom & Pain Unchanged

- 20 CFR 404.1529, 416.929, How we evaluate symptoms, including pain.
- SSR 19-4p, Primary Headache Disorders
- SSR 16-3p, Symptoms in Disability Claims
- SSR 17-3p, Sickle Cell Disease (SCD)
- SSR 14-1p: Chronic Fatigue Syndrome (CFS)
- SSR 12-2p: Fibromyalgia

Resources for Symptom Analysis



- 20 CFR 404.1529, 416.929
- Social Security Ruling (SSR) 16-3p
- Avery v. Secy HHS, 797 F.2d 19 (1st Cir.1986)
- Rose v. Shalala, 34 F.3d 13 (1st Cir. 1994).
- Johnson v. Astrue, 597 F.3d 409 (1st Cir. 2009).
- Sherry v. Saul, 518 F.Supp.3d 590 (D.R.I. 2021)
- Devine v. Kijakazi, 627 F.Supp.3d 10 (D.MA. 2022)



Duty - Submit All Evidence Related to Disability

- Effective 04/20/2015 claimants must tell SSA about or submit all known evidence relating to blindness or disability.
- Representatives must help claimant obtain and submit required evidence.
- Narrow exceptions for attorney/client privilege and work product apply.
- 20 CFR 404.1512, 416.912, SSR 17-4p, HALLEX I-2-5-1

Provider Role in Disability Determinations



- Providers are an important resource in the disability determination process.
- Provider information is necessary to establish a diagnosis.
- Provider information is also key in establishing the degree of disability, i.e., the severity of functional limitations.



Where Providers Go Wrong on Disability Determinations

- Do not respond (timely or at all)
- Do not understand their role (info provider – not the decision maker)
- Do not understand the SSA standard (e.g. say patient can do sedentary work without knowing SSA definition of that term)
- Respond about severity without enough knowledge of the facts (e.g., how pain affects daily life of patient)

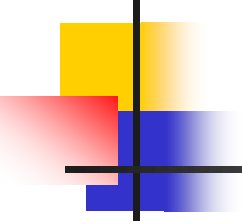


Where Providers Go Wrong on Disability Determinations

- Respond as to other clinicians without sufficient explanation for SSA
- Do not document functional limits
- Say “patient doing well” without explanation, e.g. well under the circumstances?
- Do not fully document symptoms such as pain and fatigue.

Age 18 Redeterminations

20 C.F.R. 416.987

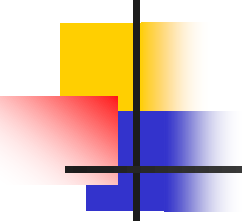


- Children must be redetermined under the adult disability standard within one year from the date they attain age 18.
- SSA will notify a recipient that a review has begun and will invite the recipient to submit evidence of continuing disability.
- This NOT a CDR – it is a determination as to whether the young person is eligible under the adult disability standard.
- See SSR 11-2p for helpful evidence considerations for young adults.



Continuing Disability Reviews

- Continuing Disability Reviews:
 - SSA must review disability eligibility of most SSI/DI recipients at least every 3 years.
 - Recipients deemed likely to medically improve may be reviewed more frequently.
 - Recipients deemed permanently disabled are reviewed less frequently, usually every 7 yrs.
 - 20 CFR 404.1590, 416.990



CDR Standard-Adults

20 CFR 404.1597, 416.994

- Has there been medical improvement in the impairment(s) present when benefits approved? If no, benefits continue. If yes...
- Is medical improvement related to the ability to work? Compare RFC now with RFC at time of approval. If no, benefits continue. If yes...
- Does the person meet the disability eligibility standard, considering current impairments?
- BUT – benefits can be terminated if fraud, noncooperation with review, inability to locate, failure to follow prescribed treatment.



CDR Standard – Child Under Age 18

- SSA uses a similar medical improvement standard as that for adults.
- Has there been medical improvement resulting in increased age appropriate functional capacity in the childhood domains of function?
- 20 CFR 416.994a



CDR and Age 18 Review Appeal Process

- Terminations are appealable and continuing benefits available through Reconsideration and ALJ hearing **if** appeal is filed within 10 days and continuing benefits requested at each step of appeal. Otherwise, appeal period is 60 days.
 - Statutory Benefit Continuation 20 CFR 404.1597a, 416.996.
- If appeal unsuccessful, SSA should not collect an overpayment if an individual had a good faith belief that s/he was disabled, cooperated with the process, and cannot afford to repay. Must file Request for Waiver form.
 - 20 CFR 404.1597a(j), 416.996(g).



SSI Nondisability Eligibility Review

- Is recipient still eligible for SSI and getting the correct amount of SSI considering:
 - Financial eligibility – income, resources
 - Living arrangement
 - Immigration status
- Periodically scheduled according to likelihood of error (generally about yearly); or scheduled based on information received.



SSA's Administrative Appeal Process

- Levels of appeal:
 - **Reconsideration** -to appeal application decision
 - **Administrative Law Judge (ALJ) Hearing** - to appeal Reconsideration
 - **Appeals Council Review** - to appeal ALJ decision
 - **Federal Court**
- 20 CFR 404.900 et seq., 416.1400 et seq.



Appeals - Time

- 60-day deadline for filing appeals; SSA assumes notices received within 5 days of date on notice.
- Can get SSI **aid pending a timely filed Reconsideration appeal**-if timely appeal an SSI notice to terminate, reduce, or suspend benefits. The **Goldberg Kelly** rule.
- 10 day aid pending rule for appeal of medical termination of SSI or SSDI after CDR at Reconsideration and ALJ appeal levels. **Statutory Benefit Continuation.**



Goldberg Kelly(GK) SSI Aid Pending Rule

Amin v. Kijakazi, (E.D. NY 4/2023)- SSI GK benefit expanded from 10 day to 60 day rule –

- **Reconsideration** filed w/in 10 days (15 days from date on notice), benefits continue.
- Filed between 11th and 60th days of appeal period, benefits will be reinstated if stopped.
- Benefits reinstated if filed late w/good cause.
- <https://secure.ssa.gov/apps10/reference.nsf/links/08262024080531PM>
- <https://secure.ssa.gov/apps10/reference.nsf/links/08262024081128PM>



Appeals - continued

- Good cause (really good reason) for late filing an appeal. POMS GI 03101.020.
- File appeals online at local SSA office; get date stamped and keep copy.

<https://www.ssa.gov/benefits/disability/appeal.html>

- Appeal forms online at –

<https://www.ssa.gov/forms/>



Uniform Process Appeal Rules

- 75 day advance notice of hearing. 20 CFR 404.938, 416.1438.
 - 20 days for amended notices. 20 CFR 404.938(d), 416.1438(d)
- All evidence and any pre-hearing memo must be submitted within 5 business days of the scheduled hearing, unless a good cause exception applies. 20 CFR 404.949, 416.1449.
- The good cause exceptions listed in 20 CFR 404.935 (b)(3)(i) – (b)(3)(iv), 416.1435 (b)(3)(i) – (b)(3)(iv), are merely examples. 81 FR 90988.

Uniform Process Appeal Rules



- Objections to the issues must be made no later than 5 business days prior to hearing. 20 CFR 404.939, 416.1439.
 - The 5 day rules does not apply to post-hearing statements. 81 FR 90991.
- Subpoenas must be requested 10 business days prior to hearing. 20 CFR 404.950, 416.1450.
- The good cause examples noted on the prior slide apply to these deadlines. 81 FR 90988.



SSA Statements Re: Exceptions to the 5 Day Rule

- 'Actively' & 'diligently' should be interpreted using ordinary English usage. Good faith efforts to timely obtain should meet a good cause exception. 81 FR 90990.
- The rule was not intended to prevent submission of evidence of ongoing treatment. 81 FR 90990-90991.
- Rebuttal evidence to new evidence introduced by ALJ at or after a hearing could meet an exception. 81 FR 90991.



SSA Statements Re: Exceptions to the 5 Day Rule

- Appointment of a representative shortly before a hearing may meet an exception, depending on the circumstances. 81 FR 90991.
- If a claimant informs an ALJ about evidence 5 or more business days before hearing, there is no need for the ALJ to find that an exception applies. 81 FR 90991.



Rules of Representation

- If you are representing clients before the SSA, be sure to review the Rules of Representation.
- 20 CFR 404.1700 et seq., 20 CFR 416.1500
- See also SSA's Best Practices booklet.
https://www.ssa.gov/appeals/best_practices.html



Affirmative Duties

Appointed Representative

- Act with reasonable promptness
- Assist clients in complying with duty to obtain & submit required evidence.
- Conduct that furthers the efficient, fair and orderly conduct of the decision making process through competence, diligence and promptness.
- **Some reps must file certain appeals electronically.**

<https://www.ssa.gov/representation/>



Prohibited Conduct

Appointed Representative

- Coercive, threatening or intimidating conduct
- Deceiving or knowingly misleading a claimant
- Knowingly collect a fee not authorized by SSA.
- Knowingly delay or cause the delay of decision process without good cause



Prohibited Conduct

Appointed Representative

- Knowingly participate in making false or misleading statements about materials fact or law
- Attempt to influence a decision outcome
- Engage in behavior prejudicial to the fair and orderly conduct of the adjudicative process.



Representative Payment

- If you serve as a Representative Payee for an SSI or SSDI benefits recipient or if your clients have questions about this, be sure to review those regs.
- 20 CFR 404.2001, 20 CFR 416.601
- See also the Representative Payee section of the outline in your materials
- See also www.ssa.gov/payee



SSA File Information – Access Free of Charge

- Individual claimant access
 - SSA Program purpose
 - My Social Security function on website
- Third party access
 - SSA Program purpose, appeal, 1696
 - Electronic access for appointed representative
- POMS GN 03311.005



Useful Websites

- www.socialsecurity.gov
- www.mass.gov/MassHealth
- www.masslegalservices.org
- www.cms.hhs.gov/home/medicare.asp
- <http://www.mass.gov/eohhs/consumer/disability-services/vocational-rehab/ses/impact/project-impact.html>
- <https://www.workwithoutlimits.org/benefits-counseling/>