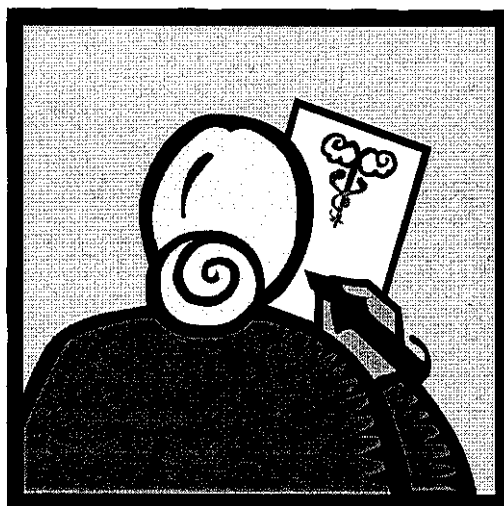


NATIONAL LAW CENTER

ON HOMELESSNESS & POVERTY

Advocating on Behalf of SSI Claimants:

A Guide to Rights and Resources



The National Law Center on Homelessness & Poverty is a registered 501(c)(3) non-profit organization. The National Law Center serves as the legal arm of the national movement to alleviate, prevent and end homelessness through impact litigation, public policy and public education.

Board of Directors

Herman Schwartz, Chairperson

American University, Washington College of Law

Pamela Malester, Vice Chairperson

Community Volunteer

Lynne M. Smith, Treasurer

Community Volunteer

Craig Champ

Community Volunteer

Bruce Casino

Baker & Hostetler, LLP

Harold Moss

Abraham House

Jeff Pash

National Football League

Margaret Pfeiffer

Sullivan & Cromwell

Jack Rothstein

Rothstein Investment Advisors

Noel Brennan

Community Volunteer

William Breakey, M.D.

Johns Hopkins University

Roderick De Armant

Covington & Burling

Deborah Dennis

Policy Research Associates

Judith Winston

Winston Withers & Associates, LLC

Maria Foscarinis, President

Executive Director, The Law Center

(Affiliations for Identification Purposes Only)

Staff

Maria Foscarinis, Executive Director

Laurel Weir, Deputy Director

Patricia Julianelle, Staff Attorney

Pallavi Rai, Staff Attorney

Susan White Haag, Staff Attorney

Jeremy Rosen, Staff Attorney

Sara Simon, Food Stamp Monitor / Equal Justice Works Fellow

Sherrin Alsop, Development Director

Christina Wheeler, Development Associate

Tisha Spriggs-Pugh, Office Manager

Published July 2002

Supplemental Security Income (SSI) benefits are a critical part of the social safety net for low-income disabled people without a significant work history. Receipt of SSI can allow homeless persons to obtain housing and Medicaid health care coverage. Yet although almost 40% of the homeless population may be eligible for SSI, a 1999 study produced by the federal Interagency Council on the Homeless reported that only 11% of homeless persons actually receive benefits.

The Application Process

Q: What is the SSI initial application process like?

A: SSI applications can be filed in person at a Social Security office, or by calling the Social Security Administration (SSA) toll-free number, at 1-800-772-1213, to set up an appointment for a phone interview. Once an application is taken, SSA first determines whether the claimant satisfies income, resource, and immigration status guidelines. Then the application is reviewed by the Disability Determination Service, or “DDS,” which is a state agency that is under contract with SSA to make initial decisions on whether or not a claimant is disabled.

Q: What does an SSI claimant need to prove their identity?

A: When filing an initial application, SSI claimants must verify their identity. Acceptable documentation of identity includes any of the following: driver’s license, state identification card, employer identification card, passport, marriage or divorce record, adoption record, health insurance card (except for Medicare cards), military records, insurance policy, or school identification card.

However, many homeless people do not have any form of ID. Under these circumstances, identification is NOT necessary if the claimant can recall their social security number. To confirm the claimant's identity, SSA can use the social security number to access computer database information such as the name of the claimant's parents or the claimant's birthplace. Then SSA will ask questions based on this information to confirm identity. If the claimant's answers are consistent with SSA's information, they should constitute sufficient proof of identity.

Q: What does the Social Security Administration do with incomplete applications?

A: If an application is incomplete, DDS will contact the claimant in order to obtain more information about the claimant's medical and work history as well as the claimant's daily activities and current medications. If the claimant cannot be contacted, the state disability determination service is authorized to decide the case on the basis of the information available. This will usually result in a finding that the claimant is not disabled. To avoid this problem, advocates are encouraged to have their clients give a stable address and phone number, such as the office of an attorney or case manager, when applying for SSI. This gives SSA a better chance of contacting the claimant if necessary.

Q: Are there ways to expedite the SSI application process?

A: YES. A client can be found presumptively eligible and begin receiving SSI benefits immediately. If a client is diagnosed with a terminal illness, their SSI case is processed before other applications. If an application is made and approved, through a

pre-release program, the claimant can begin collecting benefits on the first day of the month following the day they leave a public institution.

Presumptive eligibility

Presumptive eligibility means the claimant immediately begins receiving SSI payments while SSA gathers the evidence for a full disability determination. The standard for determining whether a claimant is presumptively eligible for SSI is as follows: “[SSA] may make a finding of presumptive disability ... if the evidence available at the time ... reflects a high degree of probability that you are disabled.”

Presumptive eligibility can be established based on any impairment. However, there are several automatic categories for presumptive eligibility, such as readily observable impairments (e.g. a double amputation) and medically documented HIV cases. A claimant can be paid under presumptive eligibility for up to six months, while SSA reviews their case. If a claimant receiving presumptive payments is found not disabled, the claimant is NOT required to repay any of the payments received. If the claimant is found disabled, they will continue to receive SSI. More homeless clients may begin to receive SSI benefits in a timely manner if their advocates systematically pursue presumptive eligibility.

Terminal Illness Cases

This designation applies to cases where disability is alleged due to a terminal illness or AIDS. SSA internal rules require that terminal illness cases be processed “in an expeditious

manner.” As a practical matter, this results in priority processing at all levels of the SSI application and appeals process. Claimants or advocates should document a terminal illness case, in writing (through medical records), in order for SSA to flag the file so that it is processed more quickly.

Pre-release programs

Pre-release programs are designed to allow people in public institutions (institutions owned by or controlled by the Federal government, a state, a city or a county) to apply for SSI benefits even though they will not receive benefits until their release. If an application is approved through a pre-release program, eligibility begins on the first day of the calendar month following the claimant’s release date.

Representing an SSI Claimant

Q: What is the role of a representative?

A: A representative is a person who helps an SSI claimant (whether homeless or not) apply for benefits and advocates on their behalf with SSA throughout the application process. Because homeless claimants face severe barriers in obtaining SSI benefits, it is particularly important that they have a representative.

Representatives may obtain information about the status of a claim, submit evidence, make requests, and reply to notices. SSA must send copies of all notices, decisions, and requests for information to a claimant’s designated representative. The representative may

authorize appeals and otherwise handle a claimant's case, even if the claimant is homeless and is temporarily absent. This can often prevent a case from being closed due to failure to respond to a notice or file an appeal.

Q: Who can represent an SSI claimant?

A: A representative may be an attorney, but is not required to be one. Shelter caseworkers, mental health case managers, friends and relatives of the claimant can also serve as representatives.

Q: What are the responsibilities of a representative?

A: SSA regulations provide that a notice or request sent to a representative has the same effect as if the notice had been sent to the claimant. This means that even a non-attorney representative is fully responsible for responding to SSA information requests and meeting all appeal deadlines. These are important responsibilities. If a representative does not file a required document (or an appeal) in a timely manner, and does not have good cause for the untimely filing, an unfavorable decision may be issued or the claimant may lose their right to file an appeal.



Determining Eligibility for SSI

Q: What must a claimant prove to establish their eligibility for SSI?

A: To qualify for SSI, claimants must establish that: (1) they meet the immigration status guidelines (2) their income does not exceed the eligibility limit (3) their resources do not exceed the eligibility limit and (4) they are disabled.

Q: How does the Social Security Administration define disability?

A: SSA considers someone to be disabled if the claimant is “unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” In simpler terms, the rule states that an individual is disabled if they cannot work because of a disability. The disability must have lasted for a year, be expected to last for a year, or be expected to result in death.

Q: How does the SSI program define income?

A: Income is defined as cash or in-kind services available to a claimant that can help them obtain food, clothing, or shelter. It does not matter whether or not the cash or in-kind benefit is actually used to obtain food, clothing, or shelter – it will be counted as income as long as it can be used for one of those purposes.

Q: What is the amount of income that will prevent a claimant from being eligible for SSI?

A: In 2002, the maximum federal SSI payment for a single individual is \$545/month. For a couple it is \$817. An individual or a couple with *countable* monthly income above these amounts is ineligible for SSI. Not all income, however, is considered countable. SSA has a formula based on earned income (wages, self-employment earnings, Earned Income Tax Credit refunds) and unearned income (alimony, support, rents, insurance proceeds, public benefits) to determine countable income.

There are types of income that are not counted in determining SSI eligibility. This category includes but is not limited to federal housing assistance such as Section 8 or Public Housing, state crime victims payments, the value of transportation tickets received as a gift and not converted to cash, disaster assistance, foster care payments, property tax refunds, and grants or scholarships used to pay educational expenses.

Q: What is the resource limit for SSI?

A: The SSI resource limit is \$2,000 for an individual and \$3,000 for a couple - whether or not the second spouse receives SSI. Similar to the income determination, there are many types of resources that are excluded from this calculation.

Q: What resources can be excluded?

A: If an SSI claimant owns a home, and makes that home their principal place of residence, the full value of the home will not count as a resource. Household goods and personal effects are also excluded, up to \$2,000. In practice, however, SSA rarely requires a claimant to document the value of their household goods, so all household items are usually excluded.

One automobile will be fully excluded, if the vehicle is used by the claimant or a member of the claimant's family and is: a) necessary for employment; b) necessary for medical treatment; c) modified for operation by or transportation of a "handicapped" person; or d) necessary to provide transportation to perform essential daily activities. Claimants can almost always argue that a car is necessary for medical treatment, because it is used to get to doctor's appointments relating to their impairments. If one of the exceptions does not apply, the value of one automobile - up to \$4,500 - will still be excluded.

There are several other resource exclusions that may benefit homeless people applying for SSI:

- All Earned Income Tax Credit (EITC) payments are excluded, until the end of the month following receipt.
- Crime victim's compensation payments are excluded from resource calculations for up to 9 months after they are received.
- Life insurance is completely excluded if the cash value of the policy does not exceed \$1,500.
- The value of housing assistance (public housing, Section 8, etc.) is totally excluded.

This is not an exhaustive list of all resource exclusions. The complete list is located at 20 C.F.R. 416.1201-1266; see: http://www.ssa.gov/OP_Home/cfr20/416/416-0000.htm.

Q: Does current drug or alcohol use automatically bar a person's eligibility for SSI?

A: NO. Regulations do not prohibit current users of drugs or alcohol or both from receiving SSI. Instead, users may receive benefits as long as drug addiction or alcoholism is not "material" to the determination of disability. To determine whether substance is "material," SSA evaluates "which of [the claimant's] physical or mental limitations, upon which [SSA] based our current disability determination would remain if [the claimant] stopped using alcohol [and/or drugs]." If SSA finds that the remaining limitations would be disabling, the claimant is considered disabled, regardless of their drug and/or alcohol use.

Q: Are people residing in public institutions eligible to receive SSI while living there?

A: SSA defines a public institution as an institution that is operated by or controlled by the Federal government, a state, a city or a county. The regulations list examples such as hospitals, mental health treatment centers, and jails. People who reside in public institutions throughout a month are not eligible to receive SSI during that month.

To be considered a resident of a public institution "throughout" a month, an individual must reside there at the beginning of the month and stay for the entire month. Advocates should make sure

that SSA does not unfairly penalize recipients who spend less than a full month in this type of facility, by suspending or terminating their SSI benefits.

Q: Are people residing in homeless shelters eligible to receive SSI while living there?

A: YES. Residents of private homeless shelters are eligible for SSI. Residents of public emergency shelters are eligible for SSI “for any six months throughout which [they] reside in a shelter in any nine-month period.”

Eligibility Based on Immigration Status

Q: What immigration status is required to qualify for SSI?

A: All U.S. citizens are eligible for SSI, based on immigration status. Conversely, any immigrant who is not legally in the United States will not be eligible to receive SSI. The regulations are more complicated, however, with respect to non-citizen immigrants who are legally in the United States. SSA refers to these immigrants as “aliens.” An “eligible alien” is an alien whose immigration status makes them eligible for SSI, under current rules. To receive SSI, an “eligible alien” will still have to be found disabled, and they will still have to meet the SSI income and resource guidelines.

Q: How does SSA determine if someone is an ‘eligible alien?’

A: An SSI applicant must satisfy two independent criteria to be considered an “eligible alien.” First, the applicant must fall into

one of the “qualified alien” categories. SSA considers the following groups of people qualified aliens:

- Persons lawfully admitted for permanent residence (LPR), including Amerasian immigrants
- Persons granted conditional entry to the U.S
- Persons paroled into the United States for at least one year
- Refugees
- Asylees
- Immigrants whose deportation or removal is being withheld
- Cuban-Haitian entrants.

Once a claimant falls into one of the “qualified alien” groups, he/she must also fall under one of the following categories, in order to be an “eligible alien.”

Immigrants Receiving Benefits on August 22, 1996

Immigrants who were receiving SSI on August 22, 1996, and who are currently lawfully residing in the United States are eligible to receive SSI.

Lawful Permanent Residents with 40 Quarters of Work (10 years)

LPRs with forty qualifying quarters (3 month periods) of employment earnings are eligible for SSI.

Veterans and Active Duty Members

Veterans or active duty members of the United States Armed Forces, and their spouses or dependent children are considered qualified aliens.

Lawful Presence in US on August 22, 1996

Aliens who are disabled and who were lawfully residing in the United States on August 22, 1996 are considered qualified aliens.

Eligible for 7 years of SSI

Individuals in the following groups are also considered “eligible aliens” but they are only eligible for seven years after obtaining the relevant status, unless during that time they become United States citizens or become eligible under another category. The groups are: refugees, asylees, aliens whose deportation or removal is being withheld, Cuban/Haitian entrants, and Amerasian immigrants.

Q: What if an immigrant claimant does not have the proper documentation to prove eligibility for SSI?

A: If the claimant does not have the proper documentation to establish their immigration status, advocates should assist them in getting replacement documents. At the same time, advocates should assist the claimant in applying for SSI, without the proper documentation, and request that SSA verify the claimant’s status with INS.

Verification between SSA and INS can take a long time and is not always accurate. However, it is important to have a claimant apply for SSI as soon as possible, so that – if they are eventually found eligible – they will receive retroactive benefits covering the time period when SSA was investigating their immigration status.

NOTE: Advocates should never send anyone to apply for SSI unless they are sure that the claimant is legally in the United States at the time that they are trying to file their application.

Documentation of Disability

Q: Will SSA send a claimant for a medical examination?

A: If the medical evidence available to the Disability Determination Service (DDS) does not clearly indicate that a claimant is disabled, DDS may arrange for the claimant to have a consultative examination at the agency's expense. These physical or mental examinations are scheduled if there is a need for a further diagnosis or medical testing, or if there is an ambiguity in the previously submitted medical records. Many homeless claimants are sent for consultative examinations, since their applications are often incomplete.

Q: What type of notice is given to claimants regarding upcoming consultative examinations?

A: Claimants are typically informed of consultative examinations by mail. Advocates should encourage claimants to list a stable address where they will be able to regularly check their mail and/or receive phone messages. If the claimant does not have a mailing address or telephone number, they should check in frequently with DDS, and also contact SSA's toll free number at 1-800-772-1213.

Q: Can a claimant's own health care clinic or personal physician perform the consultative examination?

A: YES. Upon request SSA must send claimants to their personal physician for a consultative examination, provided that the physician is qualified to perform the required medical tests. This is

important because when a doctor is familiar with an individual claimant or with homeless persons in general, claimants are much more likely to reveal all of their medical problems during a medical visit. Additionally, the doctor is more likely to take the time necessary to conduct a careful examination and to write a meticulous report detailing all of the claimant's impairments. To have the claimant's treating physician perform the consultative examination advocates should submit a written request to the DDS administrator.

Q: Are there free health care resources for homeless people?

A: YES. There are two important federal programs that are designed to meet the health care needs of homeless people. The Health Care for the Homeless Program is a federally funded program that addresses the primary health care needs of homeless persons. For a list of the clinics in your state, go to: <http://www.hchirc.com/directory/>. Community Health Centers (CHC) are federally funded to provide primary care for people in underserved communities. CHCs are located in areas where there are barriers to primary health care. For a searchable database of CHCs, go to: <http://bphc.hrsa.gov/CHC/>.

A third federal program that provides money to states, for outreach and community mental health treatment, is the Projects for Assistance in Transition from Homelessness (PATH) program. For a list of PATH funded providers in your state, go to: <http://www.pathprogram.com/contacts/default.asp>.

The SSI Appeals Process

Q: What is the SSI appeals process like?

A: There are four levels in the SSI appeals process. DDS makes the first decision on an SSI application. If DDS finds that the claimant is not disabled, then the claimant has 60 days to file for reconsideration. Every claimant has the right to reconsideration, if the request is timely filed.

Reconsideration

A DDS staff person who did not make the initial decision on the application reviews the application at the reconsideration stage. This reviewer is not bound by the original decision. If, after reconsideration, the claimant is found not disabled, then the claimant has another 60 days to file for a hearing before an Administrative Law Judge, or ALJ. If the request is timely filed, every claimant has the right to an ALJ hearing.

Administrative Law Judge Hearing

The ALJ is not bound by the original or reconsideration decisions. At an ALJ hearing, claimants get their first opportunity to meet face to face with the person deciding their case, and to give testimony about their impairments. There may also be a medical and/or vocational expert present, to give testimony about the claimant's disabilities or ability to work. After the hearing, the ALJ will issue a written decision, stating whether or not the claimant is disabled, and setting out the reasons for that decision. If the claimant is found not disabled by the ALJ, then they have 60 days to file an appeal with the Appeals Council.

Appeals Council

The Appeals Council only reviews cases where there appears to be an abuse of discretion or an error of law at the ALJ level - or cases that set forth a broad policy or procedural issue that potentially affects the interests of the general public. Once a case reaches the Appeals Council, there are three possible outcomes. First, the council can find in favor of the claimant, which is rare. The other two options occur much more frequently. The case can be remanded to the ALJ who originally heard it, with directions from the Appeals Council to correct the problem that led to the incorrect decision, and issue a new decision. Alternatively, the case can once again be denied.

Federal District Court

If an Appeals Council decision is unfavorable, a case can be filed in Federal District Court. The standard of review is whether or not the Commissioner's decision is supported by substantial evidence in the record. The three procedural options available to the court are identical to those available to the Appeals Council.

Receiving SSI Benefits

Q: How may recipients collect their monthly SSI benefits?

A: The most common methods of receiving SSI benefits are through a check sent by mail or through direct deposit into a bank account. However, homeless persons can also request that they be allowed to pick up their SSI checks at a local SSA field office.

If a SSI recipient is unable to afford the fees associated with opening a bank account, they can open an Electronic Transfer Account (ETA) instead. ETAs are special low cost accounts, available at many financial institutions, for people receiving benefits from the federal government. A searchable database of banks offering ETAs is available at <http://www.eta-find.gov/>.

Q: What is a representative payee?

A: If a claimant is awarded SSI on the basis of a mental disability or a severe physical disability, SSA may find them unable to manage their own benefits and require that the benefits be paid to a representative payee – a person charged with managing SSI monies for the benefit of a disabled claimant. A “representative payee” helps a claimant once they have been found eligible for SSI – as opposed to a “representative” who assists claimants in becoming eligible for SSI.

Q: What are the responsibilities of a representative payee?

A: The representative payee must receive a claimant’s monthly check, open a bank account, pay the claimant’s bills, and generally ensure that SSI payments are spent in the claimant’s best interest.

Q: Who can serve as a representative payee?

A: An attorney who represented the claimant throughout the application process might also agree to be a payee. However attorneys often are reluctant to serve as representative payees, because of the required time commitment. Homeless shelter staff frequently serve as payees. Community-based nonprofit agencies

are the only type of organization that can charge a management fee for the service. The fee that the nonprofit agency charges may not exceed the lesser of 10% of the recipient's monthly benefit allotment or \$25.00.

Supportive housing programs (transitional programs aimed at moving people out of homelessness) can also serve as payees for residents. When this occurs, rent of up to 30% is deducted from the monthly SSI check. This is a charge that covers the cost of providing housing to the SSI beneficiary – not a management fee.

Q: How can a recipient demonstrate that a representative payee is no longer needed?

A: SSA regulations provide that direct payment be made to a beneficiary if “he or she is mentally and physically able to manage or direct the management of benefit payments.” In order to convince SSA that representative payment is no longer necessary, the recipient should submit a physician's statement to that effect along with any other evidence of the beneficiary's ability to manage SSI payments.

If you have any questions or need more information on the SSI program, please contact
Jeremy Rosen at jrosen@nlchp.org or 202-638-2535 x 207.

**For more information on the National Law Center,
please contact us:**

1411 K Street, N.W., Suite 1400

Washington, D.C. 20005

Tel: (202) 638-2535 Fax: (202) 628-2737

www.nlchp.org

nlchp@nlchp.org



AND INTRODUCING

The National Law Center's New National Membership Network

For the most up-to-date and complete information about:

- public benefits for adults and children who are homeless;
- education of children and youth experiencing homelessness;
- civil rights of adults and children who are homeless;
- housing and surplus property issues; and
- discounts on trainings and workshops.

**Contact the National Law Center for details or go to
www.nlchp.org**

GET INVOLVED !!!

**Take a stand against homelessness and poverty.
Vigorous advocacy is needed to end homelessness.
Success depends on every one of us.**

Established in 1989, the National Law Center on Homelessness & Poverty serves as the legal arm of the national movement to end homelessness in America. By working for long-term, constructive solutions our efforts have resulted in:

- **Promotion of the Earned Income Tax Credit, food stamps and disability benefits to help homeless people move off the streets and into housing and jobs.**
- **Better access to educational programs for homeless children.**
- **Increased funding for homeless assistance programs.**
- **Conversion of closed military bases into shelters, job training, childcare and food program sites.**

We are committed to solutions which address the causes, not just the symptoms, of homelessness. To this end, we use three strategies: Education of the Public, Legislative Advocacy and Litigation. Utilizing these strategies we are a vigorous, persistent, and effective voice on behalf of homeless Americans at the local, state and federal levels.

Yes, I want to join the Law Center's efforts:

- Please send me more information about the Law Center.
- Please send me information about the New National Membership Network.
- Please send me a list of your publications.
- Please send me information on volunteer opportunities.

Name _____

Organization _____

Address _____

Phone _____

E-mail _____

Enclosed is my tax-deductible contribution (please circle)

\$35

\$75

\$100

\$150

\$250

\$500

Other _____

Contributors receive a free subscription to the Law Center's quarterly newsletter, IN JUST TIMES.

(Please detach or copy and return to the Law Center.)

The National Law Center works to end homelessness through outreach and education, legislative advocacy and litigation. We seek long-term, constructive responses at the local, state and federal levels.

We would like to thank Equal Justice Works (formerly known as NAPIL) and the Nathan Cummings Foundation for their support of our public benefits program.

**NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY**

**1411 K Street, NW Suite 1400
Washington, DC 20005**

Tel: (202) 638-2535 Fax: (202) 628-2737

www.nlchp.org nlchp@nlchp.org