Lions and Tigers and Bears, Oh my!
Helping all Dorothys in the Land of Social Security OZ understand
the alphabet soup of RIB, DIB/SSDI, DAC/CDB, SSI, SNTs and
Oz’s foreign relations with the World of Medicaid

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According to the United States Supreme Court:

“The Social Security Act is among the most intricate ever drafted by Congress. Its Byzantine construction, as Judge Friendly has observed, makes the Act ‘almost unintelligible to the uninitiated.’" Friedman v. Berger, 547 F.2d 724, 727, n. 7 (CA2 1976), cert. denied, 430 U.S. 984 (1977). “


The District Court in Friedman was even more direct:

These materials are designed as a review of the four major government benefit programs to assist the elderly and persons with disabilities, with emphasis of those affecting children and young adults. This session covers programs contained in the Social Security Act (Social Security Retirement, Survivors and Disability Insurance Benefits under Title II of the Act, also known as Old Age, Survivors and Disability Insurance (OASDI) and the Supplemental Security Income (SSI) old age and disability benefits under Title XVI, a welfare program also administered by the Social Security Administration. These programs impact the lives of almost all Americans. A matrix demonstrating the inter-relationships of these four programs is found in Appendix 1 of this outline.

I. Social Security Retirement, Survivors and Disability Benefits. When first enacted in 1935, the Social Security Insurance program was almost exclusively a retirement program. Since then, disability benefits and payments to dependents of workers (survivors and dependent benefits) were added to the program.

In 2014, over 59 million Americans will receive almost $863 billion in Social Security benefits.

- Retired workers number 38 million receiving $49 billion with an average monthly benefit of 1,294. The dependents of retired workers number 2.9 million and receive $1.9 billion.
- Disabled workers number 8.8 million receiving $10.3 billion with an average monthly benefit $1,146, and disabled worker’ dependents are an additional 2 million persons receiving $ .69 billion.
- Survivors of deceased workers number 6.2 million receiving $6.7 billion and an average monthly benefit of $1,244.

Social Security provides more than just retirement benefits.

- Disabled workers and their dependents account for 16% of total benefits paid in December 2013.
  - About 90 percent of workers age 21-64 in covered employment in 2013 and their families have protection in the event of a long-term disability.
  - Just over 1 in 4 of today’s 20 year-olds will become disabled before reaching age 67.
  - 68% of the private sector workforce has no private long-term disability insurance.

Survivors of deceased workers account for 10% of total benefits paid in December 2013.

- About one in eight of today’s 20-year-olds will die before reaching age 67.
- About 96% of persons aged 20-49 who worked in covered employment in 2013 have survivors insurance protection for their young children and the surviving spouse caring for the children.

In 1940, the life expectancy of a 65-year-old was about 14 years; today it is about 20 years.

A. Social Security Retirement Insurance Benefits (RIB). Workers earn “insured status” by paying self-employment or payroll deduction taxes on earnings. To be “fully insured” a worker must have 40 quarters of contributions (10 years) to be eligible for RIB. The amount of benefit paid is based on the amount of contribution into the Social Security Trust Fund. 42 U.S.C. 402(a); 20 C.F.R. §404.310. The earnings needed to earn one Social Security Credit for a Quarter of Coverage is $1,220 (2015). Earnings are taxed to a maximum of $118,500 for OASDI benefits, and an unlimited amount of tax on the Medicare (HI only) portion.

1. To qualify, a worker must be:
   a. **old enough** (for those born between 1943 and 1954, full retirement age is 66, and it is rising to age 67 over the next few years; workers can retire at age 62 or anytime between 62 and their normal or Full Retirement Age (FRA), with an early retirement reduction which will continue to be reduced for the rest of their lives.
   
   b. **retired** (there is an earnings test: if a “retired” worker is under Full Retirement Age and continues to work part time, $1 for every $2 earnings is subtracted from the RIB for all earnings over an annual exempt amount, currently $15,720/year which is $1,310 per month (2015); and
   
   c. **have filed an application.** Applications can be filed at any time, but cannot be made more than 6 months retroactive (unlike disability, which can be retroactive to the established onset date or up to 12 months prior to the date of filing).

2. **Retirement benefits are NOT paid to a person who is:**
   a. under full retirement age and earns more than the exempt amount;
   b. over retirement age and works outside the U.S. for more than 45 hours in a month;
   c. is in the U.S. and is neither a citizen nor an alien lawfully present;
   d. has been deported or removed from the U.S.;
   e. is an alien who is outside the U.S. for more than six calendar months in a row;
   f. is an alien living in a country where it is not permitted to mail U.S. Government;
   g. has waived the right to benefits because the person is a member of a recognized religious group that is opposed insurance; or
   h. is confined within the U.S. in a jail, prison, or other penal institution or correctional facility because of a conviction for a felony.

B. Social Security Survivors and Dependents Benefits. Certain dependents and survivors of a worker may also receive Social Security benefits, under certain circumstances, based on the contributions of the worker. The potential survivors and dependents of deceased or disabled workers include:
1. a widow or widower, age 60 or over, of a deceased worker, and the disabled widow or widower (age 50 through 59) and disabled surviving divorced spouse (age 50-59) of a deceased worker, 42 U.S.C. 402 (b) and (c);

2. a surviving dependent child (or stepchild, grandchild or step-grandchild) under age 18 (or in high school to age 19) or age 18 and older under a disability that began prior to age 22, 42 U.S.C. 402(d); 20 C.F.R. §404.350-369;

3. a widow or widower of any age and surviving divorced spouse of a deceased worker who has children of that worker in their care (“mother’s and father’s benefits), 42 U.S.C. 402(e) and (f);

4. a dependent parent age 62 or over of a deceased worker, 42 U.S.C. 402(h).

C. **Social Security Disability Insurance Benefits.** A portion of each FICA contribution (deduction for “Social Security” from wage check) is placed in the Disability Trust Fund to pay workers and their dependents if the worker becomes disabled prior to full retirement age. To qualify for Title II disability benefits, also known as DIB (Disability Insurance Benefits) or SSDI (Social Security Disability Insurance) a worker must be fully and currently insured and medically (physically or mentally) disabled.

1. **Insured.** A disabled worker must be “fully insured” and be “currently insured.” To be fully insured the worker must have worked a minimum of 10 years (40 quarters), or if age 31 or younger, have worked one-half the quarters between age 21 and the claimant’s age at time of becoming disabled. In addition to fully insured, the claimant must be “currently insured.” That is, the disability must have begun during the period the claimant has paid into the system 20 quarters of the past 40 quarters (5 of the last 10 years). Think of the second requirement as requiring that the person must “be recently connected to the work force.”

2. **Medically Disabled.** The claimant must be unable to work because of a physical or mental impairment that has lasted or is expected to last for 12 months (the duration requirement), or is expected to result in death. The impairment must prevent substantial gainful activity in the worker’s normal occupation or in any other activity for which the claimant would be qualified by reason of age, education, work experience, when considering the claimant’s residual functional capacity (physical and mental). 20 C.F.R., Subpart P, §404.1501-1599.

3. **Sequential Evaluation Process.** The Social Security Administration uses a five step series of questions, in order, each yielding a yes or no answer, which drives the decision maker to a conclusion of disabled or not disabled. 20 C.F.R. §404.1520a. See Appendix 2 attached for a graphic representation of the process.
a. **Step 1.** Is the claimant engaging in “substantial gainful activity” now. If yes, claimant is not disabled; if no, proceed to step 2. In 2015, SGA is presumed for all non-blind persons if earning more than $1,090 per month, and $1,820 for blind persons.

b. **Step 2.** Does the claimant have a non-severe (incredibly minor) medical impairment? If yes, not disabled, if no, proceed to step 3.

c. **Step 3.** Does the claimant have a medical condition so severe that it is found in the Listing of Impairments for automatic payment of benefits without further inquiry? If yes, pay the benefits; if no, proceed to Step 4.

d. **Step 4.** Can the claimant return to any type of work the claimant has done in the past 15 years? If yes, deny claim. If no, proceed to the one million dollar question at step 5.

e. **Step 5.** Given the claimant’s Residual Functional Capacity, and considering the claimant’s age, education, prior work experience and transferable skills, is there any alternative work that the claimant can do on a full time basis? If yes, deny; if no, pay the benefits.

4. **Procedure for processing claims.** See Appendix 3 attached. A disability claim is begun by filing online (preferred) at www.socialsecurity.gov or by calling SSA at 1-800-772-1213. The claim will be regarded as filed as of the phone call. Online applications are possible for SSDI claims but not SSI Claims – at this point. Paperwork is then filed at any one of the hundreds of local Social Security district offices. The application is sent to a state Disability Determination Service (DDS) office for them to gather and analyze the medical evidence, and make recommended decision. In Florida, the DDS function is performed, under contract with SSA, by the Florida Department of Health, Disability Determinations Division. The medical eligibility decision, favorable or unfavorable, is issued by the federal Social Security Administration, not the State of Florida. If denied, the claimant is notified of the opportunity to request Reconsideration. Another evidentiary review is conducted by medical personnel. If denied again, the claimant may file a Request for Hearing before a federal Administrative Law Judge. No claim may be denied at that level without a full evidentiary hearing. If denied, the claimant may file a Request for Review by the Appeals Council in Falls Church, Virginia (Washington, D.C. suburb). This completes the administrative agency review (“exhaustion of administrative remedies”). If denied by the Appeals Council, the claimant may initiate a civil Complaint in the United States District Court, and proceed through the various levels of appeal to the U.S. Circuit Court of Appeals and the United States Supreme Court.

5. **Attorney Representation and Fees.** A claimant is entitled to have a representative who can file any and all documents except independently initiate a claim for benefits. Attorney’s fees for representing claimants are highly regulated. 42 U.S.C. §406; 20 CFR §§404.1720-1799. To charge and collect a
fee a representative must obtain approval from the Social Security Administration. Failure to follow the requirements subjects the attorney to a fine and imprisonment as well as disbarment from Social Security practice. 42 U.S.C. §406(a)(5).

6. **Working while Disabled.** Unlike SSI disability claimants, Title II SSDI recipients are entitled to a 9-month Trial Work Period (TWP) wherein they can receive full disability benefits and wages from work. The months do not have to be consecutive. In addition, to encourage disabled persons to attempt to work, Congress extended Medicare eligibility for up to 84 months after the person is no longer entitled to monthly SSDI payments. However, if the claimant is receiving benefits, but also engaging in work which is less than the TWP threshold of $780 per month gross in 2015, such minimal work will not affect continued eligibility for SSDI monthly payments nor count as a month of Trial Work Period. 20 C.F.R. §404.1585. SSI claimants who work will have approximately 50% of their wages subtracted from the amount of their SSI check, as will be more fully explained below.

7. **Amount of Benefits Paid.** The benefit paid to an SSDI disabled person is the same check they would receive at Full Retirement Age, currently age 66. In other words, the retirement age is compressed down to the disabled person’s age at time of disability. Benefits are augmented by a cost-of-living increment, usually annually. There is no such thing as partial disability. A claimant is 100% disabled – or not! 42 U.S.C. 415. Benefits are retroactive to the date of onset of the disability, but no longer than 12 months back from the date of application.

a. **Cash.** In 2015, the average monthly benefit amount is $1,328 to a single retired worker, $2,176 for a retired couple both receiving benefits, and $1,976 per month to a disabled worker, with a spouse and one child. The average monthly Social Security benefit paid to a widow with two children is $2,680 (which equals $32,160 per year).

b. **Dependent benefits.** Dependent benefits are paid to a spouse of a disabled worker who is caring for children age 16 and under, and to the children under age 18, or under age 19 if in school and not yet graduated. Survivor’s Benefits are paid to spouse’s or children or deceased workers.

c. **Medicare coverage.** Medicare coverage is provided to the disabled worker (but not his dependents) beginning 24 months after the worker was in payment status for disability benefits purposes, not necessarily when the disability began.

II. **Supplemental Security Income**

A. **Definition.** Supplemental Security Income (SSI) is a cash assistance program funded and administered by the Federal Government. The program is authorized by Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. Beginning in January 1974, SSI replaced the Federal/State matching grant welfare programs of assistance to the aged, blind, and disabled. Under SSI, there is no minimum age limit for establishing eligibility
based on blindness or disability. As of April 2015, over 8 million people receive SSI benefits \textit{20 C.F.R. §416.110}. This regulations reminds us of the purposes and policies of the SSI program:

\begin{itemize}
\item \underline{20 CFR § 416.110 Purpose of program.} The basic purpose underlying the supplemental security income program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level. The supplemental security income program replaces the financial assistance programs for the aged, blind, and disabled in the 50 States and the District of Columbia for which grants were made under the Social Security Act. Payments are financed from the general funds of the United States Treasury. Several basic principles underlie the program:

\begin{itemize}
\item \textbf{(a) Objective tests.} The law provides that payments are to be made to aged, blind, and disabled people who have income and resources below specified amounts. This provides objective measurable standards for determining each person's benefits.
\item \textbf{(b) Legal right to payments.} A person’s rights to supplemental security income payments — how much he gets and under what conditions — are clearly defined in the law. The area of administrative discretion is thus limited. If an applicant disagrees with the decision on his claim, he can obtain an administrative review of the decision and if still not satisfied, he may initiate court action.
\item \textbf{(c) Protection of personal dignity.} Under the Federal program, payments are made under conditions that are as protective of people's dignity as possible. No restrictions, implied or otherwise, are placed on how recipients spend the Federal payments.
\item \textbf{(d) Nationwide uniformity of standards.} The eligibility requirements and the Federal minimum income level are identical throughout the 50 States and the District of Columbia. This provides assurance of a minimum income base on which States may build supplementary payments.
\item \textbf{(e) Incentives to work and opportunities for rehabilitation.} Payment amounts are not reduced dollar-for-dollar for work income but some of an applicant's income is counted toward the eligibility limit. Thus, recipients are encouraged to work if they can. Blind and disabled recipients with vocational rehabilitation potential are referred to the appropriate State vocational rehabilitation agencies that offer rehabilitation services to enable them to enter the labor market.
\end{itemize}

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B. \textbf{Administration.} The SSI program is administered by the Social Security Administration, an agency formally under the Department of Health and Human Services, but since March 31, 1995, is an independent agency of the federal government headed by a Commissioner and a Board of Trustees.

C. \textbf{Financing.} SSI payments are made from the funds in the general treasury of the United States, not from the Social Security Retirement, or Disability or Medicare Trust Funds.

D. \textbf{Relationship to Florida Medicaid.} Under Section 1634 of the Social Security Act, Florida has opted to have the Social Security Administration make eligibility decisions regarding SSI-related Medicaid. \textit{POMS SI 01715.020}
If a claimant is eligible for at least $1 of SSI monthly income benefits, the claimant is automatically eligible for Medicaid. Florida Statutes, §409.903; DCF ESS Manual §2040.0801.01.

E. Categorical eligibility. In order to be eligible for SSI benefits, a claimant must fit one of the following three categories:

1. **Aged** - An "aged" person is someone who is age 65 or older; however, certain lawfully admitted U.S. Permanent Residents over age 65 are denied benefits unless they are also disabled;

2. **Blind** - A "blind" person is someone whose vision, with use of a correcting lens, is 20/200 or less in the better eye or who has tunnel vision of 20 degrees or less. There is no minimum age limit; or

3. **Disabled** - A "disabled" person is someone who meets the Social Security disability insurance program (SSDI) definition of disability. That is, he or she:
   a. Must be unable to engage in substantial gainful activity (SGA) due to a medically determinable physical or mental impairment; and
   b. The impairment can be expected to last for at least 12 months in a row or result in death.
   c. But unlike Title II SSDI benefits, there is no minimum age limit. A child under age 18 is eligible if he or she meets conditions (a) and (b) above, and if otherwise eligible financially and meets the non-financial eligibility requirements. 20 C.F.R. §416.202 lists all persons who may get SSI.

F. Other non-financial eligibility requirements. See 20 C.F.R. §416.210-216. These include meeting all of the following:

1. Be a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands, or be a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. armed forces;

2. Be a citizen of the U.S., or an alien in an immigration category qualified to receive Federal benefits and meet certain additional requirements;

3. Not be a resident of a public institution throughout a month;

4. Not be absent from the U.S. for a calendar month unless the claimant is:
   a. a child who is a U.S. citizen and lives outside the U.S. with a parent in the U.S. armed forces; or
   b. a student who is temporarily abroad for the purpose of conducting studies;

5. Apply for any other benefits for which the claimant is potentially eligible;

6. Not refuse, without good cause, vocational rehabilitation services if the claimant is blind or disabled;

7. Accept appropriate treatment, if available, for drug addiction or alcoholism;

8. Not be a fugitive felon; and

9. Not be violating a condition of parole or probation.
G. **Special alien requirements.** 20 C.F.R., Subpart P, §416.1600-1619. The claimant must be a U.S. Citizen, or one of a select group of aliens who are “qualified aliens” or “Non-qualified aliens” who were lawfully present in the United States prior to August 22, 1996. To be a qualified alien, the claimant must meet one of the categories listed below:

1. A person lawfully admitted for permanent residence (LAPR), **and:**
   a. Has 40 qualifying quarters of creditable work; or
   b. Is a veteran, active duty member of the U.S. military or a spouse or dependent child of a veteran or member of the U.S. military; or
   c. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   d. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
   e. Was granted one of the alien classifications listed below within the last seven years:
      1) Refugee under section 207 of the INA;
      2) Asylee under section 208 of the INA;
      3) Alien whose deportation is being withheld under section 243(h) of the INA or whose removal has been withheld under section 241(b)(3) of the INA;
      4) Cuban/Haitian entrant under one of the four categories in Section 501(e) of the Refugee Education and Assistance Act of 1980; or

2. A refugee under section 207 of the INA **and:**
   a. Is a veteran, active duty member of the U.S. military, or a spouse or dependent child of a veteran or member of the U.S. military; or
   b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
   d. Was granted refugee status under section 207 of the INA within the last seven years.

3. A person granted asylum under section 208 of the INA **and:**
   a. Is a veteran, active duty member of the U.S. military or a spouse or dependent child of a veteran or member of the U.S. military; or
   b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
   d. Was granted asylum within the last seven years.

4. A person whose deportation was withheld under section 243(h) of the INA or removal withheld under section 241(h)(3) of the INA **and:**

5. A veteran, active duty member of the U.S. military or a spouse or dependent child of a veteran or member of the U.S. military; **or:**
   a. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   b. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
   c. Deportation or removal was withheld within the last seven years.
6. A conditional entrant under section 203(a)(7) of the INA and:
   a. Is a veteran, active duty member of the U.S. military or a spouse or dependent child of a veteran or member of the U.S. military; or
   b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   c. Is lawfully residing in the United States and was receiving SSI on 8/22/96.

7. A person paroled into the U.S. for one year or more under section 212(d)(5) of the INA and:
   a. Is a veteran, active duty member of the U.S. military or a spouse or dependent child of a veteran or member of the U.S. military; or
   b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
   d. Was granted Cuban/Haitian entrant status within the last 7 years under 501(e) of the Refugee Education and Assistance Act of 1980.

8. A Cuban/Haitian entrant under Section 501(e) of the Refugee Education and Assistance Act of 1980 and:
   a. Is a veteran, active duty member of the U.S. military or a spouse or dependent child of a veteran or member of the U.S. military; or
   b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   c. Is lawfully residing in the United States and was receiving SSI on 8/22/96; or
   d. Was granted Cuban/Haitian entrant status within the last seven years.

9. A battered spouse or child who petitioned for status as a lawfully admitted permanent resident under section 204(a)(1)(A)(i)-(iv) or 204(a)(1)(B)(i)-(iii) of the INA, or suspension of deportation under section 244(a)(3) or 240A(b)(2) of the INA, and:
   a. Is a veteran, active duty member of the U.S. military or a spouse or dependent child of a veteran or member of the U.S. military; or
   b. Was lawfully residing in the United States on 8/22/96 and is blind or disabled; or
   c. Is lawfully residing in the United States and was receiving SSI on 8/22/96.

H. Financial eligibility requirements. SSI benefits are paid to those individuals who meet the above medical eligibility requirements and who further meet the financial requirements for low income and resources. 20 C.F.R., Subpart D, §416.401-435.

1. SSI income rules. A claimant must not have monthly “countable” income more than the current Federal Benefit Rate (FBR) which is increased each year by a cost-of-living-adjustment unless Congress also adjusts the FBR as part of the budget process (Congress has done so only once since creating the SSI program in 1974). The FBR for an eligible couple (both qualifying) is 1.5 times the individual’s rate. The Federal Benefit Rate, that is, the maximum SSI check for 2015 for an individual is $733 per month, and for a couple, $1,082 per month. 20 C.F.R., Subpart K, §416.1100-1182. The Medicaid nursing home income cap for Institutional Care Program (ICP) benefits is always related to the Federal Benefit Rate by a formula of three times the FBR. Thus the Florida ICP income cap is $2,163 (3 X $733 – the maximum SSI check).
a. **Definition of income.** Income is anything that “comes in,” that is, anything the claimant receives during a calendar month that can be used to meet their needs for food or shelter. It may be in cash or in-kind. In-kind income is not cash; it is food or shelter, or something the claimant can use to get food or shelter. 20 C.F.R. §416.1102.

b. **Certain things are NOT income.** See 20 C.F.R. §416.1103. These include:

1) Medical care and services, including room and board, provided by anyone while the claimant is living in a medical treatment facility such as a hospital or nursing home;
2) Social Services;
3) Receipts from the sale, exchange, or replacement of a resource.
4) Income tax refunds;
5) Payments by credit life or credit disability insurance;
6) Proceeds of a loan;
7) Money paid by someone else directly to a supplier on the claimant’s behalf. However, goods or services you receive as a result of the payments may be in-kind income even if the third-party payments themselves are not;
8) Replacement of income already received, e.g., replacement of a stolen paycheck;
9) Assistance received to protect the claimant’s residence from bad weather, such as insulation or storm doors; and
10) Any item (other than an item of food or shelter) that would be an excluded non-liquid resource.

c. **Countable income.** Countable income, that is, the amount of other income that is subtracted from the Federal Benefit Rate to determine the amount of the claimant’s monthly SSI check, consists of the dollar amount left over after subtracting everything that is “not income” (above) and applying the income “exclusions.” The exclusions are a $20 general income disregard, and $65 from earned income, and one-half of the remaining amount of earned income.

d. **Earned income exclusions.** See 20 C.F.R. §416.1112. In figuring countable earned income, certain exclusions are applied in the following order:

1. Exclusions authorized by Federal laws other than Title XVI;
2. The full amount of any earned income tax credit payments;
3. Up to $10 per month of earned income if received infrequently or irregularly. For example, if the income is received only once during a calendar quarter or if its receipt cannot reasonably be expected;
4. For 2015, up to $1,750 in a month (but no more than $7,060 per year) for a blind or disabled child who is a student regularly attending school;
5. Any portion of the $20 per month general income exclusion that is not used against unearned income in the same month;
6. $65 of earned income;
7. Impairment-related work expenses of a disabled (not blind) individual who:
   a) Is under age 65; or
b) Received SSI based on a disability for the month before turning age 65;

8. One-half of the month's remaining earned income;

9. Any expenses reasonably typical of the earning of income for a blind (not disabled) individual who:
   a) Is under age 65; or
   b) Received SSI because of blindness for the month before turning age 65; and

10. Any earned income used to fulfill an approved plan for achieving self-support in the case of a blind or disabled individual who:
   a) Is under age 65; or
   b) Received SSI based on blindness or disability for the month before turning age 65.

e. Unearned income exclusions. See 20 C.F.R. §416.1124. These include:

1) Exclusions authorized by Federal laws other than Title XVI (e.g., food stamps, TANF payments);

2) Any public agency's refund of taxes on real property or food;

3) Assistance based on need and funded wholly by a State and/or one of its political subdivisions (including Indian tribes);

4) Any portion of a grant, scholarship, or fellowship used for paying tuition, fees or other necessary educational expenses. However, any amount set aside or actually used for food, clothing, or shelter is not excluded;

5) Food raised by an individual or by his or her spouse if consumed by the household;

6) Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any Federal statute because of a catastrophe declared by the President to be a major disaster;

7) Up to $20 per month of unearned income if received infrequently or irregularly; i.e., if received only once during a calendar quarter from a single source or if its receipt cannot reasonably be expected;

8) Payments received by certain recipients under the Alaska Longevity Bonus program;

9) Payments to an individual for providing foster care to a child placed in the individual's home by a qualified agency;

10) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement left to accumulate and become part of the separately identifiable burial fund;

11) Certain home energy and other needs-based support and maintenance assistance;

12) One-third of support payments made by an absent parent to or for an eligible child;

13) The first $20 per month of an individual's total unearned income other than income based on need;

14) Any unearned income used to fulfill an approved plan for achieving self-support in the case of a blind or disabled individual who is under age 65 or received SSI based on blindness or disability for the month he or she turned 65;

15) Federal housing assistance, whether provided directly by the Federal Government or through other entities such as local housing authorities, nonprofit organizations, etc.;

16) Any interest accrued on (or after April 1, 1990) and left to accumulate as part of the value of an excluded burial space purchase agreement;
17) The value of any commercial transportation ticket received as a gift and not converted to cash. This applies to travel among the 50 states, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;

18) Hostile fire pay from the Uniformed Services received in or after October 1993;

19) Payments received from a State fund to aid victims of crime;

20) Relocation assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970;

21) Austrian Social Insurance payments that are based, in whole or in part, on wage credits received for certain losses suffered before and during World War II;

22) Payments made by the Dutch Government under the Netherlands Act on Benefits for Victims of Persecution 1940-1945 to individuals who were victims of persecution and suffering from illnesses or disabilities resulting from the persecution.

f. In-kind support and maintenance. "In-kind income" is income that is not in the form of cash or negotiable instruments. See 20 C.F.R. §416.1130-1157. Examples of in-kind income include real property, food, and occasionally, wages (e.g., room and board as compensation for employment). In-kind income that is unearned and directly satisfies the need for food or shelter is called "in-kind support and maintenance." It has special rules for valuation. Any other in-kind income is valued at its current market value. There are two rules for placing a value on in-kind support and maintenance: the “one-third reduction rule” and the “presumed maximum value rule.”

1) Under the one-third reduction rule, an amount equal to one-third of the FBR is considered to be the value of the in-kind support and maintenance (ISM) regardless of the actual current market value of the amount received. The one-third reduction rule applies to a claimant who lives in another person’s household and receives both food and shelter from within that household, 20 C.F.R. §416.1131;

2) The presumed maximum value rule applies in any other situation (for example, where the claimant lives in a home owned by the claimant, and someone, like a trustee, outside the home pays the mortgage or some other food or shelter expense). Again, regardless of the amount paid, the reduction is the presumed maximum value amount, 20 C.F.R. §416.1140.

Table 1. The Individual and Couple Federal Benefit Rates, 2015.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Full FBR</td>
<td>$733</td>
</tr>
<tr>
<td>Medicaid Care</td>
<td>$30</td>
</tr>
<tr>
<td>Eligible Couple Full FBR</td>
<td>$1,100</td>
</tr>
<tr>
<td>Medicaid Care - Couple</td>
<td>$60</td>
</tr>
</tbody>
</table>
Table 2. The one-third reduction rule values (RRV) and applicable Presumed Maximum Values (PMV).

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual RRV</td>
<td>$244.33</td>
</tr>
<tr>
<td>Eligible Couple RRV</td>
<td>$363.00</td>
</tr>
<tr>
<td>Individual PMV</td>
<td>$264.33</td>
</tr>
<tr>
<td>Eligible Couple PMV</td>
<td>$383.00</td>
</tr>
</tbody>
</table>

2. **SSI Resource Requirements.** In addition to meeting the income requirements, the claimant must not have countable resources in excess of a specified amount at the beginning of each month, literally the first day of the month. The limits for January 2015 remain the same as they have for many, many years at $2,000 for an individual and $3,000 for a couple. [20 C.F.R. §416.1201](#).

   a. **Definition.** For SSI purposes, a resource is any of the following owned by the claimant or claimant’s spouse, if any, including cash, liquid assets, and real or personal property that can be converted to cash to obtain support and maintenance. If the claimant has the right, authority, or power to liquidate the property, it is considered a resource.

   b. **Resource exclusions.** Certain things are not counted as resources by operation of law. [20 C.F.R. §416.1210; 42 U.S.C. 1382b(a)](#). Examples include (the most frequently used ones in bold):

   1. An individual's **home**, regardless of value. A home includes any adjacent land and related buildings on it, [20 C.F.R. §416.1212](#);

   2. **Household goods** and personal effects are excluded without regard to value. Household goods are defined as “items of personal property, found in or near the home, that are used on a regular basis, and needed by the householder for maintenance, use and occupancy of the premises as a home;” EXCEPT items “acquired or held because of their value or as an investment are not considered household goods.” “Household goods include, but are not limited to, furniture, appliances, electronic equipment such as personal computers and televisions.” Personal effects are defined as “items of personal property that are worn or carried by an individual or “items that have an intimate relation to the claimant;” and include, but are not limited to, “clothing, jewelry, personal care items, prosthetic devices, and educational or recreational items such as books, musical instruments, or hobby materials.” [POMS SI 01130.430](#) and [20 C.F.R. §416.1216](#);

   3. **One automobile**, regardless of value, if used to provide necessary transportation. For SSI purposes, “automobile” means any vehicle used for transportation. Vehicles used for transportation include but are not limited to cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and even animals. Not included is a vehicle that is used only as a
recreational vehicle (e.g., a boat used on weekends for pleasure) which can NOT be excluded as “personal property” and whose equity value is counted as a resource. **POMS SI 01130.200** and **20 C.F.R. §416.1218**;

4. **Special Needs Trusts** pursuant to Foster Care Independence Act of 1999 (P.L. 106-169). Section 205; **42 U.S.C. 1382b; POMS SI 01120.201** and **203**; and **Third Party Special Needs Trusts**. See **POMS SI 01120.200**.

5. **Life insurance with a face value of less than $1500** with some caveats, **20 C.F.R. §416.1230**;

6. **Burial spaces regardless of cost, and burial funds up to $1,500**, **20 C.F.R. §416.1231**;

7. **Title XVI (SSI) or Title II (SSDI, DAC or RIB) retroactive payments** as provided in **20 CFR §416.1233**;

8. Restricted allotted Indian lands, **20 C.F.R. §416.1234**;

9. Property of a trade or business without limit (but not the income from it);

10. Non-business property of a reasonable value that is needed for self-support;

11. Resources of a blind or disabled individual that are needed carry out an approved plan for achieving self-support, **20 C.F.R. §416.1225-1227**;

12. Disaster relief, **20 C.F.R. §416.1237**;

13. Payments or benefits excluded by provisions of a Federal statute other than Title XVI of the Social Security Act;

14. Housing assistance as provided in **20 CFR §416.1238**;

15. Shares of stock held by a native of Alaska in a regional or village corporation during the 20-year period in which, under the provisions of the Alaska Native Claims Settlement Act, such stock cannot be transferred;

16. Payments received as compensation for expenses incurred or losses suffered as a result of a crime for nine months following receipt, **20 C.F.R. §416.1229**;

17. Relocation assistance from a State or local government for nine months; and

18. Dedicated financial institution accounts required to be established for the payment of past-due benefits to disabled children as provided in **20 CFR 416.1247**.

3. **Deeming of Income and Resources.** Under certain circumstances, all or portions of the income or resources of a spouse, parent, or sponsor of an alien are “deemed” to be the income or resources of the claimant. Pension funds owned by an ineligible spouse or by an ineligible parent or spouse of a parent are excluded from resources for deeming purposes. Pension funds are defined as funds held in Individual Retirement Accounts (IRA’s) or in work-related pension plans. **Note:** deemor’s IRAs and pensions funds are excluded, but not the claimant’s IRAs or pension funds under the theory that the claimant’s IRAs can be converted to purchase food and shelter and therefore are NOT excluded in determining eligibility. **20 C.F.R. §416.1160**. If a person is disabled, IRS rules do not impose a penalty for withdrawing IRA funds prior to age 59½, and only the ordinary federal income tax would be paid on the amount withdrawn.
a. **Deeming from spouse to spouse.** The deeming of spousal income and assets applies only if the parties are living in the same household. In addition, if there are children under age 21 living in the household, an allocation for their living allowance is provided (up to $367 in 2015 depending on the child’s own income), as well as for the spouse who lives in the household. The allocation is equal to the difference in the FBR for an individual and the FBR for a couple. The resources of an ineligible spouse and the eligible claimant are added together and compared to the resource limit for a couple ($3,000) to determine eligibility. In addition, the same income exclusions available to the SSI claimant spouse apply to the not SSI eligible spouse’s income. **20 C.F.R. §416.1161 et seq.**

b. **Deeming from parent to child.** Deeming does not apply if the SSI eligible child does not live in the same household as the parent (e.g., separated or divorced parents). Children are subject to deeming from natural, adoptive parents, and a stepparent if living in the same household. However, if the child is living with a stepparent only due to the death or divorce of the natural parent, the stepparent’s income and resources are NOT deemed to a child. There are also living allocations for other children under age 21 (up to $361 in 2015), and the income exclusions of both parents apply in determining eligibility. **20 C.F.R. §416.1165.** The following chart produced by SSA and found at [http://www.socialsecurity.gov/ssi/text-child-ussi.htm](http://www.socialsecurity.gov/ssi/text-child-ussi.htm) tells you how much income the parent or parents can have and still retain at least $1 of SSI disability payments for the child, which would trigger Florida Medicaid automatically under §409.903, Florida Statutes.

**HOWEVER, READ CAREFULLY THE CAUTIONARY NOTES FOLLOWING THE CHART.** IF THE FAMILY’S SITUATION DOESN’T MATCH EXACTLY YOU MUST DO A HAND CALCULATION BEFORE ADVISING ANY FLORIDA CLIENT.

The POMS contain forms for doing a hand-calculation of the deeming for spouse-to-spouse and parent-to-child to determine the correct amount of deemed income. At a minimum, however, the chart gives a pretty good idea of how much a deemor can earn and still have the disabled person qualify for at least $1 of SSI.
Gross monthly income **BELOW** the dollar amounts shown means a disabled child may be eligible for SSI benefits in 2015.

Amounts given are general guidelines only.

<table>
<thead>
<tr>
<th>Number of ineligible children in household</th>
<th>All income is <strong>earned</strong></th>
<th>All income is <strong>unearned</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>One parent in household</td>
<td>Two parents in household</td>
</tr>
<tr>
<td>0</td>
<td>$ 3,057</td>
<td>$ 3,791</td>
</tr>
<tr>
<td>1</td>
<td>$ 3,424</td>
<td>$ 4,158</td>
</tr>
<tr>
<td>2</td>
<td>$ 3,791</td>
<td>$ 4,525</td>
</tr>
<tr>
<td>3</td>
<td>$ 4,158</td>
<td>$ 4,892</td>
</tr>
<tr>
<td>4</td>
<td>$ 4,425</td>
<td>$ 5,259</td>
</tr>
<tr>
<td>5</td>
<td>$ 4,892</td>
<td>$ 5,626</td>
</tr>
<tr>
<td>6</td>
<td>$ 5,259</td>
<td>$ 5,993</td>
</tr>
</tbody>
</table>

**The Deeming Eligibility Chart for Children does not apply when:**

- The parent(s) receives both earned income (for example, wages or net earnings from self-employment) and unearned income (for example, Social Security benefits, pensions, unemployment compensation, interest income, and State disability).
- The parent(s) receives a public income maintenance payment such as Temporary Assistance for Needy Families (TANF), or a needs–based pension from the Department of Veterans Affairs. See **SSI AND ELIGIBILITY FOR OTHER GOVERNMENT AND STATE PROGRAMS** for more information on TANF.
- The parent pays court-ordered support payments.
- The child has income of his or her own.
- Any ineligible child has income of his or her own, marries, or leaves the home.
- There is more than one disabled child applying for or receiving SSI benefits.
- The State supplements the Federal benefit, which Florida does not.
4. **Transfer of Assets Penalty.** The same SSI statutory amendment that incorporated 42 USC §1396p(d)(4)(A) [the Medicaid Special Needs Trust exceptions] re-instituted a transfer of assets penalty for transferring ownership of a resource for less than fair market value. Such transfer can result in a period of ineligibility for SSI. Foster Care Independence Act of 1999 (P.L. 106-169). Section 205; 42 U.S.C. 1382b. This provision is effective for transfers made on or after 12/14/99. If the individual received fair market value for the transferred resource, the period of ineligibility does not apply. The look-back period to develop uncompensated transfers is 36 months. That is, any resources transferred 36 months before the date of application for SSI benefits, even if transferred for the specific purpose of qualifying for SSI, are non-penalty transfers. 42 U.S.C. 1382b(c).

a. **Penalty provisions.** If a resource was transferred without value and does not meet one of the exceptions below, the penalty is calculated by dividing the fair market value of the resource transferred by the FBR (Federal Benefit Rate, which is the maximum SSI payment to an single individual, for example, in 2015 it is $733). The result is the number of months of ineligibility, capped at 36 months forward from the date of transfer. 42 U.S.C. 1382b(c)(1)(A). These rules are different from and more favorable for the SSI claimant than the Florida Medicaid ICP rules on transfer penalties.

b. **Exceptions to the transfer of assets penalty:**

1) **Transfers to Trusts.** The period of ineligibility does not apply to an individual who transfers a resource to a trust established for the sole benefit of the individual's child of any age who is blind or disabled. This includes trusts qualifying as "Medicaid trust exceptions" in POMS SI 01120.200 ff. (i.e., trusts established under Section 1917(d)(4)(A) and (C) of the Social Security Act). 42 U.S.C. 1396p(d)(4)(A). The period of ineligibility also does not apply to an individual who transfers a resource to a trust established for the sole benefit of an individual including himself or herself who is under age 65 and is blind or disabled. **NOTE:** A CLAIMANT OVER AGE 65 CANNOT TRANSFER RESOURCES TO A POOLED TRUST WITHOUT SERVING THE PENALTY PERIOD.

2) **Transfers of a home.** POMS SI 01150.122. It is impermissible to even add another person to the title of the claimant’s home. However, certain transfers of the home to another are permissible:

   a) Transfer to a spouse (including a separated spouse), a child under age 21 regardless of student or marital status; a child of any age or any marital status who is blind or disabled.

   b) Transfer to a sibling of the claimant who has an ownership interest (including life estate and equitable ownership) in the home, and who was residing in the claimant’s home for at least 1 year immediately before the date the transferor becomes institutionalized.
c) Transfer to a Son or Daughter who was residing in the transferor’s home for at least 2 years immediately before the date the individual becomes institutionalized, and who provided care to the individual which permitted the individual to reside at home instead of in an institution.

3) **Non-home resource transfer exceptions.** The penalty does not apply if the non-home resource was transferred to the transferor’s spouse (including a separated spouse), or another person for the sole benefit of the transferor’s spouse, or the transferor’s child of any age who is blind or disabled. POMS SI 01150.123.

4) **Resource returned.** If the improperly transferred resource is returned, and then the claimant seeks conditional SSI payments subject to sale or proper disposition of the excess resource, the penalty does not apply. POMS SI 01150.124.

5) **Transfers for purposes other than to qualify for SSI.** Some transfers are made in the normal course of life, and then the claimant becomes unexpected medically eligible for SSI disability benefits. In this circumstance and similar ones, the penalty would not apply. POMS SI 01150.125.

6) **Undue Hardship.** This exception is extremely limited, aiding those individuals who have disposed of resources and whose only funds are now equivalent to less than one month’s FBR and whose ordinary expenses are greater than the FBR. POMS SI 01150.126.

I. **Attorneys Fees.** Attorney’s fees for representing SSI claimants are highly regulated. 42 USC §406; 20 CFR §§404.1720-1799. To charge and collect a fee a representative must obtain approval from the Social Security Administration. Failure to follow the requirements subjects the attorney to a fine and imprisonment, and disbarment from Social Security practice. 42 USC §406(a)(5). To represent a claimant, the attorney must file a form SSA 1696. Thereafter SSA will send duplicate notices to both the claimant and the attorney throughout the proceedings.

To collect a fee, an attorney must file an SSA tax form, SSA 1695, with the Social Security Administration prior to beginning representation of the claimant so that SSA can report the income to the IRS.

If the attorney representative wants to collect an automatic fee of 25% of the retroactive benefits won for the claimant, the attorney must file a Fee Agreement along with the 1696 Form. Otherwise, the attorney must file a Fee Petition on forms prescribed by the Social Security Administration prior to collecting a fee from the claimant or the trustee of a claimant’s self-settled d4A Special Needs Trust.
Matrix of Public Benefits for Children and Adults – 2015
Understanding the relationships between Social Security, SSI, Medicare and Medicaid.

### Monthly Checks (from SSA)

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Purpose</th>
<th>Eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RIB, DIB &amp; DAC</strong></td>
<td>Aka: “Social Security,” “Retirement” Disability Insurance Benefits, Disabled Adult Child, SSDI, Title II, T2&lt;br&gt;Purpose: Pays monthly income based on FICA contributions during former working years&lt;br&gt;Eligibility: RIB = retired; DIB = Medically disabled per SSA rules and “Fully insured” (40 quarters or “credits”) and “currently insured” (20/40 rule); payments begin 6 months after disability onset.</td>
<td></td>
</tr>
<tr>
<td><strong>Medicare</strong></td>
<td>Aka: “the Red, White and Blue paper ID card”&lt;br&gt;Purpose: Part A pays hospitals and limited nursing home coverage; Part B pays doctors Part D provides prescription drugs.&lt;br&gt;Eligibility: Age 65, or Receipt of any DIB payment after 24 month waiting period from date DIB payments began.&lt;br&gt;Minus: Doesn't pay for extended nursing home stays; need to purchase supplemental health insurance for co-payments and deductibles.</td>
<td></td>
</tr>
<tr>
<td><strong>SSI</strong></td>
<td>Aka: Supplemental Security Income, Title XVI, T16&lt;br&gt;Purpose: Provides up to $733 for food and shelter expenses for elderly or disabled.&lt;br&gt;Eligibility: Age 65, or a finding of RIB/DIB eligibility OR a separate finding of medical disability per SSA rules PLUS meeting the rules for income (less than $753 countable monthly income) and resources of less than $2,000 (excluding house, contents, car and $$$ in Special Needs Trust).</td>
<td></td>
</tr>
<tr>
<td><strong>Medicaid</strong></td>
<td>Aka: “The Gold Card” (plastic); with Medicaid Managed Care (2014) may be through HMO.&lt;br&gt;Purpose: Pays doctors, hospitals and other medical providers directly.&lt;br&gt;Eligibility: Receipt of at least $1 of SSI triggers automatic eligibility for Medicaid in “Section 1634” states like Florida.&lt;br&gt;Plus: No deductibles and co-payments; pays for prescription drugs and extended nursing home stays, and residential services.</td>
<td></td>
</tr>
</tbody>
</table>

**DIB triggers Medicare after 24 month waiting period.”**<br>**RIB/DIB of less than $753 permits eligibility for concurrent SSI disability benefits.**<br>**Receipt of at least $1 of SSI triggers full eligibility for Florida Medicaid per federal and Florida statutes.**

Appendix 1
The Five Step Sequential Evaluation Process

[Substantive]

1. Is the claimant engaging in "substantial gainful activity?"

   Yes

   No

2. Does the claimant have a "non-severe impairment"?

   Yes

   No

3. Does the claimant have an impairment which meets or equals the Listing of Impairments?

   Yes

   No

4. Can the claimant return to any former work which he had during the previous 15 years?

   Yes

   "Old Work"

   No

5. Given the claimant's Residual Functional Capacity, is there any other work that the claimant can do?

   Yes

   "New Work"

   No

   NOT DISABLED (Claimant loses)

   AWARD CERTIFICATE $$$$$$$ (Claimant wins)

INITIAL REQUIREMENTS

Duration: Have condition that has lasted or will last 12 months or more

PLUS

SSDI Quarters: Have paid enough taxes to be covered at time of onset

OR

SSI Financial: Have low income and few assets

No $$ Benefits Can be paid by SSA

Are you working now?

Do you have a minor problem?

Do you have an extremely serious illness, such as terminal cancer, that should qualify you automatically?

Are you able to return to any type of work you did in the last 15 years?

Given that you are a handicapped person, is there any other job anywhere that you are capable of doing?

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Appendix 2
Call SSA at 1-800-772-1213 to begin the application

INITIAL APPLICATION for Disability Benefits (filed at SSA Local Office)

FLORIDA OFFICE OF DISABILITY DETERMINATIONS - collects medical records and other information submitted by claimant

CONSULTATIVE EXAM By Social Security Doctor

CONSULTATIVE EXAM By Social Security Doctor

(4 to 8 months)

INITIAL DETERMINATION (SSA Letter)

(5 to 6 months)

REQUEST FOR RECONSIDERATION (filed within 65 days at SSA)

FLORIDA OFFICE OF DISABILITY DETERMINATIONS - considers any new information submitted by claimant

RECON DETERMINATION (SSA Letter)

REQUEST FOR HEARING (filed within 65 days at SSA)

(18 to 26 months)

HEARING before ADMINISTRATIVE LAW JUDGE

(2 to 4 months)

HEARING DECISION

REQUEST FOR REVIEW OF HEARING DECISION (filed within 65 days at SSA)

(18 to 24 months)

APPEALS COUNCIL REVIEW (usually no oral argument)

APPEALS COUNCIL DECISION

($$$)

AWARD CERTIFICATE

Administrative Remedies Exhausted - Proceed to Federal Court

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