

# SSI and IHSS Advocacy for Children and Families

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*Presented by Legal Aid Society of San Diego, Inc. – SSI Advocacy Team – April 11, 2018*

## **Slide 2**

### **Supplemental Security Income (SSI)**

- SSI is the only source of federal income support targeted to families caring for children with disabilities.
- It reaches only the lowest-income and most severely impaired children. These families face higher costs, more demands on their time, and more insecurity.
- “The modest income that SSI provides doesn’t solve every problem these families face, but it reduces their struggles and helps provide the highly individualized supports their children may need.”  
<https://www.cbpp.org/research/social-security/ssi-a-lifeline-for-children-with-disabilities>

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- 1 million American children have special health care needs, but only 1.2 million children receive SSI benefits either because the disabling conditions are not severe enough, or because families’ income/resources exceed the program’s low limits.
- SSI benefits help families put food on the table, pay rent, and pay for disability-related expenses such as specialized therapies, medically prescribed diets, diapers for older children, and home modifications for accessibility

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### SSI Child Recipient's by Diagnostic Category – 1, 267,160

Unknown	1.3
Other	6.7
Diseases of the skin and subcutaneous tissue	0.2
Diseases of the respiratory systems	2.3
Diseases of the nervous system and sense organs	7.9
Diseases of the musculoskeletal system and connective tissue	1.8
Diseases of the genitourinary system	0.3
Diseases of the digestive system	1.3
Diseases of the circulatory system	0.4
Diseases of the blood and blood-forming organs	1
Other mental disorders	2.5
Schizophrenic and other psychotic disorders	0.3
Organic mental disorders	2.2
Mood disorders	3.2
Intellectual disorders	9.2
Child mental disorders not otherwise classified	19.3
Developmental disorders	20.6
Autistic disorders	12.8
Injuries	0.5
Infectious and parasitic diseases	0.1
Endocrine, nutritional and metabolic diseases	0.8
Congenital anomalies	5.5

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### The Social Security Eligibility Process has Several Stages

- Initial Application
- Reconsideration Appeal
- Administrative Law Judge Hearing
- Appeals Council
- Federal Court

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### SSI Benefit Rates- California 2018

- 65 or older	\$910.72
- Disabled adult	\$910.72
- Disabled, under 18	\$815.15
- Single, blind	\$967.23
- Single, aged or disabled, household of another	\$664.24
- Single, household of another, blind	\$720.76
- Single, household of another, child	\$568.67
- Independent, no cooking facilities	\$997.04
- Board and Care, non-medical	\$1173.37

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### SSI Eligibility Requirements

- Age – from birth until applicant reaches age 18
- Income- Parental Deeming
- Resources
- Residency
- Citizenship

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### Residency & Citizenship

SSA requires residency in the United States in order to receive SSI

Also, the child must be a U.S. citizen or lawful permanent resident who:

(1) has refugee status,

(2) political asylum, or

(3) has a parent who lawfully entered the U.S. after August 22, 1996, who has worked 40 quarters paying into the Social Security system.

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### SSI General Eligibility – Resources

Resources of parent(s) are counted toward the eligibility of the child

Resource limit

\$2,000 for a one-parent household

\$3,000 for a two-parent household

If resources exceed the limits, then the child is not eligible.

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### Resource Exclusions

- One home is excluded from the resource calculation if the family is living in the home.
- One car is excluded from the resource calculation if it is used for personal transportation.
- Life insurance, burial space, and burial funds are excluded.
- There is a 9-month resource exclusion for grants, scholarships, fellowships, and gifts used to pay for educational expenses.

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### Income Requirements- Parental Deeming

- The term deeming identifies the process of considering another person's income and resources to be available for meeting an SSI claimant's (or recipient's) basic needs of food and shelter. *POMS SI 01310.001*
- The gross monthly income or monthly unearned income of the natural parent(s), adoptive parent(s), and/or stepparent who lives in the same home as the child will be subject to the parental deeming calculation.

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### **When does deeming not apply?**

- Deeming does not apply if a family is homeless
- Deeming does not apply if the child is living with a non-parent

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### **Deeming Exclusions**

- The following types of income will NOT be included in the deeming calculation:
  - CalWorks, SSI, General Relief, or Refugee Cash Assistance
  - Food stamps
  - Foster care payments to other children in the household
  - In-home Supportive Service payments for parent to meet needs of recipient
  - Section 8 and other subsidized housing programs
  - 1/3 of any child support & scholarships

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### **Parental Deeming Process**

- Step 1
- Who does the child live with? This will determine whose income is counted.
- For example, eligible child Max lives with his mother, father and three younger siblings.
- Mother works and father is unable to work due to the child's needs and stays home with them. Mother's income will be counted, and

three deductions will be made for his younger siblings without disabilities.

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### **Parental Deeming Process Continued**

- Step 2
  - Take the total gross monthly income, for example \$3,500.00, and deduct \$368 for each ineligible child. (\$2396)
- Step 3
  - Subtract \$20 general income exclusion from any remaining unearned income. Here, there is no unearned income, so we deduct \$20 from the remaining earned income (\$2376)

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### **Parental Deeming Process Continued**

- Step 4
  - Subtract \$65 from the remaining earned income (\$2311).
- Step 5
  - Subtract one-half the remaining earned income from the result of step 4 (\$1155.50)
- Step 6
  - Subtract the parental living allowance (\$735 if single, \$1,103 if couple) (\$52.50)

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### **Parental Deeming Process Conclusion**

- Last step
  - Take the current rate of SSI for a child in CA- \$815.15 and deduct the \$52.50 = \$762.65
  - If Max qualifies medically, then he should be entitled to \$762.65 in monthly SSI benefits.

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### **Forms Included in an Initial Application**

- SSA 8000 – SSI application
- SSA 8010- Statement of income and resources of the parent
- SSA 11- Request to be Representative Payee
- Function Report (by age category)
- SSA 3820 Child Disability Report
- SSA 1696 – Authorized Representative
- SSA 827 – Auth. to Release Info to SSA
- SSA 5665- Teacher Questionnaire
- Child Psychiatric Review Form
- Child Medical Source Statement

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### **The SSI for Children Disability Definition**

- A child will be found disabled and therefore entitled to benefits if it can be proven that he or she has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, which has lasted, or can be expected to last, 12 months or result in death.
- The SSA conducts a three-step sequential evaluation to determine eligibility.

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### **The Three-step Sequential Evaluation**

- Step 1- Is the child working?
- Step 2- Does the child have a severe impairment?
- Step 3- Does the child meet, equal, or functionally equal a listing?

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### **What is a Listing?**

- The Listings are Social Security's descriptions of different types of medical conditions.
- The Listings are organized by diagnostic category.
- If all elements of the Listing are met, then SSA will determine that the child is disabled and the sequential evaluation will end.

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### **Listing 112.10 – Autism Spectrum Disorders**

- Qualitative deficits in verbal communication, nonverbal communication, and social interaction; and
- Significantly restricted, repetitive patterns of behavior, interests, or activities. AND
- Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 112.00F):
- Understand, remember, or apply information (see 112.00E1).
- Interact with others (see 112.00E2).
- Concentrate, persist, or maintain pace (see 112.00E3).
- Adapt or manage oneself (see 112.00E4).

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### **If a Child Does Not Meet a Listing, He or She May Still Equal a Listing**

An impairment may be medically equivalent to a listed impairment if it is at least equal in severity and duration to the criteria of any impairment in the Listing of Impairments.



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### **If the Child Does Not Meet or Equal a Listing, He or She May Still Functionally Equal a Listing**

If your disability does not meet or medically equal a listed impairment but still results in marked and severe functional limitations, SSA will determine the child is disabled. SSA will examine six domains of functioning:

- 1. Acquiring and using information
- 2. Attending and completing tasks
- 3. Interacting and relating to others
- 4. Moving about and manipulating objects
- 5. Caring for yourself
- 6. Health and physical well-being
- We must show two marked, or one extreme limitation to prove disability.

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### **Acquiring and Using Information**

In this domain, SSA considers how well the child acquires or learns information, and how well the child uses the information he or she has learned.

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### **Attending and Completing Tasks**

- In this domain, SSA considers how well the child is able to focus and maintain his or her attention, and how well she begins, carries through, and finishes her activities, including the pace at which he or she performs activities and the ease with which she changes them.

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### **Interacting and Relating to Others**

- In this domain we consider how well the child initiates and sustains emotional connections with others, develops and uses language of her community, cooperates with others, complies with rules, responds to criticism and respects and takes care of possessions of others.

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### **Moving About and Manipulating Objects**

- In this domain, SSA considers how the child moves his or her body from one place to another and how he or she moves and manipulate things.

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### **Caring for Yourself**

- In this domain, SSA considers how well the child maintains a healthy emotional and physical state, including how well he/she gets physical and emotional wants and needs met in appropriate ways, how he/she copes with stress and changes in his or her environment, and whether he/she takes care of his or her own health, possessions, and living area.

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### **Health and Physical Well-being**

- This domain is used to better explain restrictions in everyday activities due to a physical or mental disorder. For example, a person may experience problems such as generalized weakness, dizziness, shortness of breath, reduced stamina, fatigue, psychomotor retardation, allergic reactions, recurrent infection, poor growth,

bladder or bowel incontinence, or local or generalized pain. This may be caused by medications from an impairment or from chronic illness.

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### **Evidence Used by SSA Evaluators**

#### **Medical Evidence**

- Records from doctors, hospitals, emergency screening unit, and other medical facilities
- Speech therapy, occupational therapy, behavior intervention, and cognitive behavioral therapy records
- The signs, symptoms, laboratory findings, and evaluation results are used to establish disability.
- Medical source statements from Drs.

#### **Other Evidence**

- Testimonials from parents and other caregivers
- Early intervention and preschool program records
- Regional Center records such as the Individual Program Plan
- Special education records, including IEP, attendance records, transcripts, disciplinary records, and school evaluations

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### **Presumptive Disability Benefits**

- allegation of severe mental deficiency made by another individual filing on behalf of a claimant who is at least 7 years of age
- allegation of Down syndrome
- allegation of cerebral palsy, muscular dystrophy, or muscular atrophy and marked difficulty in walking (for example the use of braces), speaking, or coordination of the hands or arms

## **Slide 33**

### **Age 18 Redetermination Cases**

- Children receiving SSI are re-evaluated when they turn 18.
- SSA sends notification to you via mail to alert you to the coming redetermination
- SSA then makes a decision as to whether the individual meets the adult standard of disability
- Section 301 payments- involvement in an IEP program is an automatic qualification for these payments.

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### **In-home Supportive Services**

- California program which provides services to people with disabilities in his or her home, without which, the person would be subject to out-of-home placement.
- Allows people to live in their community and not be segregated from the rest of society.
- Services include compensation for hours spent on: meal prep, feeding, meal cleanup, dressing, laundry, bowel and bladder care, care for prosthesis, repositioning/rubbing skin, medical accompaniment, help with transfers and ambulation, oral hygiene, bathing, grooming, and protective supervision.

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### **How to establish IHSS Services**

- Call San Diego County's Ageing and Independence Services at 858-495-5885
- In 7 to 10 business days, a letter will come in the mail which includes a medical release, the name and contact information of the county social worker, and an SOC 873 form.

- You have 45 days from the date on the letter to return the SOC 873 which needs to be signed by the child's doctor. This is where the doctor opines the child needs the service because: (1) the child is unable to perform one or more ADLs and (2) needs the services to prevent the need for out-of-home care.

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### **IHSS Eligibility Process Continued**

- The Social Worker will contact you to set up an in-home visit.
- During this visit, be sure to inform the SW of all impairments and functional limitations, medications, sources of medical records, etc.
- After this visit, a notice of action will be sent to you in the mail informing you of the number of hours awarded, if any, and your appeal rights.
- You have 90 days from the date on the notice to file an appeal with the State Fair Hearings Division. The appeal can be made online at:
  - <https://secure.dss.cahwnet.gov/shd/pubintake/cdss-request.aspx>

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### **The Parent Provider Rule**

- For a parent to be the provider of IHSS services, he or she must have left full-time employment, or be prevented from obtaining full-time employment, and no other suitable provider is available.

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### **Protective Supervision**

- PS involves monitoring the behavior of a non-self-directing, confused, mentally impaired or mentally ill recipient/applicants in order to safeguard the individual against injury.

- We must establish the mental impairment and that the person is non-self-directing which means an inability due to a mental impairment or illness for individuals to assess danger and the risk of harm and therefore, the individual would most likely engage in potentially dangerous activities that may cause self-harm.
- We must give examples of the child placing himself or herself in dangerous situations.
- Maximum monthly hours = 283
- Evaluation needs to occur even if child is an infant/toddler.

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### **To Access Our Services**

- The Legal Aid SSI for Children Team may be accessed by calling (844) 774-5463
- By contacting Nichole Mendoza- Lead Attorney at (619)471-2710 or at [nicholem@lassd.org](mailto:nicholem@lassd.org)

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### **DISCLAIMER**

- This information is not intended to include all federal laws, regulations, policy directives or other relevant references. The intent here is to provide a general overview of these topics.

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### **Thank You!**

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