

Supplemental Security Income for Children: Issues Affecting Youth in the Dependency System

I. General Eligibility Criteria:

A. What are the basic eligibility requirements for Social Security benefits for children?

Supplemental Security Income (Title XVI of the Social Security Act):

A child may be eligible for Supplemental Security Income (SSI) benefits if he/she meets the following criteria:

- (1) is of limited income;¹ AND
- (2) has limited resources;² AND
- (3) is a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands, and not absent from the country for a full calendar month or more than 30 consecutive days; AND
- (4) is citizen or national of the United States or certain categories of immigrant;³ AND
- (5) is blind or disabled; AND
- (6) meets certain other requirements.

Retirement, Survivors, and Disability Insurance Benefits (Title II of the Social Security Act):

A child may be eligible to receive Retirement, Survivors, and Disability Insurance benefits (RSDI) if he/she has a parent that has worked enough quarters to become insured for Title II and is disabled, deceased, or entitled to retirement benefits.⁴

B. What types of disabilities qualify for Supplemental Security Income benefits?

There are different disability standards for adults (individuals 18 or older) and children (those under the age of 18).

In order for a child to meet the disability criteria, he/she must have a medically determinable physical or mental impairment, or combination of impairments, which causes marked and severe functional limitations, and which can be expected to cause

¹ The countable income must be below the SSI federal benefit rate.

² Disabled children can have up to \$2,000 in resources. In addition, for children living in the home of their parent(s), a single parent can have an additional \$2,000 in resources and married parents can have up to \$3,000.

³ The following categories of immigrants qualify for SSI benefits: (1) Noncitizens lawfully residing in the U.S. on August 22, 1996, (2) Legal Permanent Residents with 5 years of residency in the U.S. and parents with "40 quarters", (3) Active duty military personnel and honorable discharged veterans, (4) American Indians born in Canada who were members of specified tribes, (5) Refugees (for up to 7 years from date of entry), (6) Asylees (for up to 7 years from date of entry), (7) Persons whose deportation is withheld (for up to 7 years from date of entry), and (8) Cuban/Haitian immigrants (for up to 7 years from date of entry).

⁴ 42 United States Code (USC) § 402(d)

death or which has lasted, or is expected to last, for a continuous period of not less than 12 months.⁵ The Social Security Administration (SSA) regulations outline what information is considered when determining disability for children. They outline how the SSA evaluates medical evidence, test scores, and information from other people (such as parents, other caregivers and teachers). SSA considers how the child's functioning compares to the functioning of children his/her age who do not have impairments. They look at how well the child can initiate, sustain, and complete activities, how much help or adaptations the child needs, and the effects of structured or supportive settings.⁶

The definition of disability for adults is defined as the inability to engage in any substantial gainful activity (SGA) 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 no less than 12 months.⁷

The SSA publishes a "listing of impairments" which describes, for each of the major body systems, impairments that are considered severe enough to prevent an adult from doing any gainful activity or, for a child that causes marked and severe functional limitations.⁸

C. Is the income of other people in the youth's household deemed available to the youth when determining eligibility for Supplemental Security Income?

When determining eligibility for SSI benefits for individuals under the age of 18, the Social Security Administration deems a portion of the income and/or resources of a parent who is living in the same household as if they were available to the youth, regardless of whether the income or resources are actually available to the individual.⁹ SSA also does this when a child is temporarily away at school, returns home during weekends, holidays or during the summers and remains subject to parental control.

Note – if the individual is not living with a parent (e.g. when the youth is in foster care) then this deeming rule does not apply, and the child is evaluated for eligibility based only on his or her own income.

⁵ 42 USC § 1382c(a)(3)(C)(i); 20 Code of Federal Regulations (CFR) § 416.906.

⁶ 20 CFR § 416.924a.

⁷ 42 USC § 1382c(a)(3)(A) and (B); 20 CFR § 416.905.

⁸ The listings are available at 20 CFR § 404 (Subpart P– Determining Disability and Blindness, Appendix 1). Available at, http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm.

⁹ 42 USC § 1382c(f)(1); 20 CFR § 416.1160; Social Security Administration, Program Operations Manual System (POMS) SI 01310.145. (The POMS are available at <https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>).

II. The Application Process

A. Who May Apply for SSI Benefits on Behalf of a Foster Youth?

For youth under age 18, a court appointed representative or a person who is responsible for the care of the youth, including a relative, may sign and submit the application on the youth's behalf.¹⁰ Thus, a county social service agency, relative, or court appointed representative may submit an SSI application on behalf of a foster youth.

B. When is an Application Considered Filed?

It is important to determine when an application is "filed" with the Social Security Office, because if an individual is determined eligible for benefits, the individual may be eligible to receive benefits retroactive to the date the application was filed. In general, an application is considered to be filed on the date it is received by an employee at any social security office.¹¹ However, if certain conditions are met, the SSA will provide the youth with a "protective filing date," which is established on the date of filing a written statement that shows intent to apply for benefits or on the date that an oral inquiry about eligibility for SSI is made.¹²

C. What is Included in an SSI Application and How are Applications Evaluated?

An SSI application includes several forms which must be completed that provide the SSA with both medical and non-medical information about the applicant. Children under the age of 18 must submit a "Disability Report – Child", which is available at: <http://www.ssa.gov/online/ssa-3820.pdf> and is used to obtain medical information regarding the child's disability. In addition, children under the age of 18 must also submit the following forms, which allow the SSA to assess the level at which the child functions:¹³

SSA-5665: Teacher Questionnaire

SSA-3881: Questionnaire for Children Claiming SSI benefits

However, the SSA does not rely only on the information contained in these forms. The SSA also considers any medical or school records submitted along with the application, and requests medical records from the hospitals, doctors, and other treatment sources and information from the child's teachers, schools, and other people listed as having information about the child's illnesses, injuries or conditions. Therefore, it is important to gather as much documentation of the child's disability as possible, in order to ensure that the SSA considers all of the relevant evidence when making eligibility determinations.

¹⁰ 20 CFR § 416.315.

¹¹ 20 CFR § 416.325.

¹² 20 CFR §§ 416.340, 416.345.

¹³ Available at: <http://www.ssa.gov/online/forms.html>.

III. Representative Payees:

A. Do Youth Receive the SSI Benefits Themselves?

Generally children do not receive SSI benefits themselves. A person or entity called a representative payee receives and manages the benefits for the youth.¹⁴ However, the youth may be able to receive the benefits directly in limited circumstances. For example, the SSA assumes that a youth between the ages of 15 and 17 is capable of managing his/her own funds, “unless he/she has a court-appointed legal guardian or is entitled to disability benefits and a substance abuse condition exists which indicates that he/she may need assistance.”¹⁵ Further, the SSA may make direct payment to a beneficiary under the age of 18 when:

- (1) The individual is a parent and files for him/herself and/or his/her child and he or she has experience in handling his or her own finances; or
- (2) He/she is capable of using the benefits to provide for his/her current needs and no qualified payee is available; or
- (3) He/she is within 7 months of turning age 18 and is initially filing an application for benefits.¹⁶

B. How is a Representative Payee Selected?

SSA generally tries to select a Representative Payee who will serve the best interests of the child. SSA is required to use “extreme care” in selecting and monitoring payees.¹⁷ SSA specifies a hierarchy of most and least preferred representative payees, but the hierarchy is flexible. Natural or adoptive parents who have custody of the child and guardians are the most preferred payees, and authorized custodial agencies are the last resort.¹⁸ In determining which payee will best serve the child’s needs, SSA will consider:

- the relationship of the person/entity to the child;
- the interest the person/entity shows in the child;
- any legal authority the person/entity has to act on behalf of the child;
- whether the person/entity has custody of the child; and
- whether the person/entity is in a position to know of and look after the needs of the child.¹⁹

California law also requires that counties only be selected as representative payee if no other appropriate person is available.²⁰

¹⁴ 42 USC § 1383(a)(2)(A); 20 CFR § 416.610; SSA POMS GN 00502.005.

¹⁵ SSA POMS GN 00502.070.

¹⁶ 20 CFR § 416.610.

¹⁷ SSA POMS GN 00502.183; *see also*, 42 USC § 1383; *see, in general*, 20 CFR Part 416, Subpart F.

¹⁸ 20 CFR § 416.621; 20 CFR § 404.2021; SSA POMS GN 00502.105.

¹⁹ 20 CFR §§ 416.620 and 404.2020.

²⁰ California Welfare and Institutions Code (Cal. Welf. & Inst. Code) § 13754.

C. What are the Responsibilities of the Representative Payee?

Representative Payees are responsible for using benefits in the best interest of the youth.²¹ They must also notify SSA of changes in income or anything that might give the youth the right to receive benefits directly, and must submit written reports accounting for how the benefits were used, if requested by the SSA.²² Payees must also ensure that the youth is receiving medically necessary treatment for the condition(s) that makes him/her eligible for benefits.²³

Under California Law, if the county serves as a child Representative Payee, the county must establish a no-cost, interest-bearing maintenance account for each child and credit interest to the account.²⁴ The county must keep records of income and expenses on the account.²⁵ The county may only use the SSI funds for the benefit of the child or purposes “determined by the county to be in the child’s best interest.”²⁶ Payees are responsible for submitting annual reports to SSA about whether the benefits were spent or saved, how the benefits were used if they were spent, and who made the decisions about spending or saving benefits.²⁷

In addition, for youth that are emancipating from foster care, the county is required to establish procedures for assisting the youth in receiving direct payment of their benefits or finding an appropriate successor payee and for gaining access to any accumulated benefits. However, prior to disbursing any conserved funds, the County should contact their local SSA Field Office to determine the procedures for disbursement.²⁸

D. What happens if a Representative Payee uses funds improperly?

If a payee uses social security or SSI benefits for a purpose other than for the use and benefit of the child, misuse has occurred.²⁹ If the payee misusing funds is a county or state social services agency, SSA will pay the misused funds to the child.³⁰ SSA will require the agency to refund the misused funds to SSA, so they may be redistributed to the successor payee.

Misapplication occurs “when a payee knowingly uses dedicated account funds for expenditures not permitted.”³¹ The difference between misuse and misapplication of

²¹ 20 CFR §§ 416.635(a) and 404.2035(a)

²² 20 CFR §§ 416.635(d)-(e) and 404.2035(d)-(e).

²³ 20 CFR § 416.635(g).

²⁴ Cal. Welf & Inst. Code § 13754(a); 20 CFR § 416.645 (federal law requires that any funds not needed for the beneficiary’s current maintenance must be conserved in accordance with the rules followed by trustees).

²⁵ Cal. Welf & Inst. Code § 13754(a); 20 CFR § 416.645

²⁶ Cal. Welf & Inst. Code § 13754(b); POMS GN 00605.350

²⁷ 42 USC § 405(j)(3)(A); 20 CFR § 416.665; POMS GN 00605 et seq; POMS GN 00605.240.

²⁸ Cal. Welf & Inst. Code § 13754(b); POMS GN 00605.350 (setting forth when a final accounting to SSA is not required).

²⁹ 42 USC 405(j); 20 CFR §§ 416.641 and 416.650; POMS GN 00604.et seq.

³⁰ Public Law 108-203 (amends 42 USC 405(j)(5)).

³¹ POMS GN 00602.140.

benefits is that a misapplication occurs if the benefits are not used in the manner required by law, regardless of whether they are used to benefit the child. The payee is liable to SSA for the entire amount of the misapplied benefits.³² Misapplied benefits are returned to the SSA. The payee can appeal a finding that he or she has misapplied benefits.³³

IV. Conservation and Maintenance of Benefits

A. What is a dedicated account and when must one be established?

When a child with a Representative Payee is eligible for past-due benefits that are more than six times the monthly SSI/SSP rate, the past-due benefits must be paid into a dedicated account.³⁴ This account is separate from the account used to manage the regular, monthly benefits paid on behalf of the child. Dedicated account funds must be used for specific purposes benefiting the child. These are:

- Medical treatment and education or job skills training;
- If related to the child's impairment(s), personal needs assistance; special equipment; housing modification; and therapy or rehabilitation; or
- Other items and services related to the child's impairment(s) that we determine to be appropriate. The representative payee must explain why or how the other item or service relates to the impairment(s) of the child.³⁵

Representative Payees must keep records of deposits and expenditures from the dedicated accounts, and submit them to SSA if requested.³⁶ Most expenditures from dedicated accounts must be approved by field office staff.³⁷

The restrictions on use of dedicated accounts apply until the funds are gone or until the child is no longer eligible for benefits, whichever comes first. This means that the restrictions still apply:

- When a child turns 18, continues to be eligible and receives payments directly;
- If a new Representative payee is appointed; funds remaining in a dedicated account must be returned to SSA by the former representative payee. The new representative payee must establish a separate account into which SSA will deposit these funds; or
- During a period of suspension due to ineligibility or a period of eligibility for which no payment is due.³⁸

B. What is a maintenance account and when must one be established?

³² POMS SI 02220.060.

³³ POMS GN 00602.140.

³⁴ 42 USC 1383(a)(2)(F)(i)(I); 20 CFR § 416.546; POMS GN 00603.025.

³⁵ 20 CFR § 416.640; W&IC § 13754(c).

³⁶ 20 CFR § 416.640; W&IC § 13754(c).

³⁷ POMS GN 00602.140.

³⁸ 20 CFR § 416.640.

When all or a portion of a youth's monthly benefits are not needed for the youth's current maintenance or reasonably foreseeable needs, the funds must be placed in a maintenance account for the youth.³⁹ Under California Law, if the county serves as a child's Representative Payee, the county must establish a no-cost, interest-bearing maintenance account for each child and credit interest to the account.⁴⁰ The county must keep records of income and expenses on the account.⁴¹ The county is also required to establish a procedure for disbursing the balance to the youth when they are released from care.⁴² The county may only use the SSI funds for the benefit of the child or purposes "determined by the county to be in the child's best interest."⁴³

NOTE: Dedicated accounts and maintenance accounts differ from one another. Dedicated accounts are only for retroactive awards that equal more than six times the monthly benefit. Further, dedicated account funds can only be used to meet the specialized needs of the child, and cannot be used for a youth's current maintenance, which means the funds cannot be used to pay for the youth's foster care. Maintenance accounts are accounts established to manage the monthly benefits of the youth. The Representative Payee should use the monthly benefit to provide for the current maintenance of the youth, including the cost of food, clothing, and shelter. Any remaining funds that are not needed to provide for the youth's current maintenance must be conserved in a maintenance account. Maintenance account funds can be used for future living expenses, and are not restricted in the same way that dedicated account funds are.

C. How can a payee use a youth's SSI benefits to meet the youth's needs?

Generally, a Payee must expend funds for the use and benefit of the child and in the child's best interests.⁴⁴ The "interests of the child" are interpreted to mean providing the child with a minimum level of income for ordinary and necessary living expenses.⁴⁵ Using funds for the "current maintenance" of the child is in the child's interest. This includes the cost of food, shelter, clothing, medical care and personal comfort items.⁴⁶

Funds that are not used for the child's current maintenance or needed for reasonably foreseeable needs should be saved or invested on behalf of the child.⁴⁷ When a payee invests a child's benefits, the "[i]nvestment must show clearly that the payee holds the property in trust for the beneficiary."⁴⁸ U.S. Savings Bonds and deposits in an interest or

³⁹ 20 CFR § 416.645; Cal. Welf & Inst. Code § 13754(a).

⁴⁰ Cal. Welf & Inst. Code § 13754(a).

⁴¹ Cal. Welf & Inst. Code § 13754(a)

⁴² Cal. Welf & Inst. Code § 13754(b)

⁴³ Cal. Welf & Inst. Code § 13754(b)

⁴⁴ 20 CFR §§ 404.2035(a) and 416.635(a); POMS GN 00602 et. seq.

⁴⁵ *Washington State Dep't of Social and Health Services v. Keffeler*, 537 U.S. 371, 390, citing 20 CFR §§ 416.110 and 404.508(a).

⁴⁶ 20 CFR § 416.640.

⁴⁷ 20 CFR § 416.645(a).

⁴⁸ 20 C.F.R. §§ 416.645(a) and 404.2045(a).

dividend paying account in an institution insured under either Federal or State law are preferred investments.⁴⁹

D. Can a county use SSI benefits to recoup the cost of foster care?

Yes, counties may use SSI benefits to recoup the cost of foster care. Although there is a provision in the Social Security Act protecting benefits from “execution, levy, attachment, garnishment, or other legal process,” the U.S. Supreme Court held that using SSI benefits to pay for foster care does not violate this provision of the Act.⁵⁰ Rather, the Court held that foster care expenses provide for the youth’s “current maintenance,” and thus SSI benefits can be used to pay for foster care.⁵¹ However, before a social agency can take SSI benefits and recoup the cost of foster care expenses, it must follow SSA’s creditor-payee policy. A creditor payee must obtain SSA approval prior to using benefits for self-reimbursement.⁵² SSA regulations requires proof that the beneficiary/recipient’s current and anticipated future needs have been met before any remaining past-due benefits can be applied to the foster care debt.⁵³

In addition, when the county is not the payee, the county cannot force the payee to turn over the child’s SSI benefits to pay for foster care. The *Keffeler* court notes: “it is true that the State could not directly compel the beneficiary or any other representative payee to pay Social Security benefits over to the State, [but] that fact does not render the appointment of a self-reimbursing representative payee at odds with the Commissioner’s mandate to find that a beneficiary’s ‘interest ... would be served’ by the appointment.”⁵⁴

NOTE: See Section V.A for rules pertaining to the accounting rules when a youth receives SSI and foster care benefits concurrently.

Finally, funds in a youth’s dedicated account cannot be used to pay for foster care. In holding that a youth’s monthly SSI benefits could be used to pay for foster care, the Court noted that there was “one exception.” That is, funds in the youth’s dedicated account can “be used only for certain special needs” and cannot be used to pay for foster care.⁵⁵

V. Choosing Benefits Programs and Managing the Child’s Income

A. What factors should be taken into account when deciding whether to apply for SSI for a youth in foster care?

Youth in the dependency system may be eligible for several different benefit programs at the same time, including:

- Federal foster care (Title IV-E of the Social Security Act)

⁴⁹ 20 C.F.R. §§ 416.645(b) and 404.2045(b).

⁵⁰ *Keffeler*, 537 U.S. at 372 (2003).

⁵¹ 20 CFR § 416.640(a).

⁵² *See*, POMS GN 00602.030.

⁵³ 20 CFR § 404.2040.

⁵⁴ *Keffeler*, 537 U.S. at 389 (2003).

⁵⁵ *Id.*, at 387, fn. 9.

- State foster care
- Kin-GAP
- TANF/CalWORKs
- Adoption Assistance
- SSI
- RSDI

It is important to consider which benefits make the most sense for the youth, given factors such as the child's circumstances, the needs of the family, the reunification plan, and the date they are expected to leave the state's care.

In general, SSI/SSP benefits can be highly beneficial for children in the state's care because:

- (1) SSI/SSP benefits are an important source of additional funds that can be used to meet the child's individual needs while in the state's care;
- (2) If the child returns home, the SSI benefits follow the child, providing essential benefits to the family;
- (3) The diagnostic evaluations that are done in assessing a child for potential eligibility for SSI/SSP and during the application process will improve the likelihood that the child or youth will receive timely and appropriate treatment;
- (4) SSI benefits can be conserved to aid youth in their transition. The federal SSI rules permit a child to have up to \$2,000 in resources before becoming ineligible for SSI. Ensuring that a youth, who is emancipating out of state care, transitions with that \$2,000 can make the difference between finding shelter and living on the streets.

The *Child Welfare Policy Manual*⁵⁶ instructs individuals and agencies to carefully weigh the differences between Title IV-E benefits and SSI benefits, noting “[t]he difference between Title XVI (SSI) and Title IV-E should be considered carefully by the decision maker when choosing whether to apply for either or both Title IV-E or SSI benefits on behalf of the child. Information regarding the benefits available under each program should be made available by the State Title IV-E agency so that an informed choice can be made in the child's best interest. To achieve this goal, Title IV-E agencies should exchange information regarding eligibility requirements and benefits with local Social Security district offices and establish formal procedures to refer clients and their representatives to the local Social Security district office for consultation and/or application when appropriate.”⁵⁷

However, while SSI is not always the best choice of assistance for disabled youth while in foster care, SSI is critical for youth who are emancipating from the state's care to

⁵⁶ Child Welfare Policy Manual (CWPM) is compiled by the Department of Health and Human Services, Administration for Children and Families, and includes all of the current and updated relevant federal policy issuances (Policy Announcements and Policy Information Questions). The CWPM “conveys mandatory policies that have their basis in Federal Law and/or program regulations. It also provides interpretations of Federal Statutes and program regulations initiated by inquiries from State Child Welfare agencies or ACF Regional Offices.” <http://www.acf.hhs.gov/programs/cb/laws/policy.htm>.

⁵⁷ U.S. Dep't of Health and Human Services, Administration for Children and Families, CWPM, Section 8.4D, Question 2.

independent living. SSI is one of the only sources of cash assistance available to a youth, particularly a youth with no dependents of his/her own, once he/she emancipates. In addition, the receipt of SSI benefits has other tangential benefits. For example, the disability determinations made for SSI eligibility may automatically qualify a youth for certain types of housing assistance that depend on the demonstration of a disability. Further, in most states, SSI is categorically linked to Medicaid, ensuring that youth have access to the medical services (including mental health care) they require.⁵⁸ Thus, it is important that SSI applications be made on behalf of youth with disabilities well in advance of their emancipation, to ensure the benefits are available at the point of their transition out of foster care. *See*, Section VIII.

B. Can foster children receive federal foster care benefits and SSI benefits concurrently?

Federal law permits the concurrent receipt of SSI benefits and federal foster care benefits, but the SSI benefits are offset dollar-for-dollar by the amount of federal foster care benefits a youth receives.⁵⁹ Thus, in practice, a youth can only receive both SSI and federal foster care if the SSI benefit is more than the federal foster care payment. In this situation, the dollar-for-dollar offset will result in the child receiving the entire federal foster care payment and an SSI benefit equal to the difference between the two benefits.⁶⁰ The total benefit the child receives will not exceed the SSI rate.⁶¹

In the event that the federal foster care payment is greater than the SSI payment, the SSI will be reduced to zero, and the SSI benefits will be placed in suspense.⁶² After 12 consecutive months of benefit suspension for any reason, SSI benefits are terminated, and an individual must file a new application for SSI benefits.⁶³

There is no provision under federal law requiring SSI payments to be offset by state-only foster care benefits. However, California law counts SSI benefits as income to the youth resulting in the youth's state-only foster care benefits being reduced by the amount of SSI benefits that the youth receives. State law also permits a county to supplement SSI benefits with state-only foster care benefits, as long as the youth is not otherwise eligible for federal foster care benefits.⁶⁴

C. Who Gets to Choose What Benefit a Foster Youth Receives?

⁵⁸ Thirty-two states and the District of Columbia provide Medicaid eligibility to people eligible for SSI benefits. Seven states use the same rules to decide eligibility for Medicaid as the SSA uses for SSI, but require the filing of a separate application. Eleven states use their own eligibility rules for Medicaid, which are different from the SSA's rules for SSI. *See*, <http://www.socialsecurity.gov/disabilityresearch/wi/medicaid.htm>.

⁵⁹ CWPM, Section 8.4D, Question 1

⁶⁰ CWPM, Section 8.4D, Question 1

⁶¹ CWPM, Section 8.4D, Question 1

⁶² 20 CFR § 416.1323.

⁶³ 20 CFR § 416.1335.

⁶⁴ California Department of Social Services, Eligibility and Assistance Standards, Manual of Policy and Procedures (MPP) § 45-302.11.

California regulation provides that “a person or his/her representative who believes the application meets the eligibility requirements for more than one category of aid has the right to choose the type of aid he/she will apply for.”⁶⁵ In the case of foster children, the County has care, custody and control of the youth, and therefore can choose between foster care benefits, SSI benefits, or both, depending on which benefits best meet the individual needs of the youth.⁶⁶ Counties are encouraged to “review the circumstances in each case to determine which of the several options ensures the county, state and federal funds are expended in the most cost beneficial manner.”⁶⁷

The only limitation to the county’s choice of aid payment is in the case of foster children placed in the home of a relative caregiver. In order for a foster child who is placed with a relative to be eligible for foster care benefits, the child must be “otherwise eligible for federal financial participation in the AFDC-FC payment.”⁶⁸

VII. Maintaining Eligibility for Social Security Benefits:

A. When and why would a youth’s benefits be suspended?

If the amount of income countable to the child exceeds the SSI payment, then the SSI benefit will be put in “suspense.” Suspension of payments due to ineligibility for benefits because of excess income is effective with the first month in which “countable income” equals or exceeds the amount of benefits otherwise payable for such month. This rule applies regardless of the month in which the income is received.⁶⁹

SSI benefits can remain in suspense for 12 consecutive full calendar months. During the 12-month period, if countable income becomes less than the SSI benefit rate, then the SSI payment is reinstated.⁷⁰

Note: Resumption of payments is not automatic. The SSI recipient or representative payee must contact SSA to provide necessary information to re-establish eligibility before the 12 months expires.

B. When will benefits be terminated after they have been suspended?

In the event that SSI benefits remain in suspense for 12 full and consecutive months, then the SSI benefits will be terminated.⁷¹ This termination is effective with the start of the 13th month after the suspension began.

⁶⁵ MPP § 40-109.2.

⁶⁶ All County Information Notice (ACIN) I-65-91.

⁶⁷ All County Letter (ACL) 94-82.

⁶⁸ Cal. Welf & Inst. Code § 11402(a).

⁶⁹ 20 CFR § 416.1323.

⁷⁰ 20 CFR § 416.1323.

⁷¹ 20 CFR § 416.1335.

VIII. Important Considerations for Youth Transitioning Out of Foster Care:

A. How far in advance should an SSI application be made for a foster youth in order to ensure that benefits will be in place prior to the youth's emancipation from foster care?

SSA takes several months to process SSI applications. According to statistics available on SSA's website, the average application will be processed in 3-5 months.⁷² However, the process is known to take much longer. Thus, in order to ensure that a foster youth has a determination made prior to emancipating, it is important that the application be submitted well in advance of emancipation. A new California law requires county welfare agencies to screen each youth in foster care when they are between the ages of 16.5 and 17.5 years old for potential eligibility using Best Practice Guidelines that were developed pursuant to California Welfare and Institutions Code § 13752 and are available at <http://www.dss.cahwnet.gov/getinfo/acl07/pdf/07-10.pdf>.⁷³ For those youth that are determined likely eligible, the new law further requires that the county welfare agency complete and submit an application for SSI to the Social Security Administration on the youth's behalf.⁷⁴ The application is to be timed to allow for a determination of SSI eligibility prior to the youth's emancipation from foster care.⁷⁵

The new law also provides a mechanism by which to overcome another barrier to getting youth on SSI before emancipation. SSA policy states that the SSA will not accept applications for SSI until the month before the month that an individual meets all of the eligibility criteria.⁷⁶ This means that a child receiving federal foster care benefits greater than the SSI benefit rate cannot apply for SSI (because he/she is not financially eligible) until the month prior to the federal foster care benefits ending (usually when the youth turns 18). In practice, this policy has resulted in SSA denying applications when a foster youth who receives federal foster care benefits applies more than 30 days prior to his or her 18th birthday. Therefore, the new screening requirements developed pursuant to California Welf. And Inst. Code sec. 13752 take advantage of other SSA regulations which only require that an individual meet all the factors of eligibility in one month during the life of the application. The new California legislation therefore allows counties to qualify their youth as follows:

“for a youth receiving federally funded AFDC-FC benefits, the county shall, if necessary, forego federally funded AFDC-FC and instead use state

⁷² SSA Publication No. 05-10029, January 2006, ICN 456000; available at <http://www.ssa.gov/pubs/10029.html#part5>.

⁷³ 2007, AB 1331, Chp. 465, Section 2.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ POMS SI 00601.010 (“The earliest point at which an application may be taken before eligibility, and effectuated as an allowance, is in the month before the month of eligibility”); POMS SI 00830.410; POMS SI 00830.170(B); *see also* 20 CFR 416.330 and 20 CFR 416.335 (the regulations do not prohibit an individual from submitting an application more than a month before they meet all the eligibility requirements. However, if the individual fails to)

AFDC-FC resources to fund the placement in the month of application or in the month after making an application, and to subsequently reclaim federally funded AFDC-FC, in order to ensure that the youth meets all the SSI eligibility requirements in a single month while the application is pending, as provided by federal law and regulation.”⁷⁷

Once eligibility is established, a foster youth remains eligible for assistance, even if they are not receiving any SSI benefits, for 12 consecutive months. *See the suspension rules in VI.A.* Notably, if the individual fails to meet all of the eligibility requirements in at least one month while the application is pending, the individual will be forced to start over and submit a new application.⁷⁸ Thus, even if the SSA accepts the application more than a month before the youth reaches 18, it is important that he/she meet all of the eligibility criteria in at least one month while the application is pending.

B. Do youth have to reapply for SSI benefits after they turn 18 in order to continue to receive SSI under the adult program?

The SSA conducts an Age 18 Medical Redetermination during the 1-year period beginning on the youth’s 18th birthday or, in lieu of a continuing disability review, whenever SSA determines that the case is subject to redetermination under the Social Security Act, to determine if the youth will remain eligible for SSI benefits under the adult rules.⁷⁹ While the SSA is conducting the Age 18 Medical Redetermination, which can take several months, the youth remains eligible for SSI benefits.⁸⁰ If the SSA determines that the youth is no longer eligible for benefits, they do not owe back any of the benefits that they received while the Age 18 Medical Redetermination was being conducted.⁸¹ Further, the youth can appeal a determination that he/she does not meet the adult SSI criteria. However, if the youth elects to continue to receive benefits during the appeal, then any benefits received during the appeals period must be paid back if the youth ultimately loses the appeal.⁸²

California law mandates that counties assist youth through the Age 18 Redetermination by “provid[ing] information to the youth regarding the federal requirement that the youth establish continuing disability as an adult, if necessary, in order for SSI benefits to continue beyond his or her 18th birthday [and] assist[ing] the youth, as appropriate in fulfilling the requirements [for establishing continuing disability].”⁸³

C. Once a foster youth emancipates, can they begin receiving direct payment of their SSI benefits?

⁷⁷ *Id.*

⁷⁸ 20 CFR § 416.330.

⁷⁹ 20 CFR § 416.987

⁸⁰ 20 CFR § 416.987(e).

⁸¹ 20 CFR § 416.987(e)

⁸² SSA Publication No. 05-10041, January 2006 ICN 459260, POMS DI 28080.100

⁸³ Cal. Welf & Inst. Code § 13753(a) and (c).

The SSA determines whether or not an individual can receive direct payment of his/her benefits or if he/she needs a representative payee to assist in the management of the benefits. In order to receive direct payment, an individual must show that he/she is mentally and physically able to manage or direct the management of benefits payments in order to SSA approve the youth application to be his/her own payee.

California law mandates that counties assist youth in receiving direct payment of their SSI or RSDI benefits by “provid[ing] information to the youth regarding the process for becoming his or her own payee, or designating an appropriate representative payee if benefits continue beyond his or her 18th birthday, and regarding any SSI benefits that have accumulated on his or her behalf [and] assist[ing] the youth, as appropriate in [becoming his or her own payee].”⁸⁴

D. If there are benefits available in a youth’s dedicated account and/or maintenance account at the time of emancipation, how are those benefits transferred to the youth?

The SSA requires that a representative payee return any conserved benefits to the SSA, so that the SSA can reissue them to the successor payee or directly to the beneficiary.⁸⁵ Further, if a social agency is the payee and has served in that capacity for less than 12 months, the social agency is required to make a final accounting of the benefits to the SSA, including informing the SSA as to how the funds were used and whether there are any conserved funds left for the youth.⁸⁶

IX. YOUTH IN THE JUVENILE JUSTICE SYSTEM

A. What happens to a youth’s SSI benefits if they are incarcerated?

Individuals who are incarcerated generally lose their SSI benefits. SSI benefits must be suspended once an individual has been incarcerated for one full calendar month. SSI benefits remain in suspense until the individual has been incarcerated for 12 full calendar months, at which point SSA terminates the benefits. If an individual is released prior to serving 12 months, the SSI benefits will be restored once the individual is released from jail or prison and determined by SSA to still meet the financial-eligibility requirements. Individuals who serve 12 or more months and have their SSI benefits terminated must reapply for benefits by completing a new application and going through a new disability determination.

B. If a youth is incarcerated, are there any procedures in place that would allow the youth’s SSI benefits to start again immediately upon release, or does the youth have to wait until they are out of detention or prison before submitting a new application?

⁸⁴ Cal. Welf. & Inst. Code § 13753(b) and (c).

⁸⁵ 20 CFR § 416.660; SSA POMS GN 00605.350

⁸⁶ POMS GN 00605.380

SSA has established procedures enabling local SSA offices to provide support to public institutions in assisting individuals in applying for benefits while still incarcerated.⁸⁷ SSA will accept and process inmates' applications months before the anticipated release date, and make prospective determinations of potential eligibility. This process is facilitated by a pre-release agreement between SSA and the corrections facility; although, an inmate is permitted to apply and have the application handled expeditiously without such an agreement.

A pre-release agreement is established, either formally or informally, between a corrections facility and SSA when both parties commit to engaging in certain activities to expedite the review of inmates' Social Security applications. Under a pre-release agreement, the corrections facility agrees to:

- identify individuals who could be released within 30 days after potential eligibility has been established;
- refer only individuals who appear to meet the SSI categorical and income and resource criteria;
- provide non-medical information necessary for development of potential SSI eligibility;
- provide current medical evidence for the blind and disabled consistent with the guidelines in SI 00520.920 B and local Disability Determination Services (DDS) suggestions resulting from experience with the institution's previous evidence submittals. This should include a statement of the claimant's ability to handle funds;
- provide the field office with the anticipated release date and any change which would result in release over 30 days after notice; and
- notify the field office as soon as the individual is released. (SI 00520.910)

In return, SSA agrees to:

- provide guidelines for the information requested from the institution;
- help institutional and social services staff learn how to use the prerelease procedure;
- provide a field office contact to assist the institution in applying the prerelease procedures;
- process claims and reinstatements timely in the field office, and identify cases to the Disability Determination Services (DDS) for prompt handling; and
- notify the institution of the determination promptly.

⁸⁷ See, POMS SI 00520.900.