

# Integration of Adults with Autism into the Whole of Society:

Supplemental Security Income; Social Security Disability Insurance / Disabled Adult Child

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#### **Presentation Overview**

- This workshop addresses Social Security disability benefits for minors and adult children.
  - Medical disability requirements
  - Income and resource eligibility
  - Medical continuing disability reviews
  - Age 18 redeterminations
  - Transitional age youth
  - Working
  - Overpayments

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3



#### Introduction

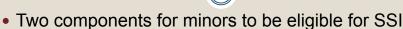


- Two SSA disability programs with different rules
  - Poverty Program: Supplemental Security Income (SSI), with Medi-Cal (most minor recipients)
  - Social Security Disability Insurance (SSDI), with Medicare
- Beneficiary can be on both programs, so can get double notices.

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#### SSI Requirements



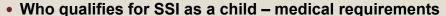
- Medical disability
- Income and resource eligibility requirements
- Adults have a third component: vocational

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5



# SSI Medical Disability Requirements for Minors



- A child "meets or equals" a specific listing (20 CFR § 404 Subpt. P, App. 1, §§ 100.00 – 114.00) OR
- Child has functional equivalents as determined by age appropriate domains.
- Examples of listings include:
  - Attention deficit hyperactivity disorder (112.11)
  - Anxiety disorders (112.06)
  - Organic mental disorders (112.02)
  - Schizophrenic and other psychotic disorders (112.03)
  - Autistic disorder and other pervasive developmental disorders (112.10)
  - Epilepsy (111.02 & .03)
  - Mood disorders. (112.04)
  - Developmental and emotional disorders in newborns and infants (112.12)
  - Others, e.g., growth impairment (100.00), musculoskeletal system (101.00), respiratory system (103.00).

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#### Functional Equivalence in 6 Domains



- Child will be evaluated at age-appropriate equivalents in six domains:
  - 1) acquiring and using information;
  - 2) attending and completing tasks;
  - 3) interacting and relating with others;
  - 4) moving about and manipulating objects;
  - 5) caring for yourself; and
  - 6) health and physical well-being.

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7



#### Functional Equivalence in 6 Domains



- Child must have an "Extreme" impairment in one domain, or "Marked" impairments in two domains to be determined to be disabled. (20 CFR § 416.926a)
- Marked limitations: one has a "marked" limitation in a domain when impairment(s) interferes seriously with the ability to independently initiate, sustain, or complete activities. Functioning is equivalent to at least 2 but less than 3 standard deviations below the mean.
- Extreme limitations: one has an "extreme" limitation in a domain when impairment(s) interferes very seriously with the ability to independently initiate, sustain, or complete activities. Functioning is equivalent to at least 3 standard deviations below the mean.
- See handout for sample evaluation for ages 6-12.

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#### Continuing Disability Reviews (CDRs)



- CDR's Required at 1, 3, 5, or 7 year intervals
  - To see if individual has medical improvement.
  - If improvement is such that one no longer qualifies as disabled, then benefits will cease.
  - Burden of proof lies with SSA to show improvement.
  - Be aware that SSA may make errors in determining whether there has been medical improvement.

(20 CFR § 416.994a)

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# SSI Financial (Income and Resource) Requirements



- Income and financial resources cannot exceed specified amounts. (20 CFR § 416.1100) (20 CFR § 416.1201).
- For minor children, parent's income and resources are deemed to the child (20 CFR § 416.1165) (20 CFR § 416.1202(b))
- Exception: Parents income and resources not deemed to minor child who lives with parents if child was or is eligible for a medical treatment facility (20 CFR § 416.1165(i)) (20 CFR § 416.1202(b)(2))
- Child must not be "over resourced" when deeming parental income and resources to the child.
- If a child under age 18 lives with one parent, \$2,000 of the parent's total countable resources do not count. If the child lives with two parents,\$3,000 do not count. (20 CFR § 416.1205)

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#### SSI Financial Resource Requirements



#### The most common types of income and/or resources that are NOT counted include:

- Home primary residence (20 CFR § 416.1210(a))
- Household goods and personal effects (20 CFR § 416.1216)
- One vehicle (20 CFR § 416.1218)
- 1/3 of the income received for child support from an absent parent (20 CFR § 416.1124 (c)(11))
- Foster care payments (20 CFR § 416.1124 (c)(8))
- Certain types of pensions for example, pensions that are not payable until the adult reaches a certain age. residence (20 CFR § 416.1202(b)(i))
- Up to \$100,000 in a qualified ABLE account.
- Funds for a Plan to Achieve Self Sufficiency (PASS) (20 CFR § 416.1210(f))
- Grants, scholarships and gifts for tuition and educational fees and expenses are excluded for 9 months. (20 CFR § 416.1250)

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#### SSI Financial Resources



#### • Interactions with other needs-based assistance:

- Temporary Assistance for Needy Families (TANF). If child is on SSI, child's portion of the TANF goes to \$0, but parents keep their portion. (20 CFR § 416.1124(c)(2))
- General Assistance (GA). If child is on SSI, child's portion of the GA goes to \$0, but parents keep their portion.

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# Unearned Income (SSI)

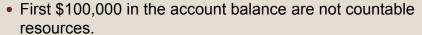
- Unearned income is income from any source that is not earned. (20 CFR § 416.1120)
- Examples include:
  - SSDI benefits 9 months to spend retroactive benefits (20 CFR § 416.1233)
  - Gifts and inheritances (cash, real property, personal property)
     (20 CFR § 416.1121(g))
  - In-kind support and maintenance (20 CFR § 416.1121(h))

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13



#### ABLE Act1 in Context of SSI



- If balance exceeds \$100,000, then SSI benefits will be suspended, not terminated.
- If SSI benefits are suspended because of ABLE account balance, beneficiary still receives Medicaid/Medi-Cal.
- Qualified distributions for certain housing expenses are not disregarded under SSI.
- 1. Achieving a Better Life Experience Act of 2014, H.R. 647, 113th Congress § 103 (2014).

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<u>14</u>



#### **SSI Application Process**

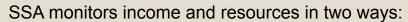
- Call SSA to make appointment
  - Protect the filing date
- Bring information about income and financial resources:
  - Earnings records
  - Bank account information
  - Leases, etc.
- Beware: SSA may make an error in determination of disability.

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# SSI Resource Eligibility Reviews



- Amount of Benefits (Monthly)
  - Recalculated monthly (for following month) based on income and resources
- Redetermination of eligibility (annual)
  - Can be form questionnaire or interview
  - SSA prepares "Redetermination Summary for Determining Continuing Eligibility for Supplemental Security Income Payments"
  - Claimant has 10 days to respond if disagrees with results; can request an extension

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# Redetermination at Age 18

Regulation: 20 CFR § 416.987

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17



# Redetermination at Age 18



- · Adult medical vocational rules are applied
  - A child who has met a listing is more likely to continue to receive benefits as an adult
  - A child who qualified for SSI based on functional equivalency must show that they are unable to work (any minimum wage unskilled job, on a sustained basis)

(20 CFR § 416.920) (20 CFR § 416.994)

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# Redetermination at Age 18

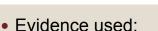
- SSA will consider the following in making its decision regarding ability to work:
  - **Functioning in educational programs** difficulties in a school setting are likely to arise in a workplace setting;
  - Community and work experience on-the-job training, work experience (including volunteer jobs), and accommodations or supports that the child may have received in these settings;
  - **Work-related stress** the child's ability to handle stress in community settings.
- Evidence of child's impairments established under age 18 can be used to prove disability in young adulthood because still relevant.
- See Social Security Policy Interpretation Ruling "Titles II and XVI: Documenting and Evaluating Disability in Young Adults" Fed. Reg. Vol. 76, No. 176, p. 56263.

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# Redetermination at Age 18



- **Doctors** (M.D., Psy. D.) for establishing a medical impairment.
- Other healthcare professionals (Lesser weight than a doctor's evidence. E.g., therapist can provide information about functionality and severity of the impairment.)
- School (Education records count equally to medical records in the determination)
- Family and community members (severity and impact of the impairment.)

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# Redetermination at Age 18



- Based on child's income and resources.
- Parents' income and resources no longer deemed to the child.
   (20 CFR § 416.1165(g)(7)) (20 CFR § 416.1202(b))
- In-kind support and maintenance will reduce the amount of the SSI benefit
- If parents of minor child are over-resourced for SSI, when is the appropriate time to apply as the child approaches 18?

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2



#### Disabled Transitional Age Youth



- Students over age 18 may be considered a child for SSI purposes. (20 CFR § 416.1856).
  - Must be under age 22
  - Must regularly attend school, college or training that is designed to prepare for a paying job
  - Must not be married.
- If disabled before age 31, then shorter period is required to obtain insured status for SSDI. (20 CFR § 404.130(c)).
  - E.g., 6 quarters of coverage out of 12 quarters up through age 24.

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<u> 22</u>



#### Disabled Transitional Age Youth - Wages

- Some wages earned by a student under age 22 are excluded from countable income (20 CFR § 416.1112(c)(3)).
  - Wages up to approximately \$5,000 per year may be exempt.
- Attendance requirements to be a student (20 CFR § 416.1861).
  - College or university: attend at least 8 hours per week.
  - Grades 7-12: attend at least 12 hours per week.
  - Vocational Rehab
    - Attend at least 15 hours per week if shop practice.
    - Attend at least 12 hours per week if not shop practice.
  - Can be fewer hours if it is for reasons the beneficiary cannot control, e.g., illness.

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23



# In-Kind Support and Maintenance (Food and Shelter)



- SSI check will be reduced by 1/3<sup>rd</sup> in-kind support rule if someone provides food and/or shelter to beneficiary.
  - Ex. Adult child lives at home with parents.
- Compare:
  - If both food and shelter are provided, then SSI check will be reduced by 1/3.
  - But, if only housing or only food is provided, check will still be reduced by 1/3.

(20 CFR 416.1131-416.1133) (20 CFR 416.1141(a))

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#### **Gifts**

- If child is given cash, that amount will be reduced from the SSI check. (20 CFR 416.1121(g))
- Current market value of non-cash gifts will be counted as income and subtracted from the SSI check, up to a maximum amount.
- Exceptions:
  - Gifts used for tuition, educational fees and educational expenses are not counted; may be set aside for 9 months. (20 CFR 416.1250)
  - The value of domestic travel tickets will not be counted if they are given as items instead of cash. (20 CFR 416.1124(c)(16))

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# SSDI on the Account of Another (Title II)

Regulation: 20 CFR § 404.350 - 404.366

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### SSDI on the Account of Another (Title II)

- A child may receive Social Security Disability Insurance (SSDI) if the parent is receiving retirement benefits, is disabled, or deceased (get more money)
  - Entitlement and amount are determined by the parent's earnings record.
  - May be entitled as early as birth.
  - May receive it after age 18 (DAC).

#### Requirements

- All categories are not the same; e.g., ½ support rule.

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2



#### Title II DAC Benefits



#### • To receive Disabled Adult Child benefits:

- The disability must have occurred prior to age 22
- The disability is continuous through the present.
- Child's earnings record must show that child's work is below the level of substantial gainful activity (SGA). The threshold amount per month allowed as of 2016 stands at \$1,130 for impairments other than blindness, \$1,820 a month for those declared blind.

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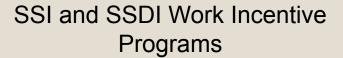
### Title II DAC Benefits

- The advantages of receiving DAC vs. SSI:
  - Usually, the DAC benefit amount is higher than SSI
  - There is no restriction on income and resources
  - DAC benefits are tied to MediCare
- The disadvantages of DAC vs. SSI:
  - DAC benefits do not always provide Medi-Cal, but can buy in. (Medi-Cal covers some expenses that Medicare does not: dental, institutional living, prescription "doughnut hole".)
  - Individuals generally cannot get married (one must get annulled, not divorced), unless marry another DAC.

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20





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### SSI Work Incentives

- Earned Income Exclusion
  - 2:1 rule: for every \$2 earned, there is a \$1 reduction in benefits (i.e., ½ of remaining earnings are excluded from countable income). (20 CFR § 416.1112)
  - First \$65 per month are excluded from countable income

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#### SSI Work Incentives

Example of Earned Income Exclusion\*
 SSI Benefit \$800

Earned Income (Gross) \$1,665
Earned income exclusion -\$65Net income for eligibility \$1,600 1/2 earnings excluded -\$800Countable earnings \$800

SSI Benefit Check \$0

\* All numbers are monthly

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#### SSI Work Incentives, Continued

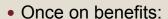
- SSI benefit amount can be \$0 but beneficiary remains on the rolls.
  - Still receives Medi-Cal
  - Does not need to re-apply if recipient has not received benefits for fewer than 365 days.

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33



# SGA - Rebuttable Presumption



- For SSDI: Earnings at the SGA level creates a rebuttable presumption that the individual is not disabled. (20 CFR § 404.1574(a)(1))
- For SSI: SGA amount cannot be used to solely to cease people. Statute: Social Security Act § 1619.
- Three work incentive rules to rebut the presumption
  - IRWEs
  - Employer Subsidies
  - Special Conditions

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# **Employment Supports**

- Sheltered Workshop Income (Generally not SGA)
  - Earnings in Sheltered Workshop may show SGA
     (20 CFR § 404.1574(a)(1) (20 CFR § 416.974(a)(1))
  - SSI: Earnings in Sheltered Workshop are counted as earned income in determining the monthly benefit amount (20 CFR § 416.1110(d))

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31

### **Employment Supports**



Example of Employment Supports Offsetting SGA for SSDI

Earnings \$1,400 / month

Taxi for panic attacks (IRWE) -\$300 that month

Leave early for panic attack -\$240 that month

(Employer subsidy)

Countable earnings \$860 that month

Result: Gross earnings are over the SGA level of \$1,130 (nonblind), but countable earnings are less than SGA level.

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# Overpayments

#### Fault

- Facts show incorrect payment resulted from an incorrect statement the individual knew or should have known.
- Failure to provide material information.
- Acceptant of an incorrect payment the individual knew or should have known was incorrect.
- SSA must consider all pertinent circumstances.

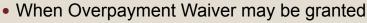
(20 CFR § 404.507) (20 CFR § 416.552)

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27



# Overpayments



- Fact of overpayment.
  - Without Fault
  - Waive if:
    - A. Hardship (defeat purpose of SSDI or SSI). 10% maximum will be deducted.
    - B. Against equity and good conscience.

(20 CFR § 404.512) (20 CFR § 416.553) (20 CFR § 416.554)

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#### **Additional Resources**

- Lanterman Developmental Disabilities Act (AB 846)
  - DD state law.
  - > \$1 Billion for implementation in state budget.
  - More money than SSI benefits.
- The five developmental disabilities that qualify for Lanterman Act services:
  - Cerebral Palsy.
  - Epilepsy.
  - Autism
  - Intellectual disability
  - Other developmental disabilities that require similar treatment
- Regional Centers pay contracts on services.

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