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Integration of Adults with Autism into the Whole of Society:
Supplemental Security Income; Social Security Disability Insurance / Disabled Adult Child

Koret Auditorium
San Francisco Public Library Main Branch
San Francisco, CA
December 6, 2016

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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



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.




SSI Requirements

- Two components for minors to be eligible for SSI
 - Medical disability
 - Income and resource eligibility requirements
- Adults have a third component: vocational

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SSI Medical Disability Requirements for Minors

- **Who qualifies for SSI as a child – medical requirements**
 - 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.



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.**



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)



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)



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))



ABLE Act¹ in Context of SSI

- First \$100,000 in the account balance are not countable resources.
- 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).



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.



SSI Resource Eligibility Reviews

SSA monitors income and resources in two ways:

- 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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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

- Evidence used:
 - **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

- **Financial Resources**
 - 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?**



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.



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.



In-Kind Support and Maintenance (Food and Shelter)

- SSI check will be reduced by 1/3rd 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))



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



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.



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.



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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SSI and SSDI Work Incentive Programs




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	<u>-\$65</u>
Net income for eligibility	\$1,600
½ earnings excluded	<u>-\$800</u>
Countable 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.



SGA - Rebuttable Presumption

- Once on benefits:
 - 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



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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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 (Employer subsidy)	-\$240 that month
Countable earnings	<div style="border-top: 1px solid black; width: 100%; margin-bottom: 5px;"></div> \$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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Overpayments

- **When Overpayment Waiver may be granted**
 - 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.