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Social Security Rules for Deeming Income from Parents to a Child with a Disability to Determine Whether a Child is Eligible for SSI and, if so, the Amount.

Preliminary Notes: Income received by a parent for providing In-Home Supportive Services (IHSS) to a disabled child is not counted as income for purposes of deeming – it is SSI exempt income. 20 CFR § 416.1161(a)(16). Through the Independence Plus Demonstration Waiver (IPW) that went into effect in 2004, IHSS services provided by a parent to a child are covered by Medi-Cal and the income received by the parent is Medi-Cal exempt income. For more information about IHSS, call and ask us to send you a copy of the IHSS Fair Hearing and Self-Assessment packet: <http://www.disabilityrightsca.org/pubs/501301.htm>

Social Security does not count as a resource parents' pension or retirement funds (such as IRAs, KEOGH, or tax deferred annuities) for purposes of determining a child's SSI eligibility – even if the fund could be cashed in. 20 CFR § 416.1202(b). Social Security does not count resources used for self-support such as a small business' inventory and operating bank account or tools, equipment, or a second vehicle used while at work or necessary in order to get to work. 42 USC §1382b(a)(3).

The 1996 welfare reform legislation, Pub.L. 104-193, did two things that affect children with disabilities: (1) The disability definition was narrowed (ask us to send you information on SSI child disability). (2) SSI benefits no longer start as of the date of application, but rather as of the first of the month following the month of application. While the 1996 welfare legislation said that legal residents will no longer be eligible for SSI benefits after July or August of 1997 unless they meet one of the exemptions, the 1997 Balanced Budget Amendments, §§ 5301-5308 of Pub.L. 105-33, rescinded those provisions with respect to children and others receiving SSI on

August 22, 1996, or lawfully present in the United States on August 22, 1996. Children with a satisfactory immigration status who arrived in the United States after August 22, 1996, and who do not qualify for SSI under one of the exceptions may qualify for CAPI (Cash Assistance Program for Immigrants) benefits by applying through their County Welfare Department.

Medi-Cal for Other Members of the Family: Income and resources counted for purposes of determining a child's financial eligibility for SSI and the amount of the child's SSI check cannot be counted again to determine the Medi-Cal eligibility of other members of the family¹.

How To Determine How Much Income is Attributed or Deemed from the Parents to the Disabled Child and How to Determine Whether the Disabled Child qualifies for any SSI

Before getting to the actual procedures for calculating how much of a parent's income is attributed to the child and how you determine whether the child is eligible for any SSI and, if so, how much, you need to understand Social Security's "retrospective monthly accounting" system and your reporting obligations. Social Security counts only the income and resources of the parent with whom the SSI child is living. Social Security does not count the income or resources of a parent with whom the SSI child is not living. The income of a stepparent with whom the SSI child lives is counted.²

Retrospective Monthly Accounting

Social Security uses retrospective monthly accounting during a period of eligibility. 20 CFR § 416.420. That means the income received in one month determines the amount of SSI two months later. For example, the income received in January affects the amount of the March SSI check. However, if income is too high in one month to qualify for any SSI, SSI is suspended for that month. Thus, if income in January is so high that your child is ineligible for SSI, SSI is suspended in January. Your child is entitled to automatic reinstatement without a new application if your income is low enough for your child to qualify for SSI in any of the subsequent 11 months.³ 20 CFR § 416.1323(b). If you go 12 months without your income dropping low enough for your child to qualify for any SSI, the suspension turns into a termination. 20 CFR § 416.1335. Once your child has been terminated, you would have to file a new application for your child to get SSI again.

Parents' Income Change Reporting Obligations

To make the "Retrospective Monthly Accounting" work, Social Security has a rule that says you must let Social Security know by the 10th of the month if there is any change in income the prior month. 20 CFR § 416.708(c), 416.714⁴ If in January your income was more or less than your income in December, you must report the change so that Social Security knows about it by the 10th of February – *better if by the 5th*. You do not need to make any report if your income in January is the same as your income in December. When Social Security receives your income change report for January, Social Security is supposed to enter the change information into

the computer so that your March SSI check will be adjusted up or down to reflect the change in your January income.

We have attached a sample income change report form to help you meet your reporting obligations. We suggest that you partially fill in the report form by writing in the address of your Social Security office and all the information after “re.” Then photocopy many copies of the partially filled in form. Each month where there has been a change in income, write in the date you are signing the form, the month you are reporting about, and the income information at the bottom. Then sign the form. Only one parent need sign the report form. Either photocopy the filled-in form or fill-in a second form as a copy for you to keep. Attach photocopies of any pay or check stubs to the report form you are sending to Social Security. Attach the originals to the copy you keep for your files. Do not send Social Security your pay stub originals, only photocopies.⁵ Social Security often loses things sent to it in the mail. Keep the original pay and check stubs attached to your copy of the report form so that Social Security may review the originals at the time of your annual review. On the income change report copy you keep, write down the date you put the letter in the mailbox.⁶ Keep a copy of everything you send to Social Security. Keep a record of any time you talk to Social Security. Write down the date you talked, to whom you talked, and what was said. We recommend you three-hole punch what you receive from Social Security and make copies of what you send to Social Security. Put everything in a notebook.

Doing the Calculations

The parent-to-child deeming regulations are found at 20 CFR §§ 416.1160, 416.1161, and 416.1165. “Earned income” includes wages and salary or income from self-employment.⁷ Everything else is “unearned income:” Gifts, unemployment benefits, state disability benefits, and Social Security benefits are all examples of unearned income. You combine the parents’ unearned income. You also combine the parents’ earned income. For earned income you count the gross income, not what you take home. Gross income is the amount you earned before any deductions.⁸

Social Security starts by deducting an allocation for each nondisabled child in the family other than the SSI child or children with disabilities. You deduct the allocation first from any unearned income and then, to the extent the allocation has not been used up, from the earned income. “Child” for purposes of the deduction includes children below the age of 21 living in the same household, and 21 year-olds who are full-time students under the standards in 20 CFR § 416.1861. The allocation for each nondisabled child

is the difference between the individual Federal Benefit Rate (FBR) and the couple FBR. (The Federal Benefit Rate is that part of the SSI check that comes from the federal government; the rest of the SSI check represents state money.)⁹ The ineligible child's own income will reduce the allocation. However if the ineligible child is a full-time student, earnings will be exempt to the same extent they are exempt for an SSI child or young adult under the age of 22. 20 CFR §§ 416.1112(c)(3), 416.1160(d), 416.1161(c), 416.1163(b), 416.1165, 416.1861.

After deductions for nondisabled children in the home, you next deduct the \$20.00 any-income disregard first from unearned income (if any or if any remaining) and then, to the extent the deduction is not used up by the unearned income, from earned income. Next come special deductions for earned income – first \$65.00 and then 50% of the balance. The remaining unearned and earned income amounts are added together. From the total you deduct either the individual FBR (if a single parent) or the couple FBR (if both parents or parent and stepparent are in the home). The balance is deemed to the disabled child as the child's unearned income. If there is more than one disabled child in the family, the amount deemed is divided among them.

The child's SSI grant is determined the same way as that of any SSI recipient with two exceptions. First, only two-thirds of any child support is counted. 20 CFR § 416.1124(c)(11). Second, if the child is a student and under age 22 in 2011, Social Security does not count the first \$1,640 in earned income each month up to a yearly maximum of \$6,600. 20 CFR §416.1112(c)(3)¹⁰. This is in addition to the deductions applicable generally to earned income.

Examples of the Application of the Deeming Rules

Attached to this memo is a blank worksheet. You may wish to make several copies of the worksheet to use in calculating the amount of your child's SSI. In addition, we have attached two worksheets which have been filled out in accord with examples "A" and "B". The calculations are based on 2011 benefit amounts. The numbers and letters below correspond to the numbers and letters on the deeming worksheet.

Example A: Mr. and Mrs. Apple have three children including Adam who has a disability. Mr. Apple's gross earned income is \$2,000.00 a month. Mrs. Apple works part-time and her gross income is \$1000.00 a month. They also receive income of \$30 a month on an oil lease.

Calculating Amount of Parent's Income to Attribute to SSI Child in Example A:

1. Enter \$30.00 which is the unearned income from the oil mineral rights lease on their home.
2. There are two children in the family in addition to Adam. They have no income of their own in the example. The 2011 allowance for nondisabled children in the family is \$337 each. The total allowance for the nondisabled children is \$674 which is entered.
3. There is no unearned income from which to take the any-income deduction.
4. The total countable unearned income is of course zero.
5. The combined total gross earned income for both Mr. and Mrs. Apple is \$3,000.00 (\$2,000.00 plus \$1,000.00).
6. The unused balance of the allowance (#1 minus #2) for the nondisabled children in the family is \$644.00.
7. Since you did not reach the \$20.00 any-income disregard in number 3 above, the full \$20.00 deduction is entered here.
8. You next deduct the \$65.00 earned income deduction.
9. Your subtotal is \$1,135.50 (\$3,000.00 less \$644.00, less \$20.00, and less \$65.00).
10. You enter \$1,135.50, which is one half of number 9.
11. Your total countable earned income is \$1,135.50.
12. Since there is no countable unearned income from number 4 above, the total countable income is also \$1,135.50.
13. The Federal Benefit Rate for a couple in 2011 is \$1011.
14. The amount deemed to the disabled child is the total countable income less the couple FBR or \$124.50.

Calculating Child's Grant in Example A:

- a. In January 2011 the grant level for a disabled SSI child is \$737.40.

- b. The amount deemed is \$124.50 and there is no other unearned income (such as Title II Social Security dependent benefits).
- c. There is no child support in this example.
- d. You deduct the \$20.00 any-income disregard from the child's income.
- e. The child has no earned income in this example.
- f. The child's total countable income is \$104.50 (\$124.50 less the child's allowable \$20.00 any-income deduction).
- g. The child's SSI check would be \$632.90.

Example B: Betty Barton is a single parent with a disabled child, Bill. Bill receives \$225.00 a month in child support from his father. Ms. Barton earns \$2,000.00 a month before any deductions.

**Calculating Amount of Parent's Income
to attribute to SSI child in Example B:**

- 1-4. In the example there is no unearned income.
- 5. The gross earned income is \$2,000.00 a month.
- 6. In the example there are no other children in the family.
- 7. Since there was no unearned income, deduct the full \$20.00 any-income disregard here.
- 8. You next deduct the \$65.00 earned income deduction.
- 9. The subtotal is \$2375.50 -- \$2,000.00 less the \$20.00 (number 7) and \$65.00 (number 8) disregards.
- 10. Less one half of \$1,915.00 or \$957.50.
- 11. The total countable earned income is also \$957.50.
- 12. The total countable income is \$957.50 since there is no unearned income in the example.
- 13. The Federal Benefit Rate for a single parent in 2011 is \$674.
- 14. The amount deemed to Bill is \$283.50, the difference between \$957.50 and \$674.00.

Calculating Child's Grant in Example B:

- a. The Child's January 2011 grant level is \$737.40.
- b. The amount deemed is \$283.50. There is no other unearned income such as Title II Social Security dependent benefits.
- c. In the example Bill receives \$225.00 a month in child support from an absent parent. Social Security only counts two-thirds of the child support, one-third of \$225 or \$75 is deducted from \$225 and the balance or \$150 is counted as the child's income.
- d. You deduct the \$20.00 any-income disregard from the child's income.
- e. In the example the Child has no earned income.
- f. The Child's countable unearned income is \$413.50 (\$283.50 plus \$150.00 less \$20.00).
- g. The Child's SSI grant is \$323.90 (\$737.40 less \$413.50)

	2009	2010 and 2011
Individual FBR	\$674.00	\$674.00
Couple FBR	\$1011.00	\$1011.00
Income Deduction Nondisabled Child	\$337.00	\$337.00
SSI Disabled Child Rate	1/09 \$793.00 5/09 \$756.00 7/09 \$739.00 11/09 \$737.40	\$737.40
SSI Blind Child	1/09 \$972.00 5/09 \$935.00 7/09 \$913.00 11/09 \$908.00	\$908.00

**EXAMPLE A
MONTHLY PARENT-CHILD
SSI DEEMING WORKSHEET**

Parents' Income:			
1.	Unearned income	\$30.00	
2.	* Less allowance for other children	\$(674.00)	
3.	Less \$20 any-income disregard	\$(20.00)	
4.	Total Countable Unearned Income		\$0.00
5.	Gross earned income	\$3,000.00	
6.	* Less balance for other children (2 minus 1)	\$(644.00)	
7.	Less balance of any-income disregard	\$(20.00)	
8.	Less \$65.00 earned income disregard	\$(65.00)	
9.	Subtotal	\$2,271.00	
10.	Less one half (50%) of #9 subtotal	\$1,135.50	
11.	Total countable earned income		\$1,135.50
12.	Subtotal - countable income		\$1,135.50
13.	** Less individual or couple FBR		\$(1011.00)
14.	# Amount deemed to disabled child		\$124.50
Calculating Child's Grant			
a.	## Child's SSI Grant Level		\$737.40
b.	Amount deemed from #14 above plus other unearned income	\$124.50	
c.	† 2/3 of any child support	- - - -	
d.	Less \$20.00 any-income disregard	\$(20.00)	
e.	‡ Countable earned income	- - - -	
f.	Child's total countable income		\$(104.50)
g.	Child's SSI grant		\$632.90

* Allowance for each nondisabled child is \$337 in 2009 through 2011. Amount of deductible for other children may be reduced by child's income. Deductible not used in #2 would be deducted against earned income in #6.

** The individual FBR (federal benefit rate) in 2009, 2010, and 2011 is \$674. Couple FBR, in 2009, 2010 and 2011 is \$1011.

If more than one disabled child, the amount deemed is divided among the disabled children.

California SSI disabled child rate including FBR and state supplement in January through April 2009 \$793, blind child \$972, May through June 2009 \$756, blind child \$935, July through October 2009 \$739,

blind child rate \$913, November 2009 through 2011 \$737.40, blind child \$908.

† Only two-thirds of child support is counted.

‡ In 2009, 2010 and 2011 the monthly exempt amount is \$1640, annual exempt is \$6,600. In addition, children have all the deductions for earned income available to adults.

**EXAMPLE B
MONTHLY PARENT-CHILD
SSI DEEMING WORKSHEET**

Parents' Income:			
1.	Unearned income	\$0.00	
2.	* Less allowance for other children	\$0.00	
3.	Less \$20 any-income disregard	\$(20.00)	
4.	Total Countable Unearned Income		\$0.00
5.	Gross earned income	\$2,000.00	
6.	* Less balance for other children	\$0.00	
7.	Less balance of any-income disregard	\$(20.00)	
8.	Less \$65.00 earned income disregard	\$(65.00)	
9.	Subtotal	\$1,915.00	
10.	Less one half (50%) of #9 subtotal	\$(957.50)	
11.	Total countable earned income		\$957.50
12.	Subtotal - countable income		\$957.50
13.	** Less individual or couple FBR		\$(674.00)
14.	# Amount deemed to disabled child		\$283.50
Calculating Child's Grant			
a.	## Child's SSI Grant Level		\$737.40
b.	Amount deemed from #14 above plus other unearned income	\$283.50	
c.	† 2/3 of any child support	\$150.00	
d.	Less \$20.00 any-income disregard	\$(20.00)	
e.	‡ Countable earned income		
f.	Child's total countable income		\$413.50
g.	Child's SSI grant		\$323.90

* Allowance for each nondisabled child is \$337 in 2009 through 2011. Amount of deductible for other children may be reduced by child's income. Deductible not used in #2 would be deducted against earned income in #6.

- ** The individual FBR (federal benefit rate) in 2009, 2010, and 2011 is \$674. Couple FBR, in 2009, 2010 and 2011 is \$1011.
- # If more than one disabled child, the amount deemed is divided among the disabled children.
- ## California SSI disabled child rate including FBR and state supplement in January through April 2009 \$793, blind child \$972, May through June 2009 \$756, blind child \$935, July through October 2009 \$739, blind child rate \$913, November 2009 through 2011 \$737.40, blind child \$908.
- † Only two-thirds of child support is counted.
- ‡ In 2009, 2010 and 2011 the monthly exempt amount is \$1640, annual exempt is \$6,600. In addition, children have all the deductions for earned income available to adults.

**MONTHLY PARENT-CHILD
SSI DEEMING WORKSHEET**

Parents' Income:			
1.	Unearned income	\$	
2.	* Less allowance for other children	\$ ()	
3.	Less \$20 any-income disregard	\$ (20.00)	
4.	Total Countable Unearned Income		\$
5.	Gross earned income	\$	
6.	* Less balance for other children	\$ ()	
7.	Less balance of any-income disregard	\$ (20.00)	
8.	Less \$65.00 earned income disregard	\$ (65.00)	
9.	Subtotal	\$	
10.	Less one half (50%) of #9 subtotal	\$ ()	
11.	Total countable earned income		\$
12.	Subtotal - countable income		\$
13.	** Less individual or couple FBR		\$ ()
14.	# Amount deemed to disabled child		\$
Calculating Child's Grant			
a.	##Child's SSI Grant Level		\$
b.	Amount deemed from #14 above plus other unearned income	\$	
c.	† 2/3 of any child support	\$	
d.	Less \$20.00 any-income disregard	\$ (20.00)	
e.	‡ Countable earned income		
f.	Child's total countable income		\$ ()
g.	Child's SSI grant		\$ ()

* Allowance for each nondisabled child is \$337 in 2009 through 2011. Amount of deductible for other children may be reduced by child's income. Deductible not used in #2 would be deducted against earned income in #6.

** The individual FBR (federal benefit rate) in 2009, 2010, and 2011 is \$674. Couple FBR, in 2009, 2010 and 2011 is \$1011.

- # If more than one disabled child, the amount deemed is divided among the disabled children.
 - ## California SSI disabled child rate including FBR and state supplement in January through April 2009 \$793, blind child \$972, May through June 2009 \$756, blind child \$935, July through October 2009 \$739, blind child rate \$913, November 2009 through 2011 \$737.40, blind child \$908.
 - † Only two-thirds of child support is counted.
 - ‡ In 2009, 2010 and 2011 the monthly exempt amount is \$1640, annual exempt is \$6,600. In addition, children have all the deductions for earned income available to adults.
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Date: _____

Social Security Administration
District Office

Subject: Child's Name: _____

Child's SS number: _____

Address: _____

Telephone: _____

I am (We are) the parent(s) of the above child. This is a report of a change of income for the month of _____. If the income change will change the amount of my (our) child's SSI check, please let me (us) know. I (We) swear or declare under penalty of perjury that the accounting in this report is true and correct and any copy attached is an exact copy of the original. Signed at the date and place indicated above.

Father

Mother

PARENTS' EARNED INCOME

Photocopy of Pay Records/Paystub Attached;

Originals are being kept for SSA inspection at the annual review

Employer: _____ Amount/date received: \$ _____
Amount/date received: \$ _____
Amount/date received: \$ _____

UNEARNED INCOME

Source: _____ Amount/date received: \$_____

Endnotes

¹ 42 USC § 1309, Cal.Code Regs., Tit. 22, § 50555.1. In the case of the Apple family members in Example A on page 4, the other two children would qualify for Medi-Cal based on zero income. The parents may not qualify if both are working. In the case of a single parent or where one of the parents is unemployed or underemployed or has a disability including a temporary disability, the parents also could be covered by Medi-Cal. If a parent is receiving IHSS to care for a child with a disability, that income is not counted when determining the child's financial eligibility for SSI nor, because of the Independence Plus Waiver (IPW), is it counted when determining the Medi-Cal eligibility of anyone else in the household.

² Although Social Security counts the income and resources of a stepparent for purposes of SSI, the state Medi-Cal (Medicaid) agency cannot. 42 USC § 1396a(a)(17)(D). For a child, the Medi-Cal program only looks to the income and resources of the parent and child. If your child does not qualify for SSI because of the income and resources of a stepparent, apply for Medi-Cal under the new Federal Poverty Level program for aged and for children and adults with disabilities (A&D FPL). If your child is not eligible under the A&D FPL program, apply for Medi-Cal under the ABD (aged-blind-disabled) medically needy program. You apply for Medi-Cal at your County Welfare office. Explain that your child is a *Sneede* (name of a lawsuit) case to ensure the right rules are used.

³ To get your child's SSI started again, write or go into your local Social Security Office to report the reduction in income or that your resources are now within Social Security limits. Include documents that show that your income is now lower or that your resources are now within SSI limits. You should specifically ask that SSI be reinstated. If you request reinstatement by mail, we suggest you do so by certified mail.

⁴ Income change is not the only thing you need to report. See 20 CFR § 416.708. You need to tell Social Security if you move, if your disabled child or nondisabled children go to live elsewhere, if a parent marries if one of the parents moves out of the home, or if your disabled child moves to a medical facility.

⁵ Some parents have reported that local offices tell them that Social Security cannot accept photocopies. That is not correct. In the income

change letter you swear under penalty of perjury that the photocopies are true copies of the originals.

⁶ Some families report that their local Social Security office tells them they do not need to send in monthly income change reports, that Social Security will make the adjustments after the fact at the time of the annual review. Sometimes this is correct when Social Security arranges for your benefits to be adjusted in line with anticipated fluctuations in your income. If paid weekly, you receive five instead of four paychecks in some months; if paid every two weeks, you receive three rather than two paychecks in a month twice a year. At the time of the annual review Social Security may program in anticipated income fluctuations for the coming year. However, unless Social Security gives you something in writing saying you are not to report changes in income, you must send in the income change reports. If you do not and there is an overpayment as a result, Social Security will say that you are at fault because you did not report the income change.

⁷ If you are self-employed, Social Security wants to know your adjusted gross income. 20 CFR § 416.1110(b). Bring to Social Security your income tax return from last year together with information about your gross receipts this year. Social Security will look to your income tax return from last year together with information about your gross receipts this year. Social Security will look to your tax return last year as a yardstick for estimating your adjusted gross income this year. If your gross receipts last year were \$40,000 but your adjusted gross income (what you paid taxes on after IRS allowable business deductions) was \$18,000 or 45% of your gross receipts, Social Security would estimate that your adjusted gross income this year would be 45% of this year's gross receipts. Because self-employment income is determined on an annual basis which is then evenly divided over the 12 months in accord with 20 CFR § 416.1111(b), you will be using estimates subject to adjustment when you prepare your income tax return.

Social Security does not count as a resource property necessary for self-support including as an employee. 42 USC §1382b(a)(3). That can include inventory, computers, farm equipment and livestock, farmland, separate business bank accounts, buildings, fishing boat, as well as a car you need to use on your job or which is essential for getting to and from work.

⁸ Some employers have plans that allow you to put money in a special account to pay for childcare or healthcare pursuant to Section 125

of the Internal Revenue Code. These are often called “cafeteria plans”. Money set aside in these accounts and used for qualified benefits is not considered “income” because you do not pay social security tax on this income. 20 CFR § 404.1054.

Your gross earned income for SSI purposes is your gross income less money put into a cafeteria plan. However, earnings put in tax sheltered retirement account are counted as income. The funds in a parent’s retirement or pension account though are an exempt resource. 20 CFR § 416.1202(b)

⁹ Because of retrospective month accounting (see pages 2-3), calculations for income received in November and December should use the Federal Benefit Rate for the following year. This is because the SSI check received in January and February is supposed to reflect income received and deemed in November and December of the prior year.

¹⁰ The annual and monthly maximums go up each year by the amount of the annual cost of living allowance. 20 CFR §416.112(c)(3)(B). The regulations provide for flexibility and accommodation to disabilities when determining when a child or young adult is a student for purposes of the earned income deduction. 20 CFR § 416.1861.

The regulations and statutes are available in public libraries. They are also available at the Social Security website: www.ssa.gov. Once at the Social Security website, click on “our program rules” which is on the right side of the website.