



## Government Resources for Children with Special Needs

**Question:** I have several clients who have children with special needs. What government resources are available to help these families?

**Answer:** For the most part, government resources fall into one of two categories: (1) needs based or (2) non-needs based. We will discuss them both, but keep in mind that a major focus of special needs planning is making sure that eligibility for needs-based resources is maintained. The discussion that follows is not intended to include all of the available programs. There are a number of nonprofit organizations that provide significant funding that will not be discussed here. Also, programs that involve state funding will vary from state to state. Advisors and family members of a child with special needs must be familiar with the specific programs in their resident state in order to ensure that all benefits are received.

**Disability under Social Security.** The Social Security Administration (SSA) administers two programs that provide benefits based on disability: The Social Security Disability Insurance (SSDI) program (title II of the Social Security Act) and the Supplementary Security Income (SSI) program (title XVI of the Social Security Act).

Title II provides for payment of benefits to disabled individuals who are “insured” under the Act based on their contributions to Social Security made while working, as well as to certain disabled dependents of insured individuals. Title XVI provides Supplementary Security Income payments to individuals – including children under age 18 – who are disabled and have limited income and resources. We will look at this program first.

**Supplemental Security Income (SSI).** This needs-based Social Security program provides financial aid to the elderly, blind and disabled who are unable to obtain substantial gainful employment because of mental or physical impairments and have limited income and resources. The impairment must be medically proven and result in marked and severe functional limitations, and must be expected to result in death or have lasted, or can be expected to last, for a continuous period of at least 12 months.

The maximum benefit for 2009 is \$674 a month. There are a number of factors that are taken into consideration in arriving at the level of financial assistance given to an individual. They include the person’s marital status, living arrangements, and income.

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Because SSI is needs based, it is reduced by income from other sources. Therefore, it is a very important financial asset and eligibility for the program needs to be protected through special needs planning.

For an unmarried child under age 18 living at home with parents who don't receive SSI benefits, a portion of the parents' income and resources may be considered as if they were available to the child. This is known as "deemed income." Deductions from deemed income are made for the parents and for other children living at home. After those deductions are subtracted, the remaining amount is used to determine whether the child meets the SSI income and resource requirements to be eligible for a monthly benefit.

In addition to an income ceiling for qualifying for SSI, there is also an asset ceiling. Benefits are denied if the disabled person owns countable assets with a value in excess of \$2,000. With some qualifications, the individual may own a home of any value as long as he/she resides in it. Household and personal effects, as well as an automobile, may be owned without a loss of benefits.

SSI is a federal benefit that applies to most states. Some states elected out of the federal SSI system and agreed to provide a greater benefit. These states are known as 209B states. Families and their advisors must look to the rules for those specific states. A list of those states can be found on the Social Security website. [www.SSA.gov](http://www.SSA.gov)

Some states working under the federal SSI system provide an optional state supplement. These supplements also follow the qualifications for SSI. Qualifying for SSI automatically also entitles the person to Medicaid benefits (described later).

**Social Security Disability Insurance for Adults (SSDI).** Benefits from SSDI are paid for total disability only and are dependent on meeting two different earning tests: (1) a **recent work** test based on the age of the person at the time he or she became disabled and (2) a **duration of work** test to show that the person worked long enough under Social Security.

To satisfy the **recent work** test, claimants who become disabled in the quarter they turn age 31 or later must have worked and contributed to Social Security for at least five years out of the ten-year period (20 out of 40 quarters) ending with the quarter in which the disability began. If disability begins before age 31 but after age 23, a claimant must have worked for at least one-half (but not less than six) of the quarters after reaching age 21 and before becoming disabled, and if disability begins at age 23 or younger, 6 quarters of work during the three-year period ending with the quarter the disability began is required.

The number of quarters of work needed to satisfy the **duration of work** test and to qualify for disability benefits depends on an individual's age at the time the person becomes disabled. Generally, 40 quarters of work are needed. However, younger workers may qualify with fewer quarters. Here are several examples of years of work generally needed if disabled at various ages.

<u>If disabled</u>	<u>Years of work needed</u>
Before age 28	1.5
At age 34	3.0
At age 42	5.0
At age 50	7.0
At age 58	9.0

See the Social Security website [www.SSA.gov](http://www.SSA.gov) for more information.

The definition of disability is "the inability to engage in any substantial gainful activity by

reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”

There are a number of steps an adult must go through to qualify for disability benefits. If a claimant is working and earnings average more than \$980 per month in 2009 (adjusted yearly), the person generally cannot be considered disabled. If earnings are less than that and the condition is severe enough to interfere with basic work-related activities, the claimant goes to the next step. There is a list of medical conditions that are so severe that they automatically qualify an individual as disabled. If a condition is not on that list, the Disability Determination Services (DDS) office in each state determines whether that condition is of equal severity to a condition that is on the list. If it is, the claimant is considered disabled.

If the condition is severe but not at a high enough severity level to be considered disabled, the next step is to determine whether the condition interferes with work the claimant did previously. If it does not, the claim will be denied. If it does, the DDS considers whether the claimant can adjust to other work, taking into consideration medical conditions, age, education, past work experience and transferable skills. The claim will be approved only if the claimant cannot adjust to other work.

Medical evidence from a claimant’s doctors will be collected and, if that evidence is inadequate or more information is needed, a medical examination by a physician selected by the Social Security Administration may be required. Qualification for SSDI does not require needs-based testing. Qualifying for SSDI automatically qualifies the person for Medicare (described later) after SSDI benefits have been paid for 24 months.

**Social Security for Unmarried Children.** A disabled person whose disability began prior to the age of 22 is entitled to benefits if one of his or her parents is entitled to Social Security, meaning the parent paid into the system for the required period of time. The child will be eligible to receive benefits based on the parent’s earnings beginning at the death, disability or retirement of the parent. Needs-based testing is not required; however, the adult child must meet the definition of disability for adults.

**Medicaid.** Medicaid is a joint program between the federal and state governments. It is administered by the states using federal funding and provides medical benefits to low-income children, seniors and people with disabilities. Congress and the Centers for Medicare and Medicaid Services establish the rules under which Medicaid operates, but each state is responsible for its own program. The eligibility rules are somewhat different in every state, but the basics of the program are the same throughout the country. The term Medicaid generically applies to numerous specific programs designed to meet specific needs and assist persons with specific disabilities. The primary program pays for nursing, home care and general medical care. Other programs include aid for assisted living, some in-home care and supplemental payments for Medicare. These additional programs vary significantly between states in both design and availability.

As is the case with SSI, Medicaid is needs based and eligibility must be protected against unintentional loss resulting from a lack of proper planning. Both income and asset levels are determinants of eligibility. Medicaid imposes constructive ownership rules, meaning that assets owned by a spouse in excess of certain amounts are deemed to be owned by the individual applying for Medicaid. However, the applicant’s home is often not counted. Recent federal legislation, which is being implemented in the states, limits the equity in the home that is

disregarded to between \$500,000 and \$750,000 for single persons.

Avoiding eligibility disqualification using trusts is difficult and complex. The Omnibus Budget and Reconciliation Act of 1993 (OBRA) established so-called “look-back” periods of 36 months for outright transfers and 60 months for transfers in trust to prevent circumvention of Medicaid eligibility requirements. Legislation in 2006 (currently subject to court challenge) made the look-back period five years or 60 months for all transfers.

**Medicare.** Medicare is a non-needs-based federal program that provides benefits based on age or status. Persons age 65 or older, persons of any age with permanent kidney failure, and certain disabled individuals are eligible.

Part A is a hospital insurance program that pays for inpatient hospital care, medically necessary inpatient care in a skilled nursing home, or home health care following a hospital stay. Intermediate care and custodial care are not covered.

Part B is voluntary medical insurance that pays for necessary physicians’ services, outpatient hospital care, physical therapy, ambulance trips, medical equipment, prosthetics, and other services not covered under Part A.

**Veterans Benefits:** Veterans benefits are provided to individuals who have served in the military and certain of their dependants. There are two types of benefits available from the Veterans Administration. “Compensation” benefits are entitlements that are not means tested. Benefits such as pension and medical benefits can have a means test. A special needs trust can be a solution to these issues.

**HUD Housing:** Section 8 (HUD) housing provides either vouchers or reduced or subsidized rent. A person’s income and assets

impact both the qualification for, and the amount of, the subsidy.

**Other Programs.** There are a number of other sources of assistance available to individuals with special needs. They depend on the nature of the disability and will vary from state to state.

**Summary.** Because of the wide variation of programs and complexity of rules in this area, it is important that financial professionals work with legal advisors who have extensive knowledge and specialize in working with families that have children with special needs.