



By: Leonard Shober, Esq.,
Shober & Rock

SSI is the basic federal safety net program for the elderly, blind and disabled, providing them with a minimum guaranteed income. For 2018, the maximum federal SSI benefit is \$750 a month for an individual and \$1,125 a month for a couple (normally, the amounts go up every January 1). These amounts are supplemented in most states (see below).

Although the Social Security Administration (SSA) administers the program, eligibility for SSI benefits is based on financial need, not on how long you have worked or how much you have paid into the Social Security system. However, the financial eligibility rules are quite stringent. If you are seeking SSI benefits because you are disabled, you must demonstrate to the SSA's satisfaction that you are disabled. This evaluation focuses on whether an individual is capable of being gainfully employed. Although the criteria are far too detailed to be described here, generally speaking a disabled recipient must earn less than \$1,000 a month from work.

About 8.3 million persons were receiving SSI payments as of December 2016. Three-quarters of these recipients were below age 65, and one-quarter were aged 65 or older. Many older persons who are not eligible for Social Security retirement benefits because they have not accumulated enough work credits may nevertheless be eligible for SSI, and even many of those receiving Social Security retirement benefits may be able to supplement their benefits with SSI payments.

Most states supplement the federal SSI payment with payments of their own. The states that do not pay a supplement are Arizona, Mississippi, North Dakota and West Virginia. In some states

that do pay a supplement, you may qualify for the state payment even if you don't meet the federal SSI eligibility criteria. But, even in those states that supplement the federal payment, the total SSI benefit usually falls below the poverty level.

The idea of the SSI program is to provide a floor income level. If you are receiving income from another source, your SSI benefit will be cut dollar for dollar. In addition, the SSA deems food and shelter you receive from another source to be "in kind" income. As a result, actual payment amounts vary depending on your income, living arrangements, and other factors.

While the SSI program's benefits are meager, in most states SSI recipients are also automatically eligible to receive Medicaid, which can

Help for the Disabled

Leonard Shober is a partner in Shober & Rock, an elder law, tax and estate planning firm that focuses on the legal needs of the elderly and disabled. Len attended Temple University School of Law and graduated in 1986 with honors. Prior to law school, Len was a social worker and family counselor, a background that has greatly assisted his work with the elderly and families in crisis.

pay for hospital stays, doctor bills, prescription drugs, nursing home care, and other health costs. SSI recipients may also be eligible for food stamps in every state except California and in some cases for special programs for the developmentally delayed.

SSI and Trusts

The contents of most trusts you create for yourself will be considered available to you in determining your eligibility for SSI. On the other hand, assets of most trusts that someone else creates and names you as a beneficiary of will not be considered to belong to you for purposes of determining your SSI eligibility. If you created and funded an irrevocable trust for your own benefit prior to January 1, 2000, it will be grandfathered, and in most cases its assets will not be considered to belong to you.

Trusts designed to aid a person with special needs are commonly known as "special needs trusts." There are three main types of special needs trusts: the first-party trust, the third-party trust, and the pooled trust. All three name the person with special needs as the beneficiary, but they differ in several significant ways.

A first-party trust is designed to hold an SSI beneficiary's own assets, but it must be created by the beneficiary's parent or grandparent, or by a court, even though the beneficiary's assets are going to fund the trust. While the beneficiary is living, the funds in the trust are used for his/her benefit, and when he/she dies, any assets remaining in the trust are used to reimburse the government for the cost of his/her medical care. These trusts are especially useful for beneficiaries who are receiving SSI and come

into large amounts of money, because the trust allows the beneficiary to retain benefits while still being able to use his/her own funds when necessary.

The third-party special needs trust is most often used by parents and other family members to assist a person with special needs. These trusts can hold any kind of asset imaginable belonging to the family member or other individual, including a house, stocks and bonds, and other types of investments. The third-party trust functions like a first-party special needs trust in that the assets held in the trust do not affect an SSI beneficiary's access to benefits, and the funds can be used to pay for the beneficiary's supplemental needs beyond those covered by government benefits. But a third-party special needs trust does not contain the "payback" provision found in first-party trusts. This means that, when the beneficiary with special needs dies, any funds remaining in the trust can pass to other family members, or to charity, without having to be used to reimburse the government.

A pooled trust is an alternative to the first-party special needs trust. Essentially, a charity sets up these trusts that allow beneficiaries to pool their resources for investment purposes, while still maintaining separate accounts for each beneficiary's needs. When the beneficiary dies, the funds remaining in his/her account reimburse the government for his/her care, but a portion also goes towards the nonprofit organization responsible for managing the trust.

Given the complexity of this field, any trust should be drafted by an experienced attorney knowledgeable about SSI matters. Please contact us if you are interested in a special needs trust for your loved one.

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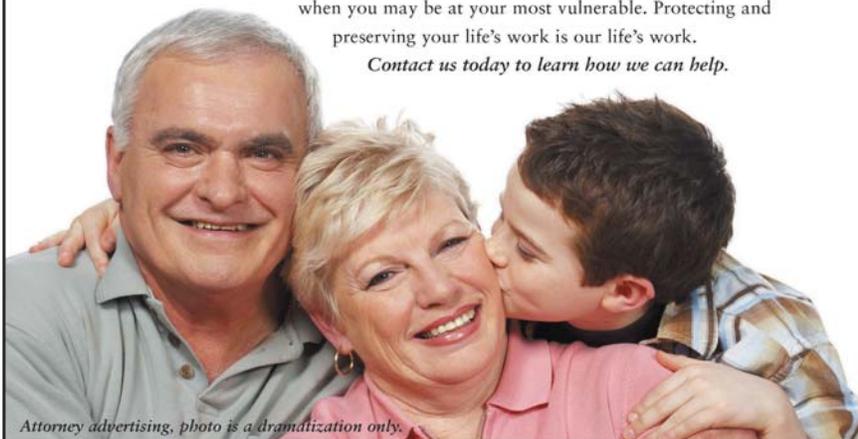
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308 N. MAIN STREET, SUITE B400, CHALFONT, PA 18914-2733

The attorneys of Shober & Rock have years of experience helping individuals and families with the complex issues of elder law. We are here to help you prepare for and confront what may be the most complex legal hurdles of your life at a time when you may be at your most vulnerable. Protecting and preserving your life's work is our life's work.

Contact us today to learn how we can help.



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