



DISABILITY
LAW CENTER

O F A L A S K A



**SOCIAL SECURITY
DISABILITY
BENEFITS
HANDBOOK**

MEMBER OF THE
NATIONAL DISABILITY
RIGHTS NETWORK

This handbook was prepared by the Disability Law Center of Alaska with grants from the U.S. Department of Health and Human Services (DHHS), U.S. Department of Education (DOE), and the State of Alaska, Department of Health and Social Services (DHSS). The contents are the sole responsibility of the authors and do not necessarily represent the official views of DHHS, DOE, or DHSS.

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This publication is a Public Education resource and is not intended to be legal advice. All laws are subject to change by legislation, rule making, and by court decisions. Readers should use this handbook as a guide, then ask questions about their own individual needs.

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INTRODUCTION

The Disability Law Center (DLC) is the State of Alaska's designated "Protection and Advocacy" (P & A) agency. In response to the public outcry about the abuse and neglect of individuals with disabilities in institutional care, the U.S. Congress in 1975 mandated the creation of P & A agencies in every state and territory. The purpose of this nationwide system is to provide for the protection of and advocacy for the legal, civil, and human rights of persons with mental or physical disabilities.

P & A agencies have unique authority under federal law to enforce both state and federal laws concerning the rights and benefits of individuals with disabilities. This authority includes initiating investigations of abuse and neglect in institutions, community settings, or programs that serve individuals with disabilities. DLC also provides information, referrals, technical assistance, and direct representation of persons with mental and physical disabilities.

State and federal laws provide specific legal entitlements and service benefits to individuals with disabilities. In our experience, Alaskans with disabilities and their families can become frustrated when they try to get services and benefits they need and are entitled to receive. Their frustration often results from difficulty in understanding the responsibilities of various agencies, and the nature and scope of the programs the agencies administer.

This handbook was written to help Alaskans with disabilities, their families and other advocates understand the services and benefits available through the Social Security Administration, and the system designed to deliver them. A question-and-answer format was used so you can quickly find answers to specific questions.

CAUTION: This manual is intended to provide general information. Variable and unique factors in your individual case may make the general rule inapplicable to you. Further, program requirements change because of changes in the law. These materials are based on laws in effect at the time of publication. Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact DLC or a legal authority in your community.

A NOTE ON STYLE

For the sake of clarity and consistency, the authors and editors direct this manual to "a consumer." We address the person who is applying for or receiving Social Security benefits as "you."

We realize that some individuals who apply for or receive Social Security benefits need the help of an advocate. The advocate -- a parent, guardian or conservator; a case manager; a professional advocate; an attorney; or anyone who is actually dealing with the Social Security system on behalf of a consumer -- will understand that the manual is directed to a consumer.

ADVOCACY SKILLS

This manual will provide you with information about a specific service system. However, you may also need some advocacy skills to get the services and benefits you believe you are entitled to receive. This section will give you some general advocacy strategies that may help you get the services you need.

1. Do Agencies That Provide Services to Persons with Disabilities Have to Follow Any Laws?

All programs that serve children and adults with disabilities operate under statutes and regulations. Statutes are laws passed by the Legislature. Regulations are rules adopted by the agency responsible for enforcing the statute. Copies of a program's regulations usually are available for you to read at the agency's local office. Ask where to go to look at the regulations. You do not need to give a reason to look at the regulations.

Agencies must obey the laws governing specific programs. Agencies that receive funds from the federal government also must comply with Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap. They also must comply with Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race or ethnic background.

2. What Steps Can I Take to Protect My Rights?

- a. Be assertive. You have a right to receive services; agency staff is there to help you receive services.
- b. If you don't understand, ask questions. You have a right to get information from every agency in a form you understand. Ask the agency to give you information in your native language. If you don't understand what someone tells you, ask for a further explanation. Ask as many questions as you need to in order to understand.
- c. Share information. Your opinions are valuable. You know your needs as well as the professionals who conducted the evaluations. Don't be afraid to voice your opinion.
- d. Be prepared. Before going to a meeting, review your case file. Be sure you know what you want, and the reasons you want it. Make a list of questions you want answered.
- e. Be willing to listen. After you request a service or ask a question, listen to the agency's response. As you listen, ask yourself if the response answers your question. If you are unsure of the response, ask more questions.
- f. Keep records. Keep all the papers concerning your case together in a file. Keep a diary or log of verbal contacts. Write down the name of each person you talked to and when you talked to that person.

g. Get help. If you feel uncomfortable about going to a meeting alone -- don't. Take a friend, a relative or a representative from an advocacy organization. You always have the right to take someone with you. That person can often keep you focused on the problem, take notes about what was decided, and give you support.

3. I Want to Apply for Benefits, but I Cannot Go to an Office to Apply Because of My Disability. What Can I Do?

If you cannot go to an agency's office to apply for benefits because of your disability, Section 504 of the Rehabilitation Act may require that the agency visit your home to take your application.

4. I Believe I Am Entitled to Benefits, but the Agency Has Denied My Application. What Can I Do?

Any time you disagree with an agency's decision, you can challenge that decision. To challenge an agency's decision, you should:

- a.** Have someone from the agency put the decision and reasons for it in writing. The decision must:
 - (1) Give the facts upon which the agency based its decision;
 - (2) List the statutes and regulations that apply to the decision;
 - (3) Explain how the law (the statutes and regulations) applies to the facts in your case;
 - (4) Give the specifics of any change or reduction.
- b.** Ask for a written copy of the agency's appeal procedure. The agency should provide the appeal procedure as part of its decision.
- c.** Ask the agency to explain its decision in your native language. You may also ask the agency to explain its appeal procedure in your native language if you are unsure about reading and understanding English. You have this right under Title VI of the Civil Rights Act.
- d.** Ask the agency for names of organizations that can help you file an appeal. Even if the organizations cannot represent you, they can give you advice about what to do.

5. Do I Have a Right to Examine the Agency's File Concerning My Case?

Generally, all agencies must give their client, their client's parents if the client is a minor, and the client's representative, access to agency files concerning the client. The agency also must provide you with copies of documents in the file upon request. An agency may charge the actual cost of reproducing the records if you can pay. If you cannot pay, the agency must provide the records without charge.

GENERAL

There are three Social Security programs which pay benefits to people who are disabled. The definition of disability is the same under all three programs.

Supplemental Security Income (SSI), which are benefits under Title XVI of the Social Security Act, is for people who are disabled or blind (or 65 years of age) and who have limited income and resources. The federal grant is supplemented by the state.

Social Security Disability Insurance (SSDI), under Title II of the Social Security Act, is a benefits program for people who are disabled and who have worked and paid into Social Security long enough to receive SSDI benefits. The disabled worker's spouse and children receive benefits in addition to those received by the worker.

Social Security Disabled Adult Child Benefits (DAC), under Title II of the Social Security Act, is a benefits program for people 18 years or older who become disabled before age 22, and who are children of a disabled, retired or deceased worker who has paid into the Social Security system.

1. Where Do I Apply for Social Security Benefits?

You apply in person at any local Social Security office. Someone else can go to a Social Security office and start the application process for you. Or you can start the process by phoning Social Security at 1-907-271-4455. If it is difficult for you to leave your home because of your disability, you have a right to have Social Security come to your home to help you apply, or to have Social Security process the application by phone. This is a right protected by Section 504 of the Rehabilitation Act. 29 USC 794. Section 504 prohibits discrimination on the basis of disability by any federal agency, and requires federal agencies to make reasonable accommodations to people's disabilities.

Social Security has a “protective filing” procedure for SSI. If you file the completed and signed application form within 60 days after Social Security sends you the application form with a notice, Social Security considers your filing date to be the date you, or someone authorized to act for you, called or wrote to Social Security saying you wanted to apply for SSI. If you do not follow this procedure, Social Security considers the SSI application to be filed the date it is received by Social Security or the date of the postmark on the envelope. If you are found to be eligible for benefits, Social Security will pay you back to your “filing date.”

For claims based on disability, Social Security sends the application, together with your signed medical releases and any medical reports you provide, to the Disability Determination Service (DDS) of the Alaska Department of Vocational Services. The DDS gathers evidence and decides whether or not you meet the SSI disability standard. The DDS does this under a contract with Social Security, and is acting as the agent of Social Security when it makes its decision.

If your local Social Security office decides you do not qualify for SSI, even if you meet the SSI disability standard, the office where you applied will send you a denial notice and will not send your file to the DDS. Examples of reasons why Social Security might deny your application include your having too much income, excess resources, or doing work considered to be “substantial gainful activity.”

2. Is There Any Way to Start Getting SSI Benefits as Soon as I Apply?

Yes, if your disability is one of a few obvious disabilities, Social Security “presumes” that you are disabled. If Social Security finds you to be presumptively disabled, you will receive SSI benefits for six months while Social Security determines your disability eligibility. If you think you may qualify for presumptive benefits, ask for presumptive benefits. You should bring something with you (like a doctor's report) to show you fit one of the presumptive disability categories. If you qualify for

presumptive benefits and you have an immediate need, the local office can write you an emergency check, then and there, for up to \$100.

3. Why Do People Receive Different Amounts of SSI?

The amount of SSI you receive depends on a number of factors -- such as whether:

- your SSI grant is reduced by earned or unearned income or by income attributed to you from your spouse or sponsor, or, if you are under age 18, from your parents;
- your income is reduced by “in-kind” income, as when you are living with other people but not .. paying your fair share of the household expenses;
- you are a disabled minor or adult, or you are blind.

4. Can Someone Attach My SSI or Social Security Benefits?

Federal law provides that SSI funds and Title II Social Security funds cannot be attached by a creditor -- like the Trust Officer at a state facility or someone who has a judgment against you. The only exception is that child support obligations can be enforced against your Title II Social Security benefits -- but not against SSI. If you are in a state facility for persons with developmental or mental disabilities and you are having problems with the Trust Officer, talk to either the Client Rights Advocate or the Patient Rights Advocate. Ask about your rights under Crawford.

MEETING THE DISABILITY STANDARDS

5. How Does Social Security Define Disability If I Am 18 or Older?

Social Security has its own definition of disability. Social Security says you are disabled if you are unable to engage in substantial gainful activity (SGA) because of a medically determinable physical or mental impairment which is expected to last 12 months or longer, or to result in death.

This means that to meet the Social Security definition, you must show that you have a mental and/or physical condition which, for a year or more, will prevent you from holding down a job. Inability to do your old job is not enough; you must also show that you cannot do any other job. You must be unable to hold down a regular job, such as one sitting down and doing assembly work, or working as a hotel clerk, or working as a receptionist. The test is not whether you could actually get such a job, but whether, if you had the job, you would be able to keep it.

Blindness is a separate eligibility category. You qualify if you meet the statutory blindness definition in 42 USC 1382c(a)(2) -- essentially 20/200 in the better eye after correction or tunnel vision so that the field of vision is less than 20% in the better eye.

6. What Do I Have to Show to Establish That I Am Disabled?

a. First, Social Security checks to see if you are working when you apply. If you are, and Social Security decides that your work constitutes SGA, the evaluation process stops, no matter how disabled you may be.

b. Second, Social Security looks to see whether your impairment (or combination of impairments) has more than a slight impact on your ability to do work-related tasks. If there is no impact, or only a slight impact, the evaluation stops at the second step.

c. Third, Social Security compares your disability with its listing of impairments. If you meet one of the listing of impairments, then Social Security presumes that you are disabled. For instance, Social Security presumes that someone who has an IQ score of 59 or below is disabled, and that someone who has more than one grand mal seizure a month, despite medication, is disabled. A letter from your doctor should explain why your impairment meets the criteria in a listing. You also can establish that you are disabled by showing that your impairment (or combination of impairments) is equivalent in severity to a listed impairment. One way of showing equivalence is by establishing that your functional impairments are comparable to the functional impairments of a listed impairment. The best way to show these things is with a letter from your doctor, as explained below.

d. Fourth, Social Security looks to see whether you have the Residual Functional Capacity (RFC) to perform your past relevant work (work performed in the last 15 years).

e. Fifth, if you do not meet or equal one of the listing of impairments and cannot return to your past work, then Social Security looks to see how your disability condition, given your age, educational background, and work experience, affects your ability to hold down a job. If you do not meet Social Security's listing of impairments, then you have to establish that your disabilities, individually or in combination, interfere with your ability to hold down any job. If all your disability limitations are related to exertional factors -- the ability to lift, walk, stand -- then Social Security will determine whether you are disabled by looking at a chart -- called a "grid" -- which is supposed to take into consideration your limitations, and your education and experience. However, most mentally and developmentally disabled persons have "non-exertional" disability limitations -- limitations in understanding, limitations in being able to use their hands, limitations in the ability to concentrate or work at an acceptable pace, pain which is unrelated to exertion, etc. In evaluating "non-exertional" limitations, Social Security does not use the grid. But, even in these cases, the grid should be used to see if you are disabled on the basis of exertional factors alone.

DISABILITY REVIEW FOR MEDICAL IMPROVEMENT

7. I Received a Notice That I Am Being Reviewed. What Does this Mean?

Social Security reviews most people every one to three years to see if they are still disabled. Before Social Security may terminate you because you are no longer disabled, Social Security must identify substantial evidence that your medical condition has improved. This applies to the Title II disability programs (Adult Disabled Child and SSDI) and to SSI (regular and 1619 programs).

The Disability Determination Service (DDS) does the review to see whether you have improved medically. This is the same agency which determines whether you meet the disability criteria when you

you apply. It is important that the doctor who treats you compare your condition now with your condition before. Your doctor may do this in a report or by phone-in dictation.

8. Social Security Is Sending Me to See a Doctor. What Does That Mean?

When your case is reviewed, just as when you apply, the DDS may send you for a “consultative” examination. In any case, if Social Security sends you for a consultative examination, ask to have a copy of the report sent directly to your own doctor so that he or she may review and comment on the report.

9. What Kinds of Disability Problems Indicate That an Adult Is Disabled under Social Security Rules?

An ability to engage in SGA means an ability to perform significant physical or mental duties which are productive and useful and which have economic value, i.e., the quality and quantity of the duties are at a level for which someone would pay a regular salary.

Examples of problems which may indicate an inability to engage in SGA and an inability to hold down a job include:

- inability to understand short and simple instructions -- cannot hear or read instructions or watch a demonstration and translate the instructions or demonstrations into action;
- poor short-term memory -- quickly forgets instructions;
- short attention span -- needs assistance to keep working on a task;
- poor hand-eye coordination preventing or slowing the ability to do simple tasks;
- problems with hands in manipulating tools and objects;
- behavioral problems, acting out;
- difficulty in working around other people because easily distracted by them, or because of interfering or distracting others with behaviors or inappropriate interactions;
- need for stress-free environment;
- unable to maintain regular attendance and punctuality within customary limits;
- need for more or closer supervision than would be required by other entry level workers;
- difficulty in asking simple questions or requesting assistance or in recognizing when to ask questions or request assistance;
- difficulty in accepting direction or responding appropriately to supervisor criticism;
- difficulty in responding appropriately to changes or adjustments in work routine;
- difficulty in making simple work-related decisions;
- limitations in capacity to appreciate normal work hazards and take appropriate precautions;
- limited stamina -- would be able to work a few hours a day, but not eight hours a day, five days a week;
- frequent periods of illness or incapacity indicating inability to hold down a regular job;
- need for frequent medical treatment -- as once a week -- interfering with ability to hold down a job;
- physical inability to sit, stand.

Any report should explain how your limitations result from your disability problem.

10. What Medical Evidence Do I Need?

The impairment or impairments that result in disability must be “medically determinable.” The impairment also must be expected to incapacitate you for a year or more, or result in death. It is not enough for your doctor to say that you are disabled and to estimate that you will be disabled for more than a year.

Your doctor must indicate:

- the specific facts on which his or her conclusions are based;
- observations, clinical and laboratory findings or tests;
- medical history if not already set out elsewhere;
- functional limitations;
- the amount of pain or discomfort to be expected and whether the pain you feel is in line with what can be expected based on your impairments;
- whether deterioration is expected, expected duration of the impairment, or whether it is permanent;
- drugs taken and their effects on your functioning;
- how long you can stand and sit, how far you can walk at one time, and how much you can lift.

So that your doctor knows what Social Security is looking for, give him or her a copy of the Social Security listings of impairments sections which apply or which may apply to your disability.

If your doctor believes your disability meets the criteria set out in a particular listing, it is important that he or she say so and explain why. If your doctor believes that, although your disability does not meet the criteria in a particular listing, your disability is equivalent in severity to a listed impairment, it is important that he or she say so and explain why.

You can establish that your disability “equals” the listings in several ways. You may have a combination of impairments which meet some of the criteria in one listing and some of the criteria in another. You may have an impairment (or combination of impairments) which results in a functional impact or limitation comparable to the functional impact or limitation of a particular listing. You may have been given different tests from those referenced in a particular listing, but those tests provide results comparable to the results indicated in a particular listing.

You should make sure that Social Security gets existing medical records and reports from all of the agencies, clinics and hospitals that have treated you.

11. What If I Get a Notice Telling Me to See a Doctor for an Examination?

Sometimes when Social Security believes it needs more information, or more recent information, Social Security will send you for a “consultative examination” by a doctor it chooses. Congress has said, however, that before Social Security sends you to one of its doctors, Social Security first has to try to get the information from the doctors who have been treating you.

If you have your own doctors, call the number on the notice and ask the following question:

- Did Social Security get the records from your doctors and hospitals?
 - ✓ If the answer is no, say that you will follow up with your own doctors and ask Social Security to postpone the examination.
 - ✓ If the answer is yes, ask why your own doctor can't do the additional examination or testing. (Congress has said that if there is a need for additional testing or examination, Social Security should pay your own doctor to do it.)

If you need help in getting to the examination, call the number on the notice and ask for help with transportation.

Make certain your own doctor gets a copy of the Social Security doctor's report so that your own doctor can review it and comment on it. If the Social Security doctor won't send a copy to your doctor, call the number on the notice and tell Social Security to send it to your doctor.

APPEALS

12. If I Disagree with a Social Security Decision, What Can I Do?

You challenge most Social Security decisions by requesting a hearing before an administrative law judge (ALJ). If you don't agree with the initial decision, you are entitled to a hearing before an administrative law judge.

13. How Soon Do I Have to Appeal?

You must appeal by filing a request for a Hearing by Administrative Judge within 60 days of receiving the Social Security initial disability determination decision. Social Security presumes you received the notice by the fifth day after the date of the notice. You may go to your local Social Security office to fill out the appeal forms, or you may simply write a letter to or call your local Social Security office and request the appeal forms be sent to you. If you write a letter, send it certified.

Note: It may take 12 months or more to get a hearing scheduled.

14. What Can I Do If I Receive An Unfavorable Hearing Decision?

You must appeal within 60 days of receiving an unfavorable hearing decision from an Administrative Law Judge by filing a Request for Review of Hearing Decision/Order to the Appeals Council. You may go to your local Social Security office to fill out an appeal form or you may call them and ask that the appeal form be sent to you. If you mail it, send it certified to verify it was received.

The Appeals Council will review a case if:

1. There appears to be an abuse of discretion by the administrative law judge;
2. There is an error of law; or
3. The action, findings or conclusions of the administrative law judge are not supported by substantial evidence.

15. What Can I Do If My Request For Review Is Denied By The Appeals Council?

Any party to the Appeals Council decision or denial of review may file a complaint in U.S. District Court. You may file an action in a Federal district court within 60 days of the date you receive notice of the Appeals Council decision.

Note: In some cases, depending on the digits of your Social Security number, you will be asked to bypass the Request for Review of Decision/Order of an Administrative Law Judge's Unfavorable Decision and appeal to the U.S. District Court instead. The unfavorable hearing decision will direct you to your appeal options.

16. What Can I Do If I Was On Social Security Disability Benefits And A Decision Was Made That I am No Longer Disabled?

If you are appealing from a decision that you are no longer disabled, you must also make a specific request that your benefits continue. Title II disability recipients (SSDI and Adult Disabled Child benefits) who appeal Social Security's determinations that they are no longer disabled also have 10 days in which to ask that their benefits and the benefits of others who receive benefits on their accounts (such as dependents of a wage earner receiving SSDI) continue. Title II disability recipients may elect to have only Medicare continued.

OTHER ELIGIBILITY STANDARDS

17. What If I Am Not a Citizen?

To be eligible for SSI you must be a citizen, or in the United States with your papers in order (a permanent resident), or Permanently Residing in the United States Under Color Of Law (sometimes called "PRUCOL"). Aliens who are residing in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) and whose departure INS does not contemplate enforcing are aliens considered by Social Security to be Permanently Residing Under Color Of Law. PRUCOL examples include certain refugees or persons granted asylum, persons granted temporary legal resident status under the Immigration Reform and Control Act of 1986 (IRCA - the "amnesty" law), persons with an indefinite stay of deportation or with an indefinite voluntary departure date. New Social Security regulations say that persons granted Temporary Protected Status (TPS) by the Attorney General shall not be regarded as Permanently Residing Under Color Of Law (non-PRUCOL) for SSI eligibility, although persons with TPS status are allowed to work. 58 Fed.Reg. 41181 (August 3, 1993) adding 20 CFR 416.1619.

For SSDI or Child Benefits there is no requirement that you be a citizen or have your papers in order to receive benefits. However, if you are not a citizen, in most cases payments will stop once you are outside the United States longer than six months.

18. My Admission into the United States was Sponsored. How does that affect Social Security's Evaluation of my Income and Resources?

For five years after your admission as an alien, your sponsor's income and resources are attributed to you (deemed) to determine whether or not you are eligible. It does not matter whether the sponsor is providing any help.

Although Social Security does not count the retirement accounts (IRAs, tax exempt annuities, Keogh) belonging to parents of SSI children or spouses of disabled spouses, it counts the cash-in value of retirement accounts owned by the sponsors of aliens.

19. What Are the Income and Resource Limitations for SSI Eligibility?

Income is money or goods you receive in a month. What you have left over as of the first of the next month are resources. An individual may not have resources in excess of \$2,000 (\$3,000 for a couple). For things that are not cash, the value of a resource is what you would end up with if you sold it or cashed it in -- that is, receipts less cost of selling or cashing in.

Certain things are *not counted as resources*:

- your home, including land immediately around it;
- your clothing, household and personal effects not exceeding \$2,000 in value;
- wedding and engagement rings;
- burial plot or policy;
- a car if worth less than \$4,500 wholesale - or - a car used for employment - or - a car used for getting to a doctor or other medical appointments at least a couple of times a year - or - a car specially fitted for your disability - or - a car necessary for daily activities because of terrain, climate or distance.

Social Security also does not count property essential to self-support as a resource. That includes tools, farmland, livestock, machinery, trucks, fishing vessels, equipment -- and a separate bank account necessary for a business. An unresolved question is how Social Security will treat property under the self-support exemption. Another unresolved question is whether a couple's second car could ever be exempt as a self-support resource when used to go to and from work.

Most income you receive reduces the amount of your SSI benefits.

Some money you may receive in a month is *not counted as income*:

- loans;
- receipts from the sale or replacement of a resource (because the money you got would be treated as a resource);
- assistance based on need which is wholly funded by the state or a local jurisdiction;
- relocation assistance under federal programs or paid by a landlord and required by state or local government;
- grant scholarship or fellowship used for paying necessary education expenses excluding that used for food, shelter or clothing;
- payments under federal fuel and energy programs for low-income persons;
- Agent Orange payments;
- German reparation payments;
- various Native American programs.

20. If Social Security Sends Me Money it Owes Me, How Does That Affect My SSI?

When you receive money from Social Security for back SSI and/or Title II benefits, you have six months to spend the money before what is left over will count as a resource for purposes of the SSI program. It is very important that you keep receipts and records of how you spent your money. Social Security does not care how you spend your money. Social Security does, however, want proof that you no longer have an amount of money large enough to put you over the SSI resource limits.

Although cash from back benefits does not count for six months, what you buy with the back benefits may be counted as a resource in the month after you purchased it. You can also be penalized if you give it away.

Instead of spending down your back benefits so that your resources are within allowable limits six months following receipt, you may wish to get Social Security to approve a Plan for Achieving Self-Support (PASS) so that you may save the money for going to school or for buying something that will help you get or keep a job. Alternatively, you may wish to put the money aside in a trust so that it is available to meet needs not covered by SSI or other programs. Ask us to send you our booklet on Conservatorships and trusts, and the list of attorneys who set up special needs trusts. If you are a regional center client, the regional center's Client Rights Advocate can also refer you to someone who can help you set up a special needs trust.

21. We Are Buying a Duplex. We Rent out One Side and Live in the Other. Is the Whole Duplex Exempt as a Home?

Yes. Because you live in one side of the duplex, the whole thing is exempt as a home. This rule applies no matter how many units there are. The home exemption applies to any property which is contiguous to the home in which you reside. For instance, if you owned two lots which were side by side, and on one of the lots was a house you lived in and on the other lot was a house you rented, both would be exempt as a home even if you could sell the lot with the second house.

22. How Does Social Security Treat the Rental Income from the Other Half of My Duplex? What about My Expenses?

Social Security allows you to deduct from the rental receipts the same deductions the Internal Revenue Service (IRS) would allow, except you cannot deduct depreciation. You must pro-rate expenses so that you are deducting from the rental receipts just the expenses attributable to the rental unit. Using the duplex as an example, you can deduct half of such expenses as property taxes, water (if there is a single meter for both units), gardener, garbage, insurance. On repair and maintenance, you may deduct all the costs attributable to the rental unit (such as the cost of painting, fixing a stopped up drain) and half the repairs that affect the two units (such as repairing the roof), but not repairs and maintenance solely attributable to your unit. On your mortgage or trust deed payment, you can Deduct 50% of the interest and fees, but not any part of the payment attributable to the principal.

Under the proration rule, if there were three units, all roughly equal in size, and you lived in one unit, the prorated share of the general expenses attributable to the rental units would be 2/3.

After you deduct allowable expenses from your gross rental receipts, what you end up with is your adjusted gross income. Your adjusted gross income is counted as unearned income.

Social Security can look at your rental income in one of two ways: One way is under 20 CFR 416.1121(d), which says that expenses may be Deducted only in the month paid. This means that you cannot attribute parts of your property tax payment over the year; you may only Deduct what you paid in one month against the income received in that same month. To avoid those problems -- and problems from having excess resources from saving up to pay property taxes and insurance premiums -- you may wish to ask the bank or savings and loan handling your trust deed or mortgage about an "impound account." That way you would pay an amount each month for property taxes and insurance when you make your monthly payment. The other way is to have your rental income treated as self-employment income under 20 CFR 416.1110(b). That way your total adjusted gross monthly unearned income -- namely, your total receipts less allowable expenses -- would be divided equally over twelve months.

23. I Am Holding a \$400 Security Deposit Which the Tenant Gave Me When the Family Moved in. Does That Count as a Resource?

No. You should not have any problem with Social Security if you hold the security deposit in a separate account. The security deposit is not counted as a resource because it is not available for your maintenance and support under Alaska law. Alaska Civil Code 1950.5(c) and (d) make that clear. The security deposit should be in a separate account so that you will not have to explain what part of your savings account is attributable to the security deposit and what part is not. In addition, some cities have ordinances which require that security deposits be held in a separate account.

24. I Sold My Home to Buy a Home Closer to My Family. I Received a Down Payment and Took Back a Trust Deed. I Used the Down Payment I Received for the Down Payment on My New Home. I Am Using the Trust Deed Payments from My Old House to Pay the Trust Deed Payments on My New House. How Does Social Security Look at All of this?

If you invested the down payment from the sale of the house into a new home, and you did that within three months, then the down payment proceeds would be treated as an exempt asset.

Following a Ninth Circuit (the federal appeals court that covers Alaska) case called Hart v. Bowen, 799 F.2d 567 (9th Cir. 1986), the Social Security Administration has changed its position about how it treats a trust deed or installment contract carried by the seller as part of the sale so that the rules are more flexible. If you buy a new home within three months of receiving money from your old home, and if you apply the trust deed or installment contract payments from the sale of your old home to your new home as you receive them, the payments will be exempt. Social Security Ruling 89-5p, Proposed regulation amendments 20 CFR 416.1212, 58 Fed.Reg. 52943 (10/13/93).

25. Are the Income and Resource Rules Any Different If the SSI Recipient Is a Child living with a Parent?

The parents' income and resources are deemed (attributed) to the child when the child is living in the same household as the parents. (There is no deeming if the child is not living with a parent.) "Parents" include a stepparent. Any income received by a parent from the In-Home Supportive Services (IHSS) program to care for the SSI child is not counted. 416.1161(a)(16).

Only parents' excess resources are deemed to an SSI child. For purposes of resources, a single parent is treated like an SSI individual, a couple like an SSI couple. For instance, if the parents' non-exempt resources totaled \$4,000, the excess \$1,000 over the \$3,000 couple allowance would be deemed to the SSI child and would be within the child's individual exclusion of \$2,000. Unresolved is whether an extra car could be deemed to the SSI child subject to the child's own exclusion -- as a vehicle specially fitted with a lift for the child.

If the SSI child receives child support from an absent parent, only two-thirds of the amount received is counted.

As in the case of the ineligible spouse, any pension fund belonging to the parents is exempt despite its cash-in value.

TITLE II DISABILITY ISSUES

26. Are There Any Income or Resource Limitations for SSDI or Adult Disabled Child Benefits?

No. SSDI and Adult Disabled Child Benefits are like insurance programs. However, money that you receive from working may indicate that you are no longer disabled.

27. Who Is Eligible for Adult Disabled Child Benefits?

There are three criteria for eligibility:

- First, you must have been disabled before you reached age 22. Most courts say you do not qualify if you have ever worked (performed SGA), even though you were disabled at the time.
- Second, your insured worker parent must be receiving Social Security benefits (SSDI or retirement) or be deceased. "Parent" is defined to include whomever raised you -- like a grandparent upon whom you were dependent for care and support.
- Third, you must be unmarried. You are disqualified if you were ever married, even if the marriage was annulled.

The amount of your benefits will be one half the amount the parent receives, or, if deceased, three quarters of what the parent would have received.

28. Who Is Eligible for SSDI Benefits?

If you are age 31 or older when you become disabled, generally you will be eligible for some Title II SSDI benefits (insured for disability) if you have credit for working five years (20 quarters) out of the last ten years. In addition, you must have credit for at least one quarter for each calendar year starting with the calendar year in which you turn 22 and through the calendar year which begins your period of disability. Earnings in one quarter in years after 1977 may give you credit for additional quarters that calendar year.

If you are under age 31 when you become disabled, you will be eligible for some SSDI benefits if you have credit for half the quarters between the time you were disabled and the quarter after the quarter in which you turned 21. However, if you have fewer than 12 quarters in the above time period, you need credit for at least six quarters in order to be disability insured.

29. Am I Eligible for Medicare?

If you receive SSDI or Adult Disabled Child's Benefits based on disability, you will be eligible for Medicare beginning two years after you were first eligible for SSDI or Adult Disabled Child benefits.

30. Can I Receive Both SSI and SSDI or Adult Disabled Child Benefits?

Yes. Your SSDI or Child Benefits check can be supplemented with SSI up to \$20 above the SSI level--if you meet the SSI income and resource limitations.

31. I Am Not Eligible to Receive Title II Adult Disabled Child Benefits Now Because My Parents Have Not Started to Receive Social Security Benefits. What Should I Do Now to Protect My Right to These Benefits Later?

Your eligibility for Adult Disabled Child benefits is linked to your parents or other persons who cared for you as a child. You are not eligible until your parent is receiving Social Security retirement or disability benefits or is deceased. When you apply you have to establish that you have been disabled since before age 22. Therefore, it is important to insure that records establishing that fact are available to you.

If your work history indicates you were performing SGA -- averaging more than \$300 a month before 1990 and \$500 a month since -- you may be disqualified. Even though your earnings were over the SGA level, there may be reasons why the earnings were not SGA. But if you do not preserve the records that show the work was not SGA, it may be difficult to prove that the work was not SGA when you apply for Title II Adult Disabled Child benefits.

You need to be aware of the consequences of marrying. If you marry, you will cut off your right to qualify for Adult Disabled Child benefits.

DISABILITY BENEFITS AND MARRIAGE

32. Are the Income and Resource Rules Any Different If I'm Married?

Part of the income of a spouse who is not eligible for SSI may be deemed (attributed) to you pursuant to a formula. However, any income your spouse receives from the IHSS program for services provided to you does not count. 416.1161(a)(16). Income deeming only happens when you and your spouse are living together. Your spouse's income cannot be deemed to you if you are living apart as of the month following the month of separation -- whether or not there is a court dissolution.

Your and your spouse's resources are pooled, and you are treated as if you were one person except for the higher couple resource allowance of \$3,000. You get no additional exclusions as a couple. However, if the working spouse needs a car to get to work, and the disabled spouse has a specially modified van, it remains unresolved how Social Security will handle the second, go-to-work vehicle. That is, it is not clear whether the second, go-to-work vehicle will count against the couple's resource allowance or whether it will be exempt as a self-support resource.

The cash-in value of any pension fund or program belonging to the spouse who is not eligible for SSI is exempt and is not counted as a resource. Examples include Individual Retirement Accounts (IRAs), tax sheltered annuities, and Keogh plans for self-employed persons. (The cash-in value of any pension fund or program you own would count.)

33. If I Get Married, How Will it Affect My SSI Benefits?

If you are receiving SSI and you marry someone who is also receiving SSI, you will each receive an SSI check equal to one half the SSI couples rate. As of 2003, the SSI rate for disabled couples is \$829.00, so each would receive a check for \$414.50. This is less than the \$603.40 each would have received as unmarried individuals. Your resource allowance is also reduced to \$3,000 (\$1,500 each instead of \$2,000 each).

If you marry someone who is not receiving SSI, part of his or her income may be deemed (attributed) to you to reduce your SSI grant.

34. I'm Married and We Have a Child. How Does My Wife's Income Affect My SSI?

Your wife's income may reduce your SSI or, if high enough, make you ineligible for SSI. These are the steps Social Security follows to determine if a spouse's income should be deemed to an SSI beneficiary:

- a.** Calculate what your SSI check would be as an individual based on your own income without any deeming. The 1994 individual disabled SSI rate is \$603.40.
- b.** An allowance for your non-SSI child is Deducted from your spouse's unearned income, if any. Any balance is deducted from your spouse's earned income.
- c.** Is the balance of your spouse's income greater than the difference between the individual Federal Benefit Rate (FBR) and the couple FBR? In 1994 that difference is \$223. If no, then you would receive an SSI check at the individual rate reduced by your own income. If yes, you go on to the next steps.
- d.** You combine your spouse's unearned income and your unearned income. You deduct the \$20 any-income disregard. The total is your total countable unearned income.
- e.** You combine your spouse's earned income with your earned income. You deduct the \$65 earned income disregard and, to the extent you did not use it with respect to unearned income, the \$20 any-income disregard. From the balance you deduct the additional 50% work incentive Deduction.

From your part of the earned income you may Deduct what you could Deduct if Social Security were counting only your earned income, namely any allowable Impairment-Related Work Expenses (IRWEs). IRWEs are deducted before the 50% work incentive Deduction. The total is your total countable couple earned income.

f. You combine your countable unearned income with your countable earned income to determine your total countable couple SSI income. You deduct your total countable couple SSI income from the current SSI disabled couple rate which in 1994 is \$1,109.22.

g. Is the difference between the SSI couple rate and the countable couple income (as determined in step “f” above) less than what you would receive as an individual with no deeming as determined in step “a” above? If yes, that lesser amount would be your SSI grant. If no, then your SSI grant would be the amount determined under step “a” above. While deeming can reduce your SSI income, deeming cannot increase your SSI.

For example, if neither you nor your wife had any unearned income, and your wife’s gross earned income was \$1,400.00 a month and your gross earned income was \$300.00, your SSI check would be \$418.22:

Spouse’s gross earned income	\$1,400.00
Less allowance for child	(\$223.00)
Subtotal	\$1,177.00
Plus your gross earned income	\$300.00
Subtotal	\$1,477.00
Less \$20 any income and \$65 earned income disregards	(\$85.00)
Subtotal	\$1,382.00
Less 50% work incentive Deduction	(\$691.00)
Leaves a Total Countable Couple SSI Income of	\$691.00

State Supplemented Disabled Couple rate of \$1,109.22 less \$691.00 = \$418.22, which is less than the step “a” amount you would have received as an individual without deeming and counting only your own income.

OVERPAYMENTS

35. Social Security Says I Have an Overpayment. What Can I Do?

There are two things you can do: You can challenge the overpayment or you can ask to have the overpayment waived -- or you can do both.

If you do not believe there is an overpayment or that the overpayment is as much as Social Security says it is, or if you don't understand why Social Security says you were overpaid, you can challenge the overpayment itself. You do this by filing a request for reconsideration and saying "I don't believe I was overpaid," or "I realize I was overpaid but not as much as you say," or "I don't understand why you say I was overpaid so I dispute the overpayment." Ask for a reconsideration by "informal conference" so that you can sit down with someone at Social Security who will take the time to explain how they determined you were overpaid. If you ask for the reconsideration within 30 days, collection of the overpayment will be suspended until the reconsideration decision.

Once you have the reconsideration informal conference, you will then be in a position to decide whether you agree with Social Security or to point out to Social Security why there was no overpayment or why the overpayment was not as much as Social Security said. If you believe there was no overpayment or the overpayment was not as much as Social Security said but Social Security disagrees with you, then you should appeal the overpayment reconsideration decision to an ALJ hearing.

If you agree you were overpaid but do not believe the overpayment was your fault, you may ask Social Security to waive all or part of the overpayment.

36. I Was Overpaid but I Do Not Believe it Was My Fault. How Do I Get Social Security to Waive the Overpayment? What Do I Have to Show?

If you tell Social Security you wish to ask Social Security to waive the overpayment, Social Security will send you an Overpayment Recovery Questionnaire to fill out. The form is long and complicated, so you may need help in filling it out. If you cannot find anyone to help you, ask Social Security to help you. You can file for a waiver at the same time that you file a request for reconsideration about whether there was an overpayment, after you appeal the overpayment, or at any time. Once you file the request for waiver, Social Security will suspend collection until there is a decision of the waiver application or, if you appeal a waiver denial, until there is a reconsideration decision.

The first step in the waiver process is establishing that you were not at fault in causing the overpayment. Whether or not you were at fault in connection with the overpayment is an individualized determination. Among the things considered was whether you reported changes, whether you answered questions fully, whether you withheld information that was important. In determining whether or not you were at fault, Social Security considers things that may affect your ability to understand your reporting requirements and your ability to meet your reporting obligations. Section 504 of the Rehabilitation Act also requires Social Security to take disability limitations into account when determining whether you were at fault in connection with the overpayment.

If you were not at fault in connection with the overpayment, then there are three ways you can show that the overpayment should be waived if adjustment or recovery of such overpayment would:

- Defeat the purpose of title XVI [SSI]; or
- Be against equity and good conscience; or
- Impede efficient or effective administration of title XVI due to the small amount involved.

You do not reach any of the waiver grounds unless you establish that you were not at fault. You satisfy the first ground ("defeat the purpose") if you show that you need your income and resources for your ordinary living expenses.

If you currently are an SSI beneficiary, you are presumed to meet the first ground. This ground is applicable to both SSI and the Title II disability programs.

Under the regulations you satisfy the second ground (“against equity and good conscience”) if you changed your position or relied on a notice or receiving more SSI than you should have. You would satisfy the second ground, for example, if you rented an apartment for more money because you relied on Social Security to have determined your grant level correctly

In Alaska because of a Ninth Circuit case (the federal appeals court that covers Alaska), *Quinlivan v. Sullivan*, 916 F.2d 524 (9th Cir. 1990) which interpreted the underlying statute, and Social Security’s acceptance of the case per AR 92-5(9), this waiver ground includes circumstances where under the individual facts, a broad concept of fairness supports a waiver. This ground is applicable to both SSI and the Title II Disability programs.

You satisfy the third ground (“Impede efficient or effective administration of Title XVI”) if the overpayment is a small amount. For instance, if you ended up with excess resources because of interest paid on a savings account, and the amount by which you were over is \$50 or less, that overpayment can be waived. This ground applies only to the SSI program.

37. What if My Waiver is Denied. Should I Appeal the Waiver Denial to an ALJ Hearing?

Yes you should appeal if you believe you were not at fault and one of the grounds apply. Because of increased emphasis on collecting overpayments, staff in local offices have less discretion to waive overpayments than they did before.

38. The Regional Center is my Representative Payee. What if There is an Overpayment Because of Something the Regional Center Did or Did Not Do? What Can I Do?

You may challenge the overpayment or ask for a waiver independent of what the representative payee does or does not do with respect to filing a request for reconsideration or an overpayment waiver. While the representative payee may have its grounds for applying for a waiver, your grounds are evaluated separately. Because Social Security determined you needed a representative payee, you undoubtedly would be found not to be at fault. If the overpayment is waived as to you, Social Security will not be able to withhold money from your SSI checks -- even though Social Security may seek to recover the overpayment from the regional center as representative payee.

39. What is the Procedure for Collecting an Overpayment?

If Social Security will not waive the overpayment, you have a right to have the repayment spread out over three years. If you receive only SSI, or SSI and Title II benefits, in most cases Social Security cannot collect more than 10% of your check each month for repayment.

40. What Can I Do to Avoid Getting an Overpayment?

The two most important things you can do are report any changes in income or living situation and keep records to show that you reported.

REPRESENTATIVE PAYEE

41. What Is a Representative Payee?

If Social Security determines that you need help in managing your money, then Social Security may appoint a relative or another person or agency to be your representative payee. (People whose disability involves alcohol or other drug abuse are required to have a representative payee.) This means your SSI check goes to the representative payee. The money is your money and may only be used to support you. You may challenge the determination that you need a representative payee and the selection of a particular person as your representative payee.

Before approving someone to be your representative payee, Social Security will require documentation of the payee's identity, verify the payee's social security or employer identification number, and, to the extent practicable, conduct a face-to-face interview. In addition, Social Security will check its own records to determine whether the payee was ever convicted of a Social Security felony or dismissed as the representative payee for someone else because of misusing SSI funds. Finally, Social Security will look more closely at certain categories of payees, for instance, persons who are not related or persons who are the payees for other people.

42. What Should I Do If My Representative Payee Is Not Using the Money for Me?

Tell Social Security. Ask Social Security to suspend payments to the representative payee and to investigate. Social Security has the responsibility to investigate cases of alleged financial abuse. Even if you do not have an alternative representative payee, the payments can come to the Social Security office in the meanwhile.

43. I Am in a State Facility. The Trust Officer Is My Representative Payee for My Title II Benefits. Can I Be My Own Payee? What about a Relative as the Payee Instead of the Trust Officer?

You can be your own payee if your doctor or treatment team believes you are able to manage your own money. This is true even if you are in the State facility based on a determination that you are not guilty by reason of insanity or are incompetent to stand trial. The only time Social Security would not review your case to see if you are able to manage your money is if there has been a judicial determination that the Social Security beneficiary is "legally incompetent or mentally incapable of managing benefits payments." 20 CFR 404.2010, 404.2015(a).

The social security regulations give preference to a relative over a public institution with custody. 20 CFR 404.2021(a)(1) versus 404.2021(a)(3). You can expect that the Trust Officer will oppose the transfer of the representative payee responsibilities to a relative. For assistance with representative payee problems and with Trust Officer problems, talk to the Patient Rights or Client Rights Advocate at your facility.

LATE FILING & REOPENING

44. What If I Think I Am Being Treated Unfairly Because Social Security Is Not Accommodating to My Disability Needs. What about Section 504, the ADA?

The Social Security Administration like other federal agencies is subject to the nondiscrimination and reasonable accommodation obligations of Section 504 of the Rehabilitation Act, 29 USC 794. The Americans with Disabilities Act (ADA) does not apply to federal agencies. If you believe you have been discriminated against, you have the right to file a complaint -- just a letter explaining what happened and why you believe it was unfair -- with the Office for Civil Rights, Health & Human Services, Region X, 2201 Sixth Avenue - Suite 900, Seattle, WA 98121-18317.

Here are some of the things that may be discriminatory including because of a failure to make reasonable accommodation to your needs:

- Not helping you fill out an application form or overpayment waiver form if you are unable to do on your own because of your disability.
- Not accommodating to your disability if you are unable to go into the office to apply or for the annual review because of the disability. Your disability reason may be either a mental or physical impairment or both.
- Not helping you write out a statement if you are unable to put something in writing which Social Security's regulations say must be in writing, such as a letter explaining why you were unable to file an appeal in time.
- Taking action against you for a "failure to cooperate" without determining whether your disability contributed to the "failure to cooperate" and without providing the reasonable accommodation needed to overcome any disability barrier.
- Denying an overpayment waiver or request to file a late appeal or a request to reopen a case without giving full weight to the impact of the person's disability limitations.
- Not providing the accommodation assistance needed by reason of a disability to comply with the reporting obligations.
- If you have a short-term memory problem, not providing the reminders necessary to enable you to keep an appointment.

45. What If I Do Not Appeal in Time. Is There Any Way to File Late?

Yes, if you can show good cause for filing late. If you are past the time, you should write a letter asking for an extension of time to appeal and explaining why you did not appeal in time. If you contacted Social Security during the 60-day time period, make certain your letter indicates that as well. Common reasons for not filing within the 60-day time period include not receiving the notice, being confused by or misled as a result of your call to the office, were delayed in getting the information or documents you needed to go with the appeal, you sent the appeal to the wrong place, family illness or death, your own disability problems including problems in understanding the notice and the significance of a notice. See 20 CFR 416.1409(b), 416.1411 for SSI, 404.911 for Title II Social Security.

Social Security has the authority to reopen a prior Title XVI SSI determination for any reason within one year and for good cause within two years. 20 CFR 416.1487-416.1489. Social Security has the authority to reopen a prior Title II Disability benefits determination for any reason with one year and for good cause within four years. 20 CFR 404.987-404.989.

46. I Am Receiving Benefits Now. Is There Any Way My Benefits Can Be Continued While I Appeal?

If you are receiving SSI, or both SSI and Social Security Title II benefits, and your appeal involves a medical question about whether you have medically improved so that you are no longer disabled, your benefits may continue until you receive the ALJ hearing decision. Your benefits continue to the ALJ level even if you elect a face-to-face reconsideration prior to the ALJ hearing. To get the interim benefits, you must appeal the determination (or the reconsideration) within 10 days of receiving the notice and you must affirmatively elect to receive benefits. You elect to receive benefits by checking all the appropriate boxes on the Social Security form “Benefit Continuation Election Statement.”

If you receive SSI, or both SSI and Title II disability benefits, and your benefits are being reduced or terminated for a reason other than because they say you are no longer meet the disability standard because you have medically improved, benefits will continue through to the reconsideration decision if you appeal within 10 days. You do not have to ask for the benefits to continue, but it is a good idea to do so.

If you are receiving only Title II disability benefits (SSDI or Adult Disabled Child benefits), and your appeal involves a medical question about whether you have medically improved so that you are no longer disabled, your benefits and Medicare may continue through to the ALJ decision. To get the interim benefits you must appeal the initial determination and the reconsideration decision within 10 days of receipt of the notice and affirmatively ask that benefits and/or Medicare be continued. (You can ask for Medicare to continue without the cash benefits.)

If you receive SSDI benefits and someone else receives benefits based on your earnings, you can ask that those benefits continue also.

If you receive only Title II disability benefits, and benefits are being reduced or terminated for a reason other than cessation of disability, there are no interim benefits.

47. I Receive Title II Adult Disabled Child Benefits Based on My Father's Earnings and His Receipt of Title II Benefits. He Is Appealing the Determination That He Is No Longer Disabled. Will My Benefits Continue During His Appeal? Is There Anything I Can Do?

In order for your father to receive continued benefits and for you to receive continued benefits, your father, within 10 days of receiving the notice of the decision to terminate benefits, must do the following:

- a. request a reconsideration of the decision that he is no longer disabled;
- b. ask that cash benefits be continued for him and for you; and
- c. ask that Medicare continue for both of you. He can ask for the continuation of benefits by checking off all the applicable boxes on the “Benefit Continuation Election Statement” form.

You also have to affirmatively elect to continue receiving benefits. You must do this within 10 days of receiving a notice from Social Security. You can receive interim benefits only if both you and your father elect that you continue to receive benefits.

To continue benefits after a reconsideration decision, your father must appeal and elect to continue benefits within 10 days of receiving the reconsideration decision and you must elect to continue benefits within 10 days of receiving a notice.

48. What If I Don't Appeal in Time to Get My Benefits Continued? Is There Anything I Can Do?

There are two things you can do. First, you can ask to file a late election to continue benefits showing good cause why you did not request a reconsideration and elect to continue benefits within the 10-day period. Second, you can wait until you receive the reconsideration decision and, if the decision is against you, appeal the decision and at that time elect to continue benefits pending the ALJ decision.

If you receive only SSI, you can choose to go straight to an ALJ hearing or to go first to a reconsideration. If you do not appeal in time to get continued SSI benefits, you may want to opt for a reconsideration so that, if the reconsideration is against you, you can appeal and have your benefits reinstated pending the hearing decision.

49. What Happens at the Reconsideration Step of the Appeal Process?

What happens at the reconsideration stage varies for different claims:

- If you are an initial applicant for SSI, and the dispute involves a non-medical question, you may choose to have your reconsideration by case review or by informal conference. “Case review” means that someone else in Social Security looks over your file to see if he or she agrees with the original determination. “Informal conference” means that you meet with someone from Social Security who was not involved in the original determination to go over the case. You may bring witnesses and/or a representative. Which type of reconsideration you choose will depend on your situation. If you think you have a chance of changing the decision, choose an “informal conference”; if you want to get to a hearing as fast as possible, choose “case review.”

- If you are receiving SSI, and the dispute involves a non-medical question, you may choose to have your reconsideration by case review, by informal conference, or by formal conference. A “formal conference” is like an informal conference except that you may have witnesses subpoenaed.
- If you are receiving SSI, or both SSI and Title II benefits, and your dispute involves a medical question (that is, whether your disability has ceased), you may choose to have a face-to-face reconsideration and then an ALJ hearing.
- If you are an initial applicant for SSI or Title II disability benefits, and the dispute involves a medical question, your reconsideration will be by case review.
- If you are receiving Title II disability benefits but not SSI, and the dispute involves a medical question, you are entitled to a face-to-face reconsideration as well as a hearing. If you want to have the reconsideration by a formal or informal conference rather than by case review, you need to indicate that when you apply for reconsideration.

50. If I Elected to Have My Benefits Continued When I Filed for a Reconsideration of the Determination That I Am No Longer Disabled, Do I Have to Elect Again When I Request a Hearing?

Yes. When you appeal a decision that you are no longer disabled, you elect to have benefits continued (1) when you ask for a reconsideration and again (2) when you ask for a hearing. If you do not elect again, your benefits will stop.

51. What Happens at the ALJ Hearing?

An ALJ will listen to the evidence in your case. The ALJ works for Social Security, but is an independent decision maker. You should have a representative at this step, although it is not required.

52. If I Elect to Continue Benefits and Lose at the Hearing, Will That Be an Overpayment?

Any overpayment will be waived if you were without fault in causing the overpayment and it would be a hardship to pay it back. Social Security will presume you are without fault if you did not cause any unnecessary delays in the appeal process. The only question will be whether it would be a hardship to pay back the overpayment. Social Security considers repayment to be a hardship if you need all your income for food, clothing, and shelter. There is no overpayment for any Medicaid services you received.

