CHAPTER 2: SOCIAL SECURITY DISABILITY BENEFITS

APPENDIX

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§ 2.1 Objectives in Social Security Disability Benefits Advocacy

The Social Security Administration (SSA) has two programs that provide disability benefits to people, who are unable to work because of their health, including people living with HIV.

The first program, *Supplemental Security Income* (SSI), provides cash assistance and Medical Assistance (MA, also referred to as "Medicaid") to people who are low income, disabled and have limited resources. The second program, *Social Security Disability Insurance* (SSDI), provides cash assistance and Medicare to people who are disabled and have worked and paid taxes for a certain number of years. Clients with a limited work history or earnings record may be eligible for both SSI and SSDI.

Your objective should be to win benefits for your client on the initial application. Your role in achieving this goal must be pro-active and advocacy-oriented. However, because Social Security's bureaucracy can be slow and difficult to understand, this is not an easy task.

An applicant unfairly denied benefits can wait many months to have the denial reversed on appeal. Although many people win benefits on appeal, the wait is an economic hardship for someone who is sick and unable to work.

Consequently, for most of your clients who want to apply for benefits, it will not be enough merely to give them Social Security's phone number and hope for the best.

Applying for SSI/SSDI will require a greater involvement on the case manager's part than applications for other benefits. This chapter describes the medical and non-medical eligibility rules for both SSI and SSDI and how to help your clients apply for these benefits. It also provides information on appealing a denial of SSI/SSDI benefits, and issues that can arise once a client has been awarded benefits.

§ 2.2 Pre-Disability Issues for Working Clients

For clients who are still employed, but considering leaving work because of disability, there are several issues to consider. Some clients may wish to continue working as long as possible, despite ill health, and may need support in dealing with their employer, particularly regarding the need for periods of short-term leave. Other clients may simply want to be aware of their future options in the event their health worsens and affects their ability to work.

Determine Availability of Sick Leave, FMLA and Short-Term Disability (STD) Insurance: Clients who are too ill to work should use any available employer-provided sick leave or STD insurance benefits. In addition, leave from work may be available beyond that provided by the employer. The *Family Medical Leave Act* (FMLA) gives employees the right to take unpaid leave of up to 12 weeks each year. The FMLA applies to employers with 50 employees or more. However, FMLA leave is available only for employees who intend to return to work after a short period of disabling illness. An employee whose disabling illness prevents them from returning to work must look to SSI and/or SSDI or any available long-term disability insurance coverage. Clients requesting sick leave, applying for short-term disability benefits or exercising their rights under the FMLA may need the assistance of an attorney.

Determine Availability of Long-Term Disability (LTD) Insurance: Long term disability insurance may be provided as part of the employer's benefits package, or can be purchased by individuals, most often through occupational or professional groups, or associations. For employment-linked disability coverage, application for such benefits is typically made through the employer. Such policies frequently require the insured to apply for Social Security benefits as a condition of continuing the coverage. Once SSA approves the application and pays benefits, the amount of LTD monthly payments will be reduced by the amount of SSA benefits. Once a period of disability begins, many policies have a waiver of premium provision so that the insured need not continue paying premiums. In addition to reducing the LTD monthly amount when client's Social Security benefits are approved, most LTD carriers will also recoup from client's Social Security retroactive benefits, LTD benefits paid for any period of time that there has been an overlap of Social Security benefits and LTD payments.

Review SSA Earnings Record and Benefit Level: A client anticipating a period of disability should contact SSA to get an estimate of the disability benefits that will be

available. Because the SSDI benefit level is based on lifetime average earnings, an accurate SSA record of earnings is important. Free copies of earnings records and estimated benefit statements are available by calling SSA at **1-800-772-1213** or can be requested via the SSA web site at **www.ssa.gov**. Checking this information and correcting any inaccuracies should be done before making an application for benefits, because an attempt to correct the information while the application is pending may result in a processing delay.

TIP:
Clients can now register for "*my* Social Security" on www.ssa.gov to access their earning history, future benefits based on their earnings, see latest statements, request a replacement Social Security card, and check the status of an application for benefits.

Document Symptoms and Functional Limitations: Clients should be urged to report all their symptoms (such as fatigue, diarrhea, nausea, abdominal cramps, muscle aches or weight loss) to their primary health care provider or other treating provider, and those reports should be fully documented in the clients' medical records. Additionally, if the client can maintain a daily activity log (see Appendix 2A-6) that documents increasing limitations on daily activities, social functioning, or concentration, persistence, or pace, that documentation may be valuable in establishing the client's disability claim.

Private Health Insurance Continuation Rights (COBRA): If the client has health insurance provided by the employer, the client is likely to have the right to continue that health insurance coverage under COBRA, which gets its name from the Consolidated Omnibus Budget Reconciliation Act of 1982. Under COBRA, continuation of health insurance coverage is available for the client, their spouse, and dependent children.

COBRA provides for 18 months of coverage, and an additional 11 months of coverage for employees who left employment because of disability, thus providing continuous coverage until Medicare coverage begins. Upon termination from employment, the covered employee's former employer must provide written notice of COBRA continuation rights.

To continue coverage under COBRA, the former employee must elect that coverage and pay monthly premiums at the employer's group rate and an administrative fee. Unfortunately, the group rate premiums are not affordable to many clients. Failure to pay the monthly premium will result in cancellation of coverage.

CAUTION!
To obtain the extended 29 months of coverage under COBRA, the former employee must provide the employer with SSA's disability determination within 60 days of the employee having received it, and under no circumstances more than 18 months after employment has ended. The SSA disability determination must indicate an onset date within 60 days of the date that COBRA coverage started. Prompt attention to obtaining Social Security disability benefits is thus crucial.

Upon completion of COBRA coverage, the group policy can be converted to an individual policy and continued, although typically the premium rates for individual policies are prohibitively expensive and the coverage may be decreased.

Before considering COBRA, clients should check eligibility for Medical Assistance or purchasing a plan through the Marketplace. Once they accept COBRA coverage, they can switch to Medical Assistance at any time but will have to wait for the open enrollment period to switch to a Marketplace plan.

Unemployment Compensation for Disabled Clients: A client who has excessive absences from work due to illness is at risk for job termination. In certain circumstances, a client who is fired because of illness-related poor attendance may be considered unemployed through no fault of their own and will be eligible for Unemployment Compensation (UC) benefits as a source of income replacement.

To be eligible to receive UC payments, the client must be available to accept suitable work and not refuse work when offered. On the other hand, to receive SSDI/SSI payments, the client must be too ill to work. As a result, it is rare to be eligible for UC benefits and SSDI/SSI benefits simultaneously, although limited exceptions may apply. One such exception is when a client has always performed part-time work due to ill health and had now been terminated due to excessive absence. Clients who believe that they are disabled and unable to work a full-time job should be encouraged to apply for SSDI/SSI instead of UC. In the meantime, until the SSDI/SSI claim is determined, the client should apply for state benefits such as Supplemental Nutrition Assistance Program, TANF (if they have minor children), Medical Assistance and/or LIHEAP.

Workers' Compensation (WC): A client injured at work may consider filing a claim for Workers' Compensation. In addition, a client may later apply for Social Security Disability benefits. In their application for Social Security benefits, the client must inform the Social Security Administration that they filed the WC claim. A client's WC benefit and Social Security disability benefit amounts (including family benefits) may not exceed 80% average current earnings before the client became disabled. As WC settlements may affect the amount of Social Security benefit payments, and clients should to hire an attorney who practices in this area, law, prior to filing a claim.

§ 2.3 Overview of Social Security Disability Benefits (SSI and SSDI)

The **Social Security Administration (SSA)** has two major programs, SSI and SSDI, that provide benefits to people who are disabled. These programs are critically important for people living with HIV, who are too ill to work.

Supplemental Security Income (SSI): provides cash benefits to disabled people. SSI is sometimes called "Title 16" or "Title XVI" after its section in the Social Security

Act. An SSI federal benefit level is set by the SSA. In 2020, the individual SSI federal benefit rate is **$783** per month and **$1,175** for an eligible couple. These amounts are adjusted annually by the Cost-of- Living Adjustment (COLA).

In addition, state governments have the option to increase the cash benefit for SSI recipients in their states by adding a **State Supplemental Payment** (SSP). The SSP benefit level varies from state to state. In Pennsylvania, individual SSI recipients receive an additional sum of **$22.10** as their SSP and an eligible couple receives **$33.30**. SSP is usually sent to the bank account where client receives their SSI check or on the state issued Electronic Benefits (EBT) card. When assisting clients, case managers must ensure that clients are receiving their SSP in addition to the federal SSI check.

For SSI eligibility, applicants' income and resources must be below certain limits. Unlike SSDI, there is no work history requirement for SSI benefits. SSI benefits begin the month after the date of filing of SSI application or the date that SSA determines the client became disabled – whichever is later. Unlike SSDI, SSI does not pay retroactive benefits for any period of disability *before* the month of application, so clients should apply as soon as they become disabled.

SSI recipients automatically receive Medical Assistance (MA), which provides insurance coverage for a broad range of health care services including prescription drug coverage. MA coverage begins as soon as a person is found eligible for SSI. Low-income clients not yet approved for SSI should apply for MA on other grounds of eligibility (see **Chapter 5**).

Social Security Disability Insurance (SSDI): provides cash disability *insurance* benefits to disabled people who have had Social Security taxes deducted from their pay for a required period of time. SSDI is best understood as a government-sponsored disability insurance program. The more a client has paid into the program while working, the higher the benefit amount will be. SSDI benefits are subject to a five-month waiting period after the onset of disability. Retroactive SSDI benefits are available, but are limited to 12 months of benefits. In order to qualify for SSDI, a client must have a work history that is generally defined as working five of the past 10 years. SSDI provides benefits for spouses depending on their age and/or if they took care of the disabled worker's minor children. SSDI also pays dependent's benefits for the disabled worker's minor children under 18 (and in some cases until 19 if the child is still in school).

Once a client is eligible for SSDI payments for 24 months, they are entitled to Medicare (see **Chapter 4**), a federal health insurance program providing coverage for hospital, physician services, and prescription drugs.

In some cases, a client can be a concurrent benefit recipient and get both SSI and SSDI. For example, when a client has paid Social Security taxes but has worked mostly low-wage jobs or if a client is a younger person with limited work history, their SSDI benefits will be low. If the SSDI benefits are below the maximum SSI amount of **$783** (2020), plus a **$20**

"disregard," then they can get SSI benefits. For example, if the client is receiving $**545** in SSDI benefits, assuming they meet the SSI income and resource tests, the client would then receive **$258** in SSI benefits, bringing their total countable income to the maximum SSI benefit amount. Such a concurrent recipient cannot receive any more than the maximum SSI benefit limit of $783 (2020) plus the $20 disregard. See **§ 2.5a** for more details on SSI Income counting rules.

CHART 2-1: COMPARISON OF SSI AND SSDI PROGRAMS

	SSI	SSDI
Program Description	A **federal disability welfare program** that provides cash benefits to applicants who meet income and asset restrictions, without regard to their work history	A **federal disability insurance program** that provides cash benefits based on the applicant's work history, but without regard to income or resources
Cash Benefit Amounts	**$783.00** per month in 2020 (plus a $22.10 state supplementary payment); **$1,172.00** per couple (plus a $33.30 state supplementary payment)	Depends on how much the applicant has paid in Social Security taxes
Benefit Availability	Available from the date of application or from the onset date whichever is later. "Presumptive" benefits available for 6 months for applicants meeting HIV listings, otherwise available immediately upon approval.	Available 5 months after onset of disability. Retroactive benefits available for up to 1 year before application. "Presumptive" SSI benefits available for 6 months for applicants meeting HIV listings if SSI application was filed and SSI income and resource tests are met.
Medical Benefits	Recipients get **Medical Assistance (MA)** as soon as they are awarded SSI. MA covers most medical-related expenses.	Recipients get **Medicare** 24 months after SSDI benefit payments start (or 29 months after the date of onset of disability) (see **Chapter 3**)

CHART 2-1A: CRITERIA FOR BENEFITS

SSA Disability Criteria	In general, **an applicant cannot be working and must meet detailed criteria that define them as medically disabled.** In some cases, applicants who are working and earning less than $1,260 (2020) per month (known as the Substantial Gainful Activity amount) can get benefits. SSA uses the same disability criteria for both SSI and SSDI.	
	SSI	**SSDI**
Work History Requirement	No work history requirement	Applicant must have worked and paid Social Security taxes. In general, the applicant must have worked 5 of the past 10 years
Income and Resource Restrictions	Yes. An applicant cannot have more than $2,000 in countable resources $(3,000 if married). In most cases the applicant's home and car are *not* counted.	No income or resource restrictions
Legal Immigrant Eligibility (see **Chapter 9**)	With some important exceptions, people arriving after August 22, 1996 will not be eligible. People who arrived before then generally are eligible	Yes. Legal immigrants can get SSDI benefits if they meet the work requirements
Illegal/Undocumented Immigrant Eligibility (see **Chapter 9**)	Not eligible	Not eligible

§ 2.4 Determining Eligibility for Benefits

Your client must meet SSA's **medical** and **non-medical** requirements to be found eligible.

§ 2.5 Non-Medical Requirements for SSI Eligibility

In addition to being found medically disabled according to SSA's five-step sequential evaluation process (see **§ 2.7(a)**, applicants for SSI must also meet certain non-medical requirements to get benefits. First, the applicant's income may affect eligibility for benefits or reduce the level of benefits. Second, the applicant's resources must be worth less than $2,000 ($3,000, if married), although SSA doesn't count the value of many assets in determining eligibility.

CAUTION!
Receiving a substantial sum of money (for example, from a lawsuit or by inheritance) can affect eligibility for SSI and other "means-tested" benefits. Clients who expect to receive funds that may affect their eligibility should consult an attorney preferably before client receives the money. There may be ways of legally avoiding or limiting the impact.

§ 2.5a —SSI Income Limitations

SSA considers an applicant's income in determining SSI eligibility and calculating the benefit amount. In general, the more a person has in income, the lower the SSI benefit will be. However, not all of a client's money is considered as income for calculating the benefit amount. The income that SSA actually uses to determine the client's SSI amount is called the "**countable income**". A person with too much countable income will be ineligible for SSI. In addition, if the applicant has a spouse, the SSA will take that income into consideration in determining eligibility and the amount of the SSI payment to the applicant spouse.

Income: SSA counts as income anything a person receives that can be used for food and shelter, with some exceptions. This income can be in cash or in-kind. SSA categorizes income as either (a) earned income or (b) unearned income.

Examples of **earned income** include wages, net earnings from self-employment, payment for services rendered in a sheltered workshop, royalties for publication and honoraria for services rendered.

Examples of **unearned income** include:

- in-kind support and maintenance (food and shelter) given to a person (and paid for by someone else)
- annuities, pension and retirement payments
- disability benefits and veteran benefits
- workers' compensation
- alimony or support payments
- gifts and inheritances
- rental income
- prizes and awards

- dividends and interest

Note that if your client lives in someone else's household, and does not pay their share of household expenses or rent, SSA may apply a benefit level that is reduced by one-third, unless the client's financial contribution to the household is deemed sufficient to offset their share of the household expenses. The value a client receives from another in free housing or food is categorized as "**in-kind support and maintenance**" (ISM). If a client's check is reduced due to ISM and your client actually pays a rent and contributes to household expenses, you should have the client's SSI amount increased by providing that information to SSA or referring the client to get legal help in adjusting their SSI amount.

Not income: In general, anything a person receives that can be used for food or shelter is considered income. However, there are some exceptions to this general rule. For example, the following are **not considered income**:

- Medical care and services provided free of charge, or paid for by a third party directly to the provider, along with any related room and board during a medical stay
- In-kind assistance (except food and shelter) provided under a non-governmental or governmental program whose purpose is to provide medical or social services
- HUD-funded housing subsidies including Section 8, HOPWA and HOPE VI
- Income tax refunds
- Borrowed money under a bona fide loan
- Value of Supplemental Nutrition Assistance Program (formerly known as Food Stamps) benefits
- Temporary Assistance to Needy Families Program (TANF) benefits
- Energy assistance programs, such as Low-Income Home Assistance Program (LIHEAP)
- Foster care payments
- One-third of child support payments

TIP:
Ryan White C.A.R.E. Act funded medical care or prescriptions should not be counted as income, because those benefits are not for food or shelter. But, in contrast, the value of services by non-profit agencies that deliver free food or housing to people living with HIV has been considered income and deducted from a recipient's monthly SSI check.

For a list of unearned income exclusions refer here: https://secure.ssa.gov/poms.nsf/lnx/0500830099

To be eligible for SSI, the client's "countable monthly income" must be less than the maximum SSI benefit amount ($783 in 2020 – the amount may increase annually if there is a cost of living adjustment).

To calculate how much a client will receive in SSI benefits, the client's "countable monthly income" is subtracted from the maximum SSI benefit amount for the year. For example, in 2020, if the client has no income, earned or unearned, and is otherwise eligible for SSI the benefit amount will be $802.10 ($783 in SSI plus the PA State Supplementary Payment of $22.10). But if, for example, the client receives a cash subsidy from their parents of $72.00 per month, the countable unearned income would be determined by deducting a $20.00 "disregard" from the $72.00 subsidy, resulting in $52.00 in countable income. The $52.00 is then deducted from the maximum SSI benefit, and the client receives $750.10 in monthly SSI benefits.

Chart 2-2: Calculating SSI Benefits for Client Receiving Unearned Income

Parental subsidy	$72.00
$20 unearned income "disregard"	–20.00
Countable income	**$52.00**
Pennsylvania SSI level	$ 802.10
Minus countable income	– 52.00
Monthly SSI check	**$750.10**

Similarly, if the client receives $462.00 in private disability insurance or SSDI benefits, then the SSI benefit is reduced. The $20 general disregard is subtracted from $462.00 so the client's countable unearned income is $442.00. Therefore, the client would receive $360.10 in SSI benefits per month.

Chart 2-3: SSI Benefits for Client Receiving SSDI But No Other Income

Monthly SSDI check	$462.00
$20 "disregard"	–20.00
Countable income	**$442.00**
Pennsylvania SSI level	$802.10

Minus countable income	– 442.00
Monthly SSI check	**$360.10**

Note that if the client has earned income, **the earned income is subject to a $62.00 earned income exclusion, and the remainder is divided in half** to calculate the client's monthly countable income. An example of this calculation is set forth in the discussion on returning to work (**§ 2.12e**).

If your client is approved for SSI, but gets less than the maximum SSI amount and does not know why, you should call the local SSA office and determine if there has been an error in calculating the client's benefits.

§ 2.5b —SSI Resource Limitations

In addition to being subject to SSI income limitations, an SSI applicant's countable resources must be less than $2,000 ($3,000 for married couples). SSA doesn't count everything an applicant owns as resources.

The value of the following assets are not included when calculating countable resources:

- The house the applicant lives in
- The household's first car used for transportation by applicant or applicant's household
- Personal and household goods
- Burial space for applicant, spouse or immediate family member
- Up to $1,500 in burial funds designated from any kind of resource
- Plan to Achieve Self Sufficiency (PASS) account (§ 2.12e(ii))
- Up to $100,000 in an Achieving a Better Life Experience (ABLE) account, a type of savings account created for people who have been disabled since childhood

SSA does count the cash surrender value of life insurance policies (but not the face/payout value), and the equity value of any real estate that is not lived in by the client. Additional categories of excluded resources can be found here: https://secure.ssa.gov/poms.nsf/lnx/0501130050

§ 2.6 Non-Medical Requirements for SSDI Eligibility

In addition to being found medically disabled, an applicant for SSDI must have worked and paid Social Security taxes for the required amount of time to qualify for benefits. The work history requirements do *not* apply to claimants seeking SSI benefits.

SSA counts the amount of time an applicant has spent working in "credits." A credit is earned each time a required amount of income is earned, with a maximum of 4 credits per year. The amount of earnings required to earn a credit increases each year. In 2020, earnings of $1,410 are required to earn a credit. Therefore, in 2020, if a client earns $5,640 in a year, they have earned the maximum of 4 credits for that year. The number of work credits needed for disability benefits depends on the applicant's age when they become disabled. In general, an applicant needs to have earned credits for 20 out of the last 40 quarters, ending with the year the applicant becomes disabled. Younger workers can qualify with fewer credits. The rules are as follows:

Before age 24: Applicants must earn six credits in the 3-year period ending at the onset of disability.

Age 24 – 30: Applicants can qualify by having credit for working half the time between age 21 and the onset of disability. For example, a client disabled at age 27 needs credit for three years of work (12 credits) out of the past six years (between age 21 and age 27).

Age 31 and older: Applicants must have credit for working half the time between age 21 and the onset of disability, and at least 20 of the credits must have been earned in the 10 years immediately before the onset of disability.

Because the SSDI benefit level is based on lifetime average earnings, an accurate SSA record of earnings is crucial. Missing or unreported earnings could lower the benefit level. Clients should be encouraged to get a free copy of their earnings record at *my* Social Security (www.ssa.gov) to determine its accuracy. They can also obtain free copies of earnings records and estimated benefit statements by calling SSA's toll-free number, **1-800-772-1213**, or by going to their local Social Security office.

> **CAUTION!**
> For clients with pending applications, however, attempting to correct an earnings record may delay approval. The applicant should consider whether it's better to first obtain benefits, then correct the earnings record. Once the earnings record is corrected, the client's benefits will be adjusted retroactively.

Other Disability Benefits: Payment from other disability benefits can affect the amount of an SSDI check. The benefit amount can be affected if the applicant is eligible for workers' compensation, or for disability benefits from certain government, civil service, or veteran's disability programs. In general, the total combined payments from SSDI and any of these other programs cannot exceed 80% of the applicant's average current earnings before becoming disabled.

Note that SSDI benefits are subject to a five-month waiting period. Therefore, SSDI benefits will begin, at the earliest, five months after the onset date of disability (this is the date the SSA found that the client first became disabled.). For example, if a client applies for benefits in December, and is found disabled as of the application date, the waiting period is January through May of the next year, and benefits will be paid beginning with June. For clients with low income and limited resources, SSI may be available during that waiting period. Therefore, if they are otherwise eligible for SSI, it is important to advise clients to file for SSI benefits at the same time they apply for SSDI benefits. If the 2-month waiting period has passed before the SSDI application is approved, retroactive benefits are paid for any months after the waiting period ends.

If an SSDI application is filed after the onset of disability, retroactive benefits may be awarded back to five months after the beginning of the disability. The maximum period for retroactive benefits is one year. A claimant who files for SSDI 17 months after the onset of disability will receive the maximum one-year retroactive benefit.

Note that if the client has not received quarter-year credits because they have not worked for some period of time before the onset of disability, the client may not have adequate credits for SSDI eligibility, as explained in the above section. Therefore, be sure that the application for benefits states the earliest date of onset of disability (not, for example, the later application date); if the onset date is *before* the last date that the applicant was insured, benefits should be available, even if retroactive benefits will only go back for one year.

§ 2.7 Medical Disability Requirements (SSI and SSDI)

After determining that an applicant meets the non-medical requirements for SSI or SSDI (or both), SSA then determines if the applicant is medically disabled. The medical disability requirement is the same for both SSI and SSDI. SSA defines disability "as the inability to engage in any substantial gainful activity (SGA) 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."

In determining whether an applicant is disabled, SSA assesses whether an applicant's health meets a medical listing for a specific body system. The medical listings are published in SSA's regulations and include a wide range of illnesses including HIV, cardiac conditions, mental health conditions and musculoskeletal conditions.

Our focus here is on the HIV listing, **but advocates should also consider whether other medical conditions, alone or in combination with the client's HIV diagnosis and related symptoms, establish that the client is medically disabled**.

§ 2.7a —SSA's Five-Step Disability Evaluation Process

SSA uses a **five-step process** (the *"sequential evaluation process"*) to determine if an

applicant is disabled.

Step 1: Is the claimant engaged in "substantial gainful activity"?

For purposes of Social Security disability claims, the applicant cannot be engaging in "substantial gainful activity." There is a rebuttable presumption that if the applicant is earning more than $1,260 (2020) in gross income per month, the applicant is engaging in substantial gainful activity. If the applicant is not earning more than $1,260 per month, then SSA will go on to Step 2. For applicants who are blind, the substantial gainful activity amount is $2,110 (for 2020) in gross income per month. These amounts increase annually if there is a Cost of Living Adjustment.

If the applicant's gross earnings average more than $1,260 per month, generally they will be found to be ineligible for benefits. An applicant who earns more than $1,260, but does so only with special accommodations that relax work performance requirements, can argue that the job is not competitive employment and is not substantial gainful activity. Also, attending school is not considered substantial gainful activity, because it is not done for pay.

EXAMPLE:
Your client's employer pays her more than $1,260 per month, paying her for a 2-day work week but allows her to work only two days per week because of her health. In making her SSA application, you should ask her employer to document the fact that it is paying her even though she's not working the full requirements of the job. SSA will take into account only the portion of earnings that relates to productive work. The income may result in ineligibility for SSI or reduce her SSI benefits, but it does not result in a finding that she is not medically disabled.

Step 2: Is the applicant's impairment severe?

This step is intended to weed out cases involving slight impairments that impose only minor limitations on the ability to work. SSA will consider a single severe impairment or a combination of impairments at this step. Usually this step is not a barrier for most applicants living with HIV, who are having symptoms related to the diagnosis and the impairment will be considered severe.

Step 3: Does the applicant have a condition included in the "Listing of Impairments" for HIV (or included in a listing for another health condition)?

Recognizes that there are recurring conditions for many serious adult and child physical and mental conditions and has published listings of HIV-related impairments and other physical and mental impairments. These listings can be found in the Code of Federal Regulations at 20 C.F.R., Part 404, Subpart P, Appendix 1, listing 14.11 (adults) and 114.11 (children).

These listings can be found on SSA's website.

Adult Listings

Childhood Listings

If an applicant has a sufficiently severe illness or symptoms included in an SSA listing, they will automatically be considered disabled by SSA as long as they are not working at SGA levels. For applicants living with HIV, Step 3 is often the most important step of the process. Carefully document your client's diagnosis or medical history when it meets one or more of the listings. If the applicant's impairments do not "meet or equal the listings," the evaluation continues to Step 4.

Disability claims for children are reviewed under the HIV listing for children.

REFER TO:

For a more detailed discussion of the HIV listing for adults, go to **§ 2.7b**.

Step 4: Can applicant perform any of the work they have done in the past 15 years?

If the applicant does not meet a listing at Step 3, then SSA looks at all the jobs the applicant has held in the past 15 years and determines if the applicant is still able to perform the easiest job of all the jobs held, given the extent of the applicant's impairment. If SSA determines that the applicant can still perform at least one of the jobs they held (based on SSA' assessment of applicant's "residual functional capacity"), it will deny the disability claim. If SSA determines that the applicant cannot do their prior job, then the evaluation goes on to Step 2.

Step 5: Are there other jobs available that the applicant can perform?

If the applicant can't perform any of the jobs they held over the past 15 years, SSA then determines if there is other work available they can perform given their education, age, and prior work experience. To do this, SSA has developed "Medical- Vocational Guidelines." If the applicant is found to be able to perform other work, then they are ineligible.

Alcoholism or drug addiction as a contributing factor material to the applicant's disability: An otherwise disabled applicant is not eligible for SSDI/SSI benefits if the disability is based on drug or alcohol addiction. The law states that a person "shall not be considered disabled . . . if alcoholism or drug addiction would . . . be a contributing factor material to [SSA's] determination that the individual would be disabled."

Note, however, that applicants who have an addiction disorder may still qualify for benefits based on HIV-related illnesses, or on other physical or mental illnesses, if they are disabled by their illness independent of the addiction disorder. Furthermore, long-lasting physical or mental impairments that were originally caused by drug or alcohol use but are

now impairments unto themselves can be the basis for a finding of disability. For instance, if long-term alcohol use has caused a disabling impairment in liver function or brain function, an applicant can qualify for benefits based on those impairments.

§ 2.7b —SSA's HIV Listing of Impairments for Adults

SSA's rules for evaluating an applicant for disability benefits under the HIV listing is linked here: SSA's rules for evaluating. The medical documentation required to meet each of the conditions in given in detail in the introduction to the HIV listing at **Section F**.

Under the HIV listings an adult can be found disabled in four ways. See appendix 2-A1 for the complete HIV listing.

A. "Stand alone" disorders: These are 5 severe illnesses – which, if sufficiently debilitating and documented as specified in the listing – will automatically result in a finding of medical disability. They are set forth in **Section A-E** of the listing at 14.11. Because these are aggressive and untreatable disorders, in addition to automatic finding of disability under the HIV listing, these illnesses are also included in the Compassionate Allowance list. See 2-25.

B. Conditions relating to CD4 counts: There are 2 separate Absolute CD4 count values in the listing – which, if sufficiently documented in the laboratory results as specified in the listing and supported by progress notes on BMI and Hemoglobin levels – will automatically result in a finding of medical disability. They are set forth in **Section F-G** of the listing at 14.11.

C. Conditions that require hospitalization within specific periods of time: These are "complication(s) of HIV infection requiring at least three hospitalizations within a 12-month period and at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization". The hospitalizations must happen within the period SSA is considering applicant's disability application. The hospitalization requirement is set forth in **Section H** of the listing at 14.11 at Appendix, 2A-1.

D. A "catchall" category: repeated manifestations of HIV illness that result in functional limitations: As set forth in Section I of SSA's listing, these repeated manifestations can be from any of the previously listed disorders, from Sections A and B above, without meeting the listing on their own OR other HIV related manifestations resulting in significant, documented symptoms or signs such as fever, headaches, insomnia, involuntary weight loss, malaise, nausea, night sweats, pain, severe fatigue, or vomiting and ONE of the following at the marked level:

- Limitation of activities of daily living.

- Limitation in maintaining social functioning.

- Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

First, SSA defines "**repeated**" as:

- occurring on an average of three times a year, or once every 4 months, each lasting 2 weeks or more; OR

- not lasting for 2 weeks but occurring substantially more frequently than three times in a year or once every 4 months; OR

- occurring less frequently than an average of three times a year or once every 4 months but lasting substantially longer than 2 weeks.

Note, however, that these occurrences do *not* have to be of the *same* manifestation. Three different manifestations will suffice, however, they must occur during the period covered in applicant's claim.

Second, SSA's examples of documented "**symptoms or signs**" include fever, headaches, insomnia, involuntary weight loss, malaise, nausea, night sweats, pain, severe fatigue, or vomiting. Any symptom or indication of physical or mental impairment, however, can be used, including side effects of treatment or medication.

Third, the HIV manifestations must limit the applicant's ability to function at a "**marked**" level of severity in any one of 3 categories:

- Activities of daily living: for example, taking care of oneself (cooking, cleaning, attending to personal hygiene), performing household chores, taking public transportation; OR

- Social functioning: for example, visits with family or friends, participation in group activities; OR

- Completion of tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

"Marked" is defined to mean that applicant's signs and symptoms from living with HIV interferes *seriously* with their ability to function. On a scale of 5, "Marked" is at 4 between "Moderate" and "Extreme", although SSA rules direct that they do not need to use such a scale.

For every applicant, the listings also require documentation of HIV infection. This can be accomplished through medical records indicating positive results from HIV

antibody tests, antigen tests, or through a diagnosis of an opportunistic infection that has no known cause other than HIV. A low T-cell count alone is not considered to be evidence of HIV infection.

Applicants seeking benefits under the "repeated manifestations" standard are among those most often denied benefits at the initial application stage, and, as a result, face a lengthy appeal process and delay in receiving benefits. To win on an initial application, carefully document both the repeated "signs and symptoms" and the resulting functional limitations. The majority of clients who suffer from subjective symptoms such as fatigue or neuropathic pain are denied benefits because these and other subjective symptoms are not fully documented in the client's medical record.

TIP:
Applicants living with HIV, may have severe objective and subjective side effects from the antiretroviral medications they take. The subjective side-effects need to be reported to a medical provider and documented in the progress notes. SSA takes into consideration side effects of antiretroviral medications when evaluating an applicant's functionality. Antiretroviral side effects recognized in the SSA regulations are: "[b]one marrow suppression, pancreatitis, gastrointestinal intolerance (nausea, vomiting, diarrhea), neuropathy, rash, hepatotoxicity, lipodystrophy (fat redistribution, such as "buffalo hump"), glucose intolerance, and lactic acidosis." In addition, medications used in the treatment of HIV infection may also have effects on mental functioning, including "cognition (for example, memory), concentration, and mood, and may result in malaise, severe fatigue, joint and muscle pain, and insomnia."

Using a daily activity log that the client shows to the doctor at each medical visit is a practical way of developing this documentation. A copy of a sample log that can be used for this purpose is included in the appendix, beginning on page 2-A1. Also, clients should compare their current level of functioning with the normal level they experienced before the onset of disability.

§ 2.7c —SSA's Listing of Mental Health Impairments

People living with HIV often also are living with co-existing mental health diagnoses such as depression, bi-polar disorder, anxiety and PTSD. Clients who do not meet the listing for HIV may instead qualify on the basis of SSA's mental health listing, alone or in combination with symptoms of HIV illness. Every client should be assessed for mental health impairments even if their condition does not meet a listing. As with the HIV listings, evidence of these conditions must be documented by a health care provider. The entire mental health listing can be found here:
https://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm

Some applicants lack adequate documentation of their mental health conditions because they are not seeing a therapist, psychologist or psychiatrist. If you believe that a client suffers from an undiagnosed and/or untreated mental health impairment, be sure to provide an appropriate referral for a full bio psycho-social evaluation and follow up

treatment if appropriate.

§ 2.7d —Listings for Other Illnesses

SSA has developed listings for many types of illness, including blindness, deafness, neurological disorders, heart disease, and cancers. If your client does not meet the HIV listing but is disabled as a result of some other condition, you should review the listing on that subject. In addition, the client may be disabled from a combination of impairments, thus, it is important to review clients' symptoms and be familiar with the other listings. The complete Listing of Impairments is available on the SSA website at https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm

§ 2.8 Disability Standard for Children

Although the emphasis of this chapter is on disability benefits for adults, children are also eligible for benefits from SSA. Children with HIV may be eligible for SSI if they qualify as medically disabled and they meet the SSI income and resource restrictions (see **§ 2.5**) after any applicable deeming of income and resources from parents. Children may also be eligible for SSDI in rare cases in which they have earned sufficient income (see **§ 2.6**).

SSA has issued listings for HIV in children that are similar to those for adults. Children's HIV-related impairment listings can be found at listing 114.11 in the Code of Federal Regulation referred to in **§ 2.7a**. SSA's child HIV listing is similar to the adult HIV listing, but with additional impairment categories relating to growth. The SSA HIV listings for children are available on the SSA website at section 114.11 here: SSA's Disability Professionals Bluebook - 114_11

§ 2.9 General Tips for Applying for Social Security Disability Benefits

You should keep the following general tips in mind as you help clients apply for SSI/SSDI:

Become familiar with the SSA's disability listings and learn to recognize disability-defining symptoms. You can find the SSA's adult disability listing here: https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm

To win benefits for your client on the initial application, make sure that your client's SSA disability file includes all medical records. Emphasize to your client the importance of telling their treating health care provider about all symptoms and having those complaints documented in the medical record. If you notice a change in your client's health, for example, your client complains of increased fatigue or pain, ask if the client's provider has been charting those symptoms. Encourage your client to seek a referral from their primary care provider for any specialized medical treatment or diagnostic testing as appropriate.

Keep copies of everything you submit. SSA is a huge bureaucracy and letters and

records can be misplaced. Always keep copies of all letters, forms, medical records, pay stubs, and any other materials you submit on your client's behalf.

When you send documents to SSA, send them by certified mail or by fax. This way you have proof of sending your clients' documents.

Meet all of SSA's deadlines and make sure your client keeps every appointment with SSA representatives. Missed appointments and failure to obtain and submit information or documents in a timely manner are some of the most common reasons why clients are denied benefits. A missed appointment can result in the immediate denial of benefits and force your client to start over again. If your client must miss an appointment, you or your client must call to reschedule. Document conversations where you cancel an appointment in case SSA later says your client failed to cooperate by missing an appointment.

> **TIP:**
> If the client can show "good cause" for missing a deadline or failing to take other action, a denial of benefits can be reversed on that basis and the claim reopened.

Take an active approach to the process. Don't rely on SSA's bureaucracy to get your client's medical records or letters from your client's doctors. Have your client sign authorization forms for release of medical records to you, request the records from every hospital, clinic, physical therapy, primary care provider, and specialist offices where your client has received services, and assemble and submit them promptly to SSA. Be sure to attach SSA's Appointment of Representative Form (Form SSA-1696) when requesting clients' medical records. A copy of the Appointment of Representative Form (Form SSA-1696) can be found here; https://www.ssa.gov/forms/ssa-1696.pdf. If your client's condition worsens while the claim is pending, submit new evidence indicating that, particularly when pursuing an appeal.

§ 2.10 Overview of SSA Application and Appeal Process

The following sections give you an overview of SSA's application and appeal process that will guide you with helping your client in securing disability benefits.

SSA Local Office Processing: After the claim is filed by telephone, online or by visiting a local SSA office, the client will be notified of an initial SSA local office interview. This interview can be done by telephone or in person at a local SSA office. The letter informing the client of this initial interview will generally have all the information the client needs to know about the interview including any documents the client needs to bring to the interview. Generally, if the client has applied for only SSDI, the client's application will be forwarded for medical evaluation of their disability.

While the case is still at the SSA local office, if the client's health care provider has submitted evidence of a listing-level impairment, presumptive disability benefits can be granted by the local office. After an initial review of the application, SSA will forward the

application to a state agency, which SSA refers to as a Disability Determination Service (DDS). In Pennsylvania, the Bureau of Disability Determination (BDD) is that state agency. BDD is a bureau within the Pennsylvania Department of Labor and Industry. On average, it takes about 85 days for the BDD to process a claim. If health care providers delay sending medical records or if the client does not promptly respond with the disability forms, however, the process can take longer. But if adequate documentation of disability for approval of the claim is in the file when it is received by the BDD, the claim should generally be approved at this stage.

Disability Claims Adjudicator's Review: After SSA forwards the file to the BDD, the case is assigned to a Disability Claims Adjudicator (DCA). Upon receipt of the file, the DCA will contact the client (or the client's representative) by telephone to verify the information that the client has provided, and to determine whether the claimant has any additional information supporting the claim.

You should not hesitate to contact the DCA early in the process to make sure that they have received all the relevant medical records from your client's health care providers. The BDD will require that you send an Appointment of Representative (Form SSA-1696) before they could speak with you about your client's case. (Refer to § 2.9). The BDD will speak with you, however, if the client is present with you when you make the call.

At this stage, the DCA may also send additional forms to determine applicant's functionality and/or work activity, as appropriate. These forms include Activities of Daily Living, Function Report and the Work Activity Report. These forms, if properly filled, will be helpful in painting a picture of your client's symptoms and therefore should be completed with great care. Clients should complete and return these forms promptly to BDD in the return envelope provided or fax them using the bar code provided.

Upon receiving these forms, the DCA then assembles the applicant's file, reviews the available evidence, consults medical or non-medical experts as necessary, and then makes a preliminary determination about the applicant's medical eligibility. You should also offer to send additional records that may help with finding your client disabled.

At this stage, if the file contains evidence that establishes the client's eligibility for benefits, the DCA should approve the claim, without consulting medical or non-medical experts or waiting until additional records are received. If the preliminary determination is favorable to the applicant, the process ends, and the applicant receives benefits.

In cases where the client's disability is not clearly established, DCA can request your client to attend a consultative examination (CE) with one of SSA's panel of doctors either for physical or mental health evaluation or for both. These examinations have become a common practice and clients should be advised to take these examinations seriously. The BDD has outsourced the scheduling of these appointments to Industrial Management Associates (IMA) and any notices from IMA should not be ignored. If clients cannot keep the appointment with SSA's doctor they should be proactive and call IMA to reschedule the appointment.

After reviewing the medical records on file, and the CE report, if the DCA concludes that the applicant is not disabled, the claim is denied. The applicant will then receive a letter stating that the claim is denied and the reasons why the claim was denied. The applicant has 60 days, plus five days for mailing, from the date of this letter to file an appeal. Applicants should act promptly in filing their appeal following the instructions given in the denial letter.

In 2019, SSA modified its disability review process in Pennsylvania and re-introduced the "Request for Reconsideration" step following an initial denial of benefits. Clients will now file Form SSA-561-U2 found here, https://secure.ssa.gov/iApplsRe/start to appeal the initial denial. Clients may also file a Request for Reconsideration on-line at https://www.ssa.gov/forms/ssa-561.html Once the appeal is filed on-line clients can fax updated medical records with the bar code that will be generated when the appeal form is submitted.

In this step of the appeal process, a DCA at the BDD who did not take part in the initial determination of the client's application will review the client's file again to ascertain that no errors were made in denying the application. The DCA will also consider new evidence filed with the appeal or after the appeal. This reconsideration process is a review of the file and client is not afforded an opportunity to appear in person and present their case. Based on the evidence in the file and the new material submitted, the client can be approved or denied.

If denied, the client has the opportunity to file an appeal to appear before an Administrative Law Judge and present their case. Clients will file Form HA-501-U5 "**Request for Hearing by Administrative Law Judge**" to make this request for appeal. The appeal is then transferred to the SSA's Office of Hearings Operations. A copy of the "Request for Hearing by Administrative Law Judge" form can be found here. https://www.ssa.gov/forms/ha-501.pdf . Clients can also complete the "Request for Hearing by Administrative Law Judge" and the "Disability Report – Appeal" on-line at https://secure.ssa.gov/iApplsRe/start. A copy of the Disability Report – Appeal form, which client files with an appeal can be found here: https://www.ssa.gov/forms/ssa-3441.pdf

Office of Hearings Operations: (OHO): After clients have filed the appeal, the Administrative Law Judge (ALJ) at OHO can further develop the record in the case and conduct a hearing. In the event that an applicant's case goes to a hearing before the ALJ, the applicant should be assisted by an attorney or other competent representative who can work with the applicant in presenting the applicant's case at the hearing. This will maximize the chance of being awarded benefits. Again, new evidence can be presented at this stage. Clients will receive notice of their hearing at least 75 days before the scheduled hearing date.

SSA rules require applicants or their representative to submit or inform the ALJ about

all available medical records at least five (5) business days before the scheduled hearing. If the applicant fails to provide the information within that time the ALJ may refuse to consider the evidence, unless good cause is shown as to why the records could not be submitted within the required time. Clients should, therefore, be encouraged to stay in touch with their representatives and request that their updated medical evidence be submitted well in advance of the appeal hearing. It can take more than a year for the appeal hearing to be scheduled to heard a before an ALJ. Therefore, clients should be advised to continue receiving treatment, report all signs and symptoms and side effects of the medications to their medical provider, and keep a Client Activity Log. Based on the medical and non-medical evidence in the record, the ALJ then either grants or denies the claim.

If the claim is denied, the applicant then has the option of appealing further to the Appeals Council.

Requesting an On-the-Record Favorable Decision: The Social Security regulations provide that an ALJ may issue a favorable decision without holding a hearing. A decision "on the record" allows the ALJ to make a decision based on the evidence that is in your client's Social Security file. When you have a very strong case, which is well documented and supported by the medical evidence, it may be in your client's best interest for your client to request a decision on the record. The request for a decision on the record should be a letter detailing how your client's condition is disabling under the Social Security regulations (a sample letter is provided in the appendix at 2-A9. The request should be submitted well in advance of a scheduled hearing. The request for decision on the record does not waive your client's right to a hearing. If the ALJ denies your request for a decision on the record, the client may still appear before the judge and present their case.

Appeals Council: A claimant who gets an Unfavorable Decision from an ALJ may appeal that decision to the Appeals Council. To request review by the Appeals Council, the applicant files a Request for Review of Hearing Decision/Order [Form HA-520]. This stage concludes the appeal process within the Social Security Administration.

A claimant who considers filing a new disability application while their case is being appealed to the Appeals Council should be advised that SSA will not entertain a new disability application from a claimant who has an appeal pending at any level of administrative review. There is an exception to this rule that "if the prior claim is pending at the Appeals Council (AC) and the claimant has evidence of a new critical or disabling condition with an onset after the date of the administrative law judge (ALJ) hearing decision, the claimant may request to file a new disability application". There are other exceptions to this rule and the client should be advised to consult with an attorney if they have a new condition that may enable them to receive benefits more quickly. This rule does not apply if client's appeal in now pending in the federal court (see next section).

Judicial Review: If the Appeals Council denies the appeal, the applicant can appeal to federal district court. The applicant is now outside the SSA's administrative appeal process

system and is under the federal judicial system. Again, the applicant should be represented by an attorney in pursuing such an appeal.

There are a few programs adopted by SSA to expedite SSD/SSI applications. When appropriate, clients should be evaluated for these expedited processes to receive benefits quickly. These programs are briefly explained below:

- **Quick Disability Determination Process (QDD):** This is SSA's fast-tracking process that was started as a model in Boston and extended nationwide, effective September 2007. QDD uses a computer Predictive Model (PM) to automatically select about 4% of all disability claims for special expedited processing. Files selected for QDD are those with a high probability that 1) the claimant is disabled, 2) evidence of the claimant's allegations can be easily and quickly verified, and 3) the case can be processed quickly by Disability Determination Services (DDS). QDD files, assigned to designated disability examiners with the knowledge, training, and experience to gather medical information (including Activities of Daily Living and Medical Records of Evidence), and make decisions on QDD claims quickly, are usually given fully- favorable determinations within about 10 days (maximum 30 days), and not the three to four months which normal initial decisions require. If a QDD claim is not resolved within 30 days, it is returned for normal processing. If a file is missing any non-medical information, it will not receive QDD processing.

- **Compassionate Allowance Process (CAL):** SSA uses the Compassionate Allowance process (CAL) to quickly approve benefits for applicants whose medical condition clearly meets the definition of disabled under the Social Security standards. Cases for CAL processing, like QDD, are chosen by SSA's PM advanced technology based solely on the allegation made by the applicant in his Form SSA-3368 (Disability Report—Adult). For applicant with HIV there are at least five HIV-related disorders that will qualify for CAL and are listed in the Appendix at 2-A1. CAL cases are similar to Terminal Illness (TERI) claims, however, not all CAL cases involve terminal illness. For example, a person with a spinal cord injury could qualify for a CAL – even if he or she is expected to live for many years. For SSA's complete list of conditions that qualify for CAL see: https://secure.ssa.gov/apps10/poms.nsf/lnx/0423022080

- **SSI/SSDI Outreach, Access and Recovery (SOAR) program**: Through the SOAR program, states and communities are able to increase access to SSI and SSDI benefits for homeless people with mental illnesses and/or co-occurring substance use disorders. If your client is homeless with mental health issues or recovering from drug and alcohol use, and just returning to the community from institutions (jails, prisons or hospitals), meets both the medical and non- medical requirements for SSI/SSDI benefits and lives in

Philadelphia, you may refer him/her to the Homeless Advocacy Project (HAP) for an expedited disability application through the SOAR Program. The disability application processing time for these homeless individuals is considerably shorter and the approval rate is higher than the regular applications.

HAP conducts several legal clinics each month in various homeless shelters, transitional housing sites, overnight cafes, and soup kitchens in Philadelphia to assess the client's needs. Based on the information that the HAP staff receives at the interview, they will do an intake for the client for the SOAR program. If you believe that you have a client who may benefit from an expedited disability decision, advise your clients to attend these outreach clinics. The legal clinic information can be found on HAP's website at www.homelessadvocacyproject.org or call (800) 837-2672 or (215) 523-9592.

§ 2.10a —Filing the Application – ASAP

When you have determined that your client has a valid disability claim you should encourage them to file applications for SSI and SSDI (if they have a work history) without delay. Your client may file disability applications in one of several ways:

By Telephone: Applicants can apply by phone by calling SSA's toll-free number at **1-800-772-1213**, Monday through Friday from 7:00 A.M. to 7:00 P.M. Applying by phone is the easiest for most clients, although application can also be made by mail or in person at a local Social Security office. **We recommend, however, that the clients always apply for both SSI and SSDI as explained below**.

> **CAUTION!**
> **Before having your client apply, be sure to find out if there are other, non-disability reasons for their unemployment or if medical disability is the cause.** If your client's former employer fired them because of HIV status, they may have a valid employment discrimination claim. Although a 1999 Supreme Court ruling allows individuals to apply for disability benefits *and* pursue a discrimination claim at the same time, the application to SSA needs to be carefully worded. Clients in this situation should consult an attorney *before* applying for disability benefits. Also, if the client is not medically disabled, you should determine whether s/he is eligible for unemployment compensation benefits, or, if the unemployment is the result of a work-related injury, and whether they are eligible for workers' compensation benefits.

In the initial phone call to SSA, the client will be asked nothing more than their basic personal information and whether they are applying for SSI, SSD or both. For some clients, you'll be able to determine that they are clearly eligible for only SSI (e.g., those with no significant work history and no assets). For other clients, however, you may not be able to determine whether they are eligible for SSI, SSDI, a combination of both, or for SSI during the SSDI five-month wait period. Therefore, it is best to have clients apply for both benefits to ensure that the client's SSI eligibility is preserved in addition to securing benefits for the 2-month waiting period for SSDI-only clients.

TIP:
Your client should call as soon as they are disabled, because the month *after* the month the client calls will be the first benefits month. For example, calling on Friday, September 29, will result in October as the first benefits month, but waiting until Monday, October 2, will result in November as the first benefits month. SSA does not take telephone applications during weekends or holidays. This is important to avoid the loss of a month's benefits, because retroactive SSI benefits are not available for any period of disability before the filing date.

During the client's initial phone call with SSA, assuming that you have been unable to determine whether your client is eligible for either SSI or SSDI (and not both), your client should be sure to say *two* important things, if appropriate:

- "**I want to apply for *both* SSI and SSDI.**" When your client calls, they should state that they are applying for *both* SSI and SSDI. That way, the client will not have to apply for the programs separately.

- "**I have HIV and I want to apply for presumptive SSI benefits.**" Presumptive SSI benefits are paid for up to six months to SSI-eligible applicants while they are waiting for their application to be approved. Applicants who meet SSA's disability definition based on a preliminary medical report can obtain such benefits. Presumptive benefits are available to any client who has filed an SSI application, including those with an SSDI application, assuming all other eligibility criteria are met. To receive presumptive Form SSA-4814-F5 should be completed and submitted to SSA as soon as possible. Clients granted presumptive benefits begin receiving benefits the following month. Presumptive SSI benefits are paid only until a decision is made by the BDD on your client's initial application. If your client's claim is approved, SSI benefits will continue unhindered. If client's application is denied, the presumptive SSI benefits will stop, even the client files an appeal from the denial. The client, however, does not have to pay back the presumptive benefits, if their initial application is denied. Presumptive benefits are never considered an overpayment and hence clients should not be dissuaded from asking for presumptive SSI benefits. (see § 2.10c below for more information on having presumptive benefits authorized.)

  (i) **On-line Application**: Some applicants can file for disability benefits on-line. As case managers, your assistance with filing these applications will be beneficial to your clients. Clients applying for SSDI only or for both SSD and SSI can file their application at https://www.ssa.gov/applyfordisability/.
  Clients applying for SSI only cannot file an application on-line.

  Applicants should first gather all the necessary information needed to enable them to complete the application uninterrupted. Even if an

applicant does not have all the required information, they can come back and complete the application at a later time. SSA prefers, and encourages applicants to file on-line applications for expedited processes. Case managers helping clients to apply for benefits on-line must ensure that the application has been submitted successfully and a confirmation report has been received. The confirmation report must be saved and/or printed to be sent to SSA along with Form SSA-827 https://www.ssa.gov/forms/ssa-827.pdf

(ii) **Application on Paper**: Assembling an Application Package. Although SSA will collect your client's medical records, the best way to speed up the process and improve your client's chances of getting benefits is to collect the records yourself, as explained below, assemble them in an application package and submit it directly to SSA. A complete application package should contain:

- A cover letter from you or your client listing everything in the packet and explaining precisely why your client is medically disabled;
- If client is filing for SSI only, a complete SSI application form (Form SSA-8000-BK) that can be found here: Application for SSI.
- If client is filing for SSDI, a completed application form (Form SSA-16 UF) can be found here: https://www.ssa.gov/forms/ssa-16-bk.pdf
- A completed Appointment of Representative Form (Form SSA-1696) if you will represent the client at the initial level;
- A completed Disability Report (SSA-3368-BK);
- A completed Medical Report on Adult with Allegation of HIV Infection (SSA 4814-F5);
- Copies of all applicable medical records, presented in an easily comprehensible fashion. These can include chart records, hospital discharge summaries, lab work reports, and other related documents. It is helpful to create a "Table of Contents" for these records with your client's name and Social Security number; and
- Any other information requested by SSA, including signed release forms (Form SSA-827) and identification information or income verification documents, such as W-2 forms or pay stubs.

Always remember to keep a copy of your client's application package for your files.

If you don't have time to assemble an entire application package yourself, we recommend that you at least submit a Medical Report on Adult with Allegation of HIV Infection [Form SSA 4814-F5], completed by your client's primary health care provider, accompanied by any relevant, supporting medical records.

> **TIP:**
> **If your client is critically ill from HIV of any other condition, on your cover letter, or other correspondence with SSA about your client, always use as a prominent heading: "TERI Case."** This indicates to SSA that your client has a terminal illness and should result in expedited processing.

§ 2.10b —Interviewing Your Client

At the earliest opportunity, conduct a thorough interview to find out the nature of your client's disability and how it is keeping them from working. Use this information to fill out the Disability Report and to have the client's treating medical provider or other health care professional fill out a **Medical Report on Adult with Allegation of HIV Infection** [Form SSA 4814-F5 found here: https://www.ssa.gov/forms/ssa-4814.pdf, if they have not done so already.

DEVELOP YOUR "THEORY OF THE CASE"

The goal of this interview is to develop a "theory" – or an argument – of why your client should get benefits. Do this by demonstrating that the client is disabled according to SSA's rules. During the interview, look for HIV-related symptoms, hospitalizations or HIV treatment, or limitations on your client's ability to function that meet the HIV listing.

Also, be on the lookout for symptoms that meet the mental health listing, or any other disabling symptoms. Although the client may not be disabled from living with HIV, a combination of symptoms from other impairments may make them unable to sustain full-time work activity. A sample interview form is reprinted in the appendix at 2-A11.

Because you'll need to list all of your client's health care providers in the application, ask the client about every practitioner (primary care and specialists), clinic, hospital, emergency room, physical therapy, and counselor they has been to during the last 10 years. Because your client will not remember everything and may provide incomplete information, you may have to do some detective work after the interview to find complete addresses or to check names of providers or hospitals with your colleagues or on the internet.

Be sure to keep asking your client if there are any other places they have received medical services. Specifically, ask about any tests or other services that were provided outside the primary care provider's office. Clients may not recall visits to providers other than their primary care provider or they may believe that the records of such visits are also included in their primary care provider's records, when in fact that is not always the case.

Sometimes people have to be asked several times before they remember.

Note that the sample client interview form closely follows the HIV listing. If your client is disabled and has an illness that meets the listing, they should automatically qualify for benefits. We do not recommend reading the list of illnesses to the client directly from the questionnaire in a "yes or no" fashion. Instead, ask generally about general symptoms and explore further. For example, if your client says "I was sick in the hospital and they had to tap my spine," you could ask if the client had meningitis. You should request and examine the client's medical records for that hospitalization. It may be helpful to refer to the copy of the SSA HIV listing (reprinted in the appendix at 2-A1. while interviewing the client, because it explains many symptoms in layperson's language.

TIP:
Ask the client to bring in *all* records of their illness – medical bills, doctor's reports, emergency-room discharge instructions, prescriptions, etc. These can yield important information that you may not gain from the interview itself.

When you are conducting your interview, ask your client to walk you through a typical day and to describe everything they do. The sample client interview form covers this information. You can also use SSA's Function Report found here: https://www.ssa.gov/forms/ssa-3373-bk.pdf and you should review the Activities of Daily Living Questionnaire (physical and mental limitation questions) that the BDD sends to claimants. (Appendix, 2-18). This will often reveal important information that you wouldn't get otherwise, such as the fact that the client needs to take long naps during the day, gets dizzy when they try to cook, or is in pain when they walk up the stairs. All of this can help you decide on your theory of why your client is disabled and how to prove it. It can also help your client meet the functional limitations part of the HIV listing.

Once you have interviewed the client, it's time to develop your theory. Look over the information you have collected. Does your client have illnesses/symptoms that meet the listing, or has the client had them in the past? If your client doesn't meet the listing, don't give up – there are other ways to be found disabled. Is there enough evidence to document these illnesses? Will you need more information from the client's medical care providers? What records are missing? You will need to answer these questions in order to make sure your client's application for benefits is as thorough and complete as possible.

PROVIDE HEALTH CARE REFERRALS

SSA will not find your client disabled unless their disabling conditions are documented in their medical records. Therefore, if your client has physical or mental health problems but is not getting treatment for them, it is crucial to link your client with appropriate medical care providers. This is important not only for your client's health, but also because it is crucial for the success of your client's application for benefits. At this stage, low-income clients should already be on Medical Assistance through one of the programs discussed in **Chapter 5**, even before their application for SSI is approved.

PREPARE YOUR CLIENT FOR THE PROCESS

Explain to your client how the process will work. Explain that it will require them to be forthcoming to SSA about personal medical issues. Many people tend to play down the severity of their illnesses and health problems. Explain to your client that when applying for benefits, they must do exactly the opposite—be as detailed as possible about symptoms, ailments, and illnesses to doctors and SSA.

GET FORMS SIGNED BY YOUR CLIENT

Before completing the interview, be sure to have your client sign:

- **Medical Record Release Authorization Forms:** Complete one form for each of your client's health care providers so that you can obtain your client's medical records. Your agency should have a standard form; if not, a sample form is provided in the Appendix, 2-A31. Some medical providers and hospitals have their own form which they require you complete before they release the clients' medical and mental health records to your organization.

- **Authorization to Release Information to SSA** (SSA-827 found here: https://www.ssa.gov/forms/ssa-827.pdf. Complete one Form 827 and forward the **original** to the SSA local Office.

- **Appointment of Representative Form** (SSA-1696 found here: https://secure.ssa.gov/apps10/poms/images/SSA1/G-SSA-1696-U4-1.pdf: This is your client's authorization for you to represent them in dealing with SSA. Note that SSA personnel will not communicate with you about your client's claim unless this form is on file with SSA. With your client's consent, you can indicate whether SSA should contact you directly instead of contacting your client regarding the claim. Be sure to mark that you are not asking for a fee from your client.

SSA's policy requires that this form be sent to claimant's local SSA office. The local offices must enter the notice of representation in the system so that you may communicate with the BDD/DCA on your client's behalf. DCAs are not authorized to act on an Appointment of Representative form sent directly to them. Therefore, to avoid any delay in advocating for your client you should send the Form 1696 to the SSA's local office and follow up with a phone call to make sure that the notice of representation has been entered in the system.

§ 2.10c —Applying for Presumptive SSI Benefits

Presumptive SSI benefits are paid to some SSI applicants with HIV before final determinations are made on their disability application. As a result, applicants are able to

begin receiving benefits within weeks of their application.

To be eligible for presumptive SSI benefits, an applicant must meet the SSI income and asset eligibility rules (**§§ 2.5a - 2.5b**) and show, through a treating medical provider's report, that their HIV-related symptoms meet the HIV listing. If found eligible for presumptive benefits, the applicant will get Medical Assistance and receive an SSI payment each month for a maximum of six months until a final decision is made on the application. An applicant receiving presumptive disability benefits does not have to pay the money back if they are later found not to be disabled. But if the benefits were improperly paid for a non-medical reason (e.g., the applicant had additional income or had resources over the SSI limit), then it would be considered an overpayment and the applicant is required to pay the money back.

Applicants who are eligible for both SSI and SSDI can receive SSI presumptive disability benefits. For clients who are clearly ineligible for SSI due to non-disability requirements (for example, they. have countable resources worth more than $2000), there is no point in attempting to get presumptive benefits.

To apply for presumptive benefits, your client's medical provider will need to complete a **Medical Report on the Allegation of HIV Infection** (Form 4814-F5 found here: https://www.ssa.gov/forms/ssa-4814.pdf). This form closely follows the HIV listing. If the health care provider checks off just one symptom or illness on this form indicating that your client has experienced that symptom or illness, your client should be found presumptively disabled and receive benefits while waiting for a final decision on his/her claim. Even if presumptive benefits are granted, however, the client must continue with the process until a final determination is made.

You may wish to send the **Medical Report on the Allegation of HIV Infection** form to the client's treating health care provider, or, perhaps better, have the client take it in, have it completed, and then return it to you. Once the presumptive benefits form is submitted to the local SSA office, benefits can be granted and begin the following month. The file need not be forwarded to the Bureau of Disability Determination for presumptive benefits to be authorized. Client's SSA local office has the authority to authorize presumptive benefits. Call the local SSA office to confirm receipt of the form and to discuss when your client's presumptive eligibility will be determined. The POMS section for presumptive SSI benefits based on allegation of HIV can be found here: https://secure.ssa.gov/poms.nsf/lnx/0411055241

Also note that a client can obtain presumptive benefits for blindness and several other impairments. The relevant POMS section for presumptive benefits for blind and disabled individuals (non-HIV) can be found here: https://secure.ssa.gov/apps10/poms.nsf/lnx/0411055230.

TIP:
SSA has an internal operations manual, commonly called Programs Operations Manual (POMS), outlining all of its procedures for processing claims. To find the POMS on-line click here: https://secure.ssa.gov/poms.nsf/home!readform

§ 2.10d — Documenting the Client's Disability

After filing the application and, if appropriate for the client, making the request for presumptive benefits, it's time to go to work on demonstrating that they are disabled and should be awarded SSI and/or SSDI.

One key item in the application is the Disability Report that can be found here: https://www.ssa.gov/forms/ssa-3368.pdf. To fill out the Disability Report in as much detail as possible, you should first collect your client's medical records from their providers. The other key items are the disability questionnaires, which are sent to the client from the BDD, Appendix at 2-A18. we have reprinted a sample BDD cover letter and accompanying questionnaires on physical limitations, mental limitations, and on fatigue and pain. BDD generates and sends these questionnaires, as appropriate, to those applicants whose claims indicate that they are based on these limitations. For your information, we have also reprinted the cover letter and questions that the BDD sends to the client's treating physician, Appendix, 2-A32.

COLLECTING MEDICAL RECORDS

Although the BDD/DCA will collect your client's medical records to make a determination about your client's disability claim, in some cases the best way to speed up the process and improve your client's chances of getting benefits is to collect the records yourself and assemble them in an application package and submit them directly to the DCA.

Before requesting the medical records and mailing or faxing copies of the medical release forms, be sure that your client discusses with their providers that they are applying for SSI/SSDI. Once the case has been transferred to the BDD, you may also request a bar code so that you can fax the client's medical records to the DCA.

> **TIP:**
> **Always ask health care providers to supply SSA with copies of the client's progress notes in addition to the formal medical records.** Progress notes may provide documentation of the client's symptoms. Some providers won't supply these progress notes unless they are specifically requested to do so.

Don't be discouraged if a medical provider's office tells you that, if you want a copy of the records, you have to pay for them. Explain to them that you work for a non-profit organization that provides free services to people with disabilities, that neither you nor your client can afford to pay for copying. Ask them to waive the copying charges. Most hospitals and medical offices have now outsourced copying medical records to third party companies. However, you can still make this request to the individual provider's office, who will communicate this request to the third-party companies.

In Pennsylvania, health care providers or facilities may only charge a flat fee of $29.72 (2020) for the expenses of reproducing medical charts or records, plus actual cost of postage, when the records are requested for the purpose of supporting a Social Security claim. When requesting the records, be sure to state that you are requesting them to support your client's Social Security claim and include the 1696 Appointment of Representative form.

COMPLETING THE DISABILITY REPORT

You should now have enough information to help your client fill out the Disability Report (Form 3368-BK found at the link above). The Disability Report is a relatively easy form to complete. Most questions are self- explanatory. The case manager's name should be listed as the contact in Section 2, or that of a helpful relative or friend. If your client doesn't have a phone, they should list a phone number where they can be reached. As you and your client complete the report, keep these general tips in mind:

When in doubt, err on the side of over-documentation. The more evidence you provide of your client's disability, the more likely it is that they will be approved for benefits. Comb through your client's medical records to find any illnesses they do not remember. Be sure to include any illnesses or health conditions that are not related to the client's HIV diagnosis.

Don't let incomplete information keep you from reporting an illness or condition. The goal is to provide as much information as possible. For example, if your client isn't sure about the exact date of a hospitalization, simply write the year. If your client can't remember the name of a doctor, simply write the hospital or clinic where the client was treated.

Put the most severe illnesses first. As in making any argument, you want to present your strongest points first.

Always fill out the form with the listings for HIV and/or other illnesses in mind. Document illnesses in the same language in which they are described in the listings. Remember, your goal is for the DCA to see immediately that your client has met the listings and is qualified for benefits.

§ 2.10e —SSA Interviews your Client

When a client files an application, they usually will have the opportunity to interview with SSA. Whether the interview is by phone or in person, the client should have the items requested by SSA in the notice it sent out about the phone interview. In addition to a completed Disability Report and any medical records, SSA will usually also request income records, such as W-2 forms from most recent employers or pay stubs, and a birth certificate and/or other identification.

If the client does not have all the requested documents, they should still go ahead with the interview. If your client fails to keep the appointment, they will lose precious time in the application process. In many cases, SSA is required to help your client gather necessary documents. For example, the agency will help an applicant apply for a copy of their birth certificate.

The interviewer will ask for the client's basic personal information, such as name, address, Social Securitynumber, etc. The client will then be asked for information about their disability. The client should clearly state that they have been diagnosed with HIV disease and list any other diagnoses and medical treatments they have. The interviewer will then request information about the client's medical records – usually directly from the Disability Report. The interviewer will want names, addresses, and phone numbers of as many of your client's medical providers as possible. Again, the more thorough your client's responses, the better.

For SSDI, the interviewer will also ask the client to provide the last date they worked.

For SSI, the interviewer will also ask for information about the client's assets, including any bank account, car, home, or life insurance policy. The client will also be asked to provide information about how long they have lived at their current address.

After the interview, SSA will then send your client a letter that recaps some of the information the client provided in the interview. The client will be asked to sign the letter and return it to SSA; this becomes the client's official application for SSI and/or SSDI.

> **TIP:**
> **You should review this letter with your client to make sure it is accurate before they sign and return it to SSA.** If necessary, you can make changes to the letter.

Along with the letter, SSA will send your client the **Authorization to Release Information to SSA** (Form SSA-827, Appendix, page 2-A31and found here: https://www.ssa.gov/forms/ssa-827.pdf.

After your client's interview, the SSA Field Office and/or BDD personnel will collect the records from each of your client's health care providers. Once these records are submitted to SSA, the Disability Claims Manager will make a preliminary determination on your client's application.

§ 2.10g —Monitoring the Application

The Bureau of Disability Determination (BDD) takes on average from 82-90 days to decide whether your client is eligible, although approval can occur within one day if the claim is well documented. Also, if medical records are unavailable, it can take longer for processing. During that time, you should check with the DCA on the status of your client's application to make sure the case is proceeding and to determine if any additional information is needed. The client's case will be assigned to either the Wilkes-Barre office

(1-800-432- 8039) or the Harrisburg office **(1-800-932-0701)**.

MEDICAL EXAMINATIONS AT SSA'S REQUEST

Sometimes SSA will refer your client to a "consultative exam" (CE), for a mental or physical examination, to resolve questions about the applicant's disability. If SSA attempts to refer the client to a consultative examiner, the client should request to have the CE performed by their own treating provider instead of the SSA medical consultant. SSA regulations allow applicants to have their treating provider do the exam, as long as the provider agrees to accept SSA's reimbursement rate and complete SSA's paperwork.

A client's treating provider will have more knowledge of their health problems, and frequently more knowledge about HIV disease than an examiner selected by SSA. The treating provider's opinion, supported by evidence resulting from the examination and the medical records, can result in a positive outcome.

If the client's provider agrees to do the exam, the client should call the "800" phone number at the top of the letter scheduling the exam, and request that they allow the treating provider to perform the exam. SSA will pay your client's provider to do the exam, but the provider must agree to do the required SSA paperwork. If your client's provider does the exam, make sure they complete and send the paperwork to SSA promptly.

If your client cannot have the exam performed by their own provider, keep these points in mind:

First, it is very important that your client keeps any CE appointments that SSA makes. If your client can't keep the appointment, make sure they call to reschedule. SSA can deny your client's application if they miss an appointment without a good reason, such as illness or because they never got a notice about the CE. Sometimes SSA will send your client a physician's name and phone number and tell the client to set up the CE themselves. If that happens, make sure your client schedules as soon as possible. Again, remember that your client can choose to have their own provider perform the CE instead.

Second, if SSA sets up a CE that is too far away, you or the client can call the number at the top of the letter and ask to be scheduled at a closer location.

Third, when your client goes to the CE, the client should be sure to tell the medical examiner about *all* medical problems. The client should bring medical records to the appointment, especially x-ray or test results. The examiner may not have any records or may not know anything about the client. If the examiner asks the client if they can do something, the client should make sure to report the problems they have with that activity. For example, if the examiner asks if the client can walk for five blocks and the answer is "yes, but I have to stop and rest at the end of every block because I get tired," the client should make sure that the examiner understands their limitations with walking. If anything that the examiner asks the client to do is painful or difficult, the client should make sure to

say so. Otherwise, the examiner will assume the client could do that activity on a regular basis.

§ 2.11 Medicaid and Medicare

One of the most important benefits of SSI or SSDI is getting Medicaid (for those on SSI) or Medicare (for those on SSDI). The following are the most important things you need to know about these programs.

§ 2.11a —SSI and Medicaid

People who receive SSI also receive Medicaid health insurance coverage (known in Pennsylvania as "Medical Assistance" or "MA"). Most Pennsylvania residents on Medical Assistance are required to enroll in the mandatory MA managed care program called HealthChoices (or Community HealthChoices if they also have Medicare).

These managed care programs work much like any private HMO. Each has a physician network from which your client will be required to choose a primary care provider (PCP). The PCP is responsible for coordinating the patient's entire care, referring them to specialists when necessary.

REFER TO:
For more on Medical Assistance, HealthChoices and Community HealthChoices HMOs, refer to **Chapter 2**

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§ 2.11b —SSDI and Medicare

Applicants who receive SSDI are eligible for Medicare, the federal health insurance program. Medicare coverage does not start until 24 months after a recipient's first SSDI check. The rationale is that disabled people can continue their health insurance from their job by paying COBRA premiums for those two years. Depending on the client's income and medical expenses, they may be able to get Medical Assistance while waiting for Medicare to begin. Medical Assistance is discussed in detail in Chapter 2. Clients not eligible for Medical Assistance should enroll in a plan in the Marketplace under the Affordable Care Act until their Medicare coverage begin. Affordable Care Act enrollment information is discussed in detail in Chapter 6.

Through Medicare's various parts, the federal government provides coverage for in-patient services, such as hospital stays and some follow-up care (Part A), out-patient care such as doctors' visits, labs, physical therapy, and other ambulatory care (Part B) and prescription drugs (Part D). Medicare beneficiaries do not pay premiums for Part A coverage, but have monthly premiums for Part B and Part D benefit coverage.

REFER TO:
For more information on Medicare, refer to **Chapter 4**.

§ 2.12 Social Security Post-Entitlement Issues

Once your client has been awarded benefits or has started receiving them, there are many issues may arise. Some of the more common issues are listed below:

First, direct deposit of benefits (**§ 2.12a**); and the role of representative payees (**§ 2.12b**) concern the manner in which the benefit payments are accessible to clients. Next, in the event that the client is paid retroactively, the schedule of such payments is discussed (**§ 2.12c**). The problem of overpayments of benefits is covered next (**§ 2.12d**). Finally, return-to-work issues are covered (**§ 2.12e**), along with the related issue of continuing disability reviews (**§ 2.12f**).

§ 2.12a —Direct Deposit of Benefit Payments

The U.S. Treasury Department requires that all Social Security payments be issued electronically. As a result, Social Security benefits are now paid directly into the client's bank account or onto a Direct Express prepaid debit card which is issued to the client once disability benefits are approved.

Your client may receive payment by check if the Treasury Department grants them an exemption from electronic payment based on (a) the client being unable to maintain a bank account due to mental impairment and they are not assisted by a representative payee; or (b) the client lives in a remote area that does not have the infrastructure necessary to receive payments electronically. For either of these exemptions to be granted, your client must apply and have the request approved by the Treasury. The SSA does not have the authority to grant the exemption. The Treasury may grant automatic exemptions in limited situations, which includes a recipient's Direct Express debit card being suspended or cancelled.

If a client does not have a bank account and wants one, a case manager should help them identify a bank that has suitable account options. For example, some local financial institutions offer checking accounts for low-income residents who receive SSI/SSDI or other benefits. These accounts may not have monthly maintenance fees, or teller or ATM fees. They also may not require a minimum balance. Social Security local offices must maintain a list of these banks to be provided to clients when asked.

The benefits are then directly deposited to the account or card and are available the beginning of the business day that the client is scheduled to receive their benefits.

Clients should call SSA, **1-800-772-1213**, to establish direct deposit to an existing account or visit their local SSA office and meet with their claims representative and

provide the direct deposit information.

§ 2.12b —Representative Payee Issues

In some cases, SSA determines that your client cannot handle money on their own and that someone else, designated as a "representative payee," will receive your client's check for them. The representative payee must spend the money only on things for your client's benefit, such as rent, food, clothing, utilities, medical care, and personal items. From time to time, SSA will ask the representative payee to show an accounting of how the recipient's money was spent.

SSA can require a beneficiary to have a representative payee if, based on a court decision (including SSA's Administrative Law Judge), medical evidence, or statements from friends, relatives, or other people who know your client, SSA decides that

- the beneficiary's mental illness or physical disability (particularly drug and alcohol addiction resulting in residual dementia or the potential for relapse of an addiction that is in remission) makes them unable to manage money;
- the beneficiary is legally incompetent; or
- the beneficiary is under 18, unless they can show they are capable of handling money and there is no one else available to be a payee.

However, if your client does not think they should have a representative payee, they can appeal and bring in evidence or witnesses that show the client has been managing their own money and can do it well. Statements from health care providers, counselors, relatives, and friends are all good evidence to present. The client should have their physician complete the appropriate SSA form.

SSA usually will choose whomever your client suggests as a payee, as long as that person doesn't have a serious mental illness or an addiction to drugs or alcohol. SSA's first choice will be your client's spouse or other relative. The second choice will be a friend who shows they care about your client. If your client lives in an institution, such as a nursing home, and there is no relative or friend available, SSA will ask the institution to serve as the payee. Finally, if none of the above applies, SSA will choose a member of a non- profit community group to serve as your client's representative payee.

Some organizations are allowed to charge a small monthly fee to be a payee. The most they can charge in 2020 is $44 a month or 10% of your client's check, whichever is less. For beneficiaries determined by SSA to have an addiction disorder, the monthly fee is $83.00 or 10% of the combined monthly payment, whichever is less. SSA must authorize the higher $83.00 fee based on client's addiction disorder. Note that if the client has given a power of attorney to someone, they still must apply to become a Rep Payee.

If your client wants a new or different representative payee, your client and the proposed payee should go to the local SSA office and explain the desire to change payees. The new person will have to fill out an application asking to be appointed as a payee. If your client wants a new payee, because they believe that the current payee has not spent the money in ways that benefit the client, they should be sure to let SSA know. If your client gets both SSI and SSDI benefits, your client should be sure to ask to have a new payee for *both* checks, or one check will continue to go to the old payee.

Your client can ask SSA to require the payee to tell them how the money has been spent. Your client can have someone they trust apply to be their new payee. The old payee would be required to hand over any of your client's money they have to the new payee.

If your client thinks that what your payee is doing with your money is a crime, they can report it to the U.S. Attorney's office. The U.S. Attorney is responsible for prosecuting people who steal SSA benefits. However, they may not be willing to get involved unless there is a lot of money at stake, or the payee is stealing from more than one person.

§ 2.12c —Schedule of Retroactive Benefits

If an applicant wins on appeal, they may receive back benefits. For SSDI back payments, SSA will pay all of the benefits in one lump sum payment. For SSI benefits, however, SSA will pay one lump sum payment only if the amount of past-due payments is less than three (3) times the SSI monthly payment amount. Otherwise, retroactive benefits will be paid in three installments at six-month intervals. The only exceptions to this policy are: (a) the recipient of retroactive benefits suffers from an illness with an expected death within 12 months; or (b) SSA determines the person will no longer be eligible for benefits and will remain ineligible for benefits for 12 months. In SSI installment payment, neither the first nor second installment payment can be more than 3 times the monthly SSI amount unless the exception for increasing the installment amount applies as stated below. The remainder of retroactive will be paid in the third installment, regardless of the amount.

There are some exceptions to the rule limiting the amount of the first two installment payments to 3 times the monthly SSI amount. These exceptions include client's *debts* relating to food, clothing, shelter (including utilities, mortgages, rent and property taxes), medically necessary services, and medicine OR client's *expenses* relating to medically necessary services, supplies or equipment or to purchase a home. SSA's policy on increasing the SSI retroactive installment payment can be found at https://secure.ssa.gov/apps10/poms.nsf/lnx/0502101020

Clients can spend their back benefits in any way they like. For beneficiaries on SSI, the payments are excluded from their countable resources.

§ 2.12d —Overpayments

Sometimes SSA decides that your client has been paid too much in SSI or SSDI benefits.

This can happen if your client had income that SSA did not originally count or had resources that put them over the limit or if they continued to receive benefits while incarcerated or when they had an outstanding warrant or if they returned to work and SSA was not aware of such work activity.

To contest SSA's overpayment determination, your client should file an appeal. Your client will file an appeal only if they do not think they have been overpaid or disagree with the amount SSA says they have been overpaid. In order to continue getting the same amount in benefits during the appeal process, your client must appeal within 10 days (plus five days for mailing), after the date of the overpayment notice. Although the client has a full 60 days to appeal an overpayment determination, their benefits will not continue or may be reduced if they miss the 10-day-plus-five deadline. A sample appeal letter is in the Appendix, 2-A46. This letter should accompany the Request for Reconsideration form linked here: https://www.ssa.gov/forms/ssa-561-u2.pdf.

An Overpayment Waiver may be requested at any time. A waiver of overpayment recovery means that a client does not have to pay back any of the money SSA claims they were overpaid. To succeed in a request for waiver of overpayment recovery, your client must show that (a) the *overpayment was not his/her fault*; **and** (b) that it *would be a financial hardship to pay the money back*. Financial hardship is automatically presumed if the client is on SSI or another cash assistance problem. Requests for Waivers are also available in cases in which repayment is against equity and good conscience.

Your client should use Form SSA BK 632 – Request for Waiver of Overpayment Recovery to apply for the waiver, linked here: https://www.ssa.gov/forms/ssa-632-bk.pdf. The cover letter, with which this form should be submitted is in the Appendix, 2-A47. Your client has a right to a personal conference with the SSA representative to explain why the Request for Waiver should be granted. At this conference, your client should explain that it was not their fault that they were overpaid **and** that they cannot afford to pay back the overpayment due to financial hardship. After you have made your case SSA will make a decision on the request for waiver. If the request is denied the client can file an appeal from that decision by following the appeal guidelines stated in the denial letter.

TIP:
If your client's original (not the balance) overpaid amount is $1,000 or less, they should request the SSA to grant an Administrative Waiver of the overpayment recovery. **Administrative Waivers** are granted because SSA's average cost of recovering the overpayment equals or exceeds the amount of the overpayment with some exception. An Administrative Waiver can be granted only if a request is made by the client to SSA to grant such waiver of recovery. Unless the client has committed fraud or misrepresented facts to SSA, Administrative Waivers will usually be granted. Sample letter (requesting Administrative Waiver is included in the Appendix at 2-A48.

If SSA determines that benefits have been overpaid, it can withhold money from your client's check until the overpayment is paid off in full. Remember, SSA cannot take any money from your client if the case was appealed within the time limit stated above, or if a request for waiver was filed and is pending determination.

If your client gets SSI, SSA cannot take more than 10% of the full SSI amount without their permission. Your client can also request that less than 10% of their income be withheld due to financial hardship. SSA will decide this based on the facts of the client's case.

If your client gets SSDI, the entire monthly check will be withheld until the overpayment is paid in full. However, your client can ask for SSA to withhold a lesser amount if taking the full amount will cause them financial hardship. SSA will grant any request that will repay the whole overpayment within 12 months (although they must take a minimum of $10). If a client cannot afford a 12 month overpayment, SSA will accept an amount that will allow full recovery of the overpayment within 36 months if the beneficiary verbally states that they need their income for their living expenses. If a beneficiary seeks a repayment plan that will take longer than 36 months, they must complete SSA-634-BK form – Request for Change in Overpayment Recovery Rate – and provide proof of all their income, expenses and assets. That form is linked here: https://www.ssa.gov/forms/ssa-634.pdf

TIP:
For clients who have an overpayment and receive a full Low-Income Subsidy (LIS) also known as "Extra Help" from the Medicare Part D program (§ 6.7g), SSA cannot collect more than $10.00 to recover the overpayment, regardless of the amount overpaid. Individuals who have income at or less than 135% of the FPIG ($1219 in 2020) receive full Low-Income Subsidy. If your client does not know if she is receiving full Low-Income Subsidy, you or your client may call the SSA to get this information. A copy of the relevant POMS section regarding this rule is linked here: https://secure.ssa.gov/poms.nsf/lnx/0202210030. (Refer to POMS GN 02210.030 C. Exception)

If a client is no longer on either SSI or SSDI, they can still request a waiver and/or make a payment plan. Clients who fail to make a payment plan or default on a payment plan are at risk of SSA doing any of the following: (1) offsetting any federal tax return for which the client may eligible; (2) implementing an Administrative Wage Garnishment ordering an employer to withhold money each pay day from a working client's pay check; and/or (3) reporting the debt to the credit agencies. It is important that you assist your client with dealing with these overpayment notices, regardless of whether the client is currently an SSI or SSDI recipient or not.

§ 2.12e —Returning to Work

SSA has several programs designed to help benefit recipients test their ability to work while continuing to get some or all of their monthly benefit check. In the case of clients whose health has improved since they applied for and obtained disability benefits, these

programs are an important means of returning to work. The rules relating to these programs differ for SSDI and SSI, but recipients of both these benefits are required to inform SSA about any work earnings they received each month. Your client may report wages to SSA on line by creating or signing into their SSA account at https://www.ssa.gov/myaccount, by telephone at 1-800-772-1213, or in person at their local SSA office. In addition, SSI recipients may report their earnings on a smartphone through the SSI Mobile Wage Reporting app.

§ 2.12e(i) SSDI Work Incentives

The following rules apply only to clients receiving SSDI benefits.

Trial Work Period: During the trial work period (TWP), there is no limit on the amount that your client can earn without facing a loss or reduction of benefits. The TWP lasts for nine (9) months. These 9 months need not be consecutive. The trial work period ends only after the completion of 9 months within a rolling 60-month period. A "trial work month" is any month in which your client earns more than $910 (for 2020). For self-employed clients, however, if the client works 80 hours or more per month, that counts as a trial work month even if the client has no earnings.

Extended Period of Eligibility: Once the TWP ends, the client enters what is called an **extended period of eligibility (EPE).** For the first 36 months of the EPE, your client will receive a monthly benefit check for any month that their earnings fall below the Substantial Gainful Activity (SGA) amount, which is $ 1,260 (for 2020). For blind persons, this amount is $2,110 (for 2020). This allows a client to continue working, knowing that at any period of inability to work, SSDI benefits will begin again without a new application, disability determination or waiting period.

The first time a person earns over the SGA amount in the EPE that, they get a 3-month grace period where benefits continue. This grace period begins with the first month of SGA and continues for the next two months (whether the beneficiary earns SGA in those months or not).

In calculating a beneficiary's earnings, Impairment-related work expenses (IRWE) should be deducted. IRWE are discussed in more detail below. A chart showing the SGA and TWP amounts from 2010 through 2020 is included in the Appendix, 2-A49.

Medicare: Health insurance coverage under **Medicare** will continue for at least 93 months after a client completes their TWP without regard to earnings. To continue receiving Medicare Part B and D, however, a client will have to pay the premiums either from their SSDI benefits, out of their own pocket, or through another public benefit (such as SPBP or MA's buy-in program see Chapter 5)

After the first 36 months of the EPE, if a working client loses earned income as a result of disability, a client may file either a new application or, if within 60 months of

termination, an **expedited reinstatement (EXR)** of benefits. To be eligible for an EXR, the client must meet all of the following requirements: (1) their previous entitlement to disability benefits was terminated due to performance of SGA; (2) the client is not performing SGA in the month of the expedited reinstatement request; (3) hte client is unable to perform SGA because of their medical condition; (4) the current disabling condition is the same as or related to the condition for which they were previously receiving benefits; and (5) your client requests expedited reinstatement within 60 months of termination. The form with which the client should apply for expedited reinstatement is linked here: https://secure.ssa.gov/apps10/poms/images/SSA3/G-SSA-371-1.pdf

Your client can request provisional payments when they file for an expedited reinstatement and while they await a decision on his medical eligibility. If client is found not to be disabled, provisional benefits, that include cash payments and Medicare/Medicaid coverage, do not have to be paid back. Provisional payments, are paid for up to six months, but will end sooner if client (a) is found not be disabled; (b) start to work and earn more than SGA; or (c) reaches his/her full retirement age.

§ 2.12e(ii) SSI Work Incentives

SSA has following work incentives for SSI recipients:

SSI Income "Disregard": Clients receiving SSI can return to work and receive benefits although the amount of benefits will decrease in rough proportion to the amount earned. When your client's earnings are over the SSI break-even point, they will not receive a SSI check for that month, but may still retain eligibility for MA.

Two standard deductions apply when SSA calculates your client's "countable" monthly income to determine the client's SSI check. To get the countable monthly income amount, do the following calculations:

- Exclude the first $20.00 of monthly unearned income ("general income exclusion"). Unearned income is income that is not paid in exchange for work performed. Examples include veterans' benefits, unemployment benefits, and SSDI. If the client does not have unearned income, however, then the $20.00 exclusion is applied to earned income.

- The first $62.00 of monthly earned income plus one-half of the remainder is not counted ("earned income disregard"). "Earned income" is income paid in exchange for work performed.

EXAMPLE
Cliff is earning $450.00 per month at a part-time job. He also receives $72.00 per month worth of financial support from his mother. Cliff's SSI check is the standard monthly benefit (in Pennsylvania, $783 for 2020) minus his monthly countable income. Here, Cliff would receive $532.50 per month in SSI benefits, plus his earned income of $450.00. Note that by working, Cliff earns more per month than if he were to receive his SSI check alone. Here's how to determine his countable income and arrive at his benefit amount:

Chart 2-4: SSI Benefit for Client with Earned and Unearned Income	
Unearned Income	
Mom's cash subsidy	$72.00
$20 general income "disregard"	–20.00
Countable unearned income	**$52.00**
Earned Income	
Earnings from work	$450.00
Earned income exclusion	–62.00
Subtotal	$382.00
Subtract ½ of subtotal	–192.50
Countable earned income	**$192.50**
Plus **countable unearned income**	**+$52.00**
Total countable income	**$247.50**
Pennsylvania SSI level (2020)	$783
Minus total countable income	–247.50
Monthly SSI check	**$532.50**

Depending on your working client's circumstances, several other SSA work related incentives can reduce earnings:

- **Impairment-Related Work Expenses (IRWE):** Client can deduct payments for IRWE in determining monthly earning. Such expenses must directly relate to the client's impairment and be necessary for the client to work. The expenses must be paid by the client (not by a third party) in a month in which the client is working. Expenses include, for example, impairment related transportation/mileage costs for getting to work, costs of visits to the doctor's office to obtain regularly prescribed medical treatment that attempts to control the disability, and costs of the medication to control the symptoms from the disability. Routine physical, dental, and eye exams and health and life insurance premium do not qualify as IRWE. IRWE can be deducted all in one month or, for larger one-time expenses, prorated over a period of 12 months. IRWE credits can be used by recipients of SSI and SSDI. For more information on IRWE refer to https://secure.ssa.gov/poms.nsf/lnx/0410520001

- **Student-Earned Income Exclusion (SEIE):** Working clients, under age 22, who regularly attend school and are not considered head of household (non- married individuals living alone are not considered head of household) or married can exclude up to $1,900 of earned income per month in 2020 (up to a maximum of $7,670 for the year). This amount increases annually based on the cost of living. SEIE can be applied to the income of client's parents, or to the income earned by a spouse who is not eligible for SSI. If client is married it will apply to the joined earned income of the couple when both are less than 22 in age and are working students. Regularly attending school means that the student takes one or more courses and attends classes at the college or university level for 8 hours a week; attends grades 7-12 for 12 hours a week; or attends training course to prepare for employment for 12 hours a week (15 hours per week if the course involves shop practice). SEIE does not apply to SSDI. For more information refer to https://secure.ssa.gov/poms.nsf/lnx/0500820510

- **Blind-Work Expenses (BWE):** Working clients who receive SSI and whose primary diagnosis is blindness are entitled to exclude from their income any ordinary and necessary expenses attributable to earning that income and expenses that are not reimbursable. This exclusion does not apply to individuals over 65 who were not receiving SSIdue to blindness for the month before they turned 62. Unlike IRWE, BWE need not relate directly to the client's blindness – any reasonable work related expenses will count. BWE, however, may not exceed total countable income. For information refer to https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820535

- **Plan for Achieving Self-Support (PASS):** Clients receiving either SSI or SSDI may submit to SSA a plan describing a strategy for achieving self-sufficiency. Such a plan can address education, vocational training, or starting a business. If the plan is approved by SSA, the client can set aside some income and assets each month in order to meet the Plan's expenses. This set aside can be used to reduce countable income for SSI, or to reduce the client's SSDI income to a level where they are also eligible for SSI (and MA). Remember, however, that the reduction of countable income cannot be the exclusive purpose of the PASS plan; the plan's purpose must be to achieve independence through increasing earning capacity.

EXAMPLE
Jorge, an SSDI recipient with no health insurance, would like to get his certification as a computer network engineer so that he'll have the qualifications to return to work in that field. He has $5,500 in savings, so he allocates $3,500 to tuition for a training course. He allocates $300.00 of his monthly income to the purchase of a new computer. Under this plan, Jorge will begin receiving a monthly SSI check of $256 and the resulting MA coverage. Here's his PASS budget:

Chart 2-5: Sample PASS Budget	
Resources	
Current savings	$5500
Set aside for training course	–3500
"Available" resources	$2000
Income and SSI Calculation	
SSDI monthly benefit	$847
$20 "disregard"	–20
Subtotal	$827
Set-aside for computer	–300
Countable income	**$527**
Pennsylvania SSI level	$783.00
Minus countable income	–527.00
SSI benefit (rounded to $278)	**$256.00**

If Jorge finds work after he gets his certification, he'll be able to use both the earned income exclusion and the trial work period during his early months. When he's out of the trial work period, his SSDI check will be discontinued, but he may be eligible for extended MA if his earnings exceed the break-even point.

The appendix provides an SSI Calculation Sheet at 2-A50 that includes all the possible deductions for an SSI recipient: the general income exclusion, earned income exclusion, student earned income exclusion, impairment related work expense exclusion, blind work expense exclusion, and the PASS deduction.

Keeping Medical Assistance (MA) without SSI while working, or "Section 1619(b) Status": A client whose *earned* income exceeds the SSI limit, and thus does not receive any cash payment, may still be eligible for MA under what is called "section 1619(b) status". Section 1619(b) of the Social Security Act provides for extended MA coverage. To be eligible for 1619(b) coverage, the client must need MA in order to work and have income inadequate to replace the cost of MA coverage (In Pennsylvania, $38,431 for 2019, and increases annually), and continue to be disabled. SSA's detailed description of this program along with the threshold amounts for each state for 2018-2019 is included here: https://www.ssa.gov/disabilityresearch/wi/1619b.htm

Section 1619(b) status is also important because it maintains active SSI case standing for an indefinite period, as long as they meet all other SSI eligibility requirements

(including less than $2,000 in countable resources). If a client in section 1619(b) status loses employment or has a reduction in earnings, SSI benefits can be reinstated automatically. If the client does not receive SSI benefits for a reason other than excess earned income (for example, excess resource or excess unearned income), the client is not eligible and MA is not available.

§ 2.12f — Continuing Disability Reviews (CDRs)

Recipients of SSI and/or SSDI benefits will be subjected to periodic Continuing Disability Reviews (CDR) to determine whether they remain disabled under SSA rules. In determining whether a beneficiary's disability continues, SSA uses the Medical Improvement Review Standard (MIRS), which is an easier standard to meet than the standard used for new applications. Although it's easier to meet, it is more complicated evaluation process, using an 8-step sequential process (one step of which is the 2-step sequential process for new applications). More information about this process can be found at https://secure.ssa.gov/apps10/poms.nsf/lnx/0428005000.

The frequency of the reviews depends on whether SSA believes a beneficiary will medically improve. SSA has three categories of review: 1. Medical Improvement Expected with reviews between 6 to 18 months; 2. Medical Improvement Possible with reviews every 3 years; and 3. Medical Improvement Not Expected, with reviews every 2-7 years. Most people living with HIV are placed into the medical improvement possible category, with the exception of people meeting the stand-alone listings who are generally placed in the medical improvement not expected category.

Along with the scheduled periodic CDRs listed above, SSA can initiate a CDR for various other reasons, including advances in medical technology; someone reports improvement, or return to work. However, if a person has been on benefits for longer than 24 months, a CDR can be triggered because of work activity alone. SSA will, however, continue to perform scheduled CDRs. People actively participating in the Ticket to Work Program are exempted from all CDRs.

There are two types of CDR: a short-form mailer or a full medical review.

- The short form mailer is a single double-sided questionnaire (Form SSASA-452-OCR-SM). Clients should complete this form timely and send it back in. Based on the answers, SSA will determine either that a person should continue receiving benefits or that a full medical review is necessary. A beneficiary cannot be terminated with a full medical CDR.

- A full medical review is similar to an initial application. SSA must be provided information about all of a beneficiary's current medical providers. Advocates should use the same tips as found in the sections above discussing initial applications. The decision on whether a person continues to be disabled is made by the Bureau of Disability Determinations (BDD),

the same as an initial application.

If SSA determines that the client is no longer disabled, benefits will stop unless the client requests a hearing within 10 days, plus five days for mailing, from the date of the notice. A client has to file an appeal within 15 days from the date of the notice and should explicitly request that benefits and their Medicare coverage be continued. As a practical matter, clients should monitor the status of their benefits to be certain that they are not terminated. Clients will use Form SSA-789 [Request for Reconsideration – Disability Cessation Right to Appeal] to file an appeal. The form can be found here: https://www.ssa.gov/forms/ssa-789.pdf. It is important for clients and case managers to be vigilant and follow every instruction on SSA's notice to discontinue clients' benefits, in filing an appeal.

When a client has filed an appeal from SSA's decision that client's medical condition has improved, the file will be reviewed by one of BDD's adjudicators. If the adjudicator still believes that the client's disability has ended, client has the right to meet with SSA's disability hearing officer (DHO) at the disability hearing unit (DHU) and explain why they believe they are still disabled. When filing Form SSA-789, client should elect to meet with the DHO. If the DHO, after reviewing the updated medical records submitted by the client, concludes that the client is no longer disabled, an appeal should be filed for a hearing before an Administrative Law Judge. Again, to keep benefits on while the appeal is pending, the client must file the appeal within 10 days (plus five days for mailing) of the decision and should explicitly ask that their benefits continue. If the ALJ finds that the disability ends, a client can appeal to the Appeals Council.

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Note that Compassionate Allowance and Quick Disability Determination processes do not apply to continuing disability review cases.

§ 2.13 Restrictions on SSI/SSDI Eligibility

Congress has passed several laws restricting eligibility for SSI and SSDI benefits. Immigrants and residents of certain institutions face restrictions on whether they can receive SSI or SSDI benefits. There are also restrictions on people with certain criminal convictions or who have outstanding warrants.

People who live in **nursing homes** are eligible for benefits, but their checks may be paid directly to the nursing home. The nursing home will then give the benefit recipient a monthly allowance of $30.00 ($60 for certain eligible couples).

People who live in **homeless shelters** are eligible for all SSI and SSDI benefits. Their SSI checks, however, may be reduced if they are getting free services such as housing or meals, because SSA sometimes counts those services as in-kind support and maintenance, a type of unearned income, in determining countable monthly income (see **§ 2.5a**). Once the person leaves the shelter and stops getting the services, they should be sure to notify Social Security so that their check can be increased to the full SSI amount.

For restrictions based on immigration status, see **Chapter 9**.

For restrictions based on criminal records or related issues, see **Chapter 10**.