

The Voice is the e-mail newsletter of The Special Needs Alliance. This installment was written by Special Needs Alliance members Ann Butenhof and Judith Bomster, of Butenhof & Bomster, PC, in Manchester, New Hampshire (www.butenhofbomster.com). Ann and Judith focus their practices on estate planning, special needs planning, elder law and probate and trust administration. Both are members of the National Academy of Elder Law Attorneys and the local New Hampshire chapter (“NH NAELA”). Ann is a Certified Elder Law Attorney, a Fellow of the American College of Trust & Estate Counsel, has been listed as one of New Hampshire’s Top Lawyers since 2003, and has been designated one of New England’s Super Lawyers. Judith currently serves on the Board of NH NAELA, on the Ethics Committee of the New Hampshire Bar Association, and was the primary draftsman for New Hampshire’s first pooled special needs trust program for third-party trusts, a program launched in 2010 by the Enhanced Lives Options Group, a New Hampshire non-profit organization that manages several pooled special needs trust programs.

Comparing Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)

The two primary disability income programs, SSI and SSDI, sound similar, but they are very different programs with different benefits and different eligibility requirements. This article is a brief summary of these two important benefit programs.

Social Security Disability Insurance

Social Security Disability Insurance (SSDI) is a cash assistance program administered by the Social Security Administration (SSA) for people who have a sufficient work history and are either blind or disabled. An individual is considered disabled for purposes of SSDI eligibility if she or he is incapable of performing any substantial gainful activity due to severe physical or mental impairment that has lasted, or is expected to last, at least 12 consecutive months or to result in death. Federal regulations provide a list of certain impairments and illnesses considered to be of such severity as to entitle an individual to a presumption of disability for SSDI eligibility. Even without a “listed impairment,” an individual would be disabled if he or she has a “medically determinable” impairment equal in severity to those listed, or suffers from several physical or mental conditions which, when combined, are considered equivalent to those listed impairments. With respect to whether a qualifying impairment renders an individual disabled and unable to work, Federal law provides that individuals who have demonstrated an ability to earn in excess of \$1,000/month in wages are considered to have engaged in “substantial gainful activity” and, by definition, are not disabled. Therefore, in most cases, an individual who earns income in excess of \$1,000/month will not be entitled to SSDI even if he or she has a “listed impairment” or disabling conditions that equal a qualifying impairment. This earned income limit is slightly higher for individuals who are blind.

In addition to meeting the criteria for being considered disabled and evidencing an inability to engage in substantial gainful work activity, individuals between the ages of 31 and 65 who are seeking SSDI benefits based on their own work history must have worked for five out of the last ten years, or twenty out of the last forty quarters, prior to the onset of disability. Fewer work quarters are required for workers under the age of 31 but the same standard of disability applies.

If an individual with disabilities has worked the requisite number of quarters, SSDI provides monthly cash benefits to the worker and his or her eligible dependents. The benefit amount is the same amount that the worker would have received if he or she waited until full retirement age to retire. Disability benefits terminate, however, when an individual is able to return to substantial gainful activity or has reached his or her normal retirement age and is eligible for a Social Security retirement pension.

SSDI is also available to certain disabled individuals who don't have a work history of their own but have specified relationships to workers who are disabled, retired, or deceased. For example, SSDI may be paid to a person who has been disabled prior to age 22 whose parent is retired, disabled or deceased, or to a disabled widow age 50 or over.

Since SSDI is only paid to those individuals who have worked and paid into the Social Security system over a certain period of time (or to their eligible disabled relatives), SSDI actually is an insurance program, not a welfare program. SSDI is not "needs based." A person's assets or other income have no effect on eligibility for receipt of SSDI benefits, and making gifts doesn't affect a person's eligibility. SSDI recipients who are eligible for benefits for at least twenty-four months also are entitled to medical insurance under the Medicare program.

Supplemental Security Income

Supplemental Security Income (SSI) also is administered by the SSA, and is a cash assistance program available to financially eligible individuals who are over the age of 64, blind or disabled. Since SSI is based on financial eligibility and not work history, it is a welfare program, not an insurance program. The same definition for disability applies to SSI as to SSDI, but individuals who are eligible for SSI generally have insufficient work history to meet the requirements for SSDI. To be financially eligible for SSI, the individual must be both "income eligible" and "resource eligible." To be *income* eligible, an individual's "countable income" must be less than the "standard of need." For 2011, the standard of need is \$674/month for an individual. Countable income includes earned and unearned income, as well as the value of any "in-kind support and maintenance" provided to the individual (examples: payment by a family member or a trust for food, utilities or rent; a parent providing free room and board), subject to certain limits. Gifts of cash received by the individual are counted as unearned income. The first \$20 of income received each month is not counted. In addition, with respect to earned income, the first \$65 each month is not counted, and one-half of the earnings over \$65 in any given month is not counted. Countable income also includes "deemed" income, which is the income of certain household members such as a spouse or the parents of a minor child. Individuals with

countable resources of \$2,000 or more per month are not eligible for SSI, and making gifts will affect SSI eligibility.

Unlike SSDI recipients, most individuals receiving SSI will not be entitled to Medicare coverage because they have not sufficiently paid into the federal system through wages. In most but not all states, SSI recipients automatically are eligible for Medicaid benefits. This is not the case in other states, where applicants must file an independent application for Medicaid and may have to meet a more stringent definition of disability.

Although SSI and SSDI are administered by the same federal agency and use the same medical disability criteria, they otherwise are very different programs. Below is a chart comparing the benefits and eligibility requirements for each program. (If you receive this by email and the chart does not appear below, click [here](#) for access to the website version of this article and chart.)

Comparison of Three Social Security Programs

SSI	SSDI	SSRI
<u>Supplemental Security Income</u>	<u>Social Security Disability Income</u>	<u>Social Security Retirement Income</u>
Disability	Disability	Retirement
Cash	Cash 6 months from disability date and Medicare 29 months from disability date	Cash at age 62+ and Medicare at 65
No work history	Work history (or relationship to someone with work history)	Work history
Monthly Earnings Cap: 1/2 of earnings + \$65 up to \$694 in 2011	Earnings Cap: \$1000 in 2011 (slightly higher for individuals who are blind)	Yearly Earnings Cap (if under full retirement age): \$14,160 in 2011
Earned & unearned income both counted	Only earned income is counted	Only earned income is counted
Resource cap - \$2,000	No resource cap	No resource cap
Welfare cash benefit	Insurance	Insurance
Food and shelter counted as income, up to set limits	Food and shelter not counted as income	Food and shelter not counted as income
US citizens, some qualified immigrants (some limited additional exceptions)	All workers with a valid social security number who paid into Social Security	All workers with a valid social security number who paid into Social Security
No dependent coverage	Covers dependents	Covers dependents