

*PUBLIC BENEFITS LAW -  
WHAT EVERY LAWYER SHOULD  
KNOW*

*Volunteer Lawyers Program  
Alabama State Bar*

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**I. INTRODUCTION**

### **A. Alabama's Safety Net**

1. Alabamians have a “safety net” of various public benefits potentially available to them when they are unable to work or unable to obtain work.
2. Some of these benefits, such as Social Security, Medicare, Workers Compensation and Unemployment Compensation, are based on past work.
3. Other benefits, such as Supplemental Security Income (SSI), Family Assistance (“welfare”), Medicaid, Food Stamps (“SNAP”) and health care subsidies through the Affordable Care Act, are based on need.
4. The site [AlabamaLegalHelp.org](http://AlabamaLegalHelp.org) has information about all the programs discussed in these materials. Each section also has URL’s for other places to find information about the programs.

### **B. Objectives of These Materials**

1. To provide a general overview of Alabamians’ safety net, so you will be able to refer clients to these programs.
2. To give you enough information about the fundamentals of these programs to let you spot problems for your clients that could arise during your representation.
3. These materials give some examples of common practices in the course of representation of clients that may have an impact on a client’s public benefits and some suggestions on how to avoid or resolve problems that may arise as a result.

### **C. Aid Continuing**

1. Most times when clients receive notice of termination of a need-based benefit, they have a “due process” right to a hearing before an agency can stop the benefits.
2. Generally, the client must request a hearing within ten days to avoid having the benefits cease before the client can have a hearing. It is sometimes possible to get continued benefits after more than ten days have passed.
3. If a client has received a termination notice for one of these programs, a lawyer should advise the client to appeal immediately.
4. Agency officials often try to discourage appeals by telling clients that they will have to repay benefits if they do not win.

a. A destitute client can suffer great harm if his benefits terminate even temporarily, and later restoration may not make up for the damage caused by the deprivation.

b. If the client loses the hearing, the client is obligated to repay the amount received without any interest. Thus, the amount paid pending the hearing is, at worst, an interest-free loan. Moreover, if the client cannot repay, there usually are no repercussions until the client seeks the same kind of benefits again.

## **II. COMMON FUNDAMENTALS**

### **A. Introductory Information about the Program**

1. Agency that administers
2. Eligibility Unit
3. Nature of the Benefits
4. Useful Statutes, Regulations and Websites. Some information on all these programs is also available at [www.alsp.org](http://www.alsp.org), the website for Legal Services Alabama.

### **B. Income and Resource Limits**

1. Almost all need-based programs have limits on an applicant's gross income, net income or both.
2. Most need-based programs have resource limits, generally limiting the amount of a recipient's equity in non-exempt resources.
3. Generally the values of a house where the applicant is living, a vehicle and some amount of household items are exempt.

### **C. Non-financial Eligibility Criteria**

1. Both programs based on need and programs based on past work also have non-financial eligibility criteria.
2. One kind of non-financial eligibility criterion is based on demographics, such as age, family status or disability.
3. Other eligibility criteria relate to what an applicant must do, such as establish an

earnings record.

4. For most programs, an applicant also must not be subject to a disqualification based on something the applicant has done – such as being convicted of a drug offence, giving away property or failing to comply with a work requirement.

## II. SOCIAL SECURITY (OLD AGE, SURVIVORS AND DISABILITY INSURANCE)

### A. Introductory Information

1. The program is administered by the Social Security Administration – but eligibility determinations are made by a separate state organization: the Alabama Disability Determination Service.

2. Individuals receive Social Security, although some family members may be able to receive *dependent's* benefits based on the earnings of the primary recipient and are eligible to receive *survivor's* benefits.

3. Eligible people receive monthly Social Security checks, generally by automatic deposit into a bank account.

4. The main statute starts at 42 U.S.C. 401, and the regulations at 20 C.F.R. Part 404. The principal website is that of the Social Security Administration: [www.ssa.gov](http://www.ssa.gov) .

a. Another helpful website is [www.nosscr.org](http://www.nosscr.org) , that of the National Organization of Claimants' Representatives.

b. See also the website of the National Senior Citizens Law Center, [www.nsclc.org](http://www.nsclc.org) .

### B. Income and Resources

1. Social Security has no financial eligibility criteria, but one kind of income, worker's compensation, affects the amount of someone's Social Security benefits.

a. A worker's Compensation award will "offset" (reduce) the amount of future benefits to be paid to a Social Security disability claimant according to a schedule and a worker's life expectancy.

b. Even if the worker has spent the worker's compensation, the worker remains ineligible until the end of the period established by the formula.

2. A person receiving dependent's or survivor's benefits based on a worker's earnings will not be able to receive these benefits if her earnings exceed a specified amount per month.

### C. Non-financial Eligibility Criteria

1. To be eligible for Social Security, a worker must work a job covered by Social Security and receive enough pay in each of a sufficient number of calendar quarters.

- a. Forty quarters (ten years) of covered work makes a worker "fully insured," which means that the worker can get Social Security once he or she is old enough.

- b. A worker must have worked for twenty of the last 40 quarters (five of the last ten years) to have disability coverage.

- 2 To get Social Security retirement benefits a worker must be 62 years old or older. If the worker waits to start drawing retirement benefits, they will be able to increase their monthly benefit, but there is no advantage to delaying past age 70.

3. To get Social Security disability benefits a worker must not be able to perform any job in the national economy.

- a. Details on the disability program are beyond the scope of this outline.

- b. For information, go to the disability portion of the Social Security Administration's website, [www.ssa.org/disability](http://www.ssa.org/disability), or to the disability section of [www.nosscr.com](http://www.nosscr.com).

4. Dependents of a worker eligible for Social Security are entitled to benefits on the worker's earnings record. The dependent must be the worker's:

- a. Spouse or divorced spouse 62 or over;

- b. Spouse caring for a child entitled to benefits 16 or under;

- c. Child under 18 or through age 18 if in high school; or

- d. Disabled adult child.

5. If a fully insured worker dies, dependents can receive survivor's benefits, unless the worker had only minimal earnings. The survivor must be:

- a. Widow(er) or surviving divorced spouse, 60 or older;
- b. Disabled widow or surviving divorced spouse, 50-59;
- c. Surviving spouse or surviving divorced spouse caring for a child of the worker under age 16
- d. Child under 18
- e. Disabled adult child

6. A person is disqualified from receiving Social Security if the person is fleeing to avoid criminal prosecution or post-conviction confinement for a felony, or if the person violates a condition of parole or probation.

a This is called the “fleeing felon” disqualification. See 20 C.F.R. 416.1339 for the SSI regulation on this disqualification.

b. The Social Security Administration used to disqualify people even if they did not know of any warrants against them, but the order in a nationwide class action forced the Social Security Administration to limit disqualifications to situations where the recipient really was fleeing to avoid prosecution.

#### **D. Frequent Problems**

1. People receiving Social Security disability benefits or parent’s benefits can work while receiving benefits. They get a trial work period of nine months, but after that if they earn more than the “substantial gainful activity” amount, the Social Security Administration will send a letter terminating benefits and demanding repayment.

a. One way the person may be able to show that they continue to be eligible for disability benefits is to show that the employer was paying more than what the work was worth out of kindness. Alternatively, the person can show that although for a period of time they were able to earn at too high a level, their condition prevents them from being able to continue earning so much.

b. A person can ask the Social Security Administration to waive collection of the overpayment by showing both that the person cannot afford to pay the money back and that they were not at fault for the overpayment.

(1) To make a showing of lack of fault, it is helpful to show the person's lack of sophistication and difficulties with reading and comprehension.

(2) If the person has received this type of overpayment before, it becomes more difficult to show that the person was not at fault for the overpayment, but a person with sufficient mental or educational deficits can be without fault for a series of overpayments.

2. The Social Security Administration will terminate a disabled Social Security recipient if the Social Security Administration believes that the person has ceased to be disabled.

a. Any dependents of the recipient who were drawing benefits will also have those benefits terminated.

b. The recipient has a right to challenge the termination and to request that the benefits continue until the Social Security Administration makes a final decision after an Administrative Law Judge hearing.

(1) To keep benefits continuing, the recipient needs to make the request within ten days, although the Social Security Administration can grant aid continuing for later requests if the recipient shows a good reason for not making the request in time.

(2) The Social Security Administration will not grant aid continuing where a termination is based on a person working and earning more than the minimum "substantial gainful activity" level

### **III. SUPPLEMENTAL SECURITY INCOME (SSI)**

#### **A. Introductory Information**

1. The program is administered by the Social Security Administration – but eligibility determinations are made by a separate state organization: the Alabama Disability Determination Service.

2. Individuals receive SSI. There are no dependent benefits available.

3. Eligible people receive monthly SSI checks, generally by automatic deposit into a bank account.

4. The statute begins at 42 U.S.C. 1381, and the regulations are at 20 C.F.R. Part 416. The principal website is that of the Social Security Administration: [www.ssa.gov](http://www.ssa.gov).

a. Another helpful website is [www.nosscr.org](http://www.nosscr.org), that of the National Organization of Claimants' Representatives.

b. See also the website of the National Senior Citizens Law Center, [www.nslc.org](http://www.nslc.org) .

## **B. Income and Resources**

1. To be eligible for SSI, someone must have countable income that is less than the maximum SSI payment level, sometimes called the Federal Benefit Rate.

a. The maximum monthly benefit for any year can be found on the Social Security Administration website at [www.ssa.gov/OACT/COLA/SSIamts.html](http://www.ssa.gov/OACT/COLA/SSIamts.html) .

b. When the SSI program started, the payment maximum was \$157.70 for one person.

c. For 2014, the maximum monthly benefit for one person was \$721, and the maximum monthly benefit for a couple was \$1082.

2. Countable and excluded income in determining eligibility

a. Some forms of income do not count at all:

(1) the value of food stamps; home energy assistance; state or local need-based assistance; disaster assistance; food or shelter based on need provided by nonprofit agencies;

(2) small amounts of income received irregularly or infrequently; any income tax refunds; interest or dividends earned on countable resources or resources excluded under other Federal laws (since July 1, 2004); money someone else spends to pay your expenses for items other than food or shelter (e.g., someone pays your telephone or medical bills); loans (cash or in-kind) that you have to repay;

(3) grants, scholarships, fellowships or gifts used for tuition and educational expenses (since June 1, 2004);

(4) income set aside under a Plan to Achieve Self-Support (PASS);

(5) earnings up to \$1,750 per month to a maximum of \$7,060 per calendar year (effective January 2014) for a student under age 22

(6) the value of impairment-related work expenses for items or services that a blind or disabled person needs in order to work; and

(7) certain trust fund payments paid to American Indians.

b. In determining a child's SSI payment, one-third of a child support payment is disregarded, and the other two-thirds counts as income.

- c. The first \$20 of monthly income from any source is excluded.
- d. \$65 of earned income is disregarded, and then half the earned income in excess of \$65 is also disregarded.
- e. The Social Security Administration counts some non-cash income, up to one-third of the maximum SSI payment where an individual gets food or shelter for free or less than cost.
- f. The Social Security Administration also has rules for “deeming” some income from an individual’s spouse or from the parent of a minor child
- g. The Social Security Administration explains determining countable income at [www.ssa.gov/notices/supplemental-security-income/text-income-ussi.htm](http://www.ssa.gov/notices/supplemental-security-income/text-income-ussi.htm).

3. Countable resources are limited to \$2000 for an individual and \$3000 for a couple.

4. Resource Exclusions:

- a. Home
- b. Back SSI and Social Security for up to 6 months.
- c. Household goods and personal effects up to \$2,000
- d. One vehicle per person – sometimes more if needed to go to and from work or the doctor’s office.
- e. Life insurance policies (subject to cash value limits)
- f. Property essential to self-support (although the income generated is counted)
- g. A few trusts (all other trusts are countable resources)
  - (1) Trusts established with assets that were transferred by a will.
  - (2) Special needs trust (trusts for the benefit of a disabled person under age of sixty-five by parent, grandparent, legal guardian or a court, if the state will receive a Medicaid payback upon the beneficiary’s death.
- h. Burial reserve - \$1500 individual; \$3000 couple

### **C. Non-financial Eligibility Criteria**

1. Retirement and disability benefits requirements similar to those for Social Security, except:
  - a. Retirement age is 65.
  - b. There is no earnings record requirement.
  - c. There are no benefits for survivors or other dependents.
2. Most non-citizens cannot receive SSI.
3. An incarcerated person cannot receive SSI.
4. The same “fleeing felon” rule that governs Social Security applies to SSI.
5. Since January 1, 2000, a transfer of assets can disqualify someone from receiving SSI. There is no disqualification if:
  - a. The applicant intended to sell at fair market value;
  - b. Assets were transferred exclusively for some purpose other than to qualify for SSI; or
  - c. The assets transferred are returned to the applicant; or
  - d. The denial of SSI eligibility would work an undue hardship; or
  - e. Transfer was to any one of the following:
    - (1) Spouse
    - (2) Applicant’s child who is either under age 21, blind or disabled.
    - (3) Sibling who has equity interest in home who has lived there for more than a year.
    - (4) Applicant’s child who has lived in house for two years and cared for applicant and allowed applicant to stay at home because of care.

### **D. Frequent Problems**

1. The Social Security Administration will terminate an SSI recipient under the age of 65 if the Social Security Administration believes that the person has ceased to be disabled.

- a. The recipient has a right to challenge the termination and to request that the benefits continue until the Social Security Administration makes a final decision after an Administrative Law Judge hearing.
  - b. The first level of appeal is an informal conference, which is held at the Social Security Administration's local office.
  - c. Almost all children will be subjected to a review of their eligibility when they turn 18, and other recipients will have their eligibility reviewed periodically.
  - d. In order to be able to show continued eligibility, it is important for a recipient to get regular medical care from physicians who keep medical records documenting the recipient's difficulties and limitations.
2. The Social Security Administration will also terminate an SSI recipient if the recipient ceases to be financially eligible.
- a. This can happen because of income, because of presumed income (the value of free housing, for example, or income presumed to be available from a spouse or from the parent of a minor); or
  - b. This can happen because of the value of resources, including if money left in a bank account puts the recipient over the resource limit or if the recipient gets an inheritance or gift that puts them over the limit.
  - c. Recipients can avoid termination by using banked funds, inheritances or gifts to purchase an exempt resource that they need, such as a house or a car.
3. When the Social Security Administration makes a retroactive termination or upholds a termination after a recipient has received aid continuing, the Social Security Administration will assess the recipient with an overpayment.
- a. If the person continues to be financially eligible for SSI, the Social Security Administration will find the recipient is unable to afford to repay the overpayment.
  - b. If the person cannot afford to pay back the overpayment, the person can seek to get the Social Security Administration to waive the overpayment by showing that the person was not at fault for the overpayment.
    - (1) To make this showing, it is helpful to show the person's lack of sophistication and difficulties with reading and comprehension.
    - (2) If the person has received this type of overpayment before, it becomes more difficult to show that the person was not at fault for the overpayment,

but a person with sufficient mental or educational deficits can be without fault for a series of overpayments.

#### **IV. FAMILY ASSISTANCE**

##### **A. Introductory Information**

1. The Alabama Department of Human Resources (DHR) runs the Family Assistance program, which is Alabama's name for the Temporary Assistance for Needy Families (TANF) program.

a. Congress converted the old Aid to Families with Dependent Children (AFDC or ADC) program into TANF in 1996.

b. The U.S. Department of Human Services picks up much of the state's cost for Family Assistance.

2. The eligibility unit is the family with at least one minor child.

a. When a child is not living with a parent, or when the parent with whom a child lives receives SSI, the child may be able to receive a one-person Family Assistance payment.

b. A recipient of Family Assistance is automatically eligible for food stamps and Medicaid.

(1) If necessary for work or work-related Family Assistance activities, a recipient is also entitled to child care.

(2) When a recipient leaves Family Assistance because of earnings from a job, the recipient is able to get a period of continued (transitional) Medicaid and child care.

3. Most people receive a monthly payment on an EBT ("electronic benefits transfer" card). Some who have failed to comply with various program requirements may instead receive benefits by means of direct payment to some third person.

4. DHR's website is [www.dhr.state.al.us](http://www.dhr.state.al.us).

a. Information about the rights of people who apply for Family Assistance can be found at the website of the National Center for Law and Economic Justice (formerly the Welfare Law Center) at [www.nclej.org](http://www.nclej.org).

b. More information about Family Assistance can be found at the website of

the Center on Law and Social Policy (CLASP) at [www.clasp.org](http://www.clasp.org) .

c. Alabama's state plan for Family Assistance is found at [http://dhr.alabama.gov/services/Family\\_Assistance/Documents/AmendedStatePlanmaster.pdf](http://dhr.alabama.gov/services/Family_Assistance/Documents/AmendedStatePlanmaster.pdf)

## **B. Income and Resources**

### 1. Income

a. The countable income limit is the same as the payment standard, which is \$165 for a family of one, and it increases by \$25 for each of the next two family members, then \$30 for each additional family member.

(1) It is \$190 for a family of two, \$215 for a family of three; \$245 for a family of four; \$275 for a family of five.

(2) A family does not receive any Family Assistance, unless it is entitled to a payment of ten dollars or more.

b. DHR does not count as income food stamp or other non-cash benefits, disaster assistance or any non-cash help from anyone.

c. Before earned income is counted against the Family Assistance payment standard, a 20% work expense and expenses for childcare (within limits) are subtracted from gross income.

d. If a Family Assistance recipient gets a job, DHR will disregard 100% of the income from that job for six months.

### 2. Resources

a. Since 2009, Alabama has had no resource limit for Family Assistance.

## **C. Non-financial Eligibility Criteria**

1. The child must live in the home of a parent or other close relative.

2. A person can receive Family Assistance benefits as an adult for only 5 years in his or her lifetime.

3. The child must be under age 18 unless in school. If in school, the child may receive benefits through the month before the 19th birthday or the last month in school, whichever is earlier.

4. The child must be a U. S. citizen or a legal eligible alien and must live in Alabama.
5. The child must not be receiving any other form of cash assistance from DHR and must not be receiving any similar form of public assistance from any other state.
6. A person who has been convicted of giving a false address to get help from two States at the same time cannot receive benefits for ten years.
7. Neither the child nor any parent or stepparent may be on strike.
8. The relative applying for benefits must cooperate with Child Support Unit, unless the relative can demonstrate good cause not to cooperate.
9. Child support being received for a child is assigned to the State Department of Human Resources when an application for FA is made for the child, and the relative must turn over all child support payments to the State.
10. The relative must give DHR a Food Stamps number for each member of the assistance unit. If a member does not have a Food Stamps number, the relative must apply for a number and then provide it to DHR when it is received.
11. The relative must participate in the JOBS Program, unless he or she has good cause not to participate, which could include impairment or a risk of domestic violence.
  - a. The relative usually must accept employment that is available.
  - b. Parents under age 18 who are also dependent children are required to participate.
12. Persons applying for Family Assistance must participate in job search, unless good cause exists.
13. The relative must apply for any other benefits for which they may be eligible, such as Veterans Benefits, Social Security and Unemployment Compensation.
14. A parent who is under age 18 and his or her children must live with an adult. This adult must be a relative or a legal guardian. If an adult relative or guardian is not available, the parent under 18 and his or her children must live in an adult-supervised supportive living arrangement.
15. A parent under age 18 with a child that is at least 12 weeks old must have a high-school diploma or be in school or a training program.

16. The child or relative must not be probation or parole violator or a fleeing felon. The child or relative must not have been convicted of a felony for the possession, use or sale of a controlled substance.

17. A parent must sign and meet the terms of their Family Responsibility Plan.

#### **D. Frequent Problems**

1. Applicants will generally be denied if they fail to make sufficient efforts to find work before turning in their applications.

2. Recipients will be terminated or have their benefits reduced if they fail to comply with work requirements.

a. A recipient can avoid loss of benefits by showing that they should have been exempt from the work requirement.

b. A recipient can also avoid loss of benefits by showing that they tried to comply but only failed to because of an emergency or because of the failure of a worker to send a proper notice.

### **V. FOOD STAMPS (also called SNAP – Supplemental Nutrition Assistance Program)**

#### **A. Introductory Information**

1. The Alabama Department of Human Resources (DHR) runs the food stamp program, but for the most part has to follow rules developed by the Food and Nutrition Service (FNS), a branch of the U.S. Department of Agriculture (USDA).

2. The eligibility unit is the household, which can be one person or a group of people buying and preparing food together.

a. People living together can get a greater total amount of food stamps if they break up into separate food stamp households.

b. Children under 21 years of age who live with one or more of their parents must be a part of their parent's (parents') household.

c. A person living with his or her spouse cannot be a separate household from that spouse.

3. The vast majority of recipients get an electronic benefits transfer (EBT) card that can be used as a debit card only to purchase food.

4. The statute begins at 7 U.S.C. 2011, and the regulations at 7 C.F.R. Parts 271, 272 and 273. Information about the food stamp program is at [www.dhr.state.al.us](http://www.dhr.state.al.us) or at [www.fns.gov](http://www.fns.gov) and a summary of eligibility requirements is at [http://dhr.alabama.gov/services/food\\_assistance/Documents/FY2014EligibilityRequirements.pdf](http://dhr.alabama.gov/services/food_assistance/Documents/FY2014EligibilityRequirements.pdf)

a. The Center on Budget and Policy Priorities has a bank of information on food stamps at [www.cbpp.org](http://www.cbpp.org) .

b. The Food Research Action Center also has information on food stamps at its website, [www.frac.org](http://www.frac.org) .

5. The Food and Nutrition Service (FNS) has a screening tool you can use to tell someone whether they appear to be eligible for food stamps and to determine the approximate amount that they would receive.

a. The eligibility calculator is at <http://www.snap-step1.usda.gov/fns/>

b. The tool will say that someone with assets over \$3250 is probably ineligible, but this is not correct. You can estimate the amount the person will probably receive by putting in a low value for the assets

## **B. Income and Resources**

### **1. Income**

a. Households consisting only of elderly or disabled people need only meet net income limits (130% of Federal Poverty Level.)

b. Most other households need to meet both a gross income test and a net income test.

c. Households consisting only of people receiving SSI or Family Assistance are automatically eligible for at least some food stamp benefits.

### **2. Resource Limits**

a. Most households can get food stamps regardless of the amount of their resources.

b. If someone in the household was disqualified from receiving food stamps, the household can have no more than \$2,000 in resources and still get food stamps unless there is at least one person in the household who is at least 60 years old, in which case the resource limit is \$3,250.

### 3. Excluded Resources

- a. Home and the land it sits on no matter what the value;
- b. A vacant lot on which you plan to build a home if you do not own a home now;
- c. Your personal belongings and household goods;
- d. Burial plots;
- e. The cash or face value of life insurance policies and pension funds;
- f. Tools, equipment, livestock, buildings and other things you use to make money; or
- g. Things that you cannot turn into money, such as money in a trust fund and Indian land held with the tribe.
- h. Since July 1, 2002, all vehicles are excluded, no matter how many or how much they are worth.

### **C. Non-financial Eligibility Criteria**

- 1. Most non-citizens are ineligible
- 2. Households containing someone on strike are ineligible.
- 3. Transfer of assets for less than fair market value can bar participation for up to a year, even though the assets did not affect food stamp eligibility.
- 4. A conviction since 1996 for a drug felony. See 7 C.F.R. 273.11(m).
- 5. The “fleeing felon” disqualification applies. 7 C.F.R. 273.11(n). See the discussion in the Social Security section.
- 6. Failure to comply with work requirements may disqualify a household member. If that member is the head of the household, the entire household is disqualified.
- 7. If a household member quits a job without a good reason, that person is disqualified from receiving food stamps. If that member is the head of the household, the entire household is disqualified.

8. Able-bodied people between the ages of 18 and 50 may not be able to receive more than three or four months of food stamps in a three-year period, unless they either work or do volunteer work.

#### **D. Frequent Problems**

1. Verification Problems
  - a. Households are expected to verify their eligibility and to verify changes in their circumstances.
  - b. When a household fails to verify a factor needed for the household to be eligible for food stamps, DHR will deny the household
  - c. When a household fails to verify an expense, DHR will compute eligibility as if the household did not have that expense
  - d. DHR has an affirmative duty to assist a household with verification, but they will rarely do so without being asked
2. Lost or misplaced paperwork
  - a. Many DHR offices have a history of losing verification, recertifications or other paperwork or treating it as if it was received later than a household member brought it in.
  - b. It is in a client's best interest to ask for a receipt when bringing any papers to the food stamp office.

## **VI. MEDICARE**

### **A. Introductory Information**

1. The Centers for Medicare and Medicaid Services (CMS), a branch of the U.S. Department of Health and Human Services, operates Medicare.
2. Individuals are insured by Medicare, although spouses and former spouses who receive Social Security on a worker's account can generally also receive Medicare coverage.
3. The principal benefit is health insurance, for which most recipients pay monthly premiums and also must pay co-payments and deductibles.
  - a. Part A Medicare is hospital insurance, which most people pay for in advance through payroll taxes while they are working.
    - (1) It pays at least part of the cost of inpatient care in hospitals and skilled nursing facilities (not custodial or long-term care.)
    - (2) It can also pay at least part of the cost for hospice care and some

home health care.

b. Part B is insurance for the costs of doctors' services and outpatient care, which most people pay through monthly premiums.

(1) It also pays at least part of the cost of some other medical services that Part A does not cover, such as medically necessary physical and occupational therapy and some home health care.

(2) Most people's monthly premiums are automatically deducted from their monthly Social Security checks.

c. Part C is an alternative to both Part A and Part B.

(1) It covers everything in Part A and Part B, but in a different manner such as a health maintenance organization, preferred provider organization, Medical Savings Account or other new type of health plan.

d. Part D is coverage for prescription drugs.

(1) Most people pay a monthly premium to private companies that provide a particular drug plan. A beneficiary who decides not to enroll in a drug plan when first eligible may pay a penalty of higher premiums when joining later.

(2) People whose income is less than 150% of the Federal Poverty Level and who have less than \$10,000 (\$20,000 for a couple) in assets can receive a low income subsidy to cover the costs of the monthly premiums.

4. The main statute starts at 42 U.S.C. 1395, and the regulations at 20 C.F.R. Part 405. The principal website is that of CMS: [www.cms.hhs.gov](http://www.cms.hhs.gov) .

a. Another helpful website is [www.healthlaw.org](http://www.healthlaw.org) , that of the National Health Law Program.

b. See also the website of the National Senior Citizens Law Center, [www.nsclc.org](http://www.nsclc.org) .

## **B. Income and Resources**

1. There are neither income nor resource limits for Medicare.

2. However, people who qualify for any form of Medicaid do not have to pay monthly premiums for any Medicare coverage and other people with sufficiently little income do not have to pay for Part D prescription drug coverage. People who receive full Medicaid coverage do not have to pay premiums, co-payments or deductibles.

### **C. Non-financial Eligibility Criteria**

1. To be eligible, someone must be more than 65 years old OR suffer from a disability that would entitle the person to Social Security or SSI OR have End-Stage Renal Disease (permanent kidney failure requiring dialysis or a kidney transplant.)
2. Someone who qualifies for Medicare on the basis of a disability must wait two years and five months before being covered by Medicare.

### **D. Frequent Problems**

1. Denial of payment for service
2. The recipient has the right to request a hearing and show the need for the service.

## **VII. MEDICAID**

### **A. Introductory Information**

1. The Centers for Medicare and Medicaid Services (CMS), a branch of the U.S. Department of Health and Human Services, operates Medicaid nationwide. Before 2001, the name of the agency was the Health Care Financing Agency (HCFA). In Alabama, the Alabama Medicaid Agency administers Medicaid.
2. Medicaid can cover either families or individuals, including children whose parents are not eligible for Medicaid.
3. The main benefit is health insurance. Medicaid also pays premiums, co-payments and deductibles for Medicare and can premiums for private health insurance.
4. The main statute starts at 42 U.S.C. 1396, and the regulations start at 42 C.F.R. Part 430.
  - a. The website of CMS: [www.cms.hhs.gov](http://www.cms.hhs.gov) .
  - b. The website of the Alabama Medicaid Agency is [www.medicaid.state.al.us](http://www.medicaid.state.al.us)
  - c. Other helpful websites are [www.healthlaw.org](http://www.healthlaw.org) , that of the National Health

Law Program, [www.familiesusa.org](http://www.familiesusa.org), that of Families U.S.A, and the website of the National Senior Citizens Law Center, [www.nscclc.org](http://www.nscclc.org).

## **B. Income and Resources**

1. Income – until and unless Alabama elects to expand Medicaid to the federally authorized level of 138% of poverty, the following income limits apply:

a. SOBRA Medicaid, which covers children and pregnant women, has an income ceiling of 133% of the federal poverty level, except that for children six years old or older, the income ceiling is 100% of the poverty level.

b. The income limits for Medicaid for low-income families are the same as those for the Family Assistance program.

c. The income ceiling for the Qualified Medicare Beneficiary (QMB) program, under which the Alabama Medicaid Agency pays a recipient's Medicare premiums, co-payments and deductibles, is \$20 more than 100% of the federal poverty level.

d. The income ceiling for the Specified Low Income Medicare Beneficiary (SLMB) program, under which the Alabama Medicaid Agency pays a recipient's Medicare premiums, is \$20 more than 120% of the federal poverty level.

e. For a woman to be eligible for the breast or cervical cancer program, her income must be less than 100% of the federal poverty level.

f. To be eligible for nursing home Medicaid, or for the waiver that allows someone eligible for nursing home Medicaid to get care at home, a person's monthly income must be less than three times the SSI maximum monthly payment.

(1) Note that even if the person is married, the spouse's income does not count in determining eligibility.

(2) If the person is eligible for nursing home Medicaid and has a spouse not in a nursing home, that spouse gets a monthly income allowance (133% of the poverty level for a household of two), a housing allowance and a family monthly income allowance for other family members living in the household. None of the resident's money goes to the nursing home for care until the community spouse's monthly income is brought up to this level (using the resident's income to supplement the income of the "community

spouse.”) 42 U.S.C. §1396r-5(d).

(3) Effective 2014, the “community spouse” protections apply not only when the other spouse is in a nursing home, but also whenever that person is receiving benefits under a home and community based services waiver program

## 2. Resources

a. There are no resource limits for SOBRA Medicaid, which covers children and pregnant women.

b. There are no resource limits for Medicaid for low-income families.

c. There are no resource limits for the Qualified Medicare Beneficiary (QMB) program, under which the Alabama Medicaid Agency pays a recipient’s Medicare premiums, co-payments and deductibles.

d. There are no resource limits for the Specified Low-Income Medicare Beneficiary (SLMB) program, under which the Alabama Medicaid Agency pays a recipient’s Medicare premiums.

e. There are no resource limits for Medicaid for women with breast or cervical cancer.

f. The resource limit for nursing home Medicaid is \$2000 of countable assets.

(1) The following resources are excluded:

(A) The nursing home resident’s home if the resident intends to return to it OR the resident’s spouse or dependent relative lives in the home OR a joint owner lives there and sale of the house would cause undue hardship OR a bona fide effort is being made to sell the property;

(B) Household goods and personal effects worth up to \$4,000;

(C) One automobile, regardless of value;

(D) Life Insurance and burial funds up to a total of \$5,000;

(E) Income producing property with equity of less than \$6,000 and producing at least 6% per annum return on equity; and

(F) Any life estate or remainder interest in property.

(2) For a married person who entered a nursing home after September 30, 1989, or gets a home and community-based services waiver, the Alabama Medicaid Agency takes a "snapshot" of all countable assets and resources in which either spouse had an interest at the time the Medicaid applicant entered the nursing home (or starts the waiver),

regardless of when the Medicaid application is filed. Then, it determines how much the community spouse can get.

(A) 42 U.S.C. 1396r-5 permits the spouse not in the nursing home to retain a community spouse's resource allowance equal to the greater of \$25,000 in resources or one-half of the resources up to a maximum of more than \$117,240 that is adjusted annually to reflect increases in the Consumer Price Index. This maximum is called the community spouse resource allowance.

(B) The community spouse resource allowance is determined by considering only non-exempt assets. The community spouse also gets to keep the exempt assets.

### **C. Non-financial Eligibility Criteria**

1. To be eligible, someone must be in one of these eligibility groups:
  - a. SSI and Family Assistance recipients have categorical eligibility, as do "Pickle People" (people who would be eligible for SSI but for cost of living raises in Social Security since the time they were eligible for both Social Security and SSI).
  - b. Children need only live in families with sufficiently little income.
  - c. Pregnant women need only live in families (or alone) with sufficiently little income.
  - d. Nursing home residents must be able to document need of nursing home level of care.
  - e. Women diagnosed with breast or cervical cancer through a federal screening program may qualify for coverage of their treatment and other medically necessary services, if they do not have health insurance covering these diseases.
2. Most non-citizens cannot receive SSI.
  - a. Since July 1, 2006, people claiming to be citizens have to document it by birth certificate, passport or some other means acceptable to CMS.
  - b. Non-citizens are still allowed to attest to meeting non-citizen qualification requirements.

3. People who have transferred assets to qualify for Medicaid or SSI are ineligible for Medicaid for a number of months determined by the amount transferred.

a. If either spouse transfers property for less than fair market value at any time within the 60-month period prior to the date of one spouse's application for Medicaid, 42 U.S.C. §1396p(c) authorizes the Alabama Medicaid Agency to presume that the transfer was made to qualify for benefits. See also Alabama Medicaid Administrative Code, Rule No. 560-X-25-.09.

b. If a transfer was made to qualify for Medicaid, the Alabama Medicaid Agency may impose a disqualification period equal to the lesser of 60 months or the quotient resulting from dividing the uncompensated value of the resource by the current average monthly nursing home rate in the state, (approximately \$5000).

c. Exceptions - There is no penalty for the following transfers:

(1) The transfer took place for a reason entirely unrelated to Medicaid.

(2) The transfer was pursuant to a court order.

(3) The home was transferred to a sibling with an equitable interest in the property who lived in the house for the year prior to the applicant's entrance into the institution, OR to a caretaker son or daughter who lived with the applicant in the applicant's house for 2 years immediately prior to the applicant's entrance into an institution and whose care enabled the parent to remain in the community for those 2 years.

(4) The asset was transferred between spouses ("or to, or for the benefit of the spouse") or to a disabled son or daughter.

4. Alabama Code §22-6-8 disqualifies from Medicaid for at least a year and until the date of repayment anyone who defrauds abuses or misuses the Medicaid program.

a. This statute is almost certainly unconstitutional under the Supremacy Clause.

b. The Alabama Medicaid Agency has allowed people to return to Medicaid eligibility once they begin repaying money they owe the agency. It also allowed an SSI recipient back on the program despite her inability to repay her debt.

#### **D. Frequent Problems**

1. The Alabama Medicaid Agency will often reduce the number of hours of care it is paying for under a nursing home waiver program. When an advocate contests the

termination and shows that the person continues to need all the care originally granted, the agency often backs down.

2. The Medicaid Agency will generally impose a transfer of assets penalty even when a child or other person has made the transfer without the knowledge of the Medicaid applicant or recipient. By showing that the applicant or recipient should not be responsible for the transfer, an advocate may be able to avoid imposition of the penalty.

## VIII. SUBSIDY ASSISTANCE UNDER THE AFFORDABLE CARE ACT

### A. Introductory Information

1. Under the Affordable Care Act, the household is the group of people filing taxes as a unit.
2. The website at which people can both learn about responsibilities and benefits under the Act, apply for subsidies and choose a health insurance policy is [www.healthcare.gov](http://www.healthcare.gov)
3. The Kaiser Foundation has much information about the Act. See [kff.org](http://kff.org)
4. You can use the Kaiser Foundation's subsidy calculator to estimate the subsidies to which a family is entitled under the Act. See <http://kff.org/interactive/subsidy-calculator/>

### B. Income and Resources

1. There is no resource limit for healthcare subsidies under the Affordable Care Act.
2. To be eligible for an advanced premium tax credit to reduce healthcare premium costs, a person has to have income between 100% and 400% of the poverty level.
3. To be eligible for subsidies to lower out-of-pocket healthcare costs a person has to have income between 100% and 250% of the poverty level.
4. People with incomes under 100% of poverty who are not eligible for Medicaid are not eligible for any subsidies under the Act.

### C. Enrollment Periods

1. Open enrollment for obtaining healthcare and subsidies under the Affordable Care Act ends early in the year.

2. Someone can enroll outside the open enrollment period if that person:
  - a. Has just lost health insurance;
  - b. Has just gotten married; or
  - c. Has just had a baby.

## **IX. Common Results in Legal Cases and Their Effects on Public Benefits**

### **A. Lump Sum Settlement**

#### 1. Social Security

- a. There will be no effect, unless the settlement is worker's compensation.
- b. If the lump sum is for worker's compensation, it will result in decreased Social Security benefits.

#### 2. SSI

- a. If the payment is for the replacement of a lost, damaged or stolen resource, it does not count as income.
- b. Otherwise, the client will generally become income-ineligible for the month in which the settlement is received, but eligible again once the money is spent down to the resource limit.
- c. The client can return promptly to benefits if she uses the money to buy a home, make repairs on a home, buy a car or purchase income-producing property. If the settlement is a house, a car or such, rather than money, the client will probably suffer no interruption in benefits.
- d. If the lump sum represents the proceeds of the sale of a home, the client will have three months from the date of receipt of the proceeds to purchase a new home. During those three months, the money will not be a countable asset.
- e. If the client does not document expenses by saving receipts, she is likely to find it difficult to prove that she does not still have some of the money.
- f. document that it was for the repayment of a loan, she is likely to be subjected to a penalty for transferring assets for less than fair market value.

#### 3. Family Assistance

- a. The client will generally become ineligible for the month in which the settlement is received, but eligible again once the money is spent down to the resource limit.
- b. The client can return promptly to benefits if she uses the money to buy a home, make repairs on a home, buy a car or purchase income-producing property. If the settlement is a house, a car or such, rather than money, the client will probably suffer no interruption in benefits.
- c. If the client does not document expenses by saving receipts, she is likely to find it difficult to prove that she does not still have some of the money.
- d. If the client gives money to her family or others, she should be eligible for Family Assistance as soon as she has spent or transferred enough to fall within the resource limit. Family Assistance has no penalty for transferring assets for less than fair market value. See section 3320 of the Department of Human Resources Assistance Payments Manual.
- e. If the lump sum is from child support, the client would have to turn the money over to the Department of Human Resources in order to remain on the Family Assistance program. In exchange for the benefits, among other things, Family Assistance recipients sign away their rights to child support.

#### 4. Food Stamps

- a. A non-recurring lump sum usually does not count as income, but whatever remains the next month counts as a resource, which could cause a termination of Food Stamps. If the money was a reimbursement, that would provide another basis for disregarding the sum as income.
- b. The client can return promptly to benefits if she uses the money to buy a home, make repairs on a home, buy a car, purchase income-producing property or simply spends the money to bring her below the resource limit.
- c. If the client does not document expenses by saving receipts, she is likely to find it difficult to prove that she does not still have some of the money.
- d. If the client gives money to her family or others, and she cannot document that it was for the repayment of a loan, she is likely to be subjected to a penalty for transferring assets for less than fair market value. The penalty can be as much as a year.

5. Medicare

- a. A lump sum usually has no effect on Medicare.
- b. If the lump sum was for reimbursement of medical expenses that were paid by Medicare, Medicare would have a right to ask for repayment.

6. Medicaid

- a. For the most part, the effects are the same as for SSI.
- b. If the client gives money to her family or others, the penalty period for Medicaid differs from that for SSI, as it is based on the average monthly nursing home bed cost.

**B. Property Settlement in Divorce Decree**

- 1. If the client gets money, the effect is as above. If the client gets title to her home or gets a car (and did not already have one), then there is no effect on any program.
- 2. If the client agrees to give up money or property, an agency could find this to be a voluntary transfer of property to gain or maintain eligibility for public benefits, and the client would be subjected to a disqualification for SSI, Food Stamps and Medicaid.

**C. Planning to Give a Client Property or Money by Will**

- 1. If the testator creates a trust that cannot be used to pay for food, shelter or health care, this could allow the client to obtain SSI and Medicaid and probably Food Stamps and Family Assistance, too.
  - a. The language of the trust is critical, particularly with reference to the client's right to get at the principal.
  - b. The biggest problems with and closest scrutiny of trusts arise when someone is receiving nursing home Medicaid.
- 2. Neither Medicare nor Food Stamps would be affected in any way by the manner in which a testator draws up a bequest to the Medicare or Food Stamps recipient.

**D. Starting a Job**

## 1. Social Security

- a. If someone receiving Social Security is full retirement age and starts to work, the earnings have no effect on benefits.
- b. If someone drawing Social Security is not yet full retirement age and starts to work, the earnings reduce that person's benefits by one dollar for every two dollars that person earns in excess of the earnings limit, which is \$15,480 for 2014.
- c. If someone drawing Social Security is not yet full retirement age and starts to work but will reach full retirement age during the calendar year, the earnings reduce that person's benefits by one dollar for every three dollars earned in excess of the higher earnings limit, which is \$41,400 for 2014.
- d. If someone is drawing Social Security disability benefits and starts a job, the Social Security Administration will give that person a trial work period of nine months to test their ability to work. The person needs to let the Social Security Administration know about the work and report monthly earnings.
- e. At the end of the trial work period, if the person's earnings from the job are high enough to constitute "substantial gainful activity," the Social Security Administration will terminate the social security benefits.

## 2. SSI

- a. If someone receiving SSI starts to work, the Social Security Administration will disregard the first \$65 of earnings and then reduce SSI by one dollar for every addition two dollars earned
- b. If an SSI recipient participates in the PASS (Plan to Achieve Self-Support) program, they may be able to avoid any reduction in SSI while working by setting aside money to pay expenses approved by the Social Security Administration

## 3. Food Stamps

- a. If earnings from the job put a person above the income limit for their household size, food stamp benefits will cease.
- b. If the recipient remains below the income limit, earnings in excess of

the earned income disregard (20% of earnings) will be used to reduce a recipient's food stamps.

#### 4. Family Assistance

- a. For the first twelve months all of the earnings from the job are disregarded.
- b. After the first twelve months, the Department of Human Resources disregards 20% of earnings and also disregards the cost of child care or care of an incapacitated adult in the household on an as-paid basis.

#### 5. Unemployment Compensation

- a. Beginning a full-time job will disqualify a person from continuing to receive unemployment compensation benefits
- b. Beginning part-time work will cause a person to have weekly unemployment benefits reduced one dollar for every dollar earned
- c. In order to be able to continue receiving unemployment compensation benefits, a person must continue looking for work and be available for full-time work.

#### 6. Medicaid

- a. Earnings from employment could make a person ineligible for Medicaid if it causes the person's income to exceed the income maximum for the particular program through which the person was eligible.

#### 7. Health insurance subsidy

- a. The extra income from a job might make someone whose income was too low to qualify for a subsidy become entitled to one.
- b. For someone who was already receiving a health insurance subsidy, the new job would increase income and reduce the amount of subsidy to which they are entitled under the income that they were projected to make during the year. This could lead to a need to repay an overpayment.

### **E. Losing a Job**

#### 1. Food stamps

- a. When a person on food stamps quits a job without a good job-related reason, that person generally becomes ineligible for food stamps.
- b. If the person who quits is the head of the food stamp household, the entire household becomes ineligible for food stamps
- c. If the person who loses the job is not subject to a disqualification, the amount of the household's food stamps may increase in light of the decreased income

## 2. Unemployment Compensation

- a. Losing a job is necessary in order to be eligible for unemployment compensation, but someone who loses a job for the wrong reasons is not eligible for unemployment.
- b. When, because of the reason for loss of a job, someone is sure to get a total disqualification if they apply, that person should not apply for benefits. The disqualification can prevent the person from getting unemployment compensation in the future after being discharged from a job for simple misconduct.
- c. When a temporary employee of a temporary help services firm is no longer needed at the company to which the temporary help services firm has sent them, prior to close of business on the first business day following separation from the client company the temporary employee must contact the temporary help services firm to give it an opportunity to reassign the temporary employee to another assignment. If the employee has been advised of this requirement, then the failure to follow it means that the employee has voluntarily quit the job with the temporary health services firm. See Alabama Administrative Code section 480-4-3-.37.

## 3. Health insurance subsidy

- a. The loss of income from a job might make someone whose projected income was just high enough to qualify for a subsidy become not entitled to one. This could lead to a need to repay an overpayment.
- b. For someone who was overincome for a health insurance subsidy based on the income that they were projected to make during the year, the loss of the job would decrease income and could make the person entitled to a subsidy.

b. For someone who was eligible for a health insurance subsidy based on the income that they were projected to make during the year and remains eligible even at lower income, the loss of the job would increase the amount of subsidy to which the person is entitled.

4. For other need-based programs, the loss of a job should lead to an increase in benefits.

## **F. Creating an Income Stream for a Client**

### **1. Child Support**

a. No effect on Social Security or Medicare.

b. Two thirds of a monthly child support check counts as income for a child SSI recipient, reducing benefits by \$2 for every \$3 in child support.

c. There is no effect on a mother on SSI, because she is supposed to use the money to meet the needs of the child.

d. Someone on Family Assistance would either have to turn the ongoing child support over to the Department of Human Resources or go off Family Assistance. If the amount of child support exceeds the Family Assistance payment level, the benefits would stop.

e. For Food Stamps, every dollar of the child support would count as income to the household, which would cause a benefit decrease of approximately thirty cents for every dollar.

f. For Medicaid for a child, the SSI rule would apply.

### **2. Alimony and Other Income**

a. No effect on Social Security and Medicare

b. Counts as income for SSI, Family Assistance, Food Stamps and Medicaid.

## **G. Marrying**

### 1. Food stamps

- a. The person whom a recipient marries will have to become a part of the recipient's household if the person lives with the recipient.
- b. Depending on the spouse's income, this can increase or decrease the amount of food stamps and could even make the recipient no longer eligible for food stamps.

### 2. SSI

- a. The need level of a married person on SSI is based on the couple payment standard, which is equal to approximately 150% of the payment standard for an individual.
- b. Depending on the spouse's income, this can increase or decrease the amount of SSI and could even make the recipient no longer eligible for SSI.

### 3. Social Security

- a. If over age 60 or over age 50 and disabled, a widow(er) can continue to draw benefits on a deceased spouse;
- b. If over 62, a widow(er) can switch to drawing spouse's benefits on the new spouse, if the benefits would be higher
- c. If under 60 (or under 50 if disabled), remarriage will end widow(er)'s benefits.
- d. If marrying someone who is receiving a relatively high amount of social security, the marriage may give the person the opportunity to draw more social security benefits as the dependent of their new spouse.

### 4. Unemployment Compensation - no effect

### 5. Family Assistance

- a. Depending on the spouse's income, this can decrease the amount of Family Assistance and could even make the recipient no longer eligible for Family Assistance.
- b. If the spouse is added to the assistance unit, this can increase or

decrease the amount of Family Assistance and could even make the recipient no longer eligible for Family Assistance.

6. Medicaid

a. If large enough, the spouse's income could make the person ineligible for Medicaid.

b. If a person who needs nursing home assistance marries, the person may be able to transfer property to his or her spouse and even have some income transferred to the spouse while the person obtains the nursing home care.