

## — Social Security Matters —

# The Impact of Special Housing on Social Security Disability Claims

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**W**e are thrilled to be writing the first of what we hope will be many articles for *Mental Health News*. I hope that the quality and content of our columns will be up to the high standards I see as I look at the current issue.

Many people who struggle with a mental illness also have difficulty maintaining a job. Under the Federal Social Security Disability programs, individuals suffering from a disability including mental illness may receive benefits provided they can show that they are unable to work for at least one year due to their illness.

The Social Security Administration has two programs for people who fall under this category. Social Security Disability ("SSD" or "DIB") does not look at an individual's outside income or living arrangements, but requires a prior work history. By contrast, Supplemental Security Income ("SSI") requires no work history, but does take into account the individual's outside income and assets, as well as his or her living arrangements.

Mental illness is one of the three most common impairments for which disability is claimed and can be either the sole basis for a Social Security Disability claim or one of a number of impairments that, in combination, can render an individual disabled.

With regard to establishing disability, the Although it is the subject of this issue, Social Security Administration is not concerned about living arrangements under either Social Security Disability ("SSD" or "DIB") or Supplemental Security Income ("SSI"), the two programs they administer. Housing comes into play only with regard to the amount of benefits payable under SSI once the medical aspect of a disability has been established.

SSI is payable to disabled persons who typically have limited or no work history and therefore who have not paid enough into the system to qualify for SSD. That is often the case with people who have long term mental illnesses. In fact, the inability to hold a job for extended periods is such a common feature of many mental illness claims that it can often be a short-hand reference to the presence and severity of the condition for both the attorneys handling a claim and the adjudicators, though there is no legal basis for that. As in any claim for disability, whether it is SSI or DIB, there must be medical evi-



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dence to support the disability in a claim for mental illness. Even a comprehensive Functional Capacity Assessment must be supported by treatment notes.

One must also meet both an asset and an income test in order to be eligible for SSI, no matter how severe the disability may be. SSI benefits are payable at a fixed rate by categories that depend upon one's living arrangements. There are two categories for persons who may be living in housing due to mental health problems. These categories apply to children, as well as adults, although the criteria for establishing disability for children are far different from the adult criteria.

Category C is for persons living in Level 1 Congregate Care Facilities; Category D is for Level 2 Congregate Care. The definition of these various facilities is found in the Social Security POMS (Program Operations Manual System) at <https://secure.ssa.gov/poms.nsf/lnx/0501415026NY>. A summary of the requirements for each category is also typically found in the SSI award letter detailing retroactive and future payments that a claimant receives after his or her claim is approved.

In both Category C and D, the monthly payments are made directly to the facility, which then gives a small stipend to the resident. The benefit amounts, including the state supplement for New York, can be found at <https://secure.ssa.gov/poms.nsf/lnx/0501415026NY>.



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Claimants who receive SSD but not SSI do not automatically have their payments made to the facility where they live. However many facilities require that the payments be turned over to them as a requirement of residency. Also, many of those recipients might have their pay-

ments made to a representative payee, which can be the facility itself.

I expect that much of this is familiar to the practitioners and administrators who read this publication regularly. But we find in our practice that for the claimants, and in our practice, these categories and rates are secondary to the process of actually claiming and establishing disability and entitlement to either SSD, SSI or both. I expect that most of our future columns will be focused on the hows and whys of actually obtaining the benefits, or maintaining them when claims are reviewed periodically.

Whether on SSD or SSI, persons in these categories and facilities can have some income, though the amount they are allowed to earn and its impact on continued receipt of benefits differs depending on whether the person is receiving SSD or SSI. The specifics of these offsets can itself be the subject of another column or, if you have any specific or more pressing questions about income, feel free to contact me.

At some point during our representation, almost every client asks me what they have to do to help their case. I always respond: "your job is to try to get better." And with the help of the practitioners, staff and administrators, we often see that happening, especially for those in Level 2 facilities.



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