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Social Security Benefits and Their Impact on Child Support

Wednesday, May 26, 2021

12:30 p.m. – 2:00 p.m. ET

Speaker: Lara Webb Fors, JD

Speaker-Moderator: Tish Keahna Kruzan, JD

90 minutes CLE



Thank you to our sponsor!



Session Description

- Are there payor parents in your office claiming to be disabled? What to do about children receiving benefits? Are you not sure what this means for your case? This session is for attorneys and their staff to understand the difference between Title II (SSD) and Title XVI (SSI) benefits and how they differ when establishing and enforcing child support orders. There are some differences between states' laws, and the impact on UIFSA cases will also be discussed. Bring your questions and your experiences!



Overview of Session

- Definitions
- Basics
- Role of the Obligor
- Establishment
- Enforcement
- Lump Sums Application to Arrears
- How to Credit Monthly Family Benefits
- Implications in Intergovernmental Cases



Definitions



Definitions

- CP/NCP
- SSA
- SSDI
- SSR
- SSI
- Insured
- Family Benefits (auxiliary, derivative)



Basics



Basics, cont.

- Disability
 - Benefits to people who can't work because they have a medical condition that's expected to last at least one year or result in death
 - Most people will need to have worked 10 years — earning at least 40 credits of coverage — to be eligible for SSDI
 - Apply online
 - Appealable
 - Compassionate allowances and Wounded Warriors
 - Determined by state agency



Basics, cont.

- Domestic Violence Survivors
 - Requires evidence to SSA
 - Defined as harassed, abused, life endangered
 - Available to abused adult and his/her children



Basics, cont.

- Title II Benefits (What are you going to do?)
 - Disability, retirement, survivors
 - Insureds are adults
 - Family benefit
 - Benefit starts in the 6-month following disability
 - Source is insurance program paid in by insured and employer
 - Income and attachable for child support



Basics, cont.

- Title XVI Benefits, SSI-Supplemental Security Income
 - Little to no recent work wages
 - Children may qualify based on child's disability
 - Benefit is available in first month of disability
 - Source is general revenue of federal government
 - Not income on guidelines and not attachable for child support



Basics, cont.

- Title XVI Benefits
 - SSA sets the benefit amount each October
 - 2021 SSI Individual: \$794/month
 - 2021 SSI Couple: \$1,191/month
 - Can be supplemented by the state
 - Does not generate a family benefit



Basics, cont.

- Dependents/Children
 - Title II: Spouses, children, adult disabled children, or parents of insured
 - Title XVI: Not applicable



Basics, cont.

- Spouses
 - 62 or older
 - If disabled, 50
 - If caring for insured's child (younger than 16)
 - Unmarried divorced spouse eligible if married at least 10 years



Basics, cont.

- Children
 - Unmarried
 - Biological and adopted
 - Step
 - Younger than 18 unless still in high school, then 19
 - Disabled before the age of 22



Basics, cont.

- Survivors
 - Spouse
 - Children
 - Insured's Parents
 - 62 or older
 - Dependent upon the Insured for at least half of their support



Role of Obligor



Role of the Obligor

- Insured
- Disabled Child
- Widow/er
- Unmarried Ex-Spouse
- Caretaker of child younger than 16
- Survivor and dependent upon deceased child



Establishment



Establishment

- Title II Benefits on the Guidelines
 - Benefit amount to worker is income for purposes of calculating child support
Burns v. Edwards, 367 N.J. Super. 29, 842 A.2d 186 (App. Div. 2004)
 - Children's Title II benefits on another's report (state law)
 - Included in guidelines as income of the insured parent (Indiana)
 - Not included as the insured parent's income (Missouri)
 - Both states give the insured parent a credit for the benefit amount



Establishment, cont.

- Title XVI Benefits on the Guidelines
 - Insured
 - Benefit amount is not considered income for purposes of calculating child support and when it's the sole source of income, income cannot be imputed to that disabled parent. 45 C.F.R. § 302.56(c)(1).” *Burns v. Edwards*, 367 N.J. Super. 29, 842 A.2d 186 (App. Div. 2004)
 - Children’s Title XVI benefits on self account
 - Does not offset parent’s obligation to support. *Gifford v. Benjamin*, 383 N.J. Super. 516, 520, 892 A.2d 738, 740, 2006 N.J. Super.



Enforcement



Enforcement

- Title II
 - SSDI is attachable for child support purposes, even if the support entitlement has been assigned to the State
 - Attachment of Social Security Benefits, DCL-00-103, Oct 6, 2000
 - June 9, 2020, Final Rule amended at 45 CFR §307.11(c)(3)
 - prevents garnishing NCP's financial accounts when ncp receives SSI and SSDI/SSR benefits
 - Gives States the option to prevent sending IWO to SSA for the SSDI/SSR portion of benefit when NCP is also receiving SSI



Enforcement, cont.

- SSI
 - Cannot be attached to pay child support, even if they are deposited in a bank account with non-SSI funds if the SSI funds are traceable to Social Security
 - Attachment of Social Security Benefits, DCL-00-103, Oct 6, 2000
 - Garnishment of Supplemental Security Income Benefits, DCL-13-06, February 27, 2013
 - Garnishment of Federal Payments for Child Support Obligations, PIQ-09-01, August 25, 2009



Enforcement, cont.

- Case closure rules
 - 45 CFR §303.11(b)(9)
 - State option: SSI benefits only or concurrent SSI and Title II



How to Credit Monthly Family Benefits



How to Credit Monthly Family Benefits

- When to give insured NCP credit for family benefit received directly by the CP?
 - Motion to Modify
 - Impacts the financial resources of the family
 - Insured entitled to a credit
 - Put CP on notice of the benefit and prevent overpayment
 - *In re Marriage of Robinson*, 651 P.2d 454 (Colo.App.) 1982.
 - *In re Marriage of Wright*, 924 P.2d 1207, 1996 Colo. App. LEXIS 256, 20 BTR 1237



How to Credit Monthly Family Benefits, cont.

If a motion to modify is used, when does the relief begin?

- NCP's relief is limited to the service of motion, 42 U.S.C. §666
- vs.
- Title II benefits should be an exception and credit back to date family benefits began if criteria is met, *Settle v. Settle*, 208 W. Va. 310, 540 S.E.2d 178 (2000)



How to Credit Monthly Family Benefits, cont.

- When to give insured NCP credit for family benefit received directly by the CP?
 - Automatically give the NCP credit
 - Absent any other relevant facts, no need to modify
 - Permitting CP to receive family benefits and all of child support order is an unreasonable windfall and a *de facto* modification
 - *Board. v. Board*, 690 S.W.2d 380, 381 (Ky. 1985).
 - SSDI benefits are paid because of the Insured's disability and serve as a substitute for the Insured's earnings. A credit for family benefits paid directly does not retroactively modify the Insured NCP's monthly CS order; it merely changes the source of the payment
 - *Crago v. Donovan*, 594 N.W.2d 726, (SD.1999).



When the Benefits Do Not Match the Order

- Benefits are more than the child support order
 - Excess is considered gift and if there are arrears, send IWO to SSA for arrears payment.
 - See *CSEA v. Doe*, 990 P.2d 1158 (Hawai'i App. 1998); *In re Marriage of Robinson*, 651 P.2d 454, 455-456 (Colo.App. 1982); *Weeks v. Weeks*, 821 S.W. 2d 503 (Mo. 1991).
- Benefits are less than the child support order
 - Agency sends an IWO to SSA to collect the difference plus a payment towards the arrears.
 - Satisfaction
 - *Potter v. Potter*, 169 N.J. Super. 140, 404 A.2d 352 (App. Div. 1979) (NJ Supreme Court ruled that the NCP's AB lump sum paid to children, though the monthly AB amount was less than the court-ordered support, satisfied the monthly cs judgment in full.)



Issues

- How many children or dependents are there now?
- Has the insured lost the benefits?
 - Lapse
 - Only lost by insured—dependent benefits remain
 - Incarceration
 - Warrant
 - Violating parole/probation



Lump Sums—Application to Arrears



Lump Sums—Application to Arrears

- SSI – not attachable, not an issue
- Retirement and Survivors benefits have known dates – usually not a lump sum issue
- SSDI—is the lump sum issue



Lump Sums—Application to Arrears, cont.

- How does this lump sum issue happen?
 - 18-24 months from application to hearing determination
 - Start date of payments is in the past
 - Both insured and family benefits get paid for past period in a lump sum
 - Lump sums are not paid at same time
 - State laws determine how lump sums are applied



Lump Sums—Application to Arrears, cont.

- How to apply the lump sum to the arrears
 - Particularly
 - Dollar for dollar



Lump Sums—Application to Arrears, cont.

Particularly

- Children's auxiliary lump sum award should be applied only to arrears which accrued during the time period for which the benefit was paid
 - *Swaney v. State of Wyoming, Department of Family Services, Child Support Enforcement*, 256 P.3d 514, 516-517 (Wyo. 2011); *In re Marriage of Hohmann* 274 P.3d 27 (Kan.App. 2012);
- Any lump sum retirement or disability payments due to the retirement or disability of the noncustodial parent...paid for a period of time that precedes the date of such benefit date eligibility, or any amount in excess of the established child support order or judgment, must be deemed a gratuity to the child.”
 - C.R.S. §14-10-115(11)(d) (Colorado)



Lump Sums—Application to Arrears, cont.

Dollar for Dollar

- Equity remedies are a special blend of what is necessary, what is fair, and what is workable.”
 - *Lemon v. Kurtzman*, 411 U.S. 192, 200, 93 S.Ct. 1463, 1469, 36 L.Ed.2d 151, 161 (1973).”
- Title II family payments are derivative benefits of the insured and paid because of the insured’s credits and benefit amount
- SDU distribution rules for payments
- Triple payments



Lump Sums—Application to Arrears, cont.

- Should CPs be required to pay back overages if NCP has no arrears?
 - Yes—Courts have discretion to order a credit and even a recoupment to a NCP from the family benefit lump sum if there were no arrears at the time of the lump sum
 - See *C.D.G. v. N.J.S.*, 469 S.W.3d 413 (Ky. 2015)
 - No—The funds belong to the child, not the NCP, and the child has committed no inequitable conduct nor been unjustly enriched.
 - See *Keith v. Purvis*, 982 So.2d 1033 (Miss. App. 2008); *Steel v. Hardwick*, 551 S.E.2d 42 (WV 2001).



Lump Sums—Application to Arrears, cont.

- Should CPs be required to pay back overages if NCP has no arrears?
 - Maybe—A Court may consider, but is not required to, grant a credit to a child support obligor when the lump sum family benefit duplicates child support paid.
 - *Stephenson v. Papineau*, 358 P3d. 86 (Kan. 2015). See *Rosenbaum v. Shaw*, 459 P.3d 467, 2020 and *In re Marriage of Allen*, 386 P.3d 1287, 2016 Ariz. App. that cite and follow *Stephenson*.



Issue: IV-D Agency's Role in Applying for Family Benefits

- How active should the IV-D agency be to get family benefits flowing for the child?
 - Outreach to educate
 - Condition of probation or contempt
 - Confidentiality issues?
 - If CP fails to file, is it non-cooperation?
 - Should IV-D agency have standing in a IV-D case to apply?



Implications in Intergovernmental Cases



Implications in Intergovernmental Cases

- Registered for Modification vs. for Enforcement
- Challenges
 - Need to know other states' policies and laws
 - Application to arrears
 - Case closure rules
 - Automated systems need to be monitored



Implications in Intergovernmental Cases, cont.

- Part SSA, part jurisdiction, part case closure
 - *Moye v. Njie*, 2016 Pa. Super. Unpub. LEXIS 2340, 154 A.3d 842 (filed July 6, 2016)
 - 2004 PA child support order; obligor father moves to GA; mother and child remain in PA; PA sends referral to GA, and the PA order was registered in GA
 - In 2008 GA closes case for PA's failure to cooperate and sets arrears at zero
 - 2011, father is shot and is permanently disabled; starts to receive SSDI
 - 2012, PA reinstates support order retroactive to date GA terminated order, because it was terminated in error; father appeals



Implications in Intergovernmental Cases, cont.

- Part SSA, part jurisdiction, part case closure
 - *Moye v. Njie*, 2016 Pa. Super. Unpub. LEXIS 2340, 154 A.3d 842 (filed July 6, 2016)
 - We thus conclude Georgia lacked authority to modify the support order, and Pennsylvania was not bound to recognize the termination. 23 Pa.C.S.A. § 7612. For these reasons, we discern no abuse of discretion by the trial court in not revisiting the issue of the April 19, 2012, reinstatement of the underlying support order.”



Wrap Up / Q & A



Wrap Up / Q & A

- Title II (Do)

- Income for guidelines and attachable
- Can provide family benefits
- Recipient is eligible for Medicare after 2 years of disability
- Watch out for lump sum issues

- Title XVI

- Not income for guidelines and not attachable
- Will not provide family benefits
- Recipient is eligible for Medicaid immediately
- 2021 SSI Individual: \$794/month
- No dependents and no lump sum issues



Wrap Up / Q & A, cont.

- Investigate and Ask!
- Anyone may be a Title II beneficiary
- Today's number of dependents
- Why a parent is receiving SSI, but less than the maximum amount
- Get their Verification Letter / SS Statement



Contact Information



thank you!

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