

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

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Reason for this Transmittal

- State Law or Regulation Change
 Federal Law or Regulation Change
 Court Order or Settlement Change
 Clarification requested by One or More Counties
 Initiated by DCSS

August 6, 2002

CSS LETTER: 02-15

ALL -D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: ENFORCEMENT OF SUPPLEMENTAL SECURITY INCOME BENEFITS

REFERENCE: CSS LETTERS 01-11, 01-16, AND 02-04

This letter is to clarify the Department of Child Support Services (DCSS) policies regarding the enforcement of child support obligations for individuals receiving Supplemental Security Income/State Supplementary Payment (SSI/SSP) and/or Social Security Disability Insurance (SSDI) benefits.

The basic policy is:

1. SSI/SSP benefits are exempt from child support enforcement activities. Cases in which the obligor's only source of income is SSI/SSP must be closed pursuant to the case closure regulations. The support order should be set at zero before closing the case.
2. For individuals receiving both SSDI and SSI/SSP, or for individuals receiving SSDI and who would be eligible for SSI/SSP benefits except for excess income, only five percent of the individual's SSDI benefits may be used to meet child support arrearage obligations.
3. Local child support agencies (LCSA) must file a motion with the court to modify a support order within 30 days of becoming aware that an obligor's SSI/SSP income was considered in establishing the court order. If more than five percent of an obligor's SSDI benefits are inappropriately being attached to meet arrearage obligations, the LCSA shall issue an amended income withholding order.



Obligors Receiving SSI/SSP Benefits

The child support case must be closed if the obligor's only source of income is SSI/SSP. This applies to obligors receiving SSI/SSP as an aged, blind, or disabled individual. SSI/SSP is a public assistance benefit based on the individual having low income and limited resources. The general prohibition in State law against attaching or enforcing SSI/SSP benefits is found in Section 17516 of the Family Code, which specifies that benefits paid pursuant to Title XVI of the Social Security Act shall not be employed to satisfy a support obligation. The case shall be closed pursuant to California Code of Regulations (CCR), Title 22, Section 118203(a)(5)(D) which requires case closure when the non-custodial parent is receiving SSI/SSP and has no other attachable income or resources. In the absence of any other attachable income, it must be assumed that any resources, i.e. bank accounts, are the result of the SSI/SSP benefit and are not attachable. Before closing the case, the LCSA must petition the court to set the support order to zero.

The federal prohibition against taking any enforcement actions against SSI/SSP benefits is found at 42, United States Code Section 407(a) and 5, Code of Federal Regulations (CFR), Section 581.104(j), which specify that SSI benefits are not subject to execution, levy, attachment, garnishment, or other legal process. 45, CFR Section 581.102 defines "legal process" as any writ, order, summons, or other similar process in the nature of garnishment. "Legal process" encompasses not only the use of formal legal measures but also express or implied threats and sanctions.

Should an LCSA determine that a support order was inappropriately based on a combination of SSI/SSP benefits and other income, the LCSA shall within 30 days petition the court to modify the support order to reflect the obligor's ability to pay based only on the non-SSI/SSP income and issue an amended income withholding order, if appropriate. For example, if an obligor is receiving a \$500 SSI/SSP grant and \$250 pension income, the support order should reflect only the pension income. When reviewing cases involving obligors who are receiving SSI/SSP, the LCSA should be mindful that even if an obligor has income in addition to the SSI/SSP benefit, that income and any assets, were considered in determining that the obligor met the financial means test of the SSI/SSP program. Thus, the obligor's non-SSI/SSP income and resources must fall below the SSI/SSP level in order for the obligor to be eligible for SSI/SSP. SSI/SSP benefit amounts are essentially the difference between any income the individual may have and the SSI/SSP maintenance need allowance.

If a custodial party requests the LCSA to open and establish a case against an obligor receiving SSI/SSP benefits, the LCSA is required under CCR, Title 22, Section 112100(b) to accept the custodial party's application. Furthermore under Section 112155(a), an LCSA is required to obtain an order for support that is in compliance with the Statewide uniform guidelines specified in Article 2, of Chapter 2, of Part 2, of Division 9, of the Family Code, commencing with Section 4050. Since SSI/SSP benefits are a form of public assistance, SSI/SSP may not be counted as income in

determining/establishing a child support order. Thus, if the obligor's only source of income is SSI/SSP, the guidelines will determine that the order be set at zero. Once the case has been opened/established and the order set at zero, the case qualifies to be closed pursuant to the case closure regulations. CCR, Title 22, Section 18203(a)(5)(D) requires case closure when the noncustodial parent is receiving SSI/SSP and has no other attachable income or resources.

Obligors Receiving SSDI Benefits

If the obligor is receiving both SSI/SSP and SSDI, the LCSA shall assure that the current support order reflects the obligor's ability to pay based only on the obligor's SSDI benefits. If the LCSA determines that the SSI/SSP income was considered available when the existing support order was established, the LCSA shall within 30 days petition the court to modify the support order based only on the SSDI benefit and issue an amended income withholding order. If the obligor has an arrearage balance, the income withholding order shall include a provision for attaching only five percent of the obligor's SSDI monthly benefits for the liquidation of arrearages. As noted above, in order for an obligor to receive both SSI/SSP and SSDI, the obligor's combined income must fall below the maintenance need for the SSI/SSP program.

If the obligor is receiving SSDI benefits and would be eligible to receive SSI/SSP, but for excess income, then the LCSA shall within 30 days issue an income withholding order for the liquidation of arrearages not to exceed five percent of the obligor's monthly SSDI benefits.

The obligor is required by law at Section 5246(c)(3), Family Code, to provide the LCSA with proof that the obligor is receiving SSI/SSP, or would be eligible for SSI/SSP, except for excess income, and if applicable, proof of receipt of SSDI. DCSS has become aware that the Social Security Administration office (SSA) in determining if an applicant is eligible for SSI/SSP benefits, conducts the SSI income test first. If the applicant fails the income test, the SSI resource test is not completed by the SSA. Therefore, DCSS will develop a self certification SSI resource test form for LCSAs to use as proof of eligibility for SSI/SSP, but for excess income. The self certification form will require the obligor to certify under penalty of perjury that the obligor meets the SSI resource test limits. This self certification form will provide the LCSA with proof and authorization to attach only five percent of the obligor's SSDI monthly benefits. DCSS will develop and distribute the self certification SSI resource test form to LCSAs in the near future.

For your information the following are brief descriptions of the various benefits available under Title II and XVI of the Social Security Act.

SSI/SSP Benefits for aged, blind, or disabled individuals (Title XVI)	Social Security Act (SSA) Benefits (Title II)	Social Security Disability Insurance (SSD/SSDI) (Title II)
<p>Federal income supplement program (states may supplement SSI benefits i.e. SSP). SSI/SSP payments are made on the basis of financial need and are <u>not</u> based on past earnings. SSI benefits are available to those who are 65 years or older, blind, or disabled and have little or no income. Children may also qualify for SSI/SSP payments as a blind or disabled person. <u>SSI/SSP benefits are exempt from child support enforcement.</u></p>	<p>There are five major categories of benefits paid through social security taxes:</p> <ul style="list-style-type: none"> • Retirement • Disability (SSD/SSDI) • Family benefits • Survivors • Medicare <p>Title 42, United States Code (USC), Section 659(h)(1)(A)(ii)(I) specifies <u>that benefits under the SSA, including SSD/SSDI benefits are considered remuneration for employment and therefore attachable for child support purposes.</u> However, as noted above, only 5% of the SSDI benefit may be attached for arrearages in certain situations.</p>	<p>These benefits are based on total disability and inability to work. To be found disabled under the law, an individual must have a medically determinable physical or mental impairment(s) of such severity that he or she is not only unable to do his or her previous work but cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful work.</p>

If you have any questions or concerns regarding this matter please contact Shar Schroefer, Chief of the Policy Branch at (916) 464-5055.

Sincerely,

PATRIC B. ASHBY
 Deputy Director
 Child Support Services Division