

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



April 19, 2001

CSS LETTER NO. 01-11

TO: ALL IV-D DIRECTORS
ALL DISTRICT ATTORNEYS
ALL COUNTY ADMINISTRATIVE OFFICERS

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

SUBJECT: ATTACHMENT OF SOCIAL SECURITY BENEFITS

This letter clarifies the Department of Child Support Services' (DCSS) policy concerning the ability of local child support agencies to attach Social Security benefits. Clarification is also provided concerning whether or not Supplemental Security Income (SSI) benefits that are deposited into a bank account retain their character as protected benefits. In order to clarify this subject area, DCSS is providing several commonly asked questions with answers.

Question #1: Are Social Security Disability benefits subject to child support collection?

Answer: Yes. Social Security Disability (SSD) benefits under Title II of the Social Security Act (SSA) are not normally subject to attachment or other legal processes in accordance with federal law. The statutory prohibition on attaching SSD benefits is found at 42 U.S.C. Section 407(a).

The SSA prohibition against attaching SSD benefits is expressly overridden as it relates to child support collection activities. The ability for the child support program to attach SSD benefits is found at 42 U.S.C. Section 659(a). This section of law provides that federal payments, that are based on remuneration for employment, are subject to wage withholding or other legal processes brought by a state IV -D agency or any individual obligee seeking to collect on a child support obligation. Moreover, Section 659(h)(1)(A)(ii)(I) specifies that benefits under the SSA, including SSD benefits, are considered remuneration for employment. Therefore, SSD payments can be attached for child support purposes.

Question #2: Are Supplemental Security Income benefits subject to child support collection?

Answer: No. The statutory prohibition against attaching benefits found at 42 U.S.C. Section 407(a) applies to Supplemental Security Income (SSI) benefits. Federal law at 42 U.S.C. Section 1383(d)(1) mandates that the bar against attaching these type of benefits under the SSA applies to SSI benefits. Moreover, federal regulations at 5 Code of Federal Regulation (CFR) 581.104(j) mandate that SSI benefits are not subject to garnishment.

The ability to override the bar against attaching these type of benefits under 42 U.S.C. Section 407(b) only applies to benefits which are based on remuneration for employment and is not applicable to SSI benefits. Payments under the SSI program are needs based and not remuneration for employment. Finally, some courts have decided that SSI benefits are a form of public assistance and intended to protect the individual recipient from poverty. See, *Becker County Human Servs. re Becker County Foster Care v. Peppel*, 493 N.W.2nd 573 (Minn. App. 1992), *Tennessee Dept. of Human Serv. ex rel Young v. Young*, 802 S.W.2nd 594 (Tenn. 1990). Therefore, since SSI benefits are not considered remuneration for employment under federal law they are not attachable for child support collection purposes.

Question #3: Are SSI benefits that are paid into a bank account subject to child support collection?

Answer: No. The United States Supreme Court determined that Social Security benefits deposited into a bank account "retained the quality of 'moneys' within the purview of Section 407[.]" See, *Philpott v. Essex County Welfare Bd.*, 409 S.Ct. 590, 34 L.Ed.2nd 608 (1973). Courts have also held that SSI benefits are exempt from legal process even when they are commingled in a bank account with other funds, so long as the SSI benefits are reasonably traceable to Social Security. See, *NCNB Financial Services, Inc. v. Shumate*, 829 F.Supp. 178 (W.D. Va. 1993), *affd.* 45 F.3d 427, *cert. den.* 515 U.S. 1161. The reasoning in answers to questions #1 and #2 above is applicable to this question since the prohibition on the attachment of SSI benefits is based on the same statutory provisions that apply to Social Security benefits. Please note that the prohibition against attaching these type of SSI benefits has not been expressly overridden by any other statute. Since federal law and the courts have determined that SSI benefits are a public benefits rather than remuneration for employment, these type of benefits are exempt from attachment for child support collection. Therefore, it is DCSS' policy that SSI benefits deposited into a back account are not attachable for child support collection. This policy is based on both federal law and court decisions.

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If you have any questions on this issue, please contact Josefina Angulo in the Policy Branch at (916) 464-5171 or email her at josefina.angulo@dcss.ca.gov.

Sincerely,

CURTIS HOWARD

Assistant Deputy Director