

## Chapter Ten

### Medicaid and Supplemental Security Income (SSI)

Scope of chapter. This chapter deals with the Regular Medicaid program and Supplemental Security Income (SSI). Because the only basis on which an individual who does not have children and who does not need long-term care can receive regular (“full”) Medicaid in Texas is by being an SSI recipient, SSI is considered in detail first. In Texas, eligibility for SSI means automatic eligibility for full (regular) Medicaid.

Chapter questions and answers. After some of the paragraphs there are questions relating to the material covered in the paragraphs. An answer key is at the end of the chapter.

#### Overview of paragraphs.

- Paragraph 1 discusses sources of law for the SSI program.
- Paragraph 2 discusses sources of law for the Medicaid program.
- Paragraph 3 discusses Representation of applicants.
- Paragraphs 4 and 5 discuss pertinent agency websites.
- Paragraphs 6 and 7 discuss the amount of the SSI benefit.
- Paragraphs 8 – 10 treat in an initial manner the non-financial aspects of SSI eligibility.
- Paragraphs 11 – 15 treat eligibility of non-citizens (which is very tightly controlled).
- Paragraph 16 addresses the effect of absence from the U.S.
- Paragraph 17 addresses the requirement to file for other benefits that a person may be eligible for.
- Paragraph 18 addresses the effect of drug addiction or alcoholism on SSI eligibility.
- Paragraphs 19 – 46 address financial aspects of eligibility for SSI.
- Paragraphs 47 – 62 address the administrative decision-making process in the SSI program.
- Paragraph 63 addresses initially other benefits that accompany eligibility for SSI.
- Paragraphs 64 and 65 addresses regular Medicaid coverage.
- Paragraph 66 addresses food stamp benefits in relation to SSI eligibility.

- Paragraph 67 addresses resources to help you help clients.
- Paragraph 68 addresses manuals that may be of use.
- Paragraph 69 addresses the role of Texas Lawyers Care, an office of the State Bar of Texas.
- Paragraph 70 addresses the website of Texas Legal Services Center.
- Paragraphs 71 and 72 address review of the client's SSI file.
- Paragraph 73 addresses obtaining cost-free medical records.
- Paragraph 74 reiterates that it is the client's decision who represents the client at the administrative level.

### Back-up and support.

Any Benefits Counselor who has questions about the information in this chapter can call the Legal Hotline for Texans at the Benefits Counselor unlimited back-up and support number for further information. In certain paragraphs, Web sites are identified. Once the reader has located the level of a Web site page or link that the reader will be using time and again, the reader can, of course, bookmark that Web location.

1. **Sources of Law -- SSI.** The legal basis for the SSI program is Title XVI of the Social Security Act. The program is codified – made part of the U.S. Code – at 42 United States Code Sections 1381 and 1381a. SSI regulations are at 20 Code of Federal Regulations Section 416 *et seq.*, accessible at the link [http://www.access.gpo.gov/nara/cfr/waisidx\\_09/20cfrv2\\_09.html](http://www.access.gpo.gov/nara/cfr/waisidx_09/20cfrv2_09.html). These sources of law are abbreviated "U.S.C." and "C.F.R." At the website of the Social Security Administration, one can access a wide range of legal and explanatory materials relating to SSI (and Social Security). There is an area of the Social Security website that is called "Representing Claimants website." This is at [www.ssa.gov/representation/](http://www.ssa.gov/representation/) and at that location one finds a link to the Program Operations Manual System (POMS), the Hearings, Appeals, and Litigation Law (HALLEX) Manual, and the Social Security Laws and Regulations. Another source of basic information about SSI (and Social Security) is the "Online Social Security Handbook: Your Basic Guide to the Social Security Programs." This is at [www.ssa.gov/OP\\_Home/handbook/handbook.html](http://www.ssa.gov/OP_Home/handbook/handbook.html). All of these resources at the Social Security website are free of charge.

2. **Sources of Law – Medicaid.** The federal Medicaid law is Title XIX of the Social Security Act. The federal Medicaid law is *codified* at 42 United States Code Section 1396. Federal Medicaid regulations are at 42 Code of Federal Regulations Parts 430 – 505, accessible at the link [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/42cfrv4\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfrv4_08.html). The Texas Medicaid law is Chapter 32 of the Human Resources Code, accessible at the link <http://www.statutes.legis.state.tx.us/Docs/HR/word/HR.32.doc>. Texas Medicaid regulations are at Title 1 Part 15 of the Texas Administrative Code. In particular, 1 Texas Administrative Code Chapter 358 treats “Medicaid Eligibility for the Elderly and People with Disabilities.” Chapter 358 of Title 1 of the Texas Administrative Code is accessible at the link [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=15&ch=358](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=15&ch=358). In Texas, SSI and Medicaid go together in the sense that if one qualifies for SSI, one automatically qualifies for Medicaid. At present (2012). This type of Medicaid will be referred to in this chapter as “regular Medicaid.” (Regular Medicaid is also available to recipients of Temporary Assistance for Needy Families; receipt of regular Medicaid does not necessarily mean eligibility for SSI). Regular Medicaid pays for doctors’ visits, hospital care, and certain other health care. The Texas Medicaid Eligibility Handbook is at <http://www.dads.state.tx.us/handbooks/mepd/>. The Texas Administrative Code is at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac).

Question.

Which statement is true?

\_\_\_\_\_ In Texas, receipt of regular Medicaid necessarily means eligibility for SSI.

\_\_\_\_\_ In Texas, every person who receives SSI is automatically eligible for regular Medicaid.

3. **Representation of applicants (claimants) and recipients (beneficiaries).** As with other programs of an administrative law nature, in steps at the administrative level – in steps not involving court action – the client can ask a non-lawyer to provide representation in connection with an application for, or continued eligibility for, Medicaid and/or SSI. Thus, if an area agency on agency authorizes a Benefits Counselor to provide representation to a client at the administrative level in regard to SSI and if the client wants the Benefits Counselor to provide the

representation, the Benefits Counselor can represent the client in regard to SSI at the administrative level. The government agencies at the administrative level are the Social Security Administration and the “Division for Disability Determination Services” (which, in Texas, is part of the Department of Assistive and Rehabilitative Services). The application and hearing process for SSI is controlled by the Social Security Administration. A non-lawyer cannot charge a fee for representing a person before the Social Security Administration, without the permission of the Social Security Administration (but, of course, Texas Area Agencies on Aging do not charge for their services). Under Texas Human Resources Code Section 12.001, a non-lawyer is forbidden from charging a fee for assisting an individual to receive Medicaid (or food stamps, or Temporary Assistance for Needy Families).

Questions.

True or false: A Benefits Counselor can provide representation in SSI matters (and in Medicaid matters) at the administrative level, if the client requests and the area agency on aging permits such representation. \_\_\_\_ True. \_\_\_\_ False.

Under Texas Human Resources Code Section 12.001, how much can a non-lawyer charge for representing a person in obtaining services from the Texas Health and Human Services Commission? (Choose the one correct answer.)

- A. A flat fee of \$100.
- B. \$75 per hour.
- C. 33% of the value of the benefits obtained.
- D. Zero.

Answer:\_\_\_\_\_

4. The website of the Social Security Administration is at [www.ssa.gov](http://www.ssa.gov). The publications of Social Security, including those relating to SSI, can be viewed and downloaded at <http://www.ssa.gov/pubs/>. The website of the Texas Department of Assistive and Rehabilitative

Services' Division for Disability Determination Services is at [www.dars.state.tx.us/services/dds.shtml](http://www.dars.state.tx.us/services/dds.shtml).

5. The website of the Texas Health and Human Services Commission is at <http://www.hhsc.state.tx.us/index.shtml>. The Texas Health and Human Services Commission is the single state Medicaid agency (vis-à-vis the federal government). However, the Texas Health and Human Services Commission has delegated to the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services, and the Texas Department of Family and Protective Services, certain operational duties regarding Medicaid for the clients of those Departments. But the Texas Health and Human Services Commission is the responsible agency in regard to certifying persons for eligibility for Medicaid. Because eligibility for SSI in Texas automatically means eligibility for regular Medicaid, there should not be questions about certification for regular Medicaid, in regard to SSI recipients.

Question. Vis-à-vis the federal government, which agency of the State of Texas is the single state Medicaid agency?

\_\_\_\_\_ The Texas Health and Human Services Commission

\_\_\_\_\_ The Texas Department of Aging and Disability Services

\_\_\_\_\_ The Texas Department of Assistive and Rehabilitative Services

\_\_\_\_\_ The Texas Department of Family and Protective Services.

6. **Supplemental Security Income (SSI).** The SSI program provides a modest amount of income to eligible persons. For 2012 the maximum benefits from the federal government under SSI are \$698 per month for an individual and \$1,048 per month for a couple if both spouses are eligible. The maximum benefits are effective starting each January, having been increased by the percentage increase in Social Security benefits, due to the Cost of Living Adjustment (the "COLA"). The COLA – if there is to be one – is usually announced by the November before the January when the benefit changes become effective. It is possible to have additional income

and still receive SSI. There was no cost of living increase from 2010 to 2011, but there was – 3.6 percent – from 2011 to 2012. See <http://www.ssa.gov/pressoffice/pr/2012cola-pr.html>.

Question.

If the SSI benefit will be changing because of a Cost of Living Adjustment, in what month is the change effective?

\_\_\_\_ January \_\_\_\_ April \_\_\_\_ July \_\_\_\_ October

7. The basic SSI benefit is entirely federally-funded. Some states under some circumstances provide varying levels of supplement to the federal SSI benefits for persons in the community. These state supplements are listed at <http://www.ssa.gov/pubs/> under “SSI in California” though “SSI in Vermont.” For persons in the community, Texas does *not* provide a supplement. Thus, in Texas, for a person in the community, the maximum SSI benefit is the above-stated federal maximum, starting on January of 2012, is \$698 per month for an individual and \$1,048 per month for a couple, if both spouses are eligible. Texas does provide a state supplement to the SSI benefit if the SSI recipient is in a nursing facility, in order to provide SSI recipients in nursing facilities with the full \$60 monthly personal needs allowance. This state supplement is \$30 monthly per SSI recipient in a nursing facility in Texas.

8. **Non-financial eligibility requirements.** Non-financial eligibility requirements for SSI are that the applicant must be either age 65, or disabled, or blind.

9. Disabled means "unable to engage in any substantial gainful activity" by reason of a medically determinable physical or mental impairment that can be expected to last for a continuous period of at least 12 months or to result in death. The same disability standard is used in both the SSI program and the Social Security Disability program. Unlike under the VA system or some private disability insurance policies, Social Security does not have a “partial disability” category. “Disability” is the criterion that is most difficult to prove. Proving that a person is age 65, or that a person is blind, is not usually very murky. But meeting the criteria for “disability” can be a very complex process. Two fundamental tools for determining if an adult or child meets the Social Security disability criteria (which are used for SSI) are the “Adult

Listing of Impairments” and the “Childhood Listing of Impairments.” These are also called “Bluebooks.” They are at [www.ssa.gov/disability/professionals/bluebook/AdultListings.htm](http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm) and [www.ssa.gov/disability/professionals/bluebook/ChildhoodListings.htm](http://www.ssa.gov/disability/professionals/bluebook/ChildhoodListings.htm). The complex disability determination process is discussed further on in this chapter, beginning at paragraph 57.

Question.

A person who is unable to engage in any substantial gainful employment by reason of a medically determinable physical or mental impairment that can be expected to last for a continuous period of at least 12 months or to result in death (choose one):

- A. Meets the definition of “disabled” under Social Security and SSI.
- B. Has Munchausen’s by proxy.
- C. Has a factitious disorder.
- D. Has conscious nonpathologic syndrome.

Answer: \_\_\_\_\_

10. Blindness means vision, in the better eye, with a correcting lens, of 20/200 or less, or tunnel vision of 20 degrees or less.

11. **Eligibility of non-citizens.** There is only limited eligibility for SSI for non-citizens who reside in the U.S. In assisting non-citizens in applying for SSI, these matters come into consideration: (1) Is the non-citizen eligible for SSI; (2) What documentation will Social Security require of the immigration status of the non-citizen: and (3) What effect (if any) will receiving SSI have on the non-citizen’s ability to “adjust status” or avoid deportation? In regard to the last concern – the effect of receiving SSI on the later ability to “adjust status,” or avoid deportation, there are very, very few non-citizens for whom these effects will arise – largely because the door to SSI is open to very few non-citizens for whom receiving SSI can lead to an allegation that the non-citizen has become a “public charge.”

- In regard to non-citizens and SSI, there are three questions not presented in regard to citizens:
  - Is the non-citizen eligible for SSI?
  - What documentation will Social Security require of the immigration status of the non-citizen?
  - What effect (if any) will receiving SSI have on the non-citizen’s ability to “adjust status” or avoid deportation?

12. In regard to the first consideration in paragraph 11, “Is the non-citizen eligible for SSI?” this may be said: Those who have been granted the status of refugees, and asylees by the Immigration and Naturalization Service (INS), are eligible for SSI (if they otherwise qualify) for 7 years. Non-citizens whose deportation has been withheld by the INS are eligible (if they otherwise qualify) for 7 years. Non-citizens lawfully in the U.S. who are active duty members of the armed forces or who are honorably discharged veterans, and their spouses and dependent children are eligible, if they otherwise qualify. Lawful permanent residents who have 40 credits of Social Security coverage (and their spouse or widow/widower) can receive SSI if they otherwise qualify. Non-citizens lawfully in the U.S. who were receiving SSI on August 22, 1996, can still receive SSI. Non-citizens lawfully in the U.S. on August 22, 1996, who thereafter became disabled (as defined by the SSI law) can receive SSI if they otherwise qualify. Any person who received SSI before January 1, 1979, can continue to receive benefits (if he or she otherwise qualifies) as long as the Commissioner of Social Security lacks clear evidence that the person is an ineligible non-citizen.

13. Eligibility of non-citizens for SSI is the subject of POMS SI 00502.000, at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0500502000>. Eligibility of non-citizens is also discussed in the Social Security Administration’s “Answers to Your Questions,” available through <http://ssa-custhelp.ssa.gov>.

14. In regard to the second consideration mentioned at paragraph 11 – What documentation will the Social Security Administration accept to prove that the non-citizen is in a category that allows for eligibility for SSI, the non-citizen should, of course, have a document issued by the U.S. government which shows the immigration status. For instance, a legal permanent resident

will likely have an “I-551” – a Permanent Resident Card. The full set of immigration forms is listed at 8 Code of Federal Regulations Part 299. Whatever document the non-citizen presents to the Social Security Administration, the Social Security Administration will verify the non-citizen’s eligibility for SSI through the Department of Homeland Security. This is provided for in POMS SI 00502.115. Thus, non-citizens seeking SSI have no advantage in being untruthful about their immigration status.

15. In regard to the third consideration in paragraph 11, this basically concerns whether a non-citizen, who receives SSI, can be considered to have become a “public charge.” A “public charge” is an immigrant who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.” 64 Federal Register 28681 (May 26, 1999), promulgating 8 Code of Federal Regulations §212.102(a). (The Federal Register is the publication issued by the Government Printing Office in which federal regulations appear before they are codified in the Code of Federal Regulations.) Legal permanent residents who do not leave the United States for more than 180 days are not at risk of being considered “applicants for admission” and thus cannot be excluded from the United States for having received SSI. 64 Federal Register 28691 (May 26, 1999). Refugees and asylees are exempt from public charge scrutiny, as are Amerasian immigrants, and aliens covered by the Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act, and the Haitian Refugee Immigration Fairness Act. It is very, very unlikely that a legal permanent resident or other alien could ever be deported for receiving SSI. Deportation can only occur for the receipt of a cash benefit, if there was a duty to reimburse for the cash benefit. 64 Federal Register 28691 (May 26, 1999). There is no such duty under SSI. Even if there were such a duty, the federal government would have to have obtained a judgment for the SSI. Moreover, the federal government would have to show that the circumstances that gave rise to eligibility for SSI were present *before* the alien was admitted into the United States. 64 Federal Register 28691 (May 26, 1999). As is stated in the Federal Register, “Deportations based on public charge grounds have been rare, and the new immigration and welfare laws are not likely to change this.” 64 Federal Register 28691 (May 26, 1999).

16. **Other non-financial conditions of eligibility (applicable to all).** The person cannot be absent from the U.S. for a calendar month.

17. The applicant must file for any other benefits for which he/she is potentially eligible, not refuse vocational rehabilitation services if he or she is blind or disabled, and accept appropriate treatment, if available, for drug addiction or alcoholism. The requirement to file for other benefits that the SSI applicant may be eligible for is dealt with at POMS SI 00510.000. This is found at <https://secure.ssa.gov/poms.nsf/lnx/0500510000>. Types of other benefits for which the SSI applicant must apply include: Social Security (“Title II”) benefits, VA Pension and Compensation payments, employment-based retirement benefits, worker’s compensation payments, pensions, and unemployment compensation benefits. There are some benefits that are excepted from this requirement, such as Temporary Assistance for Needy Families (TANF), general public assistance, crime victim compensation payments, the earned income tax credit, and programs that make payment based on need. POMS SI 00510.005, at <https://secure.ssa.gov/poms.nsf/lnx/0500510005>.

18. **Effect of drug addiction or alcoholism.** Note: If drug addiction or alcohol addiction is a material factor in the person’s disability, the person will be ineligible for SSI (on the basis of disability). Thus, if you are helping a person with drug addiction or alcoholism qualify for SSI on the basis of disability, you must prove that the person would be disabled exclusively on the basis of impairments other than the drug addiction or alcoholism. Drug addiction or alcoholism can also be a barrier to receiving disability benefits under the Social Security Disability program. The POMS address the effect of drug addiction and alcoholism on qualifying for disability benefits at POMS DI 90070.000, <https://secure.ssa.gov/poms.nsf/lnx/0490070000>.

Question.

If a person provides strong evidence to the Administrative Law Judge that he or she is disabled because of addiction to illegal drugs or alcohol, the person will have an even better chance of receiving SSI based on disability.

T \_\_\_\_\_ F \_\_\_\_\_

19. **Financial eligibility criteria.** These concern *resources* and *income*.

20. After excluding resources that "do not count," countable resources cannot exceed \$2000 for an individual or \$3000 for an individual living with an ineligible spouse or for a married couple in which both spouses are eligible. Countable resources of an ineligible spouse are deemed to the eligible spouse.

21. **Excluded resources.** Certain resources are excluded. A chart that shows which resources are excluded (with links to discussion of the exclusions) is at <https://secure.ssa.gov/poms.nsf/lnx/0501110210>. The following are excluded from resources:

The homestead, regardless of value. This includes any adjacent land and related buildings on it.

- Unlike under long-term care Medicaid, there *no* limit on the value or size of the homestead that can be excluded as a resource under SSI.

Other real property, if it is jointly owned with another person and its sale would cause undue hardship to the other owner, or land that cannot be sold, despite reasonable efforts to sell it.

One wedding ring and one engagement ring, regardless of value.

Personal items required because of a person's physical condition (such as wheelchairs or prosthetic devices).

Household goods and personal effects. The following are all excluded as "household goods": (i) Items of personal property, found in or near the home, that are used on a regular basis, or (ii) items needed by the householder for maintenance, use and occupancy of the premises as a home. Items which fall under these exclusions include but are not limited to furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes. The following are excluded as "personal effects:" (i) Items of personal property ordinarily worn or carried by the individual, or (ii) Articles otherwise having an intimate relation to the individual. Items which fall under these exclusions include but are not

limited to: Personal jewelry including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual, and items required because of an individual's impairment. *However*, items that were acquired or that are held for their value or as an investment *are* counted because they are not considered to be personal effects. Such items include but are not limited to: Gems, jewelry that is not worn or held for family significance, or collectibles.

One automobile regardless of value is totally excluded if it is used for transportation by the individual or a member of the individual's household. All other automobiles are considered to be nonliquid resources, and equity in them is counted as a resource. "Automobile" is broadly defined for the purpose of this exclusion. An automobile can be a car, truck, motorcycle, boat, snowmobile, animal-drawn vehicle, or animal, as long as it is for transportation by the individual/couple of a member of the household. If no automobile is excluded by this exclusion, a total of \$4500 in current market value ("equity") of the non-excluded automobile(s) is disregarded. The automobile exclusion is discussed at POMS SI 01130.200 at <https://secure.ssa.gov/poms.nsf/lnx/0501130200>.

- One automobile can be totally excluded from counting as a resource, regardless of value, if it is used by a household member for transportation. "Automobile" has a broad definition under this exclusion.

Property essential for self-support is excluded from counting as a resource. This is covered by POMS SI 01130.500 at <https://secure.ssa.gov/poms.nsf/lnx/0501130500>. Property used in a trade or business, property that "represents government authority to engage in an income producing activity," and property used by an individual for work, are all excluded *regardless* of their value or "rate of return." See POMS SI 01130.501 at <https://secure.ssa.gov/poms.nsf/lnx/0501130501>. In addition, nonbusiness property that is used to produce goods or services essential to daily activities is excluded up to \$6000 in equity. This would include land used to produce vegetables or livestock solely for consumption by the individual's household. See POMS SI 01130.502 at <https://secure.ssa.gov/poms.nsf/lnx/0501130502>. Property that does not fit under either of the

foregoing exclusions can be excluded if it has equity value of not more than \$6000 and produces at least a 6% rate of return. Equity above \$6000 counts toward the general resource limit (\$2000 for an individual, \$3000 for a couple). See POMS SI 01130.503 at <https://secure.ssa.gov/poms.nsf/lnx/0501130503>.

- Thus, there are three categories of “Property essential for self-support,” which can lead to an exclusion. Depending on the nature and use of the property, it may be excludable totally, excluded up to \$6000 in value, or excluded only if it earns a 6% rate of return and is worth no more than \$6000.

Resources of a blind or disabled individual which are necessary to fulfill an approved plan of self-support. See POMS SI 01130.510 at <https://secure.ssa.gov/poms.nsf/lnx/0501130510>.

The cash surrender value of life insurance of the applicant and of his or her spouse, if the face value is not more than \$1500. If the face value exceeds \$1500, then the cash surrender value counts as a resource, unless designated as burial funds. (Each spouse can have up to the \$1500 limit, before the exclusion is exceeded.)

Separately identifiable, designated burial funds of up to \$1500 for the applicant/beneficiary and his or her spouse. This is reduced by the *face* value of any insurance policies, the cash value of which has been excluded. (Again, each spouse has a \$1500 limit, before the exclusion is exceeded.)

The value of burial spaces for an individual, his/her spouse, and immediate family. This includes the plot, vaults, crypts, caskets, mausoleums, urns, headstones, and gravemarkers.

Earned income tax credit (EITC) and Child Tax Credit (CTC) advances and refunds are excluded from counting as resources, for up to nine months following the month of receipt. *Interest* earned on unspent payments and refunds is *not* excluded from countable income or resources. For treatment of the EITC and CTC advances and refunds as non-counted resources for nine months following the month of receipt, see POMS SI 01130.675 at <https://secure.ssa.gov/poms.nsf/lnx/0501130675>.

Retroactive (“lump-sum”) SSI and Retirement, Survivors, and Disability (RSDI) payments are excluded from counting as resources for nine months following the month in which the individual receives the payment. See POMS SI 01130.600 at <https://secure.ssa.gov/poms.nsf/lnx/0501130600>. (For retroactive SSI benefits due an individual under the age of 18 who have a representative payee, such retroactive payments must be deposited into a dedicated account. The dedicated account is an account in a financial institution, the sole purpose of which is to receive and maintain SSI past-due benefits. The dedicated account is excluded from counting as a resource. See POMS SI 01130.601 at <https://secure.ssa.gov/poms.nsf/lnx/0501130601>.)

Question.

What is the limit on the size or value of the homestead that can be excluded under SSI?

\_\_\_ \$500,000

\_\_\_ 100 acres

\_\_\_ \$750,000

\_\_\_ Unlimited.

22. If resources cannot be excluded, there is a \$2000 general resource limit for an individual, and \$3000 for an individual living with an ineligible spouse or for a married couple (if both spouses are eligible). For example, cash cannot be excluded. But if all other resources fit under an exclusion, an individual with total cash (on hand and in accounts) of no more than \$2000 would be resource-eligible.

23. If there are excess nonliquid resources and if total countable liquid resources are no more than three times the benefit rate (i.e., no more than 3 X \$698 as of 2012) for an individual which is \$2094, there can be conditional eligibility. Under conditional eligibility the applicant agrees in writing to dispose of the excess nonliquid resources within nine months (for realty) or three months (for non-realty) and to make repayment of SSI benefits provided while the resources were being sold.

24. **Penalty for “giving property away.”** As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return and then, within 36 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. (For instance, if the application occurred in 2012, the value of the uncompensated transfer would be divided by \$698). The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 36 months from the date of the uncompensated transfer.

Question.

Which one statement below is correct?

A. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was dropped (after being present for about a decade).

B. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return, on or after December 14, 1999, and then, within 60 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 12 months from the date of the uncompensated transfer. The penalty period cannot take into account transfers made before December 14, 1999.

C. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return, on or after December 14, 1999, and then, within 36 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 36 months

from the date of the uncompensated transfer. The penalty period cannot take into account transfers made before December 14, 1999.

D. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return, on or after December 14, 1999, and then, within 36 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 12 months from the date of the uncompensated transfer. The penalty period cannot take into account transfers made before December 14, 1999.

Answer: \_\_\_\_\_

25. **Countable income.** Countable income also is arrived at only after excluding some "income" that is not counted, and taking deductions from what remains. A chart that shows what income is excluded is at POMS SI 00830.099 at <https://secure.ssa.gov/poms.nsf/lnx/0500830099>.

26. Income that does not count includes: Medical care and services provided by a third party; social services; receipts from the sale or exchange or replacement of a resource; income tax refunds; payments by credit life or credit disability insurance; proceeds of a loan; and money paid by someone else directly to a supplier, but the value of goods or services received will count as income if they are food, or shelter.

27. "Income" also does not include replacement of income already received -- e.g., replacement of a stolen check; weatherization assistance; nor any item (other than food, or shelter) which would be an excluded nonliquid resource. By virtue of the POMS section <https://secure.ssa.gov/poms.nsf/lnx/0500815250> income also does not include refunds (such as, but not limited to, refunds of money paid for medical care that is retroactively covered by Medicaid once SSI eligibility is established). There is a Texas Medicaid "Type Program" that provides for up to three months of retroactive Medicaid for certified SSI clients. This is Type Program 11. See <http://www.dads.state.tx.us/handbooks/mepd/appendix/XXX/index.htm>. ("For certified SSI clients, Medicaid coverage automatically begins with the month prior to the first

month of SSI payment [this is the “SSI gap month.”]. For TP 11 applicants, the Medical Effective Date may be as early as the first day of the month, two months prior to the SSI gap month.”) Because of this retroactive coverage, some newly certified SSI recipients may be able to obtain refunds from health care providers of payments for services, for which Medicaid retroactive coverage is available. Such refunds are excluded from income. There is not an exclusion from resources of such refunds; if they are not spent in the month received, they will count as resources. The POMS which addresses the “First-of-the-Month Rule” is at <https://secure.ssa.gov/poms.nsf/lnx/0501110600>.

28. “Income” also does not include food stamps, housing assistance, assistance based on need and funded wholly by a state and/or one of its political subdivisions, any portion of a grant, scholarship or fellowship used to pay for educational expenses, food raised and consumed by the household, Disaster Relief Act assistance, up to \$20 of unearned income if received infrequently or irregularly (i.e., if received only once during a calendar quarter from a single source or if its receipt cannot be reasonably expected), foster care payments, and interest earned on excluded burial funds.

29. **Countable earned income.** This includes wages, net earnings from self-employment, payments for participating in a sheltered workshop, payments based on earned income tax credits, and sickness or temporary disability payments received within six months of stopping work.

30. *Note:* Earned income of more than \$1010 per month is presumed to be evidence of substantial gainful activity. It would thus be evidence that a person is not disabled. For a blind person, the threshold applicable in 2012 is \$1690 per month.

31. **Countable unearned income.** Countable unearned income includes in-kind support and maintenance (food, shelter), private pensions and annuities, benefits from Social Security, Railroad Retirement, Veterans Administration, civil service, worker's compensation, unemployment compensation, and welfare, life insurance proceeds and other death benefits, gifts and inheritances, support and alimony payments, prizes and awards, dividends and interest, rents

and royalties, in-kind payments to agricultural and domestic workers, tips under \$20 per month, jury fees, and money paid to residents of institutions.

32. From countable *unearned* income there can be deducted \$20 per month. This is a one-time deduction. That is, all unearned income is totaled, and then one time the \$20 deduction is subtracted. If there is so little unearned income that some of the \$20 deduction remains, then the remainder of the \$20 deduction is subtracted from earned income, before other deductions are made from earned income.

33. From countable *earned* income there can be deducted \$65, plus one-half of the remaining earned income. If there is any unused part of the \$20 deduction against unearned income, the unused part is deducted from earned income before any other deductions from earned income.

34. The SSI benefit for an individual who is not married is the maximum federal benefit (in the year 2012 -- \$698) minus income remaining after exclusions and deductions.

35. If both spouses are eligible, they only receive one \$20 deduction from their total unearned income, and only one \$65 deduction from their total earned income (and one-half the rest of earned income is deducted). The result is subtracted from the federal benefit rate for a couple (in 2012: \$1,048 per month), to determine the SSI benefit for the couple.

36. **Deeming.** If one spouse will be eligible (due to being 65, blind, or disabled) and the other spouse does not present one of those criteria, income from the ineligible spouse will be *deemed* to the applicant-spouse. There are several steps to interspousal deeming.

37. First, there is excluded from the income of the ineligible spouse that income which is excluded from counting if it were income of the eligible spouse (see income exclusions, discussed above).

38. Next, if there are ineligible dependent children in the household, there is a deduction of the difference between the maximum monthly federal benefit for a couple and the maximum monthly federal benefit for an individual. This difference is called an “allocation.” In 2012, the maximum monthly federal benefit for a couple is \$1,048 and the maximum monthly federal

benefit for an individual is \$698. The difference is \$350. This is the maximum allowable allocation for each ineligible child of the couple, which would be subtracted from the non-excluded income of the ineligible spouse, before income will be deemed from the ineligible spouse to the eligible spouse (the spouse who is either aged (65 or older) or disabled or blind).

39. If the *ineligible* spouse's remaining income after the above deductions is not more than the difference between the maximum monthly federal benefit for a couple and the maximum monthly federal benefit for an individual, no income will be deemed, and one would calculate the income of the eligible spouse according to the rules for a single person. The *eligible* spouse's income will be subjected to the exclusions described above, and to the \$20 deduction from unearned income, and the deduction of \$65 from earned income and of one-half the rest of earned income. The result is subtracted from the maximum federal benefit rate for an individual and *that* result is the amount of the SSI check for the individual.

40. *But*, if the result after analyzing the income of the *ineligible* spouse is that she or he has countable income greater than the difference between the maximum monthly federal benefit for a couple and the maximum monthly federal benefit for an individual, there will be deeming. The procedure used in this circumstance is as follows: The eligible individual and the ineligible individual are treated as if they were an eligible couple. Their unearned income is given the exclusions that are available against unearned income (discussed above). Then \$20 is subtracted one time from non-excluded unearned income. Their earned income is totaled. From that, \$65 is deducted, and then one-half the rest. The remaining income is subtracted from the federal benefit rate for a couple and the difference is the amount of the SSI benefit to the individual. *Note, however* that the benefit an individual receives when there is deeming cannot be higher than what s/he would receive if there were no deeming, and only her/his income were compared with the federal benefit rate for an individual.

41. The POMS address deeming of income from an ineligible spouse at POMS SI 01320.400, <https://secure.ssa.gov/poms.nsf/lnx/0501320400>. At POMS SI 01320.720, there is a “monthly deeming worksheet” which can assist in calculating how much income will be deemed from the ineligible spouse to the spouse applying for (or receiving) SSI. The link to this “monthly deeming worksheet” is <https://secure.ssa.gov/poms.nsf/lnx/0501320720>.

42. **In-kind support and maintenance can reduce the SSI benefit.** There are two further rules that cause "in-kind income" to decrease the SSI benefit. These two rules are the "One-Third Reduction Rule," and the "Presumed Value Rule."

43. The One-Third Reduction rule applies when a beneficiary (a) lives in the household of another throughout a calendar month *and* (b) receives *both* food and shelter from the household. If the One-Third Reduction rule applies, the value of the in-kind support received is considered to be equal to one-third the maximum monthly federal benefit rate (i.e., in the year 2012, one-third of \$698, which is \$232.67). Thus, the benefit amount would be reduced by \$232.67. The One-Third Reduction rule can be avoided if the beneficiary has *any* equity interest in the home where s/he is living, and/or pays fully for *either* food or shelter. The one-third reduction rule is treated at POMS SI 00835.200 at <https://secure.ssa.gov/poms.nsf/lnx/05008350200>.

Question.

Under SSI, what does the "One-Third Reduction" rule mean?

- A. It means that once a person starts to receive SSI, the person's food stamps automatically are reduced by one-third.
- B. It means that once a person qualifies for SSI, the person must sell one-third of the real property the person owns.
- C. It means that once a person begins to receive SSI, the appraised value of the person's real property is reduced by one-third.
- D. It means that if an SSI beneficiary (a) lives in the household of another throughout a calendar month *and* (b) receives *both* food and shelter from the household, the value of the in-kind support received is considered to be equal to one-third the federal SSI benefit rate.

Answer: \_\_\_\_\_

44. The Presumed Value Rule applies in all other situations where an individual receives in-kind support and maintenance. In such situations -- not "caught" by the One-Third Reduction

rule -- it is presumed that the value of in-kind income (food, shelter) being received does not exceed one-third the federal benefit rate plus \$20, i.e., for the year 2012, does not exceed \$252.67.

45. The Presumed Value Rule is rebuttable. If the individual can show that the value of in-kind income (food, shelter) is less than the Presumed Value, benefits will only be reduced by the actual value of the in-kind income. The One-Third Reduction is *not* rebuttable. If it applies, the benefit will be reduced by one-third. That is why it is usually best if possible to show that the Presumed Value Rule should apply, rather than the One-Third Reduction rule. To avoid the One-Third Reduction rule, the SSI beneficiary can either have an ownership interest in the home (that is, full or part ownership), or pay at least the full pro-rata share of shelter or food. That way, only the in-kind value of what is not paid (shelter or food) will be considered unearned income under the Presumed Value Rule. Under the Presumed Value Rule, the beneficiary can rebut the presumption that the value of in-kind income is \$252.67. The beneficiary can make a showing of what the real value of the unearned in-kind income is, and then only that amount will be deducted from the maximum SSI benefit. This may require use of the administrative appeals process, which is summarized below. Chapter Fourteen (Appeals, Hearings, and Administrative Law) deals with administrative appeals in greater detail. The Presumed Value Rule is treated at POMS SI 00835.320 at <https://secure.ssa.gov/poms.nsf/lnx/0500835320>.

46. The One-Third Reduction Rule and the Presumed Value present opportunities for advocacy. Benefits counselors assisting clients who confront the One-Third Reduction Rule or the Presumed Value Rule can call the Legal Hotline for Texans for support at 1-800-622-2520.

47. **Administrative decision-making process.** Stages in the SSI decision-making process include application, reconsideration (if the application is not granted “wholly favorably”), Administrative Law Judge hearing, and Appeals Council review. Applicants and beneficiaries who are dissatisfied with a decision to deny, reduce, suspend, or terminate benefits, or a decision regarding an overpayment or underpayment (among other matters), can ask for "reconsideration." The reconsideration can be requested (in writing) within sixty (60) days of the notice of initial determination. If benefits are being terminated, suspended, or reduced, and the beneficiary wants them to continue while the administrative review process is used, the request

for reconsideration must be made within ten (10) days of the notice of initial determination. A non-lawyer can represent an individual at all administrative stages of the SSI decision-making process, up to and including Appeals Council review. The same is true in Social Security matters and Medicare matters. (In Medicare, the Appeals Council is also called the “Department Appeals Board” (DAB) or the “Medicare Appeals Council.”) It should be noted that the Social Security Appeals Council – the final administrative step in regard to SSI and Social Security matters – sits in Falls Church, Virginia. It does not travel around the country.

Questions.

What are stages of the Social Security Administration’s administrative decision-making process? (Choose the one correct answer.)

- A. Petition for mandamus, petition for certiorari, petition for prohibition.
- B. Motion for temporary restraining order, motion for preliminary injunction, motion for permanent injunction.
- C. Reconsideration, Administrative Law Judge hearing, Appeals Council review.
- D. Petition for writ of assistance, petition for writ of error, petition for writ of review.

Answer: \_\_\_\_\_

True or false? In Social Security, SSI, and Medicare matters, non-lawyers are never permitted to handle a case at the Appeals Council level.

\_\_\_ True. \_\_\_ False.

True or false?

The Appeals Council will travel to where the appellant resides, when the Appeals Council stage is reached in an SSI claim.

\_\_\_ True. \_\_\_ False.

48. If the applicant or beneficiary is dissatisfied with the reconsideration decision, s/he can request an administrative law hearing before an Administrative Law Judge. *This* must be requested (in writing) within sixty days of the receipt of the reconsideration determination. The “Office of Disability Adjudication and Review” oversees the conduct of hearings. ODAR has

ten regional offices, and the Dallas Region is Region VI. Region VI of ODAR has 16 hearing offices. ODAR’s “Office of the Deputy Commissioner” maintains the “Hearings, Appeals, and Litigation Law Manual” (“HALLEX”).

49. Whereas the POMS are a rich trove of details on eligibility for the means-tested SSI program (and for Social Security, which is paid based on a worker’s earnings record), the HALLEX can be a rich trove of details regarding case procedures. For instance, HALLEX Section I-3-1-51 discusses “Critical Case Procedures.” These Critical Case Procedures are described at [http://www.ssa.gov/OP\\_Home/hallex/I-03/I-3-1-51.html](http://www.ssa.gov/OP_Home/hallex/I-03/I-3-1-51.html). That is a link to how SSA handles cases involving:

Terminal illness, disability claims by military service injured October 1, 2001 or later, “Compassionate Allowance Claims,” claims in which the claimant is without, and unable to obtain, food, medicine or shelter, claims in which the claimant is suicidal or homicidal/potentially violent, and cases in there has been inordinate delay and there is public, congressional, or other high priority inquiry on the case.

50. The link at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0411005601> addresses what qualifies as a terminal illness. These cases are sometimes referred to as “TERI” cases. They include:

An allegation (e.g., from the claimant, a friend, family member, doctor, or other medical source) that the illness is terminal;

An allegation or diagnosis of Amyotrophic Lateral Sclerosis (ALS), known as Lou Gehrig’s Disease;

An allegation or diagnosis of Acquired Immune Deficiency Syndrome or Acquired Immunodeficiency Syndrome (AIDS) (See [DI 11055.241](#) – Processing Claims for Individuals with An Allegation of Human Immunodeficiency Virus [HIV] Infection); or

The claimant is receiving inpatient hospice care or is receiving home hospice care, e.g., in-home counseling or nursing care.

51. The link at <http://www.socialsecurity.gov/compassionateallowances/conditions.htm> lists the 113 conditions that may give rise to “compassionate allowance” handling of a claim.

Because the list is added to from time to time, it is the most up-to-date source regarding what conditions give rise to “compassionate allowance” processing of a claim. The link at <https://secure.ssa.gov/poms.nsf/lnx/0423022000> describes how “Compassionate Allowance Claims” (CAL claims) are handled, so that a decision is expedited.

52. “TERI” cases and “Compassionate Allowances” come under the “Quick Disability Determinations” process. This is abbreviated “QDD.” QDD cases are cases: (1) Having a high potential that the claimant is disabled; (2) In which it is likely that evidence of the claimant’s allegations can be easily and quickly obtained; and That can be processed quickly in the disability determination services (DDS – in Texas, this is a part of DARS). The Social Security Administration recommends that DDS’s process QDD cases in 20 or fewer days. For an informative report on how this process worked in one region, the Boston Region, one can go to the link at <http://www.ssa.gov/oig/ADOBEPDF/audittxt/A-01-09-19030.html>. If a case is a TERI case or a compassionate allowance case, it normally should not take as far as the administrative law judge (ALJ) hearing to decide. Of course, some cases may only become apparent as TERI cases or compassionate allowance cases, at the ALJ stage. When that occurs, if the a case meets the TERI or compassionate allowance criteria, the ALJ will likely take swift action to award eligibility. Texas Legal Services Center has a compilation of POMS that deal with TERI, CAL, and QDD cases.

53. An applicant or beneficiary dissatisfied with the Administrative Law Judge's decision can seek review by the Appeals Council, by filing a written request within sixty days of receipt of the Administrative Law Judge's decision.

54. An applicant or beneficiary dissatisfied with the Appeals Council decision can file, within sixty days of receipt of the Appeals Council decision, an action in federal district court, for review of the decision.

55. The steps described above in the administrative review process below the court level can all be handled by a non-lawyer, on behalf of the applicant or beneficiary (or by the applicant/beneficiary him/herself). *Note:* All such steps are *very* significant, and whoever handles them -- lawyer, or non-lawyer -- must use the highest degree of diligence and expertise.

56. Court-level proceedings can *only* be handled by a lawyer or (inadvisedly) by the applicant or beneficiary "pro se" (on his/her own).

57. **How disability is determined in the SSI program.** As noted in paragraph 9 above, if a person does not qualify for SSI due to age (65 or older) or blindness, the person must prove he or she meets the definition of "disabled."

58. Disability is defined as the inability to engage in "substantial gainful activity" by reason of a physical or mental impairment. The impairment must be medically determinable and expected to last for not less than 12 months, or to result in death. A person may be considered disabled only if such an impairment causes the person to be unable to engage in any kind of substantial gainful work, considering the person's age, education, and work experience. The work need not exist in the immediate area in which the applicant lives, and a person can be considered able to engage in substantial work even if there is no job vacancy for the person and even if the person would not be hired, were there a vacancy.

59. Disability claims are determined on a sequential basis. The first step is to determine whether the individual is engaging in substantial gainful activity (SGA). Under current 2012 regulations, in most cases if a person is earning more than \$1010 a month (net of impairment-related work expenses), the person will be considered to be engaging in SGA (the threshold is \$1690 per month, for persons who meet the Social Security definition of blindness). If it is determined that a person is engaging in SGA, a decision is made that the person is not disabled without considering medical factors. If an individual is found not to be engaging in SGA, the severity and duration of the impairment are explored. If the impairment is determined to be "not severe" (i.e., it does not significantly limit the individual's capacity to perform work), the individual's disability claim is denied. If the impairment is "severe," a determination is made as to whether the impairment "meets" or "equals" the medical listings published in the Social Security regulations and whether it will last for 12 months. If the impairment neither "meets" nor "equals" the listing (which would result in an allowance), but meets the 12-month duration rule, the individual's residual functional capacity (what an individual still can do despite his limitations) and the physical and mental demands of his past relevant work must be evaluated. If the impairment does not prevent the individual from meeting the demands of his past relevant

work, then benefits are denied. If it does, then it must be determined whether the impairment prevents other work. The listing of impairments contains over 100 examples of medical conditions that would ordinarily prevent an individual from engaging in substantial gainful activity. Each listing describes a degree of severity such that an individual who is not working, and has such an impairment, is considered unable to work by reason of the medical impairment. The listing describes specific medically acceptable clinical and laboratory findings and signs which establish the severity of the impairments. An impairment or combination of impairments is said to “equal the listings” if the medical findings for the impairment are at least equivalent in severity and duration to the findings of a listed impairment.

60. At this stage in the adjudication process, the burden of proof switches to the government to show that the individual can, considering his impairment, age, education, and work experience, engage in some other kind of substantial gainful activity that exists in the national economy. Such work does not have to exist in the immediate area in which he lives, and a specific job vacancy does not have to be available to him. Work in the national economy is defined in statute as work which exists in significant numbers either in the region where such individual lives or in several regions of the country. The Social Security Administration has developed a vocational “grid” designed to reduce the subjectivity and lack of uniformity in applying the vocational factor. The grid regulations embody in a formula certain worker characteristics such as age, education, and past work experience, in relation to the individual's residual functional capacity to perform work-related physical and mental activities. If the applicant has a particular level of residual work capability--characterized by the terms sedentary, light, medium, heavy and very heavy--an automatic finding of “disabled” or “not disabled” is required when such capability is applied to various combinations of age, education, and work experience.

61. The Listing of Impairments is found at Appendix 1 to Subpart P of Part 404 of Title 20 of the Code of Federal Regulations. The web location for the listing of impairments is given in paragraph 9 above. The vocational grid mentioned in paragraph 55 is more fully known as “Medical-Vocational Guidelines.” It is Appendix 2 to Subpart P of Part 404 of Title 20 of the Code of Federal Regulations. The Medical Vocational Guidelines are at

<https://secure.ssa.gov/poms.nsf/lnx/0425025005>. (In those guidelines, the letters “do” signify “ditto.”)

62. Because of the fact that advanced age can be a factor in determining if a person meets the definition of disability, it can be easier for a 60 year-old to be found disabled, than for a 40 year-old, other circumstances being equal. Because every person who receives SSI in Texas receives Medicaid, proving eligibility for SSI can afford the client not only the modest cash benefit, but also a form of health insurance – Medicaid. Under the Medical-Vocational Guidelines, person who are “individuals approaching advanced age” are those who are 50 to 54 years of age. Persons who are 55 years of age and older are considered to be individuals of “advanced age.”

63. **Other benefits may accompany SSI.** As noted at the outset, all SSI recipients in Texas are eligible for Medicaid. No separate application is required. This is called “Regular Medicaid” (in contrast to long-term care Medicaid and in contrast to the Dual Eligible programs, which are discussed in other chapters). If all members of a household receive SSI, there will be eligibility for food stamps. (The amount of food stamps will depend on the shelter expenses of the household, and on other deductible expenses under the food stamp program.) SSI recipients who are fifty (50) years of age or older are contacted by the food stamp program, to apply on the short application form for the “Supplemental Nutrition Assistance – Combined Application Project” (SNAP-CAP). SNAP-CAP is discussed in paragraph 66.

Question.

If all members of a household will be receiving SSI, then the household will also be eligible for (choose one):

- A. WIC
- B. Medicare
- C. Food Stamps
- C. TANF

Answer: \_\_\_\_\_

64. **Regular Medicaid Coverage.** In 2011, the Texas Medicaid program was undergoing a transition from “fee-for-service” to “managed care.” In “fee-for-service” Medicaid, the recipient can choose any Medicaid provider who can meet the recipient’s need. In managed care, the recipient receives medical services under the auspices of a “plan” and the recipient may be limited in the selection of providers. Also, managed care programs may (but are not required to) offer services beyond the minimum required services. An overview of the clients and benefits under the Texas Medicaid program (Chapter 4 of the so-called “Pink Book”) can be downloaded at <http://www.hhsc.state.tx.us/medicaid/reports/PB8/PinkBookTOC.html>.

65. These services have traditionally been provided by the Medicaid program in Texas, to eligible persons (including all SSI recipients) in “fee-for-service” areas:

**In-patient hospital services.** Thirty days per spell of illness are covered--after that, there must be a break of sixty days before coverage occurs again. Usual hospital services are covered; occupational therapy is not covered.

**Outpatient hospital services.** Diagnosis, therapy, rehabilitation, and palliation, furnished by or under the direction of a physician are covered. Drugs that can be self-administered are not covered under this coverage.

**Rural health clinic services** and other ambulatory services furnished by a rural health clinic. In general, there is a limit of twelve visits per recipient per year, although prior authorization can be sought for more visits.

**Laboratory and X-ray services ordered by a physician.**

**Nursing home services.** If an SSI recipient has medical necessity for long term care and meets the other requirements for nursing home Medicaid, the SSI recipient’s Medicaid will cover nursing home care. In addition, payment will be made to hold beds for three days' absence, when the absence is pre-authorized as therapeutic and is part of the patient's total plan of care, as directed by the doctor.

**Physician's services**--reasonably and medically necessary. Recipient-initiated second opinions regarding surgery are covered.

**Home health services**--not more than fifty visits per year. Oxygen and rented equipment are not covered. Home-health care providers must be Medicare-approved.

**Dental services**--but only those that would be covered if provided by a licensed physician.

**Drug prescriptions**--no more than three in any month for those in regular Medicaid. (Limit not imposed on nursing home Medicaid recipients or on those SSI recipients required to enroll in Medicaid managed care). (Medicare beneficiaries are expected to receive drugs through Medicare Part D. For Medicaid beneficiaries who are Medicare beneficiaries, the Medicaid program pays the premium for a "basic" Medicare prescription drug plan.)

**Hospice services**--Requires the recipient to sign an "election statement." Doctor must certify life expectancy of six months or less. Maximum coverage: 210 days per recipient.

**Case management services**--to help those who are mentally retarded, or who have a related condition, to obtain needed medical, social, educational, or other services.

**Transportation**--Other transportation must be unavailable.

**Christian Science sanatoria services.** Must be in a facility approved for this by Medicaid.

**Emergency hospital services**--must be in a Medicaid-approved hospital.

**Personal care services in the recipient's home**--Must be prescribed, must be provided under the supervision of a registered nurse, must be pre-authorized. Cannot exceed thirty hours per week. Consists of help with activities of daily living and nontechnical medical observation necessitated by chronic medical condition complicated by functional limitations.

**Day activities**--if prescribed by a doctor to treat a chronic medical condition which will benefit from the service; requires the supervision of a licensed nurse, and is limited to no more than ten hours per day nor more than 230 hours per month.

**Ambulatory surgical center services**--if the surgery would be approved by Medicare; the center must be participating in Medicare.

**Home-health and community based services.** Texas has obtained a waiver to provide these as an alternative to institutionalization.

**Medicare premiums, deductibles, and co-insurance amounts.** Paid for recipients of regular Medicaid or QMB.

Question.

If an SSI recipient has medical necessity for long term care and meets the other requirements for nursing home Medicaid, the SSI recipient's Medicaid will cover nursing home care.

\_\_\_\_\_ True. \_\_\_\_\_ False.

66. **Food stamps.** If all members of a household will be receiving SSI, then the household is also eligible for food stamps. The Social Security Office can assist the SSI applicant(s) in completing the food stamp application, but it is the Texas Health and Human Services Commission which decides how much the food stamp benefits will be. There is a "Special Nutrition Assistance Program – Combined Application Project" (SNAP-CAP) for SSI recipients who are fifty (50) years of age or older. If such persons fill out the very short SNAP-CAP application, they can receive \$65 in food stamps monthly (\$81 if monthly shelter expenses are \$289 or higher). Any person who receives a letter offering enrollment in SNAP-CAP has the option of completing the lengthier regular food stamp application. Those certified for SNAP-CAP are certified for 3 years. Certification for SNA-CAP can occur without the need for interview of any sort (not face-to-face, nor by telephone). Persons certified for SNAP-CAP are required to report changes in their shelter expenses. Although the SNAP-CAP benefit is delivered by the Lonestar Card (as are regular food stamps), persons certified for SNAP-CAP do not have to undergo the fingerimaging process. People usually are contacted (by mail) about SNAP-CAP due to being an SSI recipient 50 years of age or older (whether or not other income is received as well). The State receives notice of such households by magnetic tape from Social Security. Married individuals who each meet the criteria for SNAP-CAP are considered separate households. Persons for whom participation in the regular food stamp program is more

advantageous than the SNAP-CAP benefit can drop out of SNAP-CAP and apply for regular food stamps. Further information about the SNAP-CAP program can be downloaded at Section B-476 of the Texas Works Handbook, which is in Section 400 of the Handbook at <http://www.dads.state.tx.us/handbooks/TexasWorks/B/400/index.htm>. Scroll down to Section 476 – Supplemental Nutrition Assistance Program – Combined Application Project (“SNAP-CAP”) for the criteria for this version of food stamps.

In sum, under SNAP-CAP, the household is a one-person food stamp household.

- The SNAP-CAP program usually contacts (by mail) those who are eligible for it.
- To receive SNAP-CAP, the person must be 50 years of age or older.
- Persons eligible for SNAP-CAP can instead choose to apply for regular food stamps.
- If all persons in a household receive SSI, the entire household qualifies for food stamps (though they will have to go through the regular application process unless they all qualify for SNAP-CAP due to being 50 years of age or older).

67. **Resources to help you help clients.** The attorneys of the Legal Hotline for Texans are available for unlimited cost-free back-up to help you help your clients. The Legal Hotline’s Benefits Counselor back-up number is 1-800-880-9797. This is not the number for clients to use (that number is 1-800-622-2520).

68. **Manuals.** There are also manuals and handbooks of the various agencies that administer benefits programs. As noted above, in the Supplemental Security Income Program, there are “Program Operations Manual System” (POMS) issuances; the Hearings, Appeals, and Litigation Law (HALLEX) Manual, the Social Security Handbook, and Social Security Rulings and Acquiescence Rulings. These are available online at [www.ssa.gov/representation/](http://www.ssa.gov/representation/). The Social Security web site has “Answers to Your Questions” at [ssa-custhelp.ssa.gov](http://ssa-custhelp.ssa.gov). The Centers for Medicare and Medicaid Services publishes a Provider Reimbursement Manual and a State Medicaid Manual. These can be located at <http://www.cms.hhs.gov/Manuals/IOM/list.asp>. The Texas Department of State Health Services publishes the Texas Medicaid Provider Procedures Manual. Although this Provider Procedures Manual can be located on the Internet at

<http://www.tmhp.com/default.aspx>, it is copyright protected. It would be best to determine what general area of provider procedures you need to know about and then send a Public Information Act request to the Texas Health and Human Services Commission for that portion of this manual. Texas Legal Services Center can assist in preparing such a Public Information Act request. The manual does have very detailed information regarding services under the Texas Medicaid program. The Texas Health and Human Services Commission also publishes a “Texas Works” handbook with policies of the food stamp program and the Temporary Assistance for Needy Families Program. This is not copyright protected and can be located at and downloaded in from <http://www.dads.state.tx.us/handbooks/TexasWorks/>. (This is the manual that is referred to in the discussion of SNAP-CAP in paragraph 65.) Any benefits counselor of a Texas area agency on aging who needs assistance accessing these manuals can contact the Legal Hotline for Texans by telephone (1-800-880-9797).

69. Texas Lawyers Care (which fosters volunteer lawyering) publishes an Attorney Desk Reference, which has much basic information on public benefit programs. Texas Legal Services Center can copy excerpts from this, upon request.

70. **Texas Legal Services Center’s Website; Websites where laws can be found.** Texas Legal Services Center (where the Legal Hotline for Texans has its office) has an Internet web site. It is at [www.tlsc.org](http://www.tlsc.org). Texas state laws are accessible through the website <http://www.statutes.legis.state.tx.us/>. State administrative rules are accessible at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewwtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewwtac). Federal statutes are accessible at <http://www.gpo.gov/fdsys/browse/collectionUSCode.action?collectionCode=USCODE> and <http://uscode.house.gov/search/criteria.shtml>. Federal administrative rules are accessible at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Question:

What is the extent of back-up that Benefits Counselors serving individuals through Area Agency on Aging systems of access and assistance can receive unlimited back-up from the Legal Hotline for Texans?

\_\_\_\_\_ Three phone calls per month.

\_\_\_\_ Three emails per day.

\_\_\_\_ Three faxes per week.

\_\_\_\_ Unlimited.

71. Handling SSI cases also requires full knowledge of what is in the client's file at the administrative agency. A general proposition is that, in order to look at a client's file at an agency, the client must give written consent. Social Security has its own Appointment of Representative Form (SSA-1696-U4). State agencies in the past have accepted a written statement of the client detailing who is authorized to represent the client, the type of matter, the case number (if the agency has already assigned one), and the date of the authorization. However, recently states agencies have begun to require their own form for release of information (Form H1826, <http://www.dads.state.tx.us/forms/H1826/>) and their own Appointment of an Authorized Representative form (Form H1003, <http://www.dads.state.tx.us/forms/H1003/>). Aside from the fact that agencies often will provide an advocate with access to the client's file on the basis of an acceptable authorization, the Texas Public Information Act provides for a "special right of access." This special right of access to confidential information is provided for at Texas Government Code Section 552.023. The Legal Hotline for Texans can assist a Benefits Counselor of the Texas Aging Network in helping a client to make use of this special right of access.

72. **Early file review is essential.** In SSI cases, the file at the agency should be reviewed as soon as possible. Copies of key documents should be obtained, either from the client or from the case file. Putting together a client interview and a review of the case file allows the advocate to determine what further information is needed – witnesses, documents, and legal precedents.

73. **Cost-free medical records may be obtainable.** Sections 161.201 – 204 of the Texas Health and Safety Code authorize a representative of a claimant for benefits based on disability (including SSI), to obtain cost-free one copy of the medical records in the custody of a health care provider. The request can be made by a non-lawyer. By virtue of House Bill 670 from the 76<sup>th</sup> Legislature, this statute now also applies in the case of veterans' benefits. It is discussed in greater detail in the "Summary of Statute and Regulations" section of Chapter Fourteen. The

request will have to be accompanied by a HIPAA authorization if one is not on file for the representative making the request. These sections – 161.201 – 204 of the Texas Health and Safety Code do not require the health care provider to tender anything other than the raw medical records. Of course, some health care providers who are interested in having the individual qualify for Medicaid (through SSI, for example) may be willing to type up a legible, narrative letter explaining why the individual presents factors that meet the criteria for disability. (A letter that simply states the individual is “disabled” without more detail is not much help, usually.) If all the health care provider is willing to release pursuant to Sections 161.201 – 204 of the Texas Health and Safety Code, are raw records, the representative handling the SSI claim will want to pore over the raw records so that all helpful details are located and pointed out to the decision-maker and harmful details are spotted and explained, if need be.

Question.

The statute that allows a person to request a cost-free copy of medical records to support an application based on disability for SSI does not permit a non-lawyer to make the request.

True.     False.

74. Remember: At the administrative level, it is the right of the client to designate who will represent the client, in regard to SSI.

**Answer Key.**

Paragraph 2 Question.

Which statement is true?

In Texas, every person who receives regular Medicaid is automatically eligible for SSI. (Not true. For instance, people who receive Temporary Assistance for Needy Families receive Medicaid, but they do not necessarily receive SSI.)

In Texas, every person who receives SSI is automatically eligible for regular Medicaid.

Paragraph 3 Questions.

True or false: A Benefits Counselor can provide representation in SSI matters (and in Medicaid matters) at the administrative level, if the client requests and the Area Agency on Aging permits such representation.  True.  False.

Under Texas Human Resources Code Section 12.001, how much can a non-lawyer charge for representing a person in obtaining services from the Texas Health and Human Services Commission? (Choose the one correct answer.)

- A. A flat fee of \$100.
- B. \$75 per hour.
- C. 33% of the value of the benefits obtained.
- D. Zero.

Answer: D. Zero.

Paragraph 5 Question. Vis-à-vis the federal government, which agency of the State of Texas is the single state Medicaid agency?

The Texas Health and Human Services Commission (correct)

The Texas Department of Aging and Disability Services (not correct)

The Texas Department of Assistive and Rehabilitative Services (not correct)

The Texas Department of Family and Protective Services (not correct)

Paragraph 6 Question.

If the SSI benefit will be changing because of a Cost of Living Adjustment, in what month is the change effective?

January  April  July  October (January is the correct answer).

Paragraph 9 Question.

A person who is unable to engage in any substantial gainful employment by reason of a medically determinable physical or mental impairment that can be expected to last for a continuous period of at least 12 months or to result in death (choose one):

- A. Meets the definition of “disabled” under Social Security and SSI.
- B. Has Munchausen’s by proxy.
- C. Has a factitious disorder.
- D. Has conscious nonpathologic syndrome.

Answer: A -- Meets the definition of “disabled” under Social Security and SSI.

Paragraph 18 Question.

If a person provides strong evidence to the Administrative Law Judge that he or she is disabled because of addiction to illegal drugs or alcohol, the person will have an even better chance of receiving SSI based on disability.

True.  False. (False. Such an approach would likely *disqualify* the individual.)

Paragraph 21 Question.

What is the limit on the size or value of the homestead that can be excluded under SSI?

\$500,000

100 acres

\$750,000

Unlimited. (Unlimited – there is no limit of the size or value of the homestead that can be excluded as a resource under SSI.)

Paragraph 24 Question.

Which one statement below is correct?

A. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was dropped (after being present for about a decade).

B. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return, on or after December 14, 1999, and then, within 60 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 12 months from the date of the uncompensated transfer. The penalty period cannot take into account transfers made before December 14, 1999.

C. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return, on or after December 14, 1999, and then, within 36 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 36 months

from the date of the uncompensated transfer. The penalty period cannot take into account transfers made before December 14, 1999.

D. As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return, on or after December 14, 1999, and then, within 36 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 12 months from the date of the uncompensated transfer. The penalty period cannot take into account transfers made before December 14, 1999.

Answer: C As of December 14, 1999, the penalty for transferring countable resources in order to qualify for SSI was reinstated (after being absent for about a decade). The penalty works as follows: If a person transfers property without receiving like value in return, on or after December 14, 1999, and then, within 36 months, applies for SSI, the value of property given away will be divided by the maximum SSI benefit at the time of application. The resulting figure is the number of months of ineligibility from the date of the uncompensated transfer. The penalty period in any event is capped at 36 months from the date of the uncompensated transfer. The penalty period cannot take into account transfers made before December 14, 1999.

Paragraph 43 Question.

Under SSI, what does the “One-Third Reduction” rule mean?

- A. It means that once a person starts to receive SSI, the person’s food stamps automatically are reduced by one-third.
- B. It means that once a person qualifies for SSI, the person must sell one-third of the real property the person owns.
- C. It means that once a person begins to receive SSI, the appraised value of the person’s real property is reduced by one-third.

D. It means that if an SSI beneficiary (a) lives in the household of another throughout a calendar month *and* (b) receives *both* food and shelter from the household, the value of the in-kind support received is considered to be equal to one-third the federal SSI benefit rate.

Answer:  D  It means that if an SSI beneficiary (a) lives in the household of another throughout a calendar month *and* (b) receives *both* food and shelter from the household, the value of the in-kind support received is considered to be equal to one-third the federal SSI benefit rate.

Paragraph 47 Questions.

What are stages of the Social Security Administration's administrative decision-making process? (Choose the one correct answer.)

- A. Petition for mandamus, petition for certiorari, petition for prohibition.
- B. Motion for temporary restraining order, motion for preliminary injunction, motion for permanent injunction.
- C. Reconsideration, Administrative Law Judge hearing, Appeals Council review.
- D. Petition for writ of assistance, petition for writ of error, petition for writ of review.

Answer:  C  Reconsideration, Administrative Law Judge hearing, Appeals Council review.

True or false? In Social Security, SSI, and Medicare matters, non-lawyers are never permitted to handle a case at the Appeals Council level.

True.  X  False. (Non-lawyers are permitted to handle a case at the Appeals Council level.)

True or false?

The Appeals Council will travel to where the appellant resides, when the Appeals Council stage is reached in an SSI claim.

True.  X  False. (The Appeals Council does not travel around the country.)

Paragraph 63 Question.

If an SSI recipient has medical necessity for long term care and meets the other requirements for nursing home Medicaid, the SSI recipient's Medicaid will cover nursing home care.

True.  False. (This statement is true.)

Paragraph 66 Question.

If all members of a household will be receiving SSI, then the household will also be eligible for (choose one):

- A. WIC
- B. Medicare
- C. Food Stamps
- D. TANF

Answer:  (The correct answer is C – food stamps.)

Paragraph 70 Question:

What is the extent of back-up that Benefits Counselors serving individuals through Area Agency on Aging systems of access and assistance can receive unlimited back-up from the Legal Hotline for Texans?

Three phone calls per month.

Three emails per day.

Three faxes per week.

Unlimited. (Benefits Counselors serving individuals through Area Agency on Aging systems of access and assistance can receive unlimited back-up from the Legal Hotline for Texans.)

Paragraph 73 Question.

The statute that allows a person to request a cost-free copy of medical records to support an application based on disability for SSI does not permit a non-lawyer to make the request.

True.     False. (A non-lawyer *is* permitted to make such requests.)