

Social Security Benefits Information: Family Law Matters

I. SPOUSAL BENEFITS

Retirement benefits for current spouse on other spouse's record

Even if he or she has never worked under Social Security, your spouse may be able to get benefits if he or she is at least 62 years of age and you are receiving or eligible for retirement or disability benefits. He or she can also qualify for Medicare at age 65.

If your spouse is under full retirement age and qualifies on his or her own record, SSA will pay that amount first. But if he or she also qualifies for a higher amount as a spouse, they'll get a combination of benefits that equals that higher amount. If he or she begins receiving benefits between age 62 and their full retirement age, the amount will be permanently reduced by a percentage based on the number of months up to his or her full retirement age. If your spouse is under full retirement age and works while receiving benefits, the benefit may be affected by the retirement earnings test. If your spouse is under full retirement age and also qualifies on his or her own record, the application will include both benefits.

At his or her full retirement age, their benefit as a spouse can be equal to one-half of your full retirement amount. If your spouse will receive a pension for work not covered by Social Security such as government or foreign employment, the amount of his or her Social Security benefits on your record may be reduced.

If you are full retirement age, you can apply for retirement benefits and then request to have payments suspended. That way, your spouse can receive a spouse's benefit and you can continue to earn delayed retirement credits until age 70. If your spouse has reached full retirement age and is eligible for a spouse's benefit and his or her own retirement benefit, he or she has a choice. Your spouse can choose to receive only the spouse's benefit when he or she applies online and delay receiving retirement benefits until a later date. If retirement benefits are delayed, a higher benefit may be received at a later date based on the effect of delayed retirement credits. If both you and your spouse are full retirement age, only one of you can choose to receive spouse's benefits now and delay receiving your own benefits until a later date.

Retirement benefits for ex-spouse on other spouse's record

If you are divorced, your ex-spouse can receive benefits based on your record (even if you have remarried) if:

- Your marriage lasted 10 years or longer;
- Your ex-spouse is unmarried;
- Your ex-spouse is age 62 or older;
- The benefit that your ex-spouse is entitled to receive based on his or her own work is less than the benefit he or she would receive based on your work; and
- You are entitled to Social Security retirement or disability benefits.

If your divorced spouse remarries, he or she generally cannot collect benefits on your record unless their later marriage ends (whether by death, divorce or annulment).

If your divorced spouse is eligible for retirement benefits on his or her own record SSA will pay that amount first. But if the benefit on your record is a higher amount, he or she will get a combination of benefits that equals that higher amount (reduced for age). If you have not applied for retirement benefits, but can qualify for them, your divorced spouse can receive benefits on your record if you have been divorced for at least two years. See POMS RS 00202.005.

If your divorced spouse has reached full retirement age and is eligible for a spouse's benefit and his or her own retirement benefit, he or she has a choice. Your divorced spouse can choose to receive only the divorced spouse's benefits when he or she applies online and delay receiving retirement benefits until a later date. If retirement benefits are delayed, a higher benefit may be received at a later date based on the effect of delayed retirement credits.

If your former spouse continues to work while receiving benefits, the same earnings limits apply to him or her as apply to you. If he or she is eligible for benefits this year and is also working, you can use our earnings test calculator to see how those earnings would affect those benefit payments. If your former spouse will also receive a pension based on work not covered by Social Security, such as government or foreign work, his or her Social Security benefit on your record may be affected.

Widow/Widower's Benefits

Your widow or widower can receive reduced benefits as early as age 60 or full benefits at full retirement age or older. If your widow or widower remarries after they reach age 60, the remarriage will not affect their eligibility for survivors benefits. Your widow or widower who has not remarried can receive survivors benefits at any age if she or he takes care of your child who is under age 16 or is disabled and receives benefits on your record. You must have been married for not less than 9 months immediately prior to the day of death, unless one of the exceptions in POMS RS 00207.001 applies.

Disabled Widow/Widower's Benefits

Your widow or widower can receive benefits as early as age 50 if he or she is disabled AND their disability started before or within seven years of your death. Note: If a widow or widower who is caring for your children receives Social Security benefits, he or she is still eligible if their disability starts before those payments end or within seven years after they end. We use the same definition of disability for widows and widowers as we do for workers. If your disabled widow or widower remarries after they reach age 50, the remarriage will not affect their eligibility for survivors benefits.

Divorced Widow/Widower's Benefits

If you have a surviving divorced spouse, he or she could get the same benefits as your widow or widower provided that your marriage lasted 10 years or more. Benefits paid to a surviving divorced spouse who meets the age or disability requirement as a widow or widower will not affect the benefit amounts your other survivors will receive based on your earnings record.

If your surviving divorced spouse remarries after they reach age 60 (age 50 if disabled), the remarriage will not affect their eligibility for survivors benefits. If your former spouse is caring for your child who is under age 16 or disabled who gets benefits on your record, he or she will not have to meet the length-of-marriage rule. (The child must be your natural or legally adopted child.)

Dependent benefits for parent caretaker on other spouse's record

Your husband or wife can also receive the spouse's benefit at any age if he or she is caring for your child who is also receiving benefits. Your spouse would receive these benefits until your child reaches age 16. At that time, the child's benefits continue, but your spouse's benefits stop unless he or she is old enough to receive benefits based on their age.

These parent caretaker benefits are also available as survivor's benefits if the worker is deceased (not disabled) and the parent caretaker has not remarried. They are available to both a widow/widower caretaker and to a divorced spouse caretaker.

If your former spouse is caring for your child who is under age 16 or disabled who gets benefits on your record, he or she will not have to meet the 10 year length-of-marriage rule. The child must be your natural or legally adopted child. However, if the divorced spouse caretaker qualifies for benefits as a surviving divorced parent who is caring for your child, his or her benefits may affect the amount of benefits your other survivors will receive based on your earnings record (unlike divorced widow's benefits).

Maximum Family Benefit Amounts

Within your family, each qualified child may receive a monthly payment up to one-half of your full retirement benefit amount. The total depends on your benefit amount and the number of family members who also qualify on your record. The total varies, but generally the total amount you and your family can receive is about 150 to 180 percent of your full retirement benefit. If you have a divorced spouse who qualifies for benefits, it will not affect the amount of benefits you or your family may receive.

II. CHILD BENEFITS

Dependent Benefits from Non-Custodial Parent

When you qualify for Social Security disability benefits, your children may also qualify to receive benefits on your record. Your eligible child can be your biological child, adopted child or stepchild. A dependent grandchild may also qualify. Within your family, each qualified child may receive a monthly payment up to one-half of your full disability amount. However, there is a limit to the total amount that we can pay your family members.

To receive benefits, the child must be unmarried **and** be:

- under age 18; **or**
- 18-19 years old and a full-time student (no higher than grade 12); **or**
- 18 or older **and** have a disability that started before age 22.

Normally, benefits stop when children reach age 18 unless they are disabled. However, if the child is still a full-time student at a secondary (or elementary) school at age 18, benefits will continue until the child graduates or until two months after the child becomes age 19, whichever is first. Benefits continue regardless of whether the parent is custodial or non-custodial. These benefits are also available to children as survivor's benefits if the worker is deceased, not disabled.

Adult Disabled Child Benefits

An adult disabled before age 22 may be eligible for child's benefits if a parent is deceased or starts receiving retirement or disability benefits. SSA considers this a "child's" benefit because it is paid on a parent's Social Security earnings record. The "adult child"—including an adopted child, or, in some cases, a stepchild, grandchild, or step grandchild—must be unmarried, age 18 or older, and have a disability that started before age 22.

SSI Benefits for Children

The Supplemental Security Income (SSI) program pays benefits to disabled adults and children who have limited income and resources. The child must be found disabled and the household's income and resources must be below a certain amount.

Impact of non-custodial parent's income on SSI benefits for eligible child

The income of the parent that is not residing with the child is not deemed (counted against) the child's SSI benefit amount in any way. The income of the remaining parent, including any spousal support, will be deemed against the eligible child with certain deductions allowed for the care of the parent and any ineligible children in the household. See SSI Budget Workbook.

Impact of non-custodial parent's resources on SSI benefits for eligible child

The resources of the parent that is not residing with the child are not deemed to the child. Only the countable resources of a parent or stepparent living in the same household of a child under age 18 are considered. All the countable resources over the resource limit for an individual (\$2,000), if one parent lives in the household, or a couple (\$3,000) if two parents live in the household, are deemed available to the child. Two sets of exclusions apply: one for the parent(s) and one for the child, except for the home (one per family). Other children in the household are also allowed to have up to the resource limit for an individual (\$2,000 each). Pension funds of the parent(s) are not deemed to the child. See 20 CFR § 416.1202-1204.

Impact of child support for eligible child on SSI benefits for eligible child

A child-support payment is a payment from a parent to or for the child to meet the child's needs for food and shelter. When an eligible child receives child-support payments (including arrearage payments) the payments are unearned income to the child. When an absent parent makes a child-support payment to or for an eligible child, SSA excludes one-third of the amount (minus \$20 unearned income disregard).

SSA excludes one-third of the amount of child support that an eligible child receives in the form of food or shelter from an absent parent as income. The remaining two-thirds are in-kind support and maintenance (ISM) subject to the presumed maximum value (PMV). For more information on computing ISM from outside a household. See POMS SI 00835.350C.

EXAMPLE - Absent parent provides ISM to child: Joe Smith's father provides all Joe's food as part of his child-support agreement. In November 2011, Joe's father gives him food with a value of \$600. We would exclude \$200 of that amount from income. The remaining \$400 is subject to the 2011 PMV, which is \$224.66. We would charge (the lesser of the two) \$224.66 to Joe as ISM in the month of November.

Any in-kind child-support payment that is not for food or shelter (e.g., for health insurance) is not income to the child. However, SSA deducts court-ordered support payments made for any purpose (e.g., for health insurance, etc.) from the devisor's income. See POMS SI 00830.420.

Impact of child support for ineligible child(ren) on SSI benefits for eligible child

Child support paid to an ineligible child is counted as income for that child and is (generally) not deemed to the eligible child.

The current allocation for an ineligible child is \$361. Therefore, SSA will deduct any child support paid for the ineligible child from \$361. Any remaining amount could (arguably) be counted as income to the parent, which could then be deemed to the eligible child but this is not totally clear.

III. SSI BENEFITS FOR EX-SPOUSE

The Supplemental Security Income (SSI) program pays benefits to disabled adults and children who have limited income and resources. The adult must be found disabled and the household's income must be below \$820 (living alone 2015) or \$756 (living with others, including children 2015). The individual's resources must be below \$2000 (living alone) or \$3000 (couple).

All resources of an ineligible spouse over the resource limit of a couple (\$3,000) are deemed available to a claimant, only if the spouses are living in the same household. Only one set of exclusions applies to the family unit (one home, one car, one set of household goods). Pension funds of the ineligible spouse are not deemed to the eligible spouse. 20 CFR §§ 416.1202-1204.

Impact of spousal support from one ex-spouse on SSI benefits for other spouse

Any spousal support paid directly to the ex-spouse will be treated as unearned income. There is a \$20 unearned income disregard and the remaining amount will be used to reduce the individual's SSI benefits dollar for dollar.

Impact of separation and divorce

The income and resources of a spouse who is no longer residing with the disabled individual are not counted against the individual in any way. However, if the resources are co-owned, such as a piece of property with both names on the deed, then the resource would be counted as the individual's own resource.

See also "Disability, Divorce, SSI & Medicaid: Using Creative Alimony, Child Support and Property Settlements to Maximize SSI, Ensure Medicaid Eligibility, and Create Funding for Assistive Technology"

www.nls.org/files/Disability%20Law%20Hotlines/National%20AT%20Advocacy/DisabilityDivorce.pdf