SOCIAL SECURITY DISABILITY, SSI, MEDICARE, AND MEDICAID: WHAT’S THE DIFFERENCE—AND WHY WOULD YOU CARE?

by Jim Leach

About once a month a lawyer calls me for help sorting out how social security disability, SSI, Medicare, and Medicaid affect a client. This article explains the basics of these programs, and how they affect our clients, in a way that I hope is helpful to many lawyers who encounter them occasionally.

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)

To be eligible for SSDI, a person must be (a) “insured” and (b) “disabled.” A person is “insured” if the person has earned a minimal amount of wages for 20 of the past 40 calendar-year quarters, or to put it more simply, 5 of the past 10 years. Different rules apply to people who are under 31 years old. Most disabled people are older than 31, so these rules rarely come up, so I won’t discuss them. The minimal amount of wages required to earn coverage for a quarter changes every year. In 2010, it’s $1,120.

For example, a person who has worked continuously from January 2000 to December 2009, then is injured and unable to continue working, will be insured for disability benefits until December 31, 2014, and therefore entitled to benefits if disabled within that period. And if disabled within that period, benefits continue for as long as the person remains disabled.

It’s called “insured” because the program is funded by F.I.C.A. and self-employment taxes. The more a person has earned, the higher the person’s potential benefit will be. I’ve seen monthly SSDI benefits as low as $100 and as high as $2,300. The Social Security Administration sends a summary of lifetime earnings to every worker once a year, or on request. The summary includes an estimate of the disability benefit amount.

Unlike SSDI, SSI eligibility does not require that a person be insured. To be eligible for SSI, a person must (a) have very limited income and financial resources and (b) be disabled. The maximum income that a person can have and be eligible for SSI depends on whether the income is unearned or earned. If it’s unearned, the maximum for a single person is $694 per month; if it’s earned, the maximum for a single person is $1,433 per month. For a married person, the maximum family unearned income is $1,031 per month, and the maximum earned income is $2,107 per month. An example of unearned income is workers’ compensation benefits or unemployment insurance payment. The maximum amounts increase a little most years.

The SSI financial resource limitation is $2,000 for an individual and $3,000 for a couple. Other than a home, the land the home is on, and one vehicle, almost everything else counts as a resource, excluding only life insurance policies with a face value of no more than $1,500, burial plots, or burial funds of no more than $1,500. SSDI and SSI use the same definition of “disabled.” I wrote an article about what “disabled” means in Social Security cases that I’ll be glad to e-mail to you on request.

Medicare and Medicaid Eligibility

A person who is entitled to SSDI becomes eligible for Medicare 29 months after the person became disabled. For example, if the Social Security Administration decides on January 1, 2012, that a person became disabled on January 1, 2010, the person is eligible for Medicare beginning June 1, 2012. SSA automatically notifies the person when eligibility begins. A person who is entitled to SSI benefits in any amount—even $1 a month—receives Medicaid coverage, with no waiting period.

1Catherine Ratliff of Hot Springs made many helpful suggestions during the preparation of this article.
Medicare is described at www.medicare.gov. Medicaid is described at http://www.cms.gov/home/medicaid.asp. I tried to write a summary of the programs, but found it impossible to be both accurate and succinct.

**How SSDI and SSI are affected by personal injury and workers’ compensation recoveries**

Because SSDI is an “insurance” program, and has no resource limitations, a personal injury settlement has no effect on SSDI benefits. So if you recover a personal injury settlement of a million dollars for your client, your client’s SSDI benefits are not affected (although your client’s Medicare benefits may be affected, as discussed below).

A workers’ compensation settlement, unlike a personal injury settlement, must be reported to the Social Security Administration, and can significantly affect your client’s SSDI benefits. A workers’ compensation settlement may reduce your client’s SSDI benefits not at all, a little, a lot, or it may completely eliminate them. The reduction is because of the Social Security workers’ compensation offset (not to be confused with the South Dakota workers’ compensation offset for some people of retirement age, described in the second paragraph of SDCL 62-4-7). The good news is that how you draft the settlement documents can significantly reduce the workers’ compensation offset, thereby putting more money in your client’s otherwise empty pocket. I wrote an article about how to reduce the workers’ compensation offset that I will e-mail to you on request.

SSI, because it is a needs-based (sometimes called “welfare”) program, is drastically affected by a personal injury settlement. Any money your client receives counts as a “resource,” unless it is used to buy an asset that isn’t counted as part of “resources” (as discussed above, a home and one vehicle). So if your client receives more than $2,000 (if single) or $3,000 (if married) in a personal injury settlement, your client is disqualified from receiving SSI benefits that month, and every following month until the client’s resources are again below the allowable maximum. And if your client loses SSI benefits, your client automatically loses Medicaid too, a substantial and frightening loss.

Be sure your client keeps receipts to show how the settlement money is spent. SSA is well aware that some SSI recipients would like to park their money with a friend or relative and get back on SSI, so SSA may require receipts to show that the money was spent for goods that have been consumed, or for assets that are not counted as part of the client’s resources. Because one vehicle is not counted as part of the client’s resources, the client can use the settlement money to buy a good vehicle and become eligible again for SSI.

SSI recipients who receive workers’ compensation settlements, unlike SSDI recipients, are not subject to the workers’ compensation offset. But the workers’ compensation settlement counts as a resource, just like a personal injury settlement, so it disqualifies a person from receiving SSI and Medicaid until the person is under the resource limitation again.

**SSDI and SSI subrogation**

The SSDI and SSI programs do not have a right of subrogation for disability benefits. For example, assume that your client is injured and becomes disabled as a result of a tortfeasor’s negligence, and receives monthly SSDI or SSI disability benefits. You eventually recover a million dollars in your client’s lawsuit against the tortfeasor. None of the million dollars goes back to the government to reimburse it for the SSDI or SSI disability benefits that it paid because of the tortfeasor’s negligence.

Unfortunately for our clients, Medicare and Medicaid have a right of subrogation. Under Medicaid, the South Dakota Office of Recoveries and Fraud Investigations, once it becomes aware that you client has a claim, will correspond with you, keep you aware of the amount of its subrogation interest, and remind you of your duty to pay its subrogation claim. Ordinarily, the Office of Recoveries and Fraud Investigations will pay you a 25% attorney’s fee out of the amount you recover for it.
Medicare subrogation works differently. When Medicare has paid medical expenses incurred because of someone’s negligence or because of a work injury, or if your client asks Medicare to pay for such expenses in the future, the federal government’s Medicare reporting and set-aside rules apply. The federal government has a right to recover past Medicare expenses it paid as a result of a third-party’s conduct. And the government can deny payment of Medicare benefits in the future if a Medicare recipient recovers funds that could be used to pay future related medical expenses, but that aren’t used for that purpose.

On these Medicare subrogation issues, all I can tell you is not to call me. I have never had to do a Medicare set-aside agreement, and remain blissfully ignorant on this subject. I don’t waive future medical costs in workers’ compensation settlements, so the workers’ compensation carrier continues to pay them, they aren’t shifted to the government, and I don’t have to worry about a Medicare set-aside agreement.

**How to find out whether your client receives SSDI, SSI, or both**

As you know by now, the SSDI and SSI programs differ in several important respects. Accordingly, it makes a big difference whether your client receives SSDI or SSI. (Or your client may receive both, which can happen when the client’s SSDI check is small enough that the client qualifies for SSI.) How can you find out whether your client receives SSDI, SSI, or both?

The worst way to determine this is to ask your client. Your client doesn’t know. Even if the client thinks he knows, the client is probably—in my experience—wrong. If your client has all his or her social security papers, the papers should tell you. If your client’s social security benefit in 2010 is more than $674 per month (if the client is single) or $1,011 per month (if married), then the benefit is SSDI, not SSI. If it’s less than those amounts, it could be SSDI, SSI, or some of both, so you need to see the client’s papers, or you may be able to find out from your local social security office.

**A word on terminology**

SSDI is synonymous with “Title 2,” and sometimes is called “disability.” SSI is synonymous with “Title 16.” Clients will tell you they are on “Social Security” or “disability.” This tells you nothing, because both SSDI and SSI are “Social Security,” and both require disability.

**Resources for further information**

The Social Security Administration has a toll-free telephone number that gives free advice on all these subjects. I find it worse than useless. Studies show that the call center gives the correct answer perhaps 70% of the time. For complicated questions, I’m sure the percentage is much lower. When the call center gives you misinformation that you rely on to your client’s detriment, you have no recourse.

Social Security Administration publications, which are readily available on the internet, are an excellent source of information. Another good resource can be your local social security office, especially if you can learn who has expertise in particular areas.

**A final thought**

SSDI, SSI, Medicare, and Medicaid, although alphabet-soup confusing at first, are capable of being understood. When we understand them, we can help our clients obtain all the benefits to which they are entitled by law.