NSCLC
National Senior Citizens Law Center
PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS
POLICY ISSUE BRIEF

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SSI Transfer Penalty: Harsh Consequences Need Attention

Background

The Foster Care Independence Act of 1999 (Pub. L. No. 106-169) increased federal expenditures for foster care. In order to make the legislation revenue neutral, Congress had to seek offsetting cuts elsewhere. One of those cuts was a provision authorizing a transfer penalty in the SSI program. It establishes a period of ineligibility when an individual transfers a resource for less than fair market value while the individual is receiving SSI or during a 36 month look-back period prior to applying for SSI. This policy is apparently based on the assumption that people will give away valuable property for the opportunity to live on a subsistence income amounting, in most cases, to $674 a month.

The Issue

The consequences of the SSI transfer penalty are much harsher than the better known Medicaid transfer penalty and far more difficult to justify. First of all, while the Medicaid transfer penalty applies only to the subset of Medicaid applicants and beneficiaries in need of long-term care services, the SSI penalty applies to all SSI applicants and recipients. More importantly, the length of the period of ineligibility is far greater for SSI. While the number of months of Medicaid ineligibility is determined by dividing the amount of the uncompensated transfer by the average monthly cost of private pay in a skilled nursing facility, the number of months of SSI ineligibility is determined by dividing the amount of that same uncompensated value by the much lower SSI monthly payment rate.

> *An uncompensated transfer of $7,000 in the District of Columbia would result in one month of Medicaid ineligibility (based on skilled nursing costs of $6300 – 6800 per month), while the same $7,000 transfer would result in 10 months of SSI ineligibility ($7,000 divided by the DC SSI payment rate of $674 for an individual equals 10.39, which rounds down to 10 months).*

Although one can argue the merits of the Medicaid transfer penalty, there is at least a legitimate concern about people transferring their resources in order to qualify for Medicaid when they know they can no longer live in the community. There is no similar concern with respect to SSI. People do not divest themselves of all their resources in order to qualify for SSI, given the precarious financial position it puts them in.

SSI recipients encounter the transfer penalty with considerable frequency. Many SSI recipients feel they have a moral obligation to repay family or friends who have helped them out. However, unless there is a legal obligation to repay, which there usually is not, this can result in a period of ineligibility. Similarly, after the person is receiving SSI, the disposition of a small inheritance or of small sums from a lawsuit can result in a period of ineligibility for the typical SSI recipient who is unaware of the transfer penalty.

Not only does the transfer penalty cause considerable hardship for recipients without accomplishing any worthwhile objective, it also creates a substantial additional burden on the Social Security Administration to process all these cases at a time when it is already overburdened by an increased workload and staffing which is still less than what it was several years ago.

Recommendations

Considering the hardship that the transfer penalty causes to SSI beneficiaries without a strong rationale for the policy, action should be taken to repeal the penalty.

The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation and the education and counseling of local advocates, we seek to ensure the health and economic security of older adults with limited income and resources, and access to the courts for all.