

**SSI and “In-Kind Support and Maintenance” Income.
How knowledge of this rule can benefit your clients.**

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The Social Security Administration administers 2 core disability programs, the Social Security Disability Insurance program, and the Supplemental Security Income program.ⁱ Both programs have the same requirements in regards to the medical standard of disability, but they differ in regards to other aspects of eligibility.ⁱⁱ

Put simply, eligibility for SSDI is established when an individual meets the medical standard for disability and has paid enough Social Security taxes over their working life to be “fully” and “currently” insured.ⁱⁱⁱ SSI eligibility is established when an individual meets the medical standard for disability and demonstrates financial need.^{iv} To demonstrate financial need, the individual must have limited income and limited resources.^v An individual may have income high enough that it precludes their ability to receive any SSI benefit.^{vi} In other situations the income may be significant enough that the SSI benefit is reduced, but not altogether precluded.^{vii}

Certain types of income are obvious. If the individual is working and earning a wage or salary, this will be counted as income.

Other types of “income,” however, are less obvious. Consider an example:

Jane Claimant has no cash income. Jane lives with a friend for free (without contributing or paying her “fair share” of the household expenses). The total household expenses (rent, utilities, food, etc.) are \$2,000.00 per month. Jane and 3 other individuals live in the household.

Social Security considers Jane to be receiving “in-kind support and maintenance,” which they define as “food or shelter that somebody else provides for you.”^{viii} Social Security counts this in-kind support and maintenance (hereinafter “IKSM”) as income.^{ix}

The current (2018) SSI federal benefit rate is \$750.00.^x If Social Security were to count the total amount of this IKSM ($\$2,000.00 \div 4$ (number of people in the household) = \$500.00) against Jane, she would receive an SSI benefit of only \$250.00 per month. However, the Social Security “One-Third Reduction Rule” caps the offset at one third of the total SSI benefit.^{xi} In this case, then, Jane’s benefit would be \$500.

There are several important take-aways from the IKSM/income rules:

First, very few SSI recipients are aware of this rule despite the fact that this rule is invoked extremely frequently. It is important to educate claimants about this rule such that they understand why their benefit may be reduced. Consider a situation where an individual’s benefit is being reduced (from \$750 to \$500 per month), and this reduction is precluding them from leaving their current living situation and moving into an independent living situation. It is important for them to know that “moving out” and paying their own expenses will result in their monthly benefit being increased to the full \$750 amount. Without understanding the reason their benefit is being decreased, they may not believe they have the financial resources to move into another living situation.

Second, there are certain instances where it makes more sense for SSI recipients to begin contributing to household expenses to stop the IKSM deduction. Consider the following example:

Ben Claimant has no cash income, but lives with his mother for free. The household expenses (\$1,250.00) divided by the members of the household (5 people) equals \$250.00. If Ben does not contribute his “fair share” to the household expenses, Social Security will cut his benefit by \$250.00 per month.

This scenario presents an obvious course of action: Ben should begin contributing \$250.00 per month to household expenses. This will mean that he is not receiving IKSM (because he is paying his “fair share” of the expenses) and so his benefit amount will increase to the full \$750.00. This is a financially neutral outcome for Ben (either way he has \$500 remaining for his personal expenses). But there is a benefit here to the household because Ben is now contributing his \$250.00 share. As such, this is a net positive to the household.

The specific financial circumstances must be considered to determine if it makes sense to advise the recipient whether to begin contributing their “fair share” to the household expenses.

If the financials indicate it makes sense to begin paying the “fair share,” it is advantageous to catch this as early on in the SSI application/adjudication process as possible. Consider another example:

Our “Ben Claimant” from above applied for SSI benefits on 6/1/16, and was approved on 6/1/18 after a hearing before an Administrative Law Judge (this 2 year wait time reflects a typical wait time for an SSDI/SSI claim that goes to the hearing level of review). Ben’s “Date of Entitlement” is 6/1/16, meaning he will receive 24 months of backpay. Ben’s attorney informs him, after being approved, of the situation with his IKSM income. Realizing he can benefit his household by \$250.00 per month, Ben informs Social Security that he is contributing his fair share, and so Ben’s ongoing benefit will be \$750.00 per month. However, Ben’s attorney did not discuss this issue with Ben before the claim was approved.

Because Ben was living with another for free over the time period his 24 months of SSI backpay will be reduced, each month, by one third. In total this reflects a \$6,000.00 reduction in his backpay.

The ideal course of action here would have been for Ben’s attorney to discuss IKSM with him at the outset of representation. Social Security will respect a written loan agreement (that must meet specific criteria, see Program Operations Manual System (POMS) SI 00835.482) in regards to the IKSM from the date it is executed forward. In short, if Ben had promised, in writing, to repay his “fair share” of the household expenses over the time period 6/1/16 forward, there would have been no IKSM reduction and his household would have \$6,000.00 more in backpay to aid with their financial needs.

Social Security Disability/SSI attorneys should inquire as to a client’s living situation at the outset of representation to determine if a discussion about IKSM is needed. As is clear from the above examples, that simple discussion may have a large benefit to the claimant and the members of his household.

ⁱ 20 C.F.R. § 404.315, 20 C.F.R. § 416.202

ⁱⁱ *Id.*

ⁱⁱⁱ 20 C.F.R. § 404.315, 20 C.F.R. § 404.130

^{iv} 20 C.F.R. § 416.202, 20 C.F.R. § 406, Subpart K

^v *Id.*

^{vi} *Id.*

^{vii} *Id.*

^{viii} 20 C.F.R. § 416.1130

^{ix} *Id.*

^x Social Security Administration, SSI Federal Payment Amounts For 2018, available at <https://www.ssa.gov/OACT/cola/SSI.html> (last visited June 15, 2018).

^{xi} 20 C.F.R. § 416.1131