

# Marriage Penalties in SSA Benefits

Barriers to Marriage and Relationship Equality  
Faced by SSA Beneficiaries



# CCD Working Group on Marriage Equality

- American Civil Liberties Union
- The Arc
- Autistic Self-Advocacy Network
- Autistic Women and Nonbinary Network
- Cure SMA
- Disability Rights Education & Defense Fund
- Justice in Aging
- National Committee to Preserve Social Security and Medicare
- National Disability Rights Network
- National Down Syndrome Congress
- National Down Syndrome Society
- National PLAN Alliance
- Paralyzed Veterans of America
- Spina Bifida Association
- United Spinal
- And more ...



**CONSORTIUM FOR CONSTITUENTS  
WITH DISABILITIES**

# Marriage & Relationship Penalties – Overview

- Two SSI beneficiaries in relationship
  - Married : **25% cut** in stipend and asset limit
  - Unmarried but found **“holding out”**: **25% cut** in stipend and asset limit
- Two people, one DAC beneficiary and one not (and not receiving another Title II benefit), in relationship – **DAC benefits end with marriage**
- Two people, one SSI beneficiary and one not, in relationship
  - Married – **“spousal deeming”** of income and assets from non-SSI spouse to SSI spouse (affecting benefits)
  - Unmarried but found **“holding out”**: **“spousal deeming”** (affecting benefits)
  - Unmarried and no “holding out,” resources from non-SSI spouse can be **“in-kind support and maintenance”** (affecting benefits)

# Two Married SSI Beneficiaries – 25% Cut

- Under federal statute, two married SSI beneficiaries get a joint stipend and joint asset limit that is **25% lower** than for two unmarried SSI beneficiaries
  - Stipend:
    - Two unmarried SSI beneficiaries: \$841 + \$841 or \$1682 total
    - Two married SSI beneficiaries: \$1,261 total
  - Asset Limit:
    - Two unmarried SSI beneficiaries: \$2000 + \$2000 or \$4000 total
    - Two married SSI beneficiaries: \$3000 total

Citations: 42 U.S.C. § 1382(a) & (b); <https://www.ssa.gov/ssi/text-benefits-ussi.htm>;  
<https://www.ssa.gov/ssi/text-resources-ussi.htm>

# Two Unmarried SSI Beneficiaries “Holding Out” As Married – Same 25% Cut

- SSA can decide that two SSI beneficiaries are “holding out” as married, even if the couple is not legally married
- A finding of “holding out” means the couple is subject to the same 25% cut in stipend level and asset limit

Citations: 42 U.S.C. § 1382c(d)(2); 20 C.F.R. §§ 416.1806(a)(3), 416.1826(c), 416.1832(d)

# “Holding Out” Inquiry Under POMS

- Questions re “holding out” for two SSI beneficiaries living together:
  - What name or names are you known by?
  - How do you introduce the other person to friends, relatives, or others?
  - How is mail addressed to you and to the other person?
  - Are there any bills, installment contracts, tax returns, or other papers showing you as spouses?
  - Is the place where you live owned or rented by both of you or only one?
- Not holding out if “obvious reason” to live together “other than as a couple”:
  - living together due to employer-employee relationship
  - living together “only for the purpose of sharing expenses”

Citations: POMS SI 00501.152; GN 00210.800; Form SSA-4178

# Disabled Adult Child (DAC) Marriage Penalty

- DAC beneficiaries:
  - disabled before age 22
  - child of insured parent who is deceased or currently receiving SSDI or Social Security retirement
- DAC beneficiaries receive stipend, Medicare, pathway to Medicaid
- DAC **beneficiaries who marry lose DAC**
  - Exceptions to rule: spouse is another DAC, a person receiving SSDI, a person entitled to “old age” SSA benefits (earliest age 62), or a person receiving another “secondary” Title II benefit; Note: SSI spouse is not within exception

Citations: 42 U.S.C. §§ 423(d)(1), (5), 1382(a), (b);

<https://www.hhs.gov/guidance/document/2002groups-deemed-be-receiving-ssi-medicaid-purposes>

# SSI Beneficiary Married to Non-SSI Spouse – “Spousal Deeming” of Income and Assets

- SSI beneficiary married (or found “holding out”) to non-SSI spouse:
  - Portion of income of non-SSI spouse is allocated to SSI spouse
  - Countable assets of non-SSI spouse are allocated to couple
  - Benefits and eligibility affected
- Countable assets of non-SSI spouse are allocated to the couple; if value exceeds \$3,000, then SSI beneficiary no longer eligible
  - Example: bank account of non-SSI spouse holds \$3,100

Citations: 42 U.S.C. § 1382c(f); 20 C.F.R. §§ 416.1163, 416.1165; POMS SI 01310.160, SI 00501.150



# SSI Beneficiary Married to Non-SSI Spouse – “Spousal Deeming” (cont.)

- Small income by non-SSI spouse – less than \$1,000 a month (below the federal poverty level) – can cause SSI stipend to decrease
- Modest income by non-SSI spouse – about \$32,300 a year (less than half the US median) – brings federal portion of the **SSI stipend to zero**, which can make SSI beneficiary **ineligible for Medicaid**

Citations: 42 U.S.C. § 1382c(f); 20 C.F.R. §§ 416.1163, 416.1165; POMS SI 01310.160, SI 00501.150

# In-Kind Support and Maintenance

- If unmarried SSI beneficiary lives with non-SSI partner, contributions by non-SSI partner to household living can decrease benefits under In-Kind Support and Maintenance (ISM) rules. For example:
  - Household expenses paid by non-SSI partner can reduce stipend by up to one-third of FBR + \$20 (\$300.33 for 2022) under “Presumed Maximum Value” (PMV) rule
  - If SSI beneficiary lives with their partner and is not on the lease, SSA could find that SSI beneficiary does not pay their “fair share” of housing expenses and reduce stipend by one third under the Value of the One-Third Reduction (VTR) rule

Citations: 42 U.S.C. § 1382a(a)(2); 20 C.F.R. §§ 416.1130 – 416.1148; POMS SI 00835.000 et seq.; see also SI 00835.300; SI 00835.200

# Poverty Rates of SSI and DAC Beneficiaries

- More than 40% of SSI beneficiaries live below the federal poverty level
- Nearly 36% of DAC beneficiaries live below the federal poverty level
- SSI and DAC beneficiaries have highest poverty rates of all beneficiary groups

Citations: <https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html>;  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3507766](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3507766)

# Medicaid = Access to Disability Supports

- SSI provides Medicaid and DAC provides a pathway to Medicaid
- Medicaid is the exclusive vehicle in our society for services and supports needed for people with significant disabilities, such as:
  - Primary and preventive health care
  - Medical services for illnesses and chronic conditions
  - Durable medical equipment including wheelchairs and lifts
  - Personal attendant care services and other , and other home- and community-based services
  - Supportive housing services and employment services
- Medicaid is what enables many disabled individuals to be integrated members of their communities

# Additional Harms Imposed by Marriage Penalties On Disabled Constituents

- Limitations on forming families
- Lack of social recognition of important relationships
- Inability to engage in religious practices/conflict with religious beliefs
- Disconnection from community



# Eliminating or Reducing Marriage Penalties – Bills Introduced in Congress

- SSI Restoration Act, <https://www.congress.gov/bill/117th-congress/senate-bill/2065>
  - Would eliminate 25% penalty
- Marriage Equality for Disabled Adults Act, <https://www.congress.gov/bill/117th-congress/house-bill/6405>
  - Would eliminate DAC penalty
- Additional bills:
  - MAPSA, <https://www.congress.gov/bill/117th-congress/house-bill/761/text>
  - SSI Savings Penalty Elimination Act, <https://www.law.cornell.edu/uscode/text/42/1396r-5>

# Reducing Marriage Penalties – Agency Actions

- Mitigate 25% cut
  - Clarify “holding out” standard – apply only to affirmative representations by both individuals of marriage under state law; disclaim “functional” analysis & articulate safe harbor
- Mitigate Spousal Deeming
  - Allow spousal living allowance (deduction from non-SSI spouse’s income)
  - Revise and clarify “holding out” standard as stated
- Administrative process for RFRA claims
- Better public education and guidance on complex rules
  - Esp. DAC penalty and “holding out” rules
- Comprehensive report on penalties and reforms

Citations: <https://www.ssa.gov/policy/docs/issuepapers/ip2003-01.html>; *Beaty v. Berryhill*, No. 2:18-cv-00519 AC, 2019 U.S. Dist. LEXIS 81373 (E.D. Cal. May 13, 2019)



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# Questions and Answers