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Understanding Public Benefits Affecting the Elderly

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This outline presents the law as of this writing, with the warning that many public benefits in Texas are presently in a state of change. Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This publication is intended for educational and informational purposes only.

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INTRODUCTION

This is an overview of the most significant public benefits for persons age 65 and over in Texas. It is intended to assist attorneys and other benefits counselors to answer clients' questions about such benefits and to identify benefits clients may need but do not know about.

The benefits fall into two major categories:

- **Social insurance benefits** (financed by taxes paid by beneficiaries, available regardless of wealth or income): Social Security Retirement and Medicare

- **Means-tested benefits** (available only to those with assets and income below certain levels): Supplemental Security Income, Medicaid, Medicare Savings Programs (QMB, SLMB, Part D Extra Help)

This paper does not cover benefits available primarily to individuals under age 65—for example, Social Security Disability Insurance, under-65 Special Needs Trusts, Medicaid for children and pregnant women, and intellectual disability benefits. Those programs are covered in a longer paper by the authors.[1]

Although Social Security Retirement is a public benefit affecting the elderly, there is very little demand for attorney services with regard to that benefit. Therefore, it is not covered in this paper. There are very good summaries available, such as Joseph F. Stenken, *Social Security & Medicare Facts* and the Social Security website at www.ssa.gov .

Although much of the law discussed is federal law, many rules are state-specific. Accordingly, with regard to cases governed by the law of jurisdictions other than Texas, it must be used, if at all, with great caution.

This outline is intended as a "bridge" to help the practitioner better understand and use the voluminous statutes, rules and agency operating instructions applying to each program. Therefore, although it seeks to cover the most important rules, it cannot include every benefit, exclusion, exemption, etc. contained in the numerous sources of law, which are cited for further reference. We also cite (and list in the Resources appendix) some books, papers and websites we have found helpful.

I. SUPPLEMENTAL SECURITY INCOME (SSI)

[1] Farrell and Lesher, *Protecting Public Benefits,* University of Texas School of Law conference Changes and Trends Affecting Special Needs Trusts (February 4-5, 2016).

It is relatively rare to find a senior who is eligible for SSI, because most have Social Security or other income exceeding its income maximum ($753 per month for an unmarried person, $1,100 per month for a married couple in 2016). However, it occasionally happens, and SSI can be especially valuable because in addition to a cash income, it carries with it eligibility for full Medicaid and food stamps (SNAP benefits). Moreover, the SSI "methodology" for identifying and valuing countable assets and income is used in other programs more frequently encountered in Elder Law practice—most notably, the Medicare Savings programs (QMB, SLMB, QI-1) and Medicare Part D Extra Help (very cheap prescriptions) discussed below. Therefore, this section on SSI can be used as a reference for determining whether a Medicare beneficiary has low enough assets and income to qualify for programs that eliminate or greatly reduce the premiums, copayments and deductibles associated with Medicare. And in those rare cases in which a client over age 65 does not have Medicare, the Medicaid associated with SSI can be critical.

Supplemental Security Income (SSI) is often confused with Social Security Disability Insurance (abbreviated SSDI or SSD) and other Social Security benefits for retirees, dependents and survivors, because some of those programs also have disability criteria and because SSI is also administered by the Social Security Administration (SSA). Even the telephone operators at SSA occasionally use the terms interchangeably and incorrectly. It is, therefore, imperative to distinguish which program applies to the circumstances of a given individual. A simple way to remember the most important difference is: SSI is a needs-based program (hence the name: *supplemental … income*); and SSDI is the program that most workers "buy" into to insure themselves in the event of a disability that renders them unable to work (hence the name: Social Security *Disability Insurance*). A person becomes eligible for SSDI upon the completion of a certain work history and a qualifying determination of disability, irrespective of financial need. In many instances, a person who has a disability and the requisite work history, but a small SSDI benefit, may be eligible for both SSI and SSDI, which would also entitle the individual in question to both Medicaid and Medicare respectively.

Another important distinction between SSI and the other Social Security benefits is that the latter are paid for through the Social Security taxes paid for by workers; whereas SSI is not paid for by Social Security taxes but rather from the general funds of the United States Treasury.[2]

A. Eligibility[3]

1. <u>"Categorical" Requirements: Disability, Age 65 or over, *or* Blindness</u>

   a) Disability

We'll skip over the disability requirement, because it does not apply to individuals age 65 or over. They need to meet only the asset and income requirements. Therefore, when you encounter a person who has reached age 65 and has very low income (discussed below), consider whether

[2] *See* Social Security Handbook, http://www.ssa.gov/OP_Home/handbook/handbook.21/handbook-2105.html (last visited Dec. 20, 2015).
[3] *See* Social Security, http://www.socialsecurity.gov/ssi/text-eligibility-ussi.htm (last visited Dec. 20, 2015).