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How SSDI Works with Child Support in Massachusetts

By Kimberley Keyes | July 18, 2017

Child Support | Family Law

Massachusetts family law attorney Kimberley Keyes examines the relationship between SSDI and child support in Massachusetts.



Social Security Disability Insurance (SSDI) has a very specific impact on child support in Massachusetts that sets it apart from similar forms of income such as traditional Social Security payments, pension payments and/or short or long-term disability insurance payments. Today's blog reviews some of the special attributes of SSDI payments in the child support context.

One of the most important details of a [divorce](#) is the gross income earned by each spouse involved. How much money the family earned during the marriage greatly influences the [division of assets](#) under the divorce, as well as on the amounts of [alimony](#) and [child support](#) that may be paid during and after the divorce. Income, however, comes in a wide variety of forms. While traditional W-2 income is the most common form, numerous alternative forms of income are identified in the Massachusetts Child Support Guidelines. For example, freelancers may generate self-employment business income reported on a K-1 or receive payments reported on a 1099 as independent contractors.

In most instances, Massachusetts treats all kinds of income alike in the child support context, applying the average pretax income – whatever the form – to the Child Support Guidelines formula. However, SSDI has its own set of quirks which we will explore below.

Table of Contents for this Blog:

- An Overview of Social Security Disability Insurance (SSDI) Benefits
- The SSDI Dependency Benefit: Extra Disability Payments for Dependent Children
- Paying Child Support Through SSDI: When Dependency Benefits Are a Substitute for Child Support
- SSDI Dependency Benefits Often Exceed Child Support
- Federal Law Limits the Garnishment of SSDI for Child Support
- Appeals Court Applies CCPA to Lump-Sum SSDI Payment
- Traditional SSI Payments Do Not Create Child Support Credit Like SSDI
- SSDI Child Support Credit Not Automatic: Disabled Parent Must File Complaint for Modification

An Overview of Social Security Disability Insurance (SSDI) Benefits

At its heart, SSDI is a form of government-managed insurance for people who are physically or mentally disabled so badly that they are unable to work. To meet the definition of disability, one must not be able to engage in any substantial gainful activity (SGA) because of a medically-determinable physical or mental impairment(s):

- That is expected to result in death, or
- That has lasted or is expected to last for a continuous period of at least 12 months.

If an individual is deemed disabled by a doctor and the Social Security Administration, he or she may become eligible for SSDI payments. SSDI provides benefits to disabled or blind persons who are “insured” by workers’ contributions to the Social Security trust fund. For many, these SSDI payments are the only thing keeping themselves and their families from homelessness. The amount one receives in SSDI payments from the federal government depends on the earnings history of the individual. Individuals with a greater history of paying federal taxes – i.e. those who worked and earned more before becoming disabled – receive larger SSDI payments if they become disabled.

Unfortunately, SSDI payments are not a rare thing anymore. The number of people who receive SSDI [has exploded in the last few decades](#). In Massachusetts alone, there were [188,207 people receiving SSDI in 2015](#), so handling SSDI in divorce cases is becoming more common.

The SSDI Dependency Benefit: Extra Disability Payments for Dependent Children

Typically, SSDI payments are delivered in monthly checks to the individual deemed disabled by the Social Security Administration. However, SSDI are not intended just to support the disabled person, but also that person's family. If a SSDI recipient has any dependent children, the SSDI payments will be substantially increased to provide financial support for both the recipient and his or her dependent children. This additional, supplemental SSDI income is called the *dependency benefit*, and it can be quite generous, with custodial parents often receiving as much as \$300 every week for the dependency benefit. In some instances, the dependency benefit nearly equals the underlying SSDI payment that the individual worker receives for his or her disability.

However, things get complicated if the SSDI recipient – the disabled parent – is divorced or is a non-custodial parent who pays child support. In these cases, the government separates the payments to the SSDI recipient and the dependency benefit paid for the dependent children. If the SSDI recipient is not the primary custodial parent, then the dependency benefit may be paid directly to the other parent.

Paying Child Support Through SSDI: When Dependency Benefits Are a Substitute for Child Support

The situation becomes even more complicated if the SSDI recipient is ordered to pay child support by the court. Where the custodial parent can already receive the dependency benefit directly from the government, the imposition of a separate child support would effectively amount to a double payment – i.e. one payment through from the child support order and a second via the SSDI dependency benefit.

To avoid double payments, courts in Massachusetts credit the SSDI dependency benefit payment against the child support order. Under the leading case on the issue, *Rosenberg v. Merida (1998)*, the dependency benefit from the SSDI is treated first as part of the non-custodial parent's gross income for purposes of calculating child support. After calculating weekly child support under the Guidelines, the disabled parent receives a dollar-for-dollar credit for the SSDI dependency benefit received by the custodial parent. In *Rosenberg*, the SJC held:

We now adopt the majority position of allowing a credit to the noncustodial parent for SSDI dependency benefits. The more difficult question is how to calculate and apply the credit. The fairest approach for calculating the credit here is to treat the SSDI dependency benefits as if they were first paid directly to the noncustodial parent, who then pays that same amount to the custodial parent to satisfy some part of the support obligation. Specifically, the amount of the SSDI dependency benefits should be included in the income of the noncustodial parent and the guidelines should then be applied to that amount. ... **The noncustodial parent is then allowed a credit equal to the amount of the SSDI dependency benefits.** The net amount of the noncustodial parent's support obligation thus is simply the difference between the support amount calculated above (or as adjusted by the judge) minus the amount of the credit.

For example, if the child support guidelines provide that the disabled parent must pay \$200.00 per week in child support, and SSDI is paying \$175.00 per week to the custodial parent receives \$175.00 for the dependency benefit, then the disabled parent only owes the remaining sum of \$25.00 per week in child support. The net amount of the non-custodial parent's support obligation, therefore, is the difference between the support amount calculated under the guidelines (or as adjusted by the court) less the amount of the credit.

SSDI Dependency Benefits Often Exceed Child Support

It is not uncommon for the SSDI dependency benefit to exceed the presumptive child support order. In other words, the child support guidelines might call for the disabled parent to pay \$150.00 per week in child support, when the custodial parent is actually receiving \$200.00 per week in SSDI dependency benefits. This raises this question: Has the custodial parent been overpaid? Should the disabled parent receive a \$50.00 "rebate" for the difference between the child support order and the dependency benefit received by the custodial parent? In a word, the answer is **no**.

Under federal law, the custodial parent keeps the entire dependency benefit, *even if the dependency benefit exceeds the Court's child support order*. Because the dependency benefit from SSDI is substantial, this often means that the custodial parent will receive more financial support from a disabled parent than he or she would have received if the non-custodial parent was healthy and working.

In contrast, the disabled parent faces a considerably tighter financial position: Instead of having the full income they receive if healthy and working, he or she

must survive on the individual SSDI benefit, which may be a fraction of what he or she could make through employment.

Federal Law Limits the Garnishment of SSDI for Child Support

The reason that custodial parents can keep the entire SSDI benefit, even if it exceeds child support, is federal law. The supremacy clause of the United States Constitution elevates federal law over state law, and where federal law dictates that custodial parents may receive the entire dependency benefit, the federal law controls over a state child support order.

On a related topic, the Massachusetts Appeals Court recently issued an opinion involving the garnishment of SSDI income to pay child support. Both Massachusetts and federal law allow courts to garnish the SSDI benefits of a parent who is failing to make their child support payments. However, there are limits to how much can be garnished. (If these limits did not exist, it could leave the non-paying parent with insufficient funds to live on.)

The Appeals Court case, *Lizardo v. Ortega*(2017), involved a divorced couple with one daughter who was about to enter college. Because of the high cost of tuition, the mother argued that she would need more child support. The parties agreed to increase the father's child support obligation from \$75 per week to \$150 per week.

A few months later, the father, a veteran, was hospitalized for depression, lost his temporary job, and sought to reduce his child support obligation through a Complaint for Modification. While the case was pending, the father began to receive disability benefits from the Veterans Administration. He also earned \$400 per week from a work-therapy program. Eventually, the father's child support obligation was reduced to \$70 per week. Nine months later the father lost his driver's license, thus rendering him unable to complete the work-therapy program. He again sought a reduction of his child support obligation.

During the pendency of his modification complaint, the father was notified that he qualified for SSDI benefits. A portion of his monthly benefit was withheld to pay his child support obligation, which included arrears of approximately \$58,000. The father subsequently received a retroactive lump-sum SSDI payment of approximately \$17,000. The Probate and Family Court judge ordered him to pay approximately \$13,296, or 77 percent, of the lump-sum SSDI payment to the mother toward his arrearages. The father appealed, arguing that this exceeded the amount allowed by the [Federal Consumer Credit Protection Act \(CCPA\)](#).

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Appeals Court Applies CCPA to Lump-Sum SSDI Payment

The CCPA prevents income garnishments above a certain level to ensure that the person making the payments is not left with insufficient income to meet their basic needs, forcing them to declare bankruptcy. When the garnishment is coming from someone who is not supporting either a spouse or another dependent child outside of the child support payments, and where the child support payments have been owed for more than twelve weeks, that level under the CCPA is **65% of their “aggregate disposable earnings”** for any workweek.

In Lizardo, the Appeals Court determined that the father’s lump-sum SSDI payment was “the equivalent of wages because it represented compensation for personal services that was lost as a consequence of the father’s inability to work once he became disabled.” Wages, under the CCPA, are the most common type of “earnings” that can be garnished up to the level the CCPA allows. As for what portion of this disability income was “disposable,” the plain language of the CCPA made it clear: It was the “part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.” The court treated the father’s lump-sum SSDI payment as a “single aggregate distribution for one work week.”

The Appeals Court held that the Probate and Family Court erred by ordering payment to the mother of more than 65 percent of the father’s lump-sum SSDI disbursement, observing, “[t]he purpose of the CCPA – to protect a basic level of income – is defeated if a noncustodial parent is required to make payments toward arrearages in excess of the statutory limits.” It is important to note, however, that the court did not decide which non-Social Security lump-sum payments (for example, a severance payment from an employer) constitute “earnings” that are protected by the 65 percent rule of the CCPA.

Traditional SSI Payments Do Not Create Child Support Credit Like SSDI

It should be noted that the dollar-for-dollar credit towards child support that disabled parents receive for the SSDI dependency benefit does not apply to traditional Social Security Insurance (SSI) payments. In *Martin v. Martin (2007)*, the Appeals Court held:

[There are] significant dissimilarities between the SSDI and SSI programs, which are different in both nature and purpose. SSDI is akin to an insurance program whereby a wage earner who has worked and paid into the Social Security Trust Fund for a sufficient period of time will be entitled to receive a benefit in the event the wage earner becomes disabled. In addition to offering benefits to the disabled worker, the SSDI program provides benefits to certain dependents of SSDI-eligible wage earners. Eligibility to receive SSDI benefits is linked to the disabled wage earner's prior payment of Social Security taxes and is not affected by the recipients' assets or other income.

....

Unlike the SSDI dependents' benefits ..., SSI benefits do not derive from the wage earning history of a subsequently disabled parent, but instead are based upon the child's own disability. ... Although [SSDI dependency] benefits are payable directly to the child rather than through the contributing parent, the child's entitlement to payments derives from the parent, and the payments themselves represent earnings from the parent's past contributions." This rationale is clearly inapplicable to a dependent's receipt of SSI benefits, since such benefits have no connection with the previous earnings of the parent.

In short, SSDI dependency benefits generate a child support credit for a disabled noncustodial parent; however, payments arising out of the traditional SSI program do not create a child support credit.

SSDI Child Support Credit Not Automatic: Disabled Parent Must File Complaint for Modification

A final note is this: if a noncustodial parent who is subject to a child support order becomes disabled, he or she must file a Complaint for Modification in order for dependency benefits to be credited against that parent's child support obligation. In *Tatar v. Schuker (2007)*, the Appeals Court held that a disabled parent can be held in contempt for nonpayment of child support, even if the custodial parent is receiving the dependency benefit as a result of the noncustodial parent's disability, if the noncustodial parent fails to file a Complaint for Modification seeking a credit for SSDI payments.

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