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SUPPLEMENTAL SECURITY INCOME AND THE FAMILY LAW ATTORNEY

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*Using Creative Alimony, Child Support and Property
Settlements to Maximize SSI, Medicaid and Create
Funding for Assistive Technology*

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National Assistive Technology Advocacy Project
A Project of Neighborhood Legal Services, Inc.
Buffalo, New York
237 Main Street, 4th Floor
Buffalo, New York 14203
(v) 716-847-0650; (fax) 716-847-0227
(tdd) 716-847-1322
www.nls.org

Individual Authors:

James R. Sheldon, Esq.
Supervising Attorney
National Assistive Technology Advocacy Project
Neighborhood Legal Services, Inc.
(email) jsheldon@nls.org

Diana M. Straube, Esq.
Staff Attorney
Family Law Unit
Neighborhood Legal Services, Inc.
(email) dstraube@nls.org

TABLE OF CONTENTS

- I. SOURCES OF CASH BENEFITS AND HEALTH INSURANCE FOR ADULTS AND CHILDREN WITH DISABILITIES
 - A. Social Security
 - B. Medicare
 - C. SSI
 - D. Medicaid

II. APPLICATION OF SSI INCOME AND RESOURCE RULES TO MONEY RECEIVED AS ALIMONY, CHILD SUPPORT, OR A PROPERTY SETTLEMENT

- A. Determining the Monthly SSI Check Amount
- B. SSI Income Rules
 - 1. Spousal Income and Alimony Payments
 - 2. Parental Income and Child Support Payments
- C. SSI Resource Rules

III. MEDICAID: A VALUABLE HEALTH INSURANCE BENEFIT FOR CHILDREN AND ADULTS WITH DISABILITIES

- A. Services Available Through State Medicaid Programs
- B. Early and Periodic Screening, Diagnosis, and Treatment

IV. FAMILY LAW ISSUES

- A. Child Support Payments
 - 1. Federal Law and the Family Support Act of 1988
 - 2. Issues Regulated by the States: The New York Experience
- B. Alimony or Maintenance for the Adult Spouse: The New York Experience
- C. Division of Property: The New York Experience

V. OPTIONS FOR SETTLEMENT FOR CHILD WITH DISABILITY

- A. Child Scenario # 1
- B. Child Scenario # 2
- C. Child Scenario # 3

VI. OPTIONS FOR SETTLEMENT FOR ADULT WITH DISABILITY

- A. Adult Scenario # 1
- B. Adult Scenario # 2
- C. Adult Scenario # 3

VII. ALTERNATIVE RESOLUTIONS INVOLVING BOTH CHILD SUPPORT AND ALIMONY

VIII. REALISTIC CREATIVE RESOLUTIONS

IX. CONCLUSION

SUPPLEMENTAL SECURITY INCOME AND THE FAMILY LAW ATTORNEY

Using Creative Alimony, Child Support and Property Settlements to Maximize SSI and Medicaid

Mary has severe rheumatoid arthritis and uses either crutches or a wheelchair to get around.⁽¹⁾ She is separated from her husband and her only income is Supplemental Security Income (SSI) benefits of \$500 per month. She lives in one of 39 states in which an SSI recipient automatically qualifies for Medicaid. Medicaid pays for Mary's doctor visits, physical therapy, prescription drugs, crutches and the wheelchair. If her condition worsens, Medicaid could also pay for home health care services.⁽²⁾

Starting next month, Mary will receive \$520 per month in alimony payments under a negotiated

settlement. The SSI program will disregard the first \$20 of her alimony, but the remaining \$500 will be counted to reduce her monthly SSI check to \$0. Thus, despite a \$520 per month alimony award, the net benefit to Mary is \$20 per month. The net benefit could turn into a net loss, however, because her loss of SSI benefits means that she also loses her automatic eligibility for Medicaid.⁽³⁾

Mary's case may be settled in such a way as to maximize her benefits. Consider this alternative. Mary's ex-husband agrees to pay up to \$520 as direct payments to Mary's creditors to cover a car payment and insurance, a phone bill, and a cable television bill. Since Mary receives neither cash nor an in-kind payment for "food, clothing or shelter," these payments will not be treated as income by the SSI program and will have no effect on her eligibility. She will continue to receive a monthly SSI check of \$500. Mary's retention of SSI guarantees that she will also retain Medicaid.

When a family law attorney has an SSI recipient as a client, it is difficult to competently settle a case or advocate for a particular court order without a good working knowledge of SSI's income and resource rules. Without that expertise, a substantial part of an otherwise good settlement or court ordered payment could inadvertently go into government coffers in the form of reductions to SSI. Worse yet, if alimony or child support makes a client ineligible for SSI, in most states that client could also lose Medicaid.

In this article we cover the basic SSI rules an attorney must know to competently represent the interests of an adult or child with a disability who is expected to benefit from alimony,⁽⁴⁾ child support or any other cash or property settlement that results from a divorce or related action. We explain SSI's income and resource rules, the types of cash and property settlements that will affect SSI and those that will not. We also explain how SSI becomes the conduit to automatic Medicaid eligibility in most states and why the retention of Medicaid may be more important than the retention of SSI.

Although this article is written primarily for family law attorneys, it will be valuable to attorneys and advocates who specialize in disability law as well. We expect that it will also be read by many persons with disabilities and their families. The hypothetical examples which are included should provide the reader with guidance as to how these principles will apply in real life cases.

Finally, this article should not be viewed as the last word on any particular case. The SSI program is heavily regulated and new SSI laws, regulations and policies appear every year. Before relying on a law or regulation cited in this article, attorneys should ensure that it applies to their unique case and has not changed. Attorneys should also be mindful of the collateral consequences that any SSI-induced resolution may have on other matters such as tax liability, eligibility of the family or family members for state welfare benefits, housing subsidies, or other means-tested programs. This article will not directly address those collateral issues.

The principles stated in this article will allow the family law attorney to creatively design resolutions that will greatly enhance clients' quality of living. In selected cases, the creative resolution of alimony, child support or property issues may bring thousands of extra dollars into the family and allow a child or adult with a disability to obtain funding for expensive services and equipment to enhance independence and self sufficiency.

I. SOURCES OF CASH BENEFITS AND HEALTH INSURANCE FOR ADULTS AND CHILDREN WITH DISABILITIES

Social Security, SSI, Medicare and Medicaid are all potential sources of cash benefits and health insurance insofar as they are available to children and adults with disabilities.

A. Social Security

Social Security, an insurance program authorized by Title II of the Social Security Act, is administered by the Social Security Administration.⁽⁵⁾ A person qualifies for Social Security benefits when a wage earner has paid into the Social Security trust fund. Benefits may be paid to the wage earner or the wage earner's dependents.

Social Security Disability Insurance (SSDI), a benefit for adults with disabilities over the age of 18, is paid to wage earners who have accumulated sufficient quarters of coverage and then become disabled.⁽⁶⁾ Benefits are also available to disabled adult children, disabled widows and disabled widowers of wage earners.⁽⁷⁾ If a wage earner parent is disabled, retired or deceased, children under 19 may also qualify for Social Security benefits based on dependency, instead of disability.⁽⁸⁾

A person need not have limited income and resources to receive Social Security benefits. This distinguishes Social Security from SSI which requires that a person have limited income and resources. With Social Security, whether any income or resources is received as alimony/maintenance or child support is irrelevant. Social Security eligibility will never be affected by the financial settlement of a family law matter. The importance of Social Security benefits, to the family law attorney, is that they represent part of the income stream that will support clients and their families.

B. Medicare

Medicare, a federal health insurance program authorized by Title XVIII of the Social Security Act,⁽⁹⁾ is most frequently associated with the receipt of Social Security benefits.⁽¹⁰⁾ Adults with disabilities can establish eligibility in three ways: 1) after 24 months of eligibility for SSDI benefits; 2) after 24 months of eligibility for Railroad Retirement disability benefits⁽¹¹⁾; or 3) if suffering from kidney disease and not receiving SSDI benefits, upon entering end stage renal disease or developing an impairment that requires regular dialysis or kidney transplantation to maintain life.⁽¹²⁾

A person who is eligible for Medicare will qualify automatically for Medicare Part A. Part A, known as hospital insurance benefits, covers such things as inpatient care, skilled nursing facility care, hospice care, home health services, and durable medical equipment.⁽¹³⁾ Part B, known as supplemental medical insurance, is optional and requires payment of a monthly premium.⁽¹⁴⁾ The 1999 Part B premium is \$45.50 per month.⁽¹⁵⁾ Part B covers various outpatient services, including physician services, durable medical equipment, prosthetic devices, orthotic devices and home health services.⁽¹⁶⁾

As with Social Security, the amount of income or resources received as alimony/maintenance or child support is irrelevant for Medicare purposes. This distinguishes Medicare from Medicaid, which is for persons with limited income and resources. Medicare eligibility will never be affected by the economic settlement of a family law matter. The importance of Medicare, to the family law attorney, is that it represents part of their client's health insurance package.

C. SSI

SSI, a welfare or needs-based program for the aged, blind or disabled, is authorized by Title XVI of the Social Security Act.⁽¹⁷⁾ To qualify for SSI, a child or adult must have limited income and resources.⁽¹⁸⁾ SSI can be a person's only form of income or it can supplement other income such as Social Security benefits or wages. Like Social Security, SSI is administered by the Social Security Administration.

SSI benefits may be affected by a traditional family law resolution that involves a periodic payment, lump sum or transfer of property. For this reason, it is important to determine whether a client or client's child is receiving SSI benefits or whether the adult or child in question might be eligible for SSI if his or her income and resources were limited. The income and resource rules, which are most relevant to the family law attorney, are described in section II.

D. Medicaid

Medicaid, also known as Medical Assistance, is a cooperative federal-state program authorized by Title XIX of the Social Security Act.⁽¹⁹⁾ As explained in section III, Medicaid can pay for a wide range of health-related costs for both children and adults with disabilities.

In 39 states, a person who receives SSI benefits automatically qualifies for Medicaid.⁽²⁰⁾ In 11 states, known as section 209(b) states, Medicaid eligibility is not automatic for SSI recipients. These states use their own Medicaid eligibility criteria, which differ from SSI eligibility criteria.⁽²¹⁾ The states which exercise the 209(b) option include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia.⁽²²⁾ In any individual family law case, particularly those in which an adult or child is heavily dependent on expensive services or equipment that are covered by Medicaid, it may be important to preserve SSI eligibility to ensure the continuation of Medicaid.⁽²³⁾

II. APPLICATION OF SSI INCOME AND RESOURCE RULES TO MONEY RECEIVED AS ALIMONY, CHILD SUPPORT, OR A PROPERTY SETTLEMENT

In all states, SSI is available as a cash benefit to children and adults with disabilities who have limited income and resources. When arranging alimony, child support, and property settlements, attorneys should think creatively and consider several options in order to minimize certain kinds of income and resources and thus maximize the amount of benefits to which their clients may be entitled.

A. Determining the Monthly SSI Check Amount

An individual's monthly SSI check is based on a federal benefit rate (FBR) and optional state supplement. The FBR combined with the state supplement provides an SSI base rate for calculating monthly benefits. The amount of the monthly SSI check is determined by subtracting countable income from the SSI base rate.

The FBR for 1999 is \$500 per month for an individual and \$751 for an eligible couple.⁽²⁴⁾ Each year, the FBR is adjusted to compensate for increases in the cost of living. So, for example, effective January 1, 1999 the FBR for an individual was increased \$6 from the 1998 level of \$494 per month.⁽²⁵⁾

Many states do not provide a state supplement and the state's SSI base rate is the FBR. For example, Texas and West Virginia, two states which have chosen not to supplement the FBR, have 1999 SSI base rates of \$500 per month. Many other states, including New York, Vermont and California, have chosen to supplement the FBR. These states all have chosen different amounts for their optional state supplement. The examples in this article will use the 1999 FBR of \$500 with no state supplement.⁽²⁶⁾

B. SSI Income Rules

The SSI program defines income as anything received in cash or in kind that can be used to meet needs for food, clothing, or shelter.⁽²⁷⁾ Earned income includes gross wages, net earnings from self-employment, and a variety of other payments received for a person's labors.⁽²⁸⁾ Unearned income is any form of income other than earned income.⁽²⁹⁾ Unearned income includes income from a responsible relative, such as a parent or spouse, that is "deemed" available to the SSI recipient.⁽³⁰⁾ Both alimony and child support payments, as direct cash payments, will meet SSI's definition of unearned income.⁽³¹⁾

1. Spousal Income and Alimony Payments

When calculating the amount of benefits for SSI recipients and applicants, the SSI program distinguishes between spouses who reside in the same household and those who reside apart. If a spouse resides in the same household and has income that is high enough, the SSI program will treat a portion of that income as available to the spouse with a disability. First, a portion of the spouse's income is allocated to meet the needs of any minor children who are not eligible for SSI. Then, under a complicated "deeming" formula, a portion of the remaining income is considered available, or "deemed" to the spouse with a disability.⁽³²⁾ If spouses live apart, the SSI program will not automatically consider the income of the non-disabled spouse as available to the spouse who is the SSI recipient (i.e., it will not "deem" the working spouse's income).⁽³³⁾ The SSI program will only count income from the spouse who is living in a separate household if some of that income is paid to the SSI recipient.

If an adult SSI recipient receives alimony payments, the SSI program will ignore the first \$20 of alimony received each month.⁽³⁴⁾ The remaining amount will count as income and reduce the amount of the monthly SSI check that a person would otherwise receive.

2. Parental Income and Child Support Payments

The SSI program also distinguishes between custodial and non-custodial parents. If a child receiving SSI is under 18 and has a custodial parent with a high enough income, the SSI program will treat a portion of that income as available to the child.⁽³⁵⁾ After first allocating a portion of the income to meet the needs of the parent and other minor children, the program uses a complicated formula to deem a portion of the parent's income to the child with a disability.⁽³⁶⁾

The non-custodial parent's income will be counted by the SSI program only to the extent that it is paid and is available to meet that child's needs for food, clothing and shelter. For example, Tom is a custodial parent for 10 year old Cheryl, who receives \$500 per month in SSI benefits. Tom's ex-wife, Susan, earns more than \$30,000 per year, but SSI will not treat any part of that as available to Cheryl unless the money is, in fact, being paid. Assume that Susan is ordered to pay \$480 in child support payments to meet Cheryl's needs. The SSI program will treat these payments as income to Cheryl and, under special rules, will exclude one third of the \$480 to reduce that amount to \$320.⁽³⁷⁾ An additional \$20 is excluded under the general unearned income exclusion, reducing the income to \$300. Cheryl will be eligible for a monthly SSI check of \$200 ($\$500 - 300 = \200).⁽³⁸⁾

Cheryl need not receive so little. Consider this option. As an alternative to traditional child support, Tom's ex-wife agrees to pay up to \$480 as direct payments to a private school to cover the cost of Cheryl's tuition. Since no cash has been received on Cheryl's behalf nor any in-kind payment for "food, clothing or shelter," the payment for the tuition will not be treated as income and will have no effect on her SSI eligibility. Her monthly SSI check will remain at \$500.

C. SSI Resource Rules

A resource is defined by the SSI program as cash or other liquid assets or real or personal property that an individual owns and could convert to cash which can be used to provide for food, clothing, or shelter.⁽³⁹⁾ This article will not cover every last rule governing when something counts as a resource and when the resource is treated as exempt or excluded. We will cover the general SSI rules and some examples typically encountered by the family law attorney.⁽⁴⁰⁾

SSI's general resource limit for 1999 is \$2,000 for an individual and \$3,000 for an eligible couple.⁽⁴¹⁾ We typically say that the SSI recipient can have no more than \$2,000 in the bank, but the general resource limit goes beyond bank accounts. A parent's resources will be considered available to the child and counted against the child's \$2,000 resource limit to the extent that they exceed \$2,000 for one parent or \$3,000 for two parents in the household.⁽⁴²⁾

In addition to cash and bank accounts, the SSI program will count "liquid resources," i.e., property which can be converted to cash within 20 working days. Such resources include stocks, bonds, promissory notes, mortgages, and the cash surrender value of life insurance policies.⁽⁴³⁾ The SSI program also counts "non-liquid resources," i.e., property which is not cash and cannot be converted to cash within 20 working days. This includes household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land.⁽⁴⁴⁾ Except for automobiles, only the equity value of the non-liquid resource is countable.

Since many family law resolutions involve property transfers, the attorney should know some of the more common resource exclusions, i.e., resources that are not counted for purposes of the \$2,000 resource limit. The following list of exempt resources, although by no means complete, includes those most likely to come up in the context of a family law case:⁽⁴⁵⁾

- the residential home, regardless of its value
- household goods and personal effects with an equity value of less than \$2,000
- equipment required because of a disability, e.g., a wheelchair or telecommunication device for the deaf (TDD), is totally excluded⁽⁴⁶⁾
- an automobile, up to \$4,500 of its current market value
- an automobile's total value if it is necessary for employment of a household member, for medical reasons, or is specially modified for a person with a disability
- property, including the tools of a tradesperson and the machinery and livestock of a farmer, that is used in a trade or business or by such individual as an employee
- the full value of burial spaces
- burial funds, up to \$1,500 for an individual and \$3,000 for a couple

Consider Darlene, who has multiple sclerosis and receives SSI payments, which makes her automatically eligible for Medicaid. The resolution of Darlene's divorce requires her ex-husband to deed over his interest to the couple's home and give her a lump sum of \$25,000. The deed to the home will not affect Darlene's SSI eligibility, as it falls within the residential home exemption as long as she continues to live in the house. However, the \$25,000 cash payment is not exempt. Since it is more than the \$2,000 general resource limit, retention of that money will make Darlene ineligible for SSI until that amount, combined with all other non-exempt resources, goes below \$2,000.

A viable alternative to the \$25,000 cash payment would be to direct the ex-spouse to use that money to pay off the existing mortgage, make repairs to the property, or both. Such a payment would not affect

Darlene's SSI eligibility as it is not money available for food, clothing or shelter. Instead, the payment only adds equity value to an exempt resource. Later, if Darlene uses the equity in her home to secure a home equity loan or line of credit, the loan proceeds will not be treated by the SSI program as income. [\(47\)](#)

III. MEDICAID: A VALUABLE HEALTH INSURANCE BENEFIT FOR CHILDREN AND ADULTS WITH DISABILITIES

State Medicaid programs provide funding for medical care, rehabilitation, and other services for eligible individuals "whose income and resources are insufficient to meet the costs of necessary medical services."[\(48\)](#) Although states are not required to operate a Medicaid program, all states have opted to do so. Having opted into Medicaid, a state must meet all the requirements imposed by federal Medicaid law and regulations.[\(49\)](#)

Medicaid is a complicated maze of state and federal laws, regulations, and policies. This section will not discuss the many Medicaid recipient categories under the federal law and the eligibility criteria that apply to each category. Nor will it attempt to summarize all of the categories affected by recent welfare reform legislation.[\(50\)](#) This article will only discuss Medicaid to the extent that it is a derivative benefit of SSI eligibility.

A. Services Available Through State Medicaid Programs

Medicaid has enumerated services which are considered mandatory, meaning that any participating state must offer those services.[\(51\)](#) These include such items as inpatient hospital care, physician's services, skilled nursing facility services for persons over age 21 and home health services to persons over age 21 who are eligible for skilled nursing services.[\(52\)](#) Medicaid has also enumerated services which are considered optional, meaning that states may offer these services if they so choose.[\(53\)](#) These services include physical therapy, prosthetic devices, personal care services, private duty nursing services and prescription drugs.[\(54\)](#)

Medicaid can be a very important benefit to both adults and children with disabilities. In all states, Medicaid covers mandatory service categories such as home health services for persons over age 21 who are eligible for skilled nursing services.[\(55\)](#) The home health services category covers durable medical equipment (DME), often referred to by advocates and other programs as assistive technology.[\(56\)](#) Under the DME category, adults with disabilities have obtained funding for expensive items like custom and power wheelchairs and augmentative communication devices.[\(57\)](#) Many optional categories likewise allow Medicaid recipients coverage for other expensive services, including prosthetic devices, psychiatric care, prescription drugs, personal care services (i.e., home health care), and private duty nursing services.[\(58\)](#) As the family law attorney evaluates the importance of Medicaid for his or her adult client, both the medical needs of the client and the extent of the state's coverage of optional Medicaid services will be factors.

B. Early and Periodic Screening, Diagnosis, and Treatment

Obtaining Medicaid for children under age 21 can be even more important than it is for adults. This is because the Medicaid Act entitles poor children to receive comprehensive medical and behavioral screening and treatment services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, a mandatory service in all states.[\(59\)](#) Under EPSDT, a state must provide to Medicaid

beneficiaries under age 21 any service among those listed in the Medicaid Act, including optional services, whether or not the service is included in the state's Medicaid plan or is provided to adults.⁽⁶⁰⁾ Since children, under EPSDT, have the full range of optional services available to them, the family law attorney's analysis of what services Medicaid will cover for a child with a disability should be the same in every state.

IV. FAMILY LAW ISSUES

Much of family law practice is dictated by laws which differ from state to state. Options for resolving a case generally fall into some combination of: periodic payments, lump sum payments, and transfer of property. Traditionally, an attorney advocates for the periodic payment, lump sum, or property settlement that best serves the client. The client's circumstances and those of the spouse or parent who is the payor often dictate favoring one option or some combination of two or three options.

This article will not detail every possibility for resolving the rights of a spouse or child under state laws. To put the article into context, however, we will summarize the more important laws and selected court holdings which govern child support, alimony and marital property in New York. We will also provide selected references to laws and court holdings from other states.

A. Child Support Payments

1. Federal Law and the Family Support Act of 1988

Congress passed the Family Support Act of 1988 because it was concerned about the disproportionate number of children who reside with single parents in poverty.⁽⁶¹⁾ The Act requires states, as a condition of receiving federal grants for aid to needy families,⁽⁶²⁾ to establish guidelines for use in any judicial or administrative proceeding wherein child support would be determined.⁽⁶³⁾ The Act mandates that the guideline calculation result in the presumptively correct amount of support, and allows the presumption to be rebutted by written findings or findings on the record that the amount so calculated would be unjust or inappropriate.⁽⁶⁴⁾ A state's child support guidelines must consider all earnings and income of the absent parent, its computations must be based on specific descriptive and numeric criteria, and the criteria for rebutting the presumption must take into account the best interests of the children.⁽⁶⁵⁾ Otherwise, the details are left to the individual states.⁽⁶⁶⁾ The methods of calculation vary greatly from state to state, as do the definitions of income, the allowable deductions and the specified reasons for deviation.⁽⁶⁷⁾

2. Issues Regulated by the States: The New York Experience

This section will discuss, for illustrative purposes, New York's child support guidelines. We hope that by highlighting certain New York provisions, we can point out possible resolutions that can be used in most, if not all states for the benefit of persons who receive SSI.

New York responded to the Family Support Act's federal mandate with passage of the Child Support Standards Act (CSSA), effective September 15, 1989.⁽⁶⁸⁾ The CSSA shifted emphasis away from the needs of the child, placing the focus on total parental income and children's right to share in their parents' wealth.⁽⁶⁹⁾ It attempted to balance uniformity, predictability, and fairness of child support awards with the need to allow judicial discretion in atypical situations.⁽⁷⁰⁾

The CSSA presumes that it takes 17 percent of the combined income of both parents to support one child, 25 percent to support two, 29 percent to support three, 31 percent to support four, and 35 percent to support five or more.⁽⁷¹⁾ New York's legislature arrived at the percentages by concluding that it costs less to support each succeeding child in the same household as a result of "shared resources."⁽⁷²⁾

New York's statute speaks in terms of combined parental income. A literal application of the statute requires adding the income of both parents, multiplying up to \$80,000 of the parental income by the statutory percentage for the number of children involved, and pro rating the obligation between the parents based on their respective incomes.⁽⁷³⁾ One may simplify the calculation by multiplying the noncustodial parent's countable income by the appropriate percentage. In addition to this calculation, the court is required to determine the availability of health insurance coverage for the children, and then to allocate 1) the cost for insurance as is reasonable given the financial circumstances of the parties, and 2) uninsured medical expenses and necessary day care expenses on a pro rata basis.⁽⁷⁴⁾ Courts may include in the order of support the requirement that shelter, clothing, food, care, medical attention, educational expenses, funeral expenses, confinement expenses, life or accident insurance, and other reasonable and proper expenses be provided.⁽⁷⁵⁾

Courts may deviate from the guideline's amount of support if the resulting order would be unjust or inappropriate, based upon consideration of 10 enumerated factors.⁽⁷⁶⁾ One factor a court may consider is the financial resources of the custodial and non-custodial parents and of the child.⁽⁷⁷⁾ Another factor is the physical and emotional health of the child and the child's special needs and aptitudes.⁽⁷⁸⁾ Our experience has been that the receipt of SSI by the child and the child's special needs may be factors a New York court will consider in determining whether application of the guidelines would be unjust or inappropriate under the circumstances.

Once the court finds that support calculated pursuant to the guidelines would be unjust or inappropriate, it must set support that it finds to be just and appropriate under the circumstances.⁽⁷⁹⁾ Neither the Family Support Act nor the CSSA provide further guidance for determining a just and appropriate level of support, leaving it instead to judicial discretion.

In New York, prior to enactment of the CSSA, we consistently saw orders for multiple children in the same household in which support was allocated between the children. For example, a child support award of \$50.00 per week for two children was usually allocated as \$25.00 per week per child. Under the CSSA, child support is usually not allocated and the order will read, "\$50.00 per week for two children."

This change from allocated to unallocated support can have far-reaching consequences when one of the children in the home receives or becomes eligible for SSI. Assume a custodial parent is receiving \$100.00 per week for two children pursuant to the CSSA, and the younger child is eligible for SSI. If the order is unallocated, what amount will be considered child support for the child with the disability? Half? All? An amount equivalent to 17 percent of parental income? Eight percent of parental income? Since child support affects the amount of SSI paid on behalf of that child, it becomes important to know how much of the \$100.00 should, or would, be allocated for that child. An allocated order may eliminate the possibility that the entire amount will be considered child support for the SSI recipient. At least one state, California, resolves this issue by providing that unless the order specifies otherwise, support for the youngest child will be the amount of support for one child, and the amount of support for the next youngest child will be the difference between that amount and the amount of support for two children.⁽⁸⁰⁾

B. Alimony or Maintenance for the Adult Spouse: The New York Experience

The term "alimony" is used here in the generic sense to include both maintenance and spousal support. Alimony has been defined as "an allowance paid to a person by that person's spouse or former spouse for maintenance, granted by a court upon a legal separation or a divorce or while action is pending."⁽⁸¹⁾ The obligation derives from the common law right of the wife to support from her husband.⁽⁸²⁾ Historically, alimony was a continuation of the husband's duty to support when his conduct toward his wife was so reprehensible as to justify her separation from him.⁽⁸³⁾ In the 1979 case of *Orr v Orr*, the United States Supreme Court held that a statute that provided alimony for women only was unconstitutional.⁽⁸⁴⁾ The obligation must now be gender neutral.

Unlike child support, there are no federally mandated guidelines for the calculation of alimony, and the purpose and objectives of alimony differ from state to state. By way of illustration, we will discuss the possibilities that exist under New York law. Advocates should adjust the ideas proposed in the examples that follow to suit the laws of their states.

In New York, a married person is chargeable with the support of his or her spouse, if that person is possessed of sufficient means or is able to earn such means.⁽⁸⁵⁾ As a court-ordered obligation, a support order may arise in informal separations as well as in actions for divorce, separation or annulment.⁽⁸⁶⁾ Alimony may be paid in one sum or periodic sums, and may be payable to third persons for such items as real and personal property, services supplied to the spouse, insurance, taxes and repairs or other carrying charges on premises occupied by the spouse.⁽⁸⁷⁾

Whether an award of alimony is appropriate is within the discretion of the court, "as justice requires." The court will consider the standard of living the parties enjoyed together, whether one party needs alimony in order to meet his or her reasonable needs, and whether the other party can afford to pay alimony.⁽⁸⁸⁾

The amount of alimony awarded is discretionary and is based upon consideration of 11 factors, including each party's income and property; the length of the marriage and the age and health of both parties; the present and future earning capacity of the parties; and the ability of the party seeking alimony to become self-supporting, including the time and training necessary for obtaining employment.⁽⁸⁹⁾ Otherwise, there are no guidelines, formulae, or charts showing the correct amount of alimony to be awarded.

Absent guidelines, the advocate may find missing the fairness and predictability underlying the determinations of child support awards. However, what is left is a great deal of flexibility not only for courts, but for advocates attempting to improve the quality of the lives of their clients with disabilities. This flexibility is important when one goal of the resolution is to maximize eligibility for SSI and Medicaid.

C. Division of Property: The New York Experience

Upon dissolution of a marriage in New York, the court must determine each party's separate property and fairly distribute marital property. Marital property includes all property obtained during the marriage and before the execution of a separation agreement or commencement of a matrimonial action.⁽⁹⁰⁾ New York courts have held that marital property includes the value of a pension or retirement earned during the marriage, as well as the increased earning potential acquired through training, education, or

professional licensing.⁽⁹¹⁾ In New York, separate property is statutorily defined, and includes property acquired before the marriage from someone other than the spouse; property acquired in exchange for separate property; the increase in the value of separate property during marriage except to the extent the increase was due to the efforts of the spouse; and compensation for personal injuries.⁽⁹²⁾ Property distribution can take a number of different forms, such as transfer of title, lump sum buyouts, and periodic payments. The method of distribution can affect eligibility for SSI differently, depending on the type of asset or resource and its value.

Although alimony is not seen as a property right, it can be tied into property distribution. For example, alimony might be ordered until such time as the spouse becomes eligible for his or her share of a pension. Alimony also might be increased to help compensate for dissipation of assets by the other spouse. The advocate should know how each form of distribution will affect the client's eligibility for SSI, so that a resolution can be fashioned which will maximize the financial resources of the person with a disability.

V. OPTIONS FOR SETTLEMENT FOR CHILD WITH DISABILITY

The following examples are all based on New York child support guidelines. For simplicity's sake, they assume the custodial parent is not also receiving alimony payments. A parent's receipt of alimony could, if high enough, affect the child's SSI eligibility. An example of a case involving alimony and child support is contained in section VII.

The application of the SSI rules to these scenarios will be the same in every state. The nature of the child support guidelines and one's ability to fashion alternative relief will, of course, vary state by state. Based on experience in New York, we believe the scenarios and the alternative resolutions of these cases are realistic.

A. Child Scenario # 1

Wanda lives with her two children, Bonnie, age 11 and Chris, age 13. Chris is profoundly deaf and is eligible for SSI; Bonnie does not have a disability. The family's only income is \$1,100 gross each month from Wanda's job and monthly SSI of \$500 for Chris.⁽⁹³⁾ Wanda has been awarded child support payments of \$1,000 per month for her two children, which is 25 percent of her ex-husband's \$4,000 in monthly income as required by New York child support guidelines. The New York Family Court order does not specify how much of the \$1,000 is allocated for each child.

Affect on Chris's SSI. We can expect the SSI program to presume that half of the child support money is for Bonnie and half for Chris. SSI would then exclude one-third of Chris's child support payments, reducing the amount from \$500 to \$333.33. Another \$20 would be deducted as an unearned income exclusion, reducing Chris's income to \$313.33 and his monthly SSI check to \$186.67 (\$500 - 313.33). Chris will continue to receive Medicaid, as he lives in a state in which SSI recipients automatically qualify. Chris receives a net value of \$186.67 from the child support payment, the amount that was excluded by SSI.

Alternative resolution # 1. At the time of disposition, Wanda's attorney asks the Family Court judge to allocate \$680 of the \$1,000 as payment for Bonnie, and \$320 as payment for Chris. The legal rationale is that \$680 represents 17 percent of the father's income, New York's child support guideline for one child; \$320 represents the amount added on when payments are made for two children at 25 percent of the father's income. The court's support order reflects this allocation. The SSI program will now exclude one third of the \$320 (\$106.67) per month and an additional \$20 as an unearned income exclusion. Chris's

countable income is now \$193.33 per month (\$320 - 126.67) and the SSI check will now be \$306.67 per month (\$500 - 193.33). This minor change to the court's order will allow the family to retain an extra \$120 of Chris's monthly SSI benefits.

Alternative resolution # 2. Wanda's attorney seeks the same \$320 per month allocation for Chris. She also asks that the ex-husband be required to pay the \$320 directly to vendors or creditors for the benefit of Chris and his family. She asks that the first month's payment of \$320 be paid to XYZ Electronics for a telecommunication device for the deaf (TDD). The TDD will allow Chris to communicate on the telephone through a keyboard and screen display despite his lack of hearing. For subsequent months, she asks that the \$320 be paid directly to vendors or creditors as follows: \$80 for therapeutic dance lessons; \$30 for cable TV; \$30 for a separate phone line to allow Chris to use the TDD in his bedroom; \$50 for the lease of a laptop computer that will allow Chris to use it at home and at school; \$50 for Wanda's car insurance; and \$80 each month toward the \$960 fee for a two-week summer residential camp for deaf teenagers. The ex-husband agrees to this arrangement and the Family Court judge orders it. ⁽⁹⁴⁾

Under SSI income rules, none of these payments will be treated as income to Chris. Therefore, his SSI check will remain at \$500. This is because income, for SSI purposes, must be something received in cash or in kind that can be used to meet Chris's needs for food, clothing or shelter. ⁽⁹⁵⁾ No part of the \$320 allocation comes as cash and none of the items paid for fall into the categories of food, clothing or shelter. Comparing the financial result of this resolution to the traditional resolution, it is clear that this creative alternative will result in an enhanced quality of life for Chris and his family.

B. Child Scenario # 2

Ten year old Jenny is spinal cord injured and paralyzed from the waist down. She uses a power wheelchair to get around. Jenny lives with her mother who has no other children. Jenny's mother earns \$900 gross each month which allows Jenny to qualify for a full monthly SSI check of \$500. In a divorce settlement, Jenny's father agrees to pay \$480 per month, which meets New York's child support guidelines for one child. The SSI program will exclude one third of the child support payments, reducing Jenny's income from \$480 to \$320. Another \$20 will be deducted as an unearned income exclusion, reducing her income to \$300. Jenny now qualifies for a \$200 SSI check (\$500 - 300). The child support helps balance the family's budget, but Jenny's mother does not have enough money left to purchase a lift-equipped van to allow her to easily transport Jenny to medical appointments, family outings and recreational activities. Jenny's mother currently pays \$160 per month in loan payments for a used car that is not suitable for transporting Jenny in her wheelchair.

Alternative resolution. A more creative resolution will help finance the lift-equipped van. In lieu of paying child support, the father agrees to pay the following monthly bills directly: telephone (\$35), cable TV (\$25), YMCA membership for Jenny (\$20) and loan payments on a new lift-equipped van (\$400). The court approves this arrangement. Since the \$480 is now paid directly to the vendors and bank, the money is not available to Jenny's mother to pay for Jenny's food, clothing and shelter. Therefore, Jenny has no countable income for SSI purposes and her SSI check will remain at \$500.

Compare the family's balance sheet using the old and new divorce settlements. Under the original settlement, Jenny and her mother wind up with \$1,420 per month to meet expenses other than car payment expenses (\$900 wages + \$480 child support + \$200 SSI - \$160 car payment). Under the new settlement, they net \$1,480 to meet expenses other than van payment expenses (\$900 wages + \$500 SSI + \$80 for telephone, TV and YMCA). They now have \$60 more for household expenses and will have the needed lift-equipped van.

C. Child Scenario # 3

Robert is a 17 years old high school junior who lives with his 12 year old sister, Carol, and his father, Harry. Harry works and earns \$33,000 per year. Robert has cerebral palsy which affects his legs, arms and speech. He walks with great difficulty and can write with great difficulty. His speech can only be understood by familiar listeners. Robert meets SSI's definition of disability. Robert is a good student, is on the honor roll, and plans to study engineering in college. Robert would like to obtain a Dynavox, a \$7,000 device that would allow him to produce speech through an electronic voice. He would also like to obtain his own car, equipped with hand controls for operating the accelerator and brakes.

Robert's parents divorced three years ago. Under terms of the divorce, Robert's mother put \$10,000 into a bank certificates of deposit (CD) for Robert. She also agreed to pay the sum of \$1,000 per month as child support for Robert and Carol, the amount required under New York's child support guidelines. The court order allocates \$500 for Robert and \$500 for Carol. The child support payments for Robert will continue until his 21st birthday.⁽⁹⁶⁾

There are two reasons why Robert is not eligible for SSI. First, the CD, which is now valued at \$12,000, is considered an available resource and is more than the \$2,000 in non-exempt resources allowed by SSI.⁽⁹⁷⁾ Second, Harry's income is too high even if Robert's resources were below the \$2,000 limit. Even if the \$12,000 CD and the father's income did not stand in the way of SSI eligibility, the child support income would substantially reduce Robert's potential eligibility for SSI.

Alternative resolution. One critical SSI rule that the attorney must understand is that Harry's income and resources will only be considered available to Robert until his 18th birthday.⁽⁹⁸⁾ At age 18, Harry's income will no longer count but the SSI program will continue to count two thirds of the child support payments made by the Sharon.

Armed with this understanding, the attorney explains to Harry that his income will not be relevant to Robert's SSI eligibility when he turns 18. The attorney suggests that they plan to reduce the \$12,000 CD to bring it within SSI's \$2,000 limit by the time Robert is 18. Harry and Robert agree that \$2,000 will be used as a downpayment on a new car or newer used car. They will then propose to the Social Security Administration to place \$8,500 into something known as a Plan for Achieving Self Support (PASS) to allow Robert to pay for future college tuition and related expenses to pursue a career in engineering. If the PASS is approved, the SSI program will not count the \$8,500 as a resource.⁽⁹⁹⁾ Harry's attorney will also seek a modification of the child support order to require that Sharon pay \$300 per month as a car payment on a three-year car loan, and \$200 per month for Robert's car insurance.

Sharon agrees to the revised child support order and the court approves it. Upon Robert's 18th birthday, Sharon will pay for the car payment and insurance and continue to pay \$500 directly to Harry for Robert's sister, Carol. Harry and Robert arrange to purchase a car that will be modified to add hand controls to allow Robert to drive despite his disability. The PASS proposal was submitted and approved by the Social Security Administration, making the \$8,500 an exempt asset for SSI purposes. With the \$2,000 downpayment and the \$8,500 exempt account, Robert's countable resources will now be \$1,500, well within SSI's \$2,000 limit. On Robert's 18th birthday, he will now qualify for a full \$500 SSI check since he has no income. The payments on the loan and for insurance will not count as income to Robert as they do not meet Robert's needs for food, clothing or shelter.

Robert will also qualify for Medicaid as he lives in one of 39 states in which SSI recipients qualify for Medicaid automatically. Anticipating Robert's Medicaid eligibility, his speech pathologist begins to

prepare the paper work to submit a claim to the state's Medicaid program to fund the Dynavox communication device. The speech pathologist informs Robert that, over the past two years, nearly all of her Medicaid requests for communication devices have been approved.

The last thing the attorney suggests is that Robert start the application process with his state's vocational rehabilitation (VR) agency.⁽¹⁰⁰⁾ The attorney explains that the VR agency serves individuals with disabilities who seek assistance in pursuing vocational goals. Depending on whether Robert meets the VR agency's financial need criteria, they may be able to fund such things as college tuition, room and board, and the cost of installing the hand controls on his car.⁽¹⁰¹⁾

VI. OPTIONS FOR SETTLEMENT FOR ADULT WITH DISABILITY

The following examples are all based on New York law governing alimony. For simplicity's sake, they assume there will not also be issues involving child support. An example involving both child support and alimony is presented in section VII.

A. Adult Scenario # 1

Jason is seeking a divorce from Janet. Jason is diabetic and has not worked in three years. His only income is \$320 in Social Security benefits. He asks his attorney to see to it that any alimony payment be set up so that it will not affect his Social Security. The attorney learns that Jason lives in his own apartment and faces eviction because he cannot afford his rent. Jason has no bank account and no resources other than his modest household furnishings.

The first thing the attorney does is have Jason apply for SSI. Since he already meets the disability standard and has very limited resources, Jason should qualify for an SSI check of \$200 per month and will qualify for Medicaid, automatically, in most states. Jason applies and is approved for SSI benefits of \$200 per month. The attorney can now proceed with the alimony and property issues of the divorce, having made sure that Jason is getting the SSI benefits for which he is eligible.

B. Adult Scenario # 2

Helen is going through a divorce. Helen recently returned to the community from a two-month stay at a psychiatric hospital. She is currently unable to live independently and will be living in a supported apartment run by a community agency. Helen will also be attending a therapeutic day program, five days per week. Helen receives SSI benefits of \$500 per month and also qualifies for Medicaid, as she lives in one of 39 states in which SSI recipients automatically qualify for Medicaid. Medicaid pays for Helen's monthly psychiatrist appointments, her medications and the cost of the day program.

Based on the resources of Helen's spouse, Helen's attorney believes that alimony payments in the range of \$600 to \$700 is likely. Helen may also be able to obtain one half of the equity from the sale of the marital residence or about \$15,000 as her share. The attorney learns that Helen's condition precludes her living in the home she shared with her husband. It is not likely that Helen can live independently in the foreseeable future.

Helen's attorney does a thorough job of investigating the possibility of alternative resolutions. The attorney determines there is limited opportunity for a creative resolution to pay for either items other than food, clothing or shelter or to purchase items that are considered exempt resources by the SSI program. It is very possible that this could be a case in which Helen is advised to accept less than the full amount she could get from a court order. In fact, Helen's attorney will probably want to make sure that

the alimony payment is low enough to ensure Helen's continued eligibility for some SSI payment and automatic Medicaid. Helen may also want to accept a cash settlement of less than \$2,000 to avoid exceeding SSI's resource limit.

The ability to design a creative resolution is, of course, always dependent on individual circumstances. Changing a fact or two could make the attorney's approach change considerably. For example, if Helen is well enough to return to her residence with some support, the property settlement could involve transferring title to her. Then in lieu of alimony, the ex-husband could be directed to pay for things such as the phone bill, car insurance, a landscaping service, and a housecleaning service.

C. Adult Scenario # 3

Arlene is legally blind and has a severe arthritic condition. She receives \$500 in monthly SSI benefits. Under a divorce settlement, Arlene is to receive \$420 per month from her ex-husband in alimony. Since the \$420 is unearned income, the SSI program will disregard the first \$20 and count \$400 to reduce her SSI check to \$100.

Arlene plans to open an accounting business out of a home office. To accommodate her visual impairment, she will need an enhanced computer screen and a computer with voice output. Since her arthritis limits her ability to type for prolonged periods, she needs a scanner to enter documents directly into her computer. After receiving the maximum assistance from her state's vocational rehabilitation agency, Arlene will still need approximately \$12,000 for additional computer equipment, office supplies, advertising and business cards.

Under an alternative resolution of Arlene's case, the ex-husband agrees to pay a \$12,000 lump sum rather than pay the first three years' worth of alimony. The intent is to allow Arlene to use this money for business start-up costs. The SSI program will still treat this as income in the month of receipt and as a resource in later months, making her ineligible until all bank accounts combined total \$2,000 or less. [\(102\)](#)

There are two alternatives which will preserve SSI eligibility. Arlene could propose a Plan for Achieving Self Support (PASS) in anticipation of receiving this money. [\(103\)](#) She could designate in her PASS how she will spend the \$12,000 to purchase items related to her home accounting business. If approved, the PASS would make the \$12,000 an exempt asset and Arlene would continue to receive a full SSI check of \$500 per month. The husband could also agree to hold the \$12,000 and make payments directly to vendors as money is due. This latter method also preserves SSI eligibility as Arlene never has this cash available to her to pay for food, clothing or shelter.

VII. ALTERNATIVE RESOLUTIONS INVOLVING BOTH CHILD SUPPORT AND ALIMONY

Many family law cases involve both child support and alimony, with or without the added feature of a transfer of property. This kind of example is more difficult to present hypothetically in an article because of the very complex formula used by the SSI program to determine how much of the custodial parent's income is "deemed" available to the child who is seeking SSI. Within the deeming formula, earned income is treated one way and unearned income is treated another way. As additional children are added to the SSI recipient's household, the complexity of the calculation increases as deductions are allowed to account for the cost of supporting the other children.

The following example illustrates some of the issues involved when an attorney and his or her client

must decide whether to allocate periodic payments as child support or alimony. To limit the complexity of the budgeting, we purposely picked an example in which the custodial parent's income is very low and there are no other children.

Mark and Beverly are about to get a divorce. Mark will retain custody of nine year old Cindy, who is autistic and attends a special class for children with similar disabilities. The couple have no other children. Although Cindy clearly meets the disability criteria for SSI, she never was eligible for SSI while her parents were together because their combined incomes were too high.

Following negotiations, the parties agree to the following: Mark will go from a full-time to part-time work status to devote more time to Cindy; Mark's wife will pay \$780 per month as child support payments for Cindy or 17 percent of her income as required under New York child support guidelines; and neither party will receive alimony from the other. By going to part-time status, Mark will earn \$665 gross per month.

Under this agreement, if approved by the court, Cindy will still not be eligible for SSI. The SSI program will disregard one third of the child support payments, reducing Cindy's income to \$520. It will then disregard an additional \$20 as an unearned income deduction, leaving Cindy with \$500 in countable income or just enough to make her ineligible for SSI.

Alternative resolution #1. Upon consulting with an SSI specialist, Mark's attorney learns that Mark can receive up to \$220 per month in alimony payments without any of his income being deemed available to Cindy.⁽¹⁰⁴⁾ Beverly agrees to amend the agreement to pay \$220 per month in alimony and \$560 per month in child support. The court approves, making a written finding that it would be unjust or inappropriate to strictly follow New York's child support guideline under these circumstances.⁽¹⁰⁵⁾ One third of the child support payment (\$186.67) plus an additional \$20 will be disregarded by the SSI program, leaving Cindy with \$353.33 in countable income (\$560 - 206.67). She will now qualify for a monthly SSI check of \$146.67 (\$500 - 353.33). She will also qualify for Medicaid automatically.

Alternative resolution #2. Beverly will pay Mark \$220 per month in alimony. Of the \$560 that had been designated as child support, \$500 per month will be specifically earmarked to pay for the following items: car payments (\$200), car insurance (\$100), telephone (\$30), cable T.V. (\$30), special day care (\$80) and Saturday morning program for autistic children (\$60). Now Cindy's income is reduced to \$60 per month. One third of that amount (\$20) is excluded and an additional \$20 is disregarded as an unearned income exclusion, reducing her countable income to \$20 per month. Cindy will now qualify for a \$480 per month SSI check and automatic Medicaid.

VIII. REALISTIC CREATIVE RESOLUTIONS

Family law attorneys will find that in some cases a creative solution is unrealistic. For example, there may not be any alternative ways of directing periodic payments to minimize the impact on SSI. There may also be tax considerations that will dictate the attorney's strategy. The attorney may also encounter clients who have been victims of domestic violence, who prefer to quickly sever all ties with the abusive spouse. In that case, the creative resolution may realistically, be limited to a transfer of property or lump-sum buy out in lieu of alimony.

A creative resolution typically will depend on the cooperation of the payor parent or ex-spouse. If the other party is not willing to agree to a creative approach, it may not be realistic. In some cases, it may be necessary to provide the payor with a "better deal" in order to get them to agree to the special arrangement. The creative resolution in that case could be one that serves the interests of both parties.

When a creative resolution is available, it can make a tremendous difference in the quality of life of the individual or family.

IX. CONCLUSION

Any attorney with significant family law practice will encounter clients who are SSI recipients. In those situations, it is incumbent on the attorney to factor SSI's income and resource rules into the equation. Armed with a knowledge of the SSI rules, the attorney can proceed to advocate for a resolution that will best serve the needs of their clients and their families.

1. The examples used in this article are purely hypothetical, but may be used as guides in real life cases.
2. As noted in section III, some of the services which Medicaid covers for Mary are optional and will not be covered by Medicaid in every state.
3. Mary loses her right to automatic Medicaid as a recipient of Supplemental Security Income (SSI). However, in some states she may be able to retain Medicaid through an application to her state's Medicaid agency. For example, in New York Mary would still be able to retain Medicaid, at no cost to her, if her 1999 monthly income was \$584 or less. N.Y. COMP. CODES, R. & REGS., tit. 18, § 360-4.7.
4. As noted in section IV.B, the terms "alimony" and "maintenance" are used interchangeably in this article to describe periodic payments from one spouse to the other.
5. 42 U.S.C. §§ 401 *et seq.*
6. *Id.* § 423(c).
7. 20 C.F.R. §§ 404.335, 404.350 (1998).
8. *Id.* §§ 404.350, 404.367.
9. 42 U.S.C. §§ 1395 *et seq.*
10. *Id.*
11. *Id.* § 426(b).
12. *Id.* §§ 426-1, 1395c, 1395rr; 42 C.F.R. § 406.13(b)(1998).
13. 42 U.S.C. § 1395d.
14. *Id.* § 1395j.
15. See Health Care Fin. Admin., *Medicare Amounts for 199* (visited May 11, 1999), www.medicare.gov/amounts.html.
16. 42 U.S.C. § 1395k.
17. 42 U.S.C. §§ 1381 *et seq.*; 20 C.F.R. pt. 416 (1998).

18. *See* 20 C.F.R. §§ 416.1100 *et seq.* (1998)(regarding SSI's income rules); §§ 416.1201 *et seq.* (regarding SSI's resource rules).

19. 42 U.S.C. §§ 1396 *et seq.*

20. *Id.* § 1396a(a)(10)(A)(i).

21. *Id.* § 1396a(f).

22. Program Operations Manual System (POMS) SI 01715.020 (July 1995).

23. Some former SSI recipients, who work and lose SSI benefits due to budgeting of their wages, can continue eligibility for Medicaid under the provisions of the section 1619(b) program. 42 U.S.C. § 1382h; 20 C.F.R. §§ 416.268-.269. *See* Edwin J. Lopez-Soto et al., *Chapter 3: Work Incentives, in BENEFITS MANAGEMENT FOR WORKING PEOPLE WITH DISABILITIES: AN ADVOCATE'S MANUAL*, 23, 36-37 (Edwin J. Lopez-Soto & James R. Sheldon, Jr. eds., Greater Upstate Law Project 1998).

24. *See* Social Security Admin., *SSI Payment Amounts* (Oct. 16, 1998), www.ssa.gov/OACT/COLA/SSI.html.

25. Social Security Admin., *Table of SSI Payment Amounts, 1975-1999* (Oct. 16, 1998), www.ssa.gov/OACT/COLA/SSIAMts.html.

26. The 1999 optional state supplements for each state appear in POMS SI 01415 *et seq.* (Dec. 1998).

27. 20 C.F.R. § 416.1102 (1998).

28. *Id.* § 416.1110.

29. *Id.* § 416.1120.

30. *See id.* §§ 416.1161, 416.1165 (regarding deemed income of a responsible parent); *id.* §§ 416.1161, 416.1163 (regarding deemed income of a responsible spouse).

31. *Id.* § 416.1121.

32. *Id.* § 416.1163(b).

33. *Id.* § 416.1160(a)(1).

34. *Id.* § 416.1124.

35. *Id.* § 416.1165.

36. *Id.* § 416.1165(a).

37. *Id.* § 416.1124(c)(11).

38. *Id.* § 416.1124(c)(12).

39. *Id.* § 416.1201(a).

40. A very detailed summary of the SSI income and resource rules is contained in Edwin J. Lopez-Soto et al., *Chapter 2: SSI Income & Resource Rules*, in *BENEFITS MANAGEMENT FOR WORKING PEOPLE WITH DISABILITIES: AN ADVOCATE'S MANUAL*, 5, *supra* note 23.

41. 20 C.F.R. § 416.1205(c)(1998).

42. *Id.* §§ 416.1202(b), 416.1205(c).

43. *Id.* § 416.1201(b).

44. *Id.* § 416.1201(c).

45. *Id.* § 416.1210.

46. *Id.* § 416.1216(c).

47. *Id.* § 416.1103(f). If Darlene retained loan proceeds in a bank account, they would be counted as a resource in the following month.

48. 42 U.S.C. § 1396.

49. *Id.* § 1396a(b).

50. The major welfare reform legislation from 1996 is the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, pub. L. 104-193, 110 Stat. 2105. For a detailed discussion of how this new law affects Medicaid recipients see National Health Law Program et al., *The Welfare Law and Its Effects on Medicaid Recipients*, 30 CLEARINGHOUSE REV. 1008 (Jan.-Feb. 1997).

51. 42 U.S.C. §§ 1396a(a)(10), 1396d(a)(1)-(5), (17), (21).

52. *Id.* §§ 1396d(a)(10)(D), 1396d(a)(1), (4), (5).

53. *Id.* § 1396d(a)(6)-(16), (18)-(20), (22)-(25).

54. *Id.* § 1396d(a)(8), (11), (12), (24).

55. *Id.* § 1396a(a)(10)(D).

56. 42 C.F.R. § 440.70 (1998). *See* Technology Related Assistance for Individuals with Disabilities Act, 29 U.S.C. §§ 2201 *et seq.*(1998); Individuals with Disabilities Education Act, 20 U.S.C. § 1401(a)(25)-(26); 34 C.F.R. § 300.5-300.6 (1998).

57. *See, e.g.*, *Fred C. v. Texas Health & Human Servs. Comm'n*, 988 F.Supp. 1032 (W.D. Tex. 1997), *aff'd per curiam*, 167 F.3d 537 (5th Cir. 1998); *Hunter v. Chiles*, 944 F.Supp. 914 (S.D. Fla. 1996).

58. 42 U.S.C. § 1396d(a)(8), (11), (12), (24).

59. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a)(4)(B), 1396d(r); 42 C.F.R. § 441.50-441.62 (1998).

60. 42 U.S.C. § 1396d(r)(5); U.S. DEPT OF HEALTH & HUMAN SERVICES, HEALTH CARE FINANCING ADMINISTRATION (HCFA), STATE MEDICAID MANUAL, Part 5: EPSDT, § 5110.

61. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988).

62. Personal Responsibility and Work Opportunity Act of 1996, Pub. L. 104-193, Title I, § 103(a)(1), 110 Stat. 2112 (codified at 42 U.S.C. § § 601 *et seq.*), replacing Pub. L. No.90-248, Title II, § 240(b), 81 Stat. 911 (relating to Aid to Families With Dependent Children).

63. 42 U.S.C. § 667(a), (b)(1).

64. *Id.* § 667(b)(2).

65. 45 C.F.R. § 302.56 (1998).

66. *See* *In re Marriage of Peterson*, 888 P.2d 23 (Or. Ct. App. 1994).

67. *E.g.*, compare the formula utilized in California, CAL. FAM. CODE § 4055 (Deering 1999), to the use of the "Schedule of Basic Child Support Obligation" by Arizona, ARIZ. REV. STAT. ANN. § 25-320, Appendix (West 1998). Compare the reasons for deviation in Oregon, OR. REV. STAT. § 25.280 (1997), to the criteria set forth in the Arkansas family support chart, ARK. CODE ANN. § 9-12-312 (Michie 1998) (Administrative Order Number 10-Child Support Guidelines).

68. 1989 N.Y. Laws, c. 567, § 2, amending N.Y. FAM. CT. ACT, Art 4 *et seq.* (McKinney 1999).

69. *Cassano v. Cassano*, 651 N.E.2d 878 (N.Y. 1995).

70. *Id.*

71. N.Y. DOM. REL. LAW § 240(1-b) (McKinney 1999), N.Y. FAM. CT. ACT § 413(1)(McKinney 1999).

72. *Commissioner of Social Services of the City of New York v. Raymond S.*, 180 A.D.2d 510 (N.Y. App. Div. 1992).

73. N.Y. DOM. REL. LAW. § 240(1-b)(b)(5), (c)(2); N.Y. FAM. CT. ACT § 413(1)(c)(4), (c)(2).

74. N.Y. DOM. REL. LAW §§ 240(1)(a), 240(1-b), (c)(4), (5); N.Y. FAM. CT. ACT §§ 413(c)(4), (5), (6)(c), (d).

75. N N.Y. FAM. CT. ACT §416(a).

76. N.Y. DOM. REL. LAW § 240(1-b)(f); N.Y. FAM. CT. ACT § 413(1)(f).

77. N.Y. DOM. REL. LAW § 240(1-B)(F)(1); N.Y. FAM. CT. ACT §413(1)(f)(1).

78. N.Y. DOM. REL. LAW § 240(1-B)(F)(2); N.Y. FAM. CT. ACT § 413 (1)(f)(2).

79. N.Y. DOM. REL. LAW § 240(1-B)(G); N.Y. FAM. CT. ACT § 413(1)(g).

80. *See* CAL. FAM. CODE § 4055 (Deering 1999).
81. THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 53 (2d ed. Unabridged 1987).
82. BLACK'S LAW DICTIONARY 97 (4th ed. 1968).
83. B. FRANK ET AL., 1 ALIMONY, CHILD SUPPORT & COUNSEL FEES--AWARD, MODIFICATION & ENFORCEMENT § 6.02[4]. At 6-16 (1992).
84. *Orr v. Orr*, 440 U.S. 268 (1979).
85. N.Y. FAM. CT. ACT § 412.
86. N.Y. DOM. REL. LAW § 236, pts. A(1), B(2).
87. *Id.* § 236 pts. A(1), B(8)(b).
88. *Id.* § 236, pt. B (6)).
89. *Id.*
90. *Id.* § 236 pt.B(1)(c).
91. *Majauskas v Majauskas*, 463 N.E.2d 15 (N.Y. (1984); *O'Brien v. O'Brien*, 489 N.E.2d 712 (N.Y. 1985).
92. N.Y. DOM. REL. LAW § 236 pt. B (1)(d).
93. For simplicity's sake, all the examples will use the 1999 SSI federal benefit rate (FBR) of \$500 per month with no state supplement. As noted in section II.A, if New York is the family's state of residence, there would be a state supplement to the FBR. Wanda's \$1,100 in monthly earnings is low enough that it would not affect Chris's SSI check.
94. To the extent that this or similar alternative resolutions could be described as running afoul of the state's child support guidelines, Wanda's attorney can argue that the more traditional resolution would be "unjust or inappropriate" in that it would result in less money available to meet Chris's needs. 42 U.S.C. § 667(b)(2).
95. 20 C.F.R. § 416.102 (1998).
96. Under New York law, a parent's obligation to provide child support continues until the child's 21st birthday. N.Y. FAM. CT. ACT § 413.1(a).
97. 20 C.F.R. § 416.1205(c)(1998).
98. *Id.* § 416.1165.
99. 42 U.S.C. §§ 1382a(b)(4)(A)(iii), (B)(iv), 1382b(a)(4); 20 C.F.R. § 416.1112, 416.1124, 416.1161, 416.1180-416.1182, 416.1210, 416.1225-416.1227 (1998). For a thorough discussion of the Plan for

Achieving Self Support, see James R. Sheldon, Jr. & Edwin J. Lopez-Soto, *PASS: Supplemental Security Income's Plan for Achieving Self Support*, 30 CLEARINGHOUSE REV. 1101 (Mar.-Apr. 1997).

100. Title I of the Rehabilitation Act gives money to states to provide vocational rehabilitation services for persons with disabilities. 29 U.S.C. §§ 701 *et seq.*; 34 C.F.R. pt. 361. For a thorough discussion of the services available through state vocational rehabilitation agencies, see James R. Sheldon, Jr. & Ronald M. Hager, *Funding Assistive Technology for Persons with Disabilities: The Availability of Assistive Technology Through Medicaid, Public School Special Education Programs, and State Vocational Rehabilitation Agencies*, 31 CLEARINGHOUSE REV. 50 (May-June 1997).

101. *See* 29 U.S.C. § 723(a); 34 C.F.R. § 361.48(a)(1998).

102. 20 C.F.R. § 416.1207(d)(1998).

103. *See* section V.C, *supra* and note 99, *supra*.

104. *See* 20 C.F.R. §§ 416.1160-416.1169 (1998).

105. *See* 42 U.S.C. § 667 (b)(2); N.Y. DOM. REL. LAW § 240(1-B)(F); N.Y. FAM. CT. ACT § 413(1) (f).



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