

Planning for Adult Disabled Children

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I. Introduction

This paper will provide a basic explanation of the public benefits available to a child who is suffering from a disability that began prior to reaching age twenty-two (22). The discussion will be confined to four programs: Supplemental Security Income, Medicaid, Social Security Disability, and Medicare. There are other public benefits such as food stamps, and Medicaid waiver programs that may also be available to such a person but this paper is limited to the discussion of the four major programs set forth above.

The law concerning the Childhood Disability Benefit program is found at TITLE 42 CHAPTER 7 SUBCHAPTER II § 402 § 402. Old-age and survivors insurance benefit payments.

The program discussed in this paper is generally referred to as Childhood Disability Benefits in the Social Security regulations. The POMS manual calls the benefit Childhood Disability Benefits (CDB) POMS Section DI 00115.035. But most of the time, Social Security workers and State Medicaid workers refer to the benefits as Disabled Adult Child or DAC benefits. When discussing the program, the specific benefit must be delineated because the global term DAC can mean any of the four programs. When discussing the Medicaid benefit it may be referred to as DAC. Likewise, when discussing the Medicare component it may be referred to as DAC. Each program has its own specific title but DAC may be used by workers when referring to any one of the individual programs.

In order to qualify for any of these programs the applicant must be a disabled person under the SSA rules. Qualifying for disability can be a complicated process and any advocate that is not experienced in handling Social Security Disability claims should seek the advice of an attorney specializing in such matters. For the purposes of this paper it will be assumed that the individual meets all of the disability requirements of the program. The preliminary step in any of these matters is proving disability. Once that requirement is established there are many other eligibility factors that must be considered in order to establish eligibility. These factors include the age of the person, his or her marital status and income from all sources and assets.

A general description of DAC would be a situation where a child who is disabled from birth and has previously been determined eligible for SSI benefits and has a parent who either retires, becomes disabled, or passes away. The child will then receive a notice from SSA that he or she is entitled to benefits based on the deceased parent's social security earnings record. The increased benefit may be higher than the SSI income

limit and, if higher, the disabled child will receive a notice that his or her SSI benefits will be terminated. This notice will cause the child's care givers to panic. The care giver knows that the Medicaid benefits the child receives is piggybacked on the SSI eligibility of the child and loss of the SSI means loss of the Medicaid benefit. The child may be receiving expensive medical treatment and be uninsurable for private health insurance purposes and the loss of Medicaid may be devastating to the child's well being.

Another possible scenario may be a disabled child who has reached the age of eighteen (18). The deeming rules of the SSI program prevented the child from receiving SSI prior to age eighteen (18), once the child reaches eighteen (18), however, he or she can qualify for SSI and receive the benefits for many years. The person may be middle-aged when one of his or her parents dies.¹ The adult child will receive the notice from SSA that he or she is now eligible for DAC benefits and the same panic ensues.

Many times the adult child or the care giver may be unaware that the child may be entitled to continue to receive Medicaid benefits even though they are now receiving SSDI on the earnings record of his or her parent. They also may not be aware that after a 24-month waiting period, the adult child will be eligible for Medicare benefits. The child can be dually eligible for both programs and be able to receive any medical treatment he or she was previously receiving, including prescription medications. And, because of the new Medicare benefit, he or she may have access to more providers.

Any advocate who is advising the parents of a child applying for, or already receiving, SSI should counsel the parents about DAC benefits to prevent such panic when the notice of DAC benefits arrives. In fact, qualifying for DAC benefits should be part of any planning for any disabled child.

Many persons dealing with adult disabled children have heard of something called "Pickle Children." The DAC benefit is not related to any issue involving so-called Pickle Children. "Pickle" is the common name for a rule that allows someone who was previously receiving SSI to continue his or her Medicaid eligibility when he or she receives an increase in his or her SSDI check as a result of an annual cost-of-living increase. Named after its congressional sponsor, J. J. Pickle (D-Texas), and enacted in 1976, the Pickle Amendment established a separate category of Medicaid eligibility. This amendment requires that an individual be deemed eligible for Supplemental Security Income (and thereby eligible for Medicaid) if the individual meets all the eligibility factors for Medicaid except he or she would have lost SSI eligibility because of cost-of-living adjustments in that individual's or a deemor's Social Security, Title II Old Age, Survivors, and Disability Insurance (OASDI) benefits,² as well as changes caused by the death of a deemor. The Texas Medicaid Eligibility for the Elderly and People with Disabilities Handbook at Section A-2330 describes the program for Texas Medicaid purposes.

II. Supplemental Security Income

A child is entitled to a monthly SSI benefit based on disability or blindness if he or she has an impairment or combination of impairments that meets the definition of disability for children and the income and resources of the parents and the child are within the allowed limits.³ The amount of the benefit may be the maximum of \$674.00 per month in 2010 but it can be reduced based on income of the child or as a result of a parent's income based on income deeming rules. In Texas, eligibility for SSI automatically entitles the child to Medicaid.⁴ If the income of the person from other sources such as Childhood Disability Benefits (CDB) is below the maximum income limit it is possible to receive both CDB benefits and SSI benefits.

III. Childhood Disability Benefits (CDB)

A. What is the benefit?

The "benefit" is a monthly payment based on the earnings record of someone other than the adult child. It is a monthly check or a direct deposit in most cases. The amount of the payment is based on a wage earner's primary insurance amount (PIA). The child is entitled to one-half of the individual's PIA if the wage earner is living and three-fourths of the PIA if the wage earner is deceased.⁵ A worker has his PIA and also has a family maximum benefit (FMBA) amount. If the worker's regular benefit equals his FMBA, then even though an adult child may meet the criteria for entitlement to CDB, he or she may not receive any cash benefit until the death of his or her parent. In other words, the CDB benefits must be payable from the FMBA and if there is no amount over what the worker receives, then the adult child will not receive any benefit. Once the worker has passed away, that will free up the FMBA so that the adult disabled child will then receive benefits. However, as discussed below, the adult child will also be eligible for Medicare after a 24-month waiting period. Even though the adult child would not be receiving a check, the 24-month waiting period would start as soon as the adult child's entitlement period begins.

B. Eligibility Requirements

The eligibility requirements for CDB appear to be very simple. But, much like any of the federal benefit programs, the basic requirements can each be the subject of thousands of pages of interpretations and regulations in the POMS and Code of Federal Regulations. One issue, such as who qualifies as a dependent on another person's earnings record, can require examining many factors and take many hours of research and investigation to determine the correct result.

The eligibility requirements are found in the Social Security Handbook at § 323 and entitled Who Is Entitled to Child's Insurance Benefits? and POMS DI 10115.001 Requirements for Entitlement to Childhood Disability Benefits (CDB). A child is entitled to child's insurance benefits on the Social Security record of a parent if the following conditions are met:

1. An application for child's insurance benefits is filed;
2. The child is (or was) dependent upon the parent (see §§333-337);
3. The child is not married;
4. The child meets any of the following conditions:
 - a. Is under age 18;
 - b. Is age 18-19 and a full-time elementary or secondary school student; or
 - c. Is age 18 or older and under a disability (which must have begun before age 22) (see §517); and
5. The parent meets any of the following conditions:
 - a. Is entitled to disability insurance benefits;
 - b. Is entitled to retirement insurance benefits;
 - c. Died and was either fully or currently insured at the time of death.

In many cases, proving an adult child suffers from a disability that began before age 22 can prove a daunting task. As mentioned above, the adult child may be middle-aged before the death, disability, or retirement of a parent takes place. Depending on the disability, the proof of the beginning of a period of disability may require utilizing records that are decades old. In such a case, it is imperative that a Social Security expert be consulted. Here is an example of how convoluted the rules for SSD can be. The SSA rules state that a person reaches his or her birthday the day before his or her *actual* birthday. Therefore, you must prove disability no later than two days prior to his or her 22nd birthday.⁶ However, if the adult child was already receiving SSI as a result of a disability then the switch to CDB is virtually automatic.⁷ The SSA adopts the prior disability determination. SSA workers are instructed to inquire if the applicant has any disabled children who might qualify as a dependent on the applicant's earnings record. when an adult files an application for disability or retirement benefits⁸ SSA workers are suppose to make the same type of inquiry when an application for a Lump Sum Death payment benefit is made, but SSA officials admit that there may be disabled adult children who are not identified during this process.⁹ There is no waiting period in CDB claims.¹⁰ CDB benefits may be paid retroactively for no more than six months.¹¹ The Texas Medicaid Eligibility Handbook at Section F-2150 states that SSI and RSDI retroactive lump sum payments are excluded from countable resources for nine months after the month of receipt. The exclusion applies only to the lump sum payments.

C. Other Eligibility Issues

The first eligibility requirement set forth in the POMS is that the child must be a child of and a dependant of the worker/parent. The term "child" includes the worker's natural (i.e., biological) legitimate child, or any other child who would have the right under applicable State law to inherit intestate personal property from the worker as a child. The State law that applies to the case is the law applied by the courts of the State where the worker was domiciled at the time of entitlement to benefits. If the worker was not domiciled in any State, applicable State law is the law that the courts of the District of Columbia would apply. The child can be the step-child of the worker or a legally adopted child or any child of an invalid ceremonial marriage due to certain circumstances such as a failure to complete a prior divorce.¹² The child can be the natural child of the worker if the worker has acknowledged in writing that the child is his or her son or daughter or the parent has been decreed by a court to be the father or mother of the child. If the worker has been shown to be the child's father or mother by other acceptable evidence and was living with the child, or contributing to the child's support when the child's application is filed (in life cases), or when the worker died (in survivor cases). If the step-parent becomes divorced from the natural parent of the child, then the child's benefits will cease.¹³ The child can be eligible on the earnings record of a grandparent or step-grandparent, in some cases.¹⁴ Ultimately, the child must be a dependent of the worker.¹⁵ In most of the situations set forth above, a child will be presumed to be dependent on the worker.

You might note that Medicaid disregards retroactive SS payments for a period of time.

IV. Medicare

Once an adult disabled child is eligible for CDB on a parent's earnings record, he or she will, in turn, be eligible for Medicare after a 24 month waiting period.¹⁶

Medicare coverage for an adult disabled child is the same, in all respects, as Medicare coverage for aged individuals (i.e., the rules on benefit periods, deductible and coinsurance amounts, etc. are the same for both disabled and aged individuals). In most cases, Medicare entitlement begins after an individual has been entitled (or deemed entitled) to disability benefits CDB for 24 months, i.e., Medicare begins with the first day of the person's 25th month of childhood disability benefit entitlement.

There is an exception under Section 115 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, that waives the 24-month waiting period for beneficiaries whose primary or secondary diagnosis is chronic renal disease and needs

a kidney transplant or maintenance dialysis or Amyotrophic Lateral Sclerosis (ALS). If a beneficiary is diagnosed with ALS after his or her initial disability onset date and is within the 24-month Medicare waiting period, he or she is entitled to Medicare effective with the ALS onset month.

For example, Coleton is entitled to CDB beginning May, 2002. In September 2003, while still in the 24-month Medicare waiting period, he is diagnosed with ALS. He is entitled to Medicare effective September 2003.

Since CDB entitlement can begin no earlier than age eighteen (18), Medicare entitlement based on CDB entitlement can never begin before the month the beneficiary attains age twenty (20) (or age 18 if the individual's disability is ALS). This is true even though the individual may have been disabled and entitled to child's insurance benefits for many months prior to age 18. For example Coleton, who was born May 7, 1973, became totally disabled at age 5. In September 1984, when his father died, he became entitled to minor child's benefits on his father's record. The 24-month Medicare qualifying period begins with May 1991, the month he attained age 18, and he is entitled to Medicare beginning May 1993, the month he attains age 20.

In order to protect against the unknown costs of the co-payments and deductibles under Medicare, many Medicare recipients purchase Medigap or Supplemental Insurance to pay these costs. In Texas, people under age 65 who receive Medicare because of their entitlement to Social Security Disability Benefits have a six-month open enrollment period beginning the day they enroll in Medicare Part B. This open enrollment right entitles the beneficiary to purchase only Medicare supplement Plan A with a preexisting condition limitation of no more than six months.

V. Medicaid

A. Benefits At Age 18

As set forth above, the loss of Medicaid benefits for a disabled child upon reaching age 18 and receiving CDB can be a traumatic event in the life of a child and for his or her care givers. This trauma could be avoided if information about DAC eligibility was imparted to the child or his or her care givers when the child was originally applying for SSI benefits and his or her original Medicaid eligibility was granted. Many times, however, these two events may be separated by long periods of time. Even if this information was given to the child and family members, it may not be something that the care givers will remember after the passage of many years. **It is vital that any advocate counseling parents of disabled children make sure that parents are made aware that the child need not lose his or her Medicaid eligibility.** If the adult disabled child receives CDB and loses eligibility for SSI, he or she can continue

eligibility for Medicaid.¹⁷ The program that allows them to continue their eligibility is called Disabled Adult Children (DAC) in the Texas Medicaid Eligibility for the Elderly and People with Disabilities Handbook. The handbook describes the program as applying to persons denied SSI after July 1, 1987, and who meet SSI eligibility criteria. When such an individual qualifies for disabled adult children's benefits, the additional income is excluded from countable income. These individuals are persons denied SSI benefits because of an increase in, or receipt of, disabled children's benefits. These persons may continue to be eligible for Medicaid if they:

- A. are at least 18;
- B. become disabled before they are 22;
- C. are denied SSI benefits because of entitlement to or an increase in RSDI disabled children's benefits received on or after July 1, 1987, and any subsequent increase; and
- D. meet current SSI criteria, excluding the children's benefit specified above.

When the individual is denied SSI as a result of Disabled Child Benefits, SSA sends electronic notification to HHSC. The notification to HHSC generates a Form H1296 which is mailed to the denied SSI recipient and it informs him or her of the possibility of maintaining Medicaid benefits. The applicant should contact the nearest HHSC office and ask for an application for DAC (Type program 18). The form is an H1200-EZ, Application for Assistance Aged and Disabled.

Application for this program will allow the adult disabled child to continue his or her Medicaid benefits just as they existed prior to eligibility for DCB. Once he or she receives Medicare eligibility, the child will then be dually eligible for both programs.

B. Other Income Problems

The special income exclusion for payments from DCB does not include any other forms of income that are normally countable for SSI/Medicaid purposes. In some cases an adult disabled child may be entitled to receive benefits from insurance or pension from private sources as the result of the death of a parent. These sources of income will be treated just as income is treated for any SSI/Medicaid applicant. If the income were to be such that the person would not be eligible for SSI/Medicaid benefits as a result of this additional income, then the DAC program will not save the person's eligibility.¹⁸ (See section V. D. above). In such a case, the opportunity to direct the income to a Supplemental Needs Trust should be examined. If the income can be irrevocably assigned to the trust, then it may be excluded and prevent the additional income from disqualifying the applicant.

VI. Conclusion

The notice of eligibility for CDB may be a surprise to many beneficiaries and their care givers. The later notice of the loss of the SSI-linked Medicaid may trigger all kinds of anxiety and fear in the beneficiary and his or her family. Prior knowledge that this is just a transition from one type of benefit to another that may provide increased income and access to Medicare would prevent any such trauma. It is incumbent upon all advocates for adult disabled children to make sure that families are aware that such a transition will take place and that it is not a reason for concern or worry. Further, if there are other sources of income that may result in disqualification from SSI linked Medicaid it will give families and beneficiaries opportunity to plan for the increased income such that it will not cause a loss of benefits as well.

One last comment: An attorney in San Antonio was able to obtain DAC benefits for a person who is over age 50. Retroactive benefits will only equal 24 months, but that will give the individual automatic Medicare. So, when visiting with older individuals, it may be wise to apply for DAC and resolve any Medicaid applications before death when applications can be easily overlooked.

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1. Bush, Thomas E., Social Security Disability Practice 2nd Edition, James Publishing Inc. (Dec. 2007) p. 1-28.
2. 42 CFR 435.135
3. Social Security Handbook 516.
4. Medicaid Eligibility for the Elderly and People with Disabilities Handbook Revision: 10-1 A-2100 Supplemental Security Income (SSI)
5. Social Security Act 202(d)(1), (2)
6. Bush, at page 1-28; POMS DI 25501.061 Onset in Childhood Disability Benefits (CDB) and Disabled Minor Child (DMC) Claims
7. Bush, at page 1-28.1

8. POMS GN 00204.022 Explore Entitlement on Another Earnings Record or to Another Class of Benefits

9. Bush, 1-28.1

10. POMS RS 00203.010 Child's Benefits - First Month of Entitlement (MOET) in Life Cases; POMS DI 10115.001(A) Requirements for Entitlement to Childhood Disability Benefits (CDB)

11. POMS DI 10115.001 Requirements for Entitlement to Childhood Disability Benefits (CDB)

12. Social Security Handbook 328.

13. Social Security Handbook 331. Stepchild-Stepparent Relationship

14. Social Security Handbook 325.

15. Social Security Handbook 333. Does a child have to be dependent on the worker to qualify for benefits?

16. POMS RS 00203.001 D Child's Benefits - Entitlement and Non-Entitlement Provisions

17. Medicaid Eligibility for the Elderly and People with Disabilities Handbook Section A-2310.

18. Id.