

Disability Benefits

Social Security Benefits

SSI (Supplemental Security Income) Benefits

A Comparison

Source of Benefits

- | | |
|---|--|
| ■ Social Security | ■ SSI |
| ■ Title II benefits | ■ Title XVI benefits |
| ■ Amount of benefit based on quarters worked and amount paid in | ■ Need-based aid in subsistence amount |

Children and Benefits

- | | |
|--|---|
| ■ Social Security | ■ SSI |
| ■ Considered income for child support purposes | ■ <u>Not</u> income for child support purposes. |
| ■ Dependent derivative benefits may be available for the minor children. | ■ May receive as a "supplement" if Social Security benefits are less than subsistence amount. |
| | ■ No dependent benefits available for minor children. |

Derivative Benefits in Excess of Obligation

Old Law

Any [Social Security dependent] benefit received by the child in any given month in excess of the child support obligation shall not be treated as an arrearage payment or a future payment.

New Law

No similar statutory provision, but see:

- *Holmberg v. Holmberg*, 578 N.W. 2d 817 (Minn. App. 1998), *aff'd* 588 N.W. 2d 720 (Minn. 1999).
- *Casper and Winona County v. Casper*, 593 N.W.2d 709 (Minn. App. 1999).

- If the monthly amount of Social Security dependent benefits exceeds the total guidelines support obligation, the obligor “is not entitled to recover the difference from the child or the custodial parent.” *Holmberg* at 827.
- If a child receives Social Security benefits based on a parent’s eligibility, and the child’s dependent benefits exceed the parent’s guidelines support obligation, then “the excess is deemed ‘a gratuity’ and [is] not recoverable by the obligor.” *Casper* at 713 (*citing Holmberg* at 844).

Satisfaction of Arrears

- No statutory provision, new or old, addresses this issue.
- Under the Casper decision, an obligor may receive credit against arrears for any lump sum Social Security payment received by the child, at the time eligibility for benefits is decided, but only for arrears which accrued during the same time period covered by the lump sum.

- The obligor may not receive credit against any arrears which accrued before the date the obligor became eligible for Social Security benefits.
- If the obligor already paid support during the time period for which the child receives a lump sum, the obligor is NOT entitled to a refund.
 - Any "excess" amount paid by the Social Security Administration for the benefit of the child above and beyond the arrears owed for that specific time period is to be regarded as a gift to the child.

Casper at 713.
