

THE PRACTICAL ESTATE PLANNER



In practice since 1987, Certified Elder Law Attorney **EVAN FARR** is widely recognized as one of the leading Elder Law, Estate Planning, and Specials Needs attorneys in Virginia, Maryland, and the District of Columbia, and one of foremost experts in the country in the field of Medicaid asset protection and related trusts. He has been quoted or cited as an expert by numerous sources, including: the Washington Post, Newsweek Magazine, Northern Virginia Magazine, Trusts & Estates Magazine, The American Institute of Certified Public Accountants, and The American Bar Association.

Evan has also been featured as a guest speaker on numerous radio shows, including WTOP and Washington Post Radio. Evan has been named by SuperLawyers.com as one of the top five percent of Elder Law and Estate Planning attorneys in Virginia every year since 2007, and in the Washington, D.C. Metro Area every year since 2008. In 2011, Evan was named by Washingtonian Magazine as one of the top attorneys in the DC Metropolitan area, by Northern Virginia Magazine as one of the top attorneys in the Northern Virginia area, and by Newsweek Magazine as one of the top attorneys in the country. Evan is a nationally renowned author and frequent educator of attorneys across the U.S. As an expert to the experts, Evan has educated tens of thousands of attorneys across the country through speaking and writing for numerous national legal organizations such as the National Academy of Elder Law Attorneys, ALI CLE, the National Constitution Center, myLaw CLE, the National Business Institute, the Virginia Academy of Elder Law Attorneys, the Virginia Bar Association, Virginia Continuing Legal Education, and the District of Columbia Bar Association.

SOCIAL SECURITY, SSI, AND SSDI: WHAT'S THE DIFFERENCE AND WHY DOES IT MATTER?

Both SSI and SSDI offer cash benefits for persons with disabilities. Both programs are overseen and managed by the Social Security Administration. Medical eligibility for disability is determined in the same manner for both programs. However the eligibility requirements are quite different, attorney involvement in eligibility is quite different, and the need for a disabled recipient of these benefits to receive an inheritance protected by a special needs trust is completely different, depending on which of these two benefits is being received. Some people receive both SSI and SSDI, but this is rare. The most significant difference between Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) is the fact that SSDI is only available to workers who have accumulated a sufficient number of work credits, while SSI benefits are primarily for low-income individuals who have either never worked or who haven't earned enough work credits to qualify for SSDI.

What is SSI?

Supplemental Security Income is a program that is needs-based, for disabled persons with very low

income and almost no assets. SSI is funded by general fund taxes (not from the Social Security trust fund). SSI is called a "means-tested program," meaning it has nothing to do with work history, but strictly with financial need. The maximum benefit paid by SSI in 2020 was \$783 per month for individuals and \$1,175 for couples (this increases annually if there is a Social Security cost-of-living adjustment).

Many disabled clients and family members of disabled clients don't know if they're receiving SSI or SSDI; all they know is they get a check from Social Security. A good way to determine is to ask them the amount of the check. If it's an individual and he or she is receiving \$783 or roughly two-thirds of that amount, it's a pretty safe bet that person is on SSI. If it's a married couple receiving a total of \$1,175 per month, it's a pretty safe bet that both of them are getting SSI.

To meet the SSI income requirements, a disabled person must have less than \$2,000 in assets (or \$3,000 for a married couple) and a very limited income. In many states, a person with a disability who is eligible under the income requirements for SSI is also able to receive Medicaid. Most people who qualify for SSI will also qualify for food stamps,

and the amount an eligible person will receive is dependent on where they live and the amount of regular, monthly income they receive.

Rarely do attorneys get involved in helping people get SSI. Typically, a young adult who's disabled after turning 18 will get help from a case manager or social worker or parents to apply for SSI benefits, which are not usually denied because the types of disabilities involved are typically profound.

Because individuals receiving SSI can't have more than \$2,000 in countable resources, parents and other loved ones planning to leave money to someone on SSI should almost always plan to leave that person's share in a third-party special needs trust so as to not knock the beneficiary off of SSI, and often Medicaid (which typically has the same \$2,000 countable resource limit).

What is SSDI?

Social Security Disability Insurance is funded through payroll taxes. SSDI recipients are considered "insured" because they have earned at least 40 "credits" by working for at least 40 "quarters" and making contributions to the Social Security trust fund in the form of FICA Social Security taxes.

Only persons who become disabled before age 65 can obtain SSDI.

After receiving SSDI for two years, a disabled person will become eligible for Medicare.

Under SSDI, the person who is disabled and his or her spouse and children dependents are eligible to receive partial dependent benefits, called auxiliary benefits. However, only adults over the age of 18 can receive the SSDI disability benefit.

There is a five-month waiting period for benefits, meaning that the SSA won't pay an applicant benefits for the first five months after becoming disabled.

The amount of the monthly benefit after the waiting period is over depends on the applicant's earnings record, much like the Social Security retirement

benefit, so the monthly SSDI benefit is typically significantly larger than the monthly SSI benefit.

Attorneys are not typically involved when someone first applies for SSDI benefits. However, many applications for SSDI are denied the first time someone applies, and applicants are then encouraged to hire an attorney to represent them in connection with the appeal. There are a relatively small number of attorneys around the country who specialize in representing persons in connection with SSDI appeals.

A person receiving SSDI (and not getting SSI or Medicaid) is not required to have low assets. People can receive SSDI even though they have substantial assets because it's a benefit program that someone earns from working at least 40 quarters, regardless of how many assets they've been able to save before becoming disabled. Accordingly, parents and other loved ones don't need to worry about leaving an inheritance to a disabled beneficiary on SSDI because no amount of inheritance will affect the SSDI beneficiary's disability income. However, even if the person with SSDI is not entitled to receive Medicaid as a result of their disability, the person may, because of their disability, be at higher risk for needing nursing home care in the future, which may be reason enough to leave an inheritance for such beneficiary in a special needs trust. Alternatively, a beneficiary with disabilities may have difficulties managing money and/or making sound financial decisions, so a parent or other loved one may wish to provide the protection of a special needs trust, or another type of discretionary trust, even though the inheritance won't directly affect the disabled person's benefits.

SOCIAL SECURITY RETIREMENT BENEFITS: HELPING YOUR CLIENTS MAXIMIZE THEIR RETIREMENT INCOME

On August 14, 1935, President Franklin D. Roosevelt signed the Social Security Act into law, with the intention of providing a guaranteed monthly benefit—in the form of Social Security retirement income—to aged workers during retirement. These payouts officially began on January 1, 1940, and

they've continued for the past 80-plus years. As of June, 2020, there were over 64 million Americans receiving a monthly benefit check, with four out of five of those checks being Social Security retirement income going to older Americans.

If you have a client who is nearing eligibility age, of course you'd like to help them get as much as possible out of the program and enjoy a more financially secure retirement. To assist you, I will address some of the most common concerns about the program.

How much benefits will be

Unfortunately, Social Security benefits aren't likely to be nearly as generous as most of us would like—but on a positive note, they're still likely to make up a good portion of your clients' retirement incomes. The average monthly Social Security retirement benefit was recently \$1,365, which amounts to \$16,380 per year. If your earnings have been above average, you'll collect more than that—up to the maximum monthly Social Security benefit of \$2,687 for those retiring at their full retirement age (that's about \$32,000 for the year). Your clients can get an estimate of their expected Social Security benefits by setting up a "my Social Security" account with the SSA.

Qualifying for benefits even for clients who didn't work

Many people whose job was being a homemaker and full-time parent think that they don't qualify for any benefits. However, they may be pleasantly surprised to learn that even if they've worked mostly in the home, without receiving paychecks, or didn't have much or any taxable income, they may still qualify for Social Security benefits. That's because if you're married, divorced, or widowed, you may be able to claim benefits based on your current, ex- or deceased spouse's earnings record—generally receiving between 50 to 100 percent of the spouse's benefit (divorced claimants will need to have been married for at least 10 years and not have remarried.)

Knowing when to collect

Many people think that they need to start collecting benefits at age 65, but that's not necessarily the case. The normal (or "full") retirement age used to be 65, but it has been increased for many of us. For those born in 1937 or earlier, it's 65, and for those born in 1960 or later, it's 67. For those born between 1937 and 1960, it's somewhere in between. Despite that, though, you can start receiving benefits as early as age 62 and as late as age 70. But you need to be careful; starting to collect benefits too early or too late can be a costly mistake.

By starting at age 62, your Social Security benefits may be about 30 percent smaller than they would have been had you started at your full retirement age. That's not necessarily a mistake, though, because the system is designed so that total benefits received are about the same for people with average life spans no matter when they start collecting. If you opt to begin receiving benefits at age 62, the amount will be considerably smaller, but you'll receive many more monthly payments if you live to your projected life expectancy.

For those who expect to have enough income at 62 and perhaps for a few more years, and people in your family tend to live very long lives, you might want to start collecting later. By delaying when you start collecting Social Security, you can make your benefit checks bigger.

For every year beyond your full retirement age that you delay—until age 70—you'll increase your monthly benefit by about eight percent. So, delaying from age 67 to 70 can leave you with checks about 24 percent bigger. Remember, though, that it will still be a wash, if you live an average life span. So, it's up to you, considering your personal situation, to decide when to start collecting. There's no one-age-fits-all answer.

Should you collect Social Security earlier for a "happier retirement?"

For years, Social Security experts were suggesting that seniors wait as long as they could to collect

their Social Security benefits. But the tide is turning, and now some experts are saying to go ahead and collect your benefits earlier, rather than waiting. The full retirement age is going through a slow change. However, the range when you can claim Social Security will remain the same for the foreseeable future: from as early as 62 to as late as 70. For many, it clearly makes sense to wait until your 70th birthday to claim benefits for maximum payouts. But many Americans are claiming Social Security early, with 38 percent of men and 44 percent of women filing for benefits as soon as they become eligible.

The “Leisure in Retirement: Beyond the Bucket List” study

Recently, Merrill Lynch and Age Wave launched the “Leisure in Retirement: Beyond the Bucket List” study to understand the priorities, experiences, and challenges of leisure in retirement, and the topic of when to collect Social Security was addressed. According to study results, the best reason to claim Social Security early is because even if the payout is less, you can use the money earlier to make your day-to-day experience of retired life happier. This study is based on a survey of more than 3,700 respondents, nationally representative of age, gender, ethnicity, income, and geography.

Unless you’re truly in love with your job, there’s something that the added income of Social Security can buy you that nothing else can: free time. If you have extra income from working, you can buy things like a nice car, vacations, fancy gadgets, etc. This is called material affluence. What many of us don’t consider is time affluence, or the time we spend enjoying our retirement. Knowing that the added income of Social Security can give you the freedom you need to live your golden years the way you want, it’s important to maximize these years, and sometimes that means taking less money, but taking it a lot sooner.

Taking Social Security Administration mortality rates into account

According to the Social Security Administration, a 62-year-old man has on average another 20 years

to live, while a 62-year-old woman has 23 years. If you waited until you were 70 to collect Social Security, as a man you would have on average, 10 more years, and as a female, 13 more years. Remember, this is an average. A lot of us are living much longer! Taking these numbers into account, do you want to enjoy less extra income 10 years sooner, or wait to get more 10 years later?

Why many retirees are taking Social Security earlier

Retirees who collect Social Security earlier are using the extra income to enjoy more freedom, more fun, new beginnings, and greater emotional well-being than at any other point in their lives. The Merrill Lynch/Age Wave survey indicated what retirees value in retirement, as discussed below.

Greater freedom

Ninety-two percent of retirees say retirement gives them greater freedom and flexibility to do whatever they want—regardless of how much money they have. Between ages of 61 to 75, retirees reach the “freedom zone,” in which they enjoy the greatest balance of health, free time, fun, and emotional well-being.

More fun

Despite popular media portrayals of fun as primarily the domain of youth, it turns out that the experience of fun rises in midlife and peaks in retirement.

Greater emotional well-being

Lifetime emotional well-being peaks in retirement. Feelings of happiness, contentment, and relaxation soar, while anxiety seems to plummet.

More experiences rather than things

Most retirees (95 percent) say they would prefer to have more enjoyable experiences rather than buy more things. Retirees enjoy two types of leisure: “everyday leisure,” where most seek to de-stress and improve their health and “special occasion leisure,” where retirees seek unique or rare peak experiences

that give them lasting memories. Eighty-one percent of retirees say they want a retirement filled with many peak experiences.

More time with family and friends

Retirees tell us who they spend time with (61 percent) is far more important than what they do (39 percent), and that's even more true for women than men.

Coordinate with your spouse

Married couples have many more ways to strategize about Social Security than single and never-married people do. For example, a couple might start collecting the benefits of the spouse with the lower lifetime earnings record on time or early, while delaying starting to collect the benefits of the higher-earning spouse. That way, the couple does get some income earlier, and when the higher earner hits 70, they can collect extra-large checks. Also, should that higher-earning spouse die first, the spouse with the smaller earnings history can collect a portion of those bigger benefit checks.

Social Security is still going strong

Based on media coverage, you might be assuming that the Social Security program is on its last legs. But, things are not quite so bad! Here's why:

- The Social Security trust funds have been running a surplus in every year since 1982, taking in more from taxes and interest earned on taxes than they pay out in benefits.
- Social Security trust fund surpluses are projected through 2021. If the surplus dries up after that, the Social Security system can rely on incoming interest payments to make up the deficit—for a while.
- According to several government estimates, if no changes are made, Social Security funds are likely to be depleted by 2034. If that happens, payment checks won't disappear, but they could shrink by about 25 percent, leaving beneficiaries with about 75 percent of what they were expecting, which is certainly better than nothing.

- Fortunately, there's a decent chance that the system will be shored up, one way or another. There are many possible fixes, though politicians don't agree on them. Congress could theoretically fix the problem by simply appropriating other funds to supplement the Social Security trust fund. Another option—it's been estimated that 77 percent of the trust funds' shortfall could be eliminated by increasing the Social Security tax rate for employers and employees from its current 6.2 percent to 7.2 percent in 2022 and 8.2 percent in 2052.

The more you know about Social Security and the more you can help your clients strategize about it, the more money you'll likely be able to help your clients get out of the system.

It's important for your clients to consider their options when filing for Social Security benefits. It is also important to keep in mind what could happen if you are living on Social Security alone and you or a loved one becomes incapacitated. You must take this into account when planning for retirement. 📌