

SUPPLEMENTAL SECURITY INCOME: WHAT IS IN-KIND SUPPORT AND MAINTENANCE?

What Is In-Kind Support and Maintenance (ISM)?

In-kind support and maintenance is food or shelter that someone else provides for you. For example, if someone else pays your rent, mortgage, or utility bills, or if someone buys your groceries for you, you have received ISM. If someone allows you to live somewhere without paying rent, that is also ISM. The key characteristic of ISM is that someone is actually paying your food and shelter expenses or providing these necessities on your behalf, not simply giving you cash or a check; in that instance you would have regular income rather than ISM.

There are some items that, even when another person pays for them on your behalf, are not considered ISM. Such items and expenses include:

- telephone bills;
- automobile insurance;
- veterinary bills;
- books or newspapers;
- cable television subscriptions;
- recreational equipment, games, and crafts;
- musical instruments;
- travel and education expenses; and
- certain home maintenance costs (e.g., gardening).

The Social Security Administration (SSA) considers ISM in determining whether you are financially eligible for Supplemental Security Income (SSI), and if so, the amount you are eligible to receive.

How Does ISM Affect Those Who Receive SSI benefits?

If you are a recipient of SSI benefits, the amount of ISM you receive will lower your SSI amount. If your ISM is very significant, you may become ineligible for SSI income. Be sure to report all of your ISM, because if it is not reported and it results in overpayment of SSI benefits, the SSA may demand reimbursement.

How Is ISM Valued?

The value of any ISM you receive depends on your living arrangements. The SSA will use different formulas depending on your living arrangements. If you are living in the household of a person who provides you with both food and shelter, the one-third reduction rule applies. Otherwise, the presumed maximum value rule applies.

The One-Third Reduction Rule. This rule applies when you live in another person's household *without* contributing your fair share toward food and shelter expenses. In that case, your total SSI benefit amount would be reduced by one-third. For example, if you were otherwise eligible to receive SSI benefits of \$600 per month, but you lived in someone else's household and did not pay for food or rent, your benefits would be reduced to \$400 per month ($600 \div 3 = \200; $\$600 - \$200 = \$400$). If this rule applies, the value of any other ISM you receive is not considered.

This rule will apply even if you do pay some amount of the household expenses, but the amount is less than your pro-rata share. For example, if your pro-rata share is \$500, but you only pay \$450, you will still be subject to the full one-third reduction. If you live in another's household but you pay your *full* share of the household expenses, this rule does not apply.

To determine your pro-rata share of the household expenses, add the monthly food and shelter expenses, and divide the sum by the number of people living in the household, regardless of their age. Shelter expenses include the rent, mortgage payments, real property taxes, property insurance, repairs, heating fuel, gas, water, electricity, and garbage removal fees.

Note: If parents charge their adult child rent at an amount higher than the child's share of the household expenses, the child will receive the full amount of his or her SSI benefits tax-free. In such a scenario, the parents may not be able to claim the child as a dependent on their tax return or include the child in their health insurance coverage.

The Presumed Maximum Value (PMV) Rule. This rule applies whenever you receive food or shelter and the one-third reduction rule does not apply. Such situations include:

- living throughout a month in another person's household but not receiving *both* food and shelter from that person;
- living in your own household, but with someone outside your household paying for the rent, utilities, or food; or
- living in a non-medical institution.

Rather than determining the actual value of ISM you are receiving, the SSA presumes that its value is not more than an amount equal to one-third of the federal benefit rate plus \$20. However, if you can show that the actual value of the food and shelter you receive is less than the PMV, then that actual value will be used in calculating your countable income. The current (2018) maximum federal benefit rate for an individual is \$750 per month. This value may change from year to year based on cost-of-living adjustments.

Temporary absence from the household does not affect how your ISM is valued. Temporary absences include:

- being in an institution for ninety consecutive days or less; or
- being in a permanent living arrangement for at least one full calendar month prior to the temporary absence and then returning to that household in the same month in which you left or in the following month.

Are There Circumstances Under Which Food and Shelter Would Not Be ISM?

Yes. When certain conditions exist, the SSA does not count the value of ISM in determining your eligibility for benefits. Below is a list of situations in which SSA would not recognize ISM:

- If you live in a public assistance household, meaning a household in which every member receives some kind of public income-maintenance payments (such as TANF, food stamps, needs-based payments under the Refugee Act of 1980, payments under the Disaster Relief and Emergency Assistance Act, etc.), you are not considered to receive ISM from any members of the household.
- If you live in a non-institutional care situation, you are considered not to be receiving ISM if you pay the rate the placing agency establishes. You are living in a non-institutional care situation if you were placed by a public or private agency into a private household that is licensed or approved by the placing agency, and the placing agency is responsible for your care.
- If you live in a non-profit retirement home or similar institution, and the home or institution (1) is not under an express obligation to provide for your full support and maintenance, and (2) receives no payment for your food or shelter, or does receive payment from another non-profit organization.
- If you live in a non-medical, for-profit institution, any amount accepted by that institution as payment in full is considered by the SSA to be the current market value of whatever food or shelter the institution provides for you. You are not receiving ISM if you are paying that amount, but the PMV rate *will apply* if someone else pays it for you.

You may also be able to show that payments that otherwise would be considered ISM are not ISM in your particular circumstances. You may do this by showing that you have incurred an obligation to repay the value of the food or shelter you received (i.e. it was just a loan), or by showing that you made other cash payments toward the household expenses or for the person who pays the expenses in lieu of contributing to the traditional household expenses (e.g., you make his or her car payment).

What Should I Do When My Circumstances Change?

You or someone who helps you with your SSI benefits should always report any of the following changes, in writing, to the SSA within ten days of the change occurring, because the changes may affect your ISM:

- a change in your living arrangements (e.g., adding or losing a roommate);
- a change in your income, whether earned or unearned;
- a change in your eligibility for other public benefits;
- medical improvements that remove your disability;
- admission to or discharge from any health facility;
- you begin to receive help with your living expenses; or
- you are between 18 and 22 years of age and you stop or start attending school.

What Should I Do if I Lose Government Benefits to Which I Feel I Am Still Entitled?

If you want to appeal a decision to eliminate or reduce any benefit you are receiving, you must do so within *ten days* of the SSA decision in order to preserve the benefits during the pendency of the appeal. This is very important because the appeal process can take months to complete, and if your appeal is not made within ten days, your benefits could be eliminated or reduced until a decision is reached on appeal.

This article is intended to provide information of a general nature only. It does not provide or replace professional legal advice, and it does not establish an attorney-client relationship with the Maine Elder Law Firm or Rudman Winchell. Please consult an attorney for advice regarding your specific circumstances.

4/1/18