

Marriage Equality Annotated Bibliography

November 17, 2022

Media Coverage

Tammy Lagorce, “Seeking Marriage Equality for People with Disabilities,” New York Times (August 25, 2022),

<https://www.nytimes.com/2022/08/25/style/marriage-equality-disabled-people.html>

- Discusses the Lori Long’s story and additional information about SSA marriage penalties.

Erika Mahoney, “Millions of disabled Americans could lose federal benefits if they get married,” NPR (Feb. 13, 2022), <https://www.npr.org/2022/02/13/1080464176/disabled-americans-cant-marry-able-bodied-partners-without-losing-federal-benefi>.

- Discusses Lori Long’s story (including her loss of Medicare if she were to marry), but mentions marriage penalties affecting disabled people on federal benefits more generally.

Andrew Pulrang, “What’s Next In 'Marriage Equality' For People With Disabilities?,” Forbes (Mar. 31, 2022), <https://www.forbes.com/sites/andrewpulrang/2022/03/31/whats-next-in-marriage-equality-for-people-with-disabilities/?sh=3fa5f4956eb7>.

- Discusses the SSDI/DAC marriage penalty but mentions marriage penalties affecting disabled people on federal benefits more generally.

“Disabled Americans Are Punished for Getting Married,” VICE News (Nov. 9, 2022),

<https://www.youtube.com/watch?v=0q-gJXauP3Y&t=71s>.

“How does marriage affect Supplemental Security Income?” AARP (2022),

<https://www.aarp.org/retirement/social-security/questions-answers/how-does-marriage-affect-SSI-benefits.html>.

- Discusses the SSI marriage penalties, including the 25% penalty and spousal deeming

Sara Rubin, “A local couple's dream to get married has become a national advocacy campaign for inter-abled marriage equity.” Monterey County Weekly (Jan. 13, 2022),

https://www.montereycountyweekly.com/opinion/mcnow_intro/a-local-couple-s-dream-to-get-married-has-become-a-national-advocacy-campaign-for/article_e66e856c-74d3-11ec-9b8b-2f14edf8690c.html.

- Discusses the SSDI/DAC marriage penalty.

Mike Ervin, "Smart Ass Cripple: 'Your Marriage or Your Life,'" The Progressive Magazine (May 2, 2022), <https://progressive.org/magazine/your-marriage-or-your-life-ervin-220502/>.

- Discusses the DAC and SSI 25% penalties, mentions the potential loss of Medicare post-marriage.

Erika Mahoney, A Love Story Worth Fighting for, Salinas Couple Battles Bureaucracy to Get Married, 90.3 KAZU, <https://www.kazu.org/local/2021-02-12/a-love-story-worth-fighting-for-salinas-couple-battles-bureaucracy-to-get-married>

- Discusses Lori Long's story, DAC, and SSI marriage penalties

Carly Stern, "Forced to Divorce: Americans With Disabilities Must Pick Marriage or Health Care," OZY (Apr. 25, 2019), <http://www.ozy.com/the-new-and-the-next/forced-to-divorce-americans-with-disabilities-must-pick-marriage-or-health-care/92284>.

- Discusses the SSI and DAC marriage penalties, "holding out," the Medicaid eligibility cap, and the potential loss of Medicaid post-marriage for disabled people on federal benefits.

David Elliot, "Till Death Do They Part? Not For Some Americans With Disabilities," Coalition on Human Needs, (February 18, 2022), <https://www.chn.org/voices/till-death-do-they-part-not-for-some-americans-with-disabilities/>

- Discusses Lori Long and disability marriage penalties.

Reports, Articles, and Papers

Richard Balkus & Susan Wilschke, "Treatment of Married Couples in the SSI Program," The United States Social Security Administration, Issue Paper No. 2003-01 (Dec. 2003), <https://www.ssa.gov/policy/docs/issuepapers/ip2003-01.html>.

- A report by the SSA on marriage penalties for those on SSI (includes "holding out") and potential solutions

Rabia Belt, Disability: The Last Marriage Equality Frontier (August 29, 2015). Stanford Public Law Working Paper No. 2653117, Available at SSRN: <https://ssrn.com/abstract=2653117> or <http://dx.doi.org/10.2139/ssrn.2653117>

- A working paper exploring Social Security marriage penalties in the context of the broader issue of marriage equality.

David Weaver, Marriage and Social Security: The Case of Disabled Adult Child Beneficiaries (December 20, 2019). Available at SSRN: <https://ssrn.com/abstract=3507766> or <http://dx.doi.org/10.2139/ssrn.3507766>

- Discusses the characteristics of the overall DAC population and the DAC population that marries

Dmitry Tumin, Marriage trends among Americans with childhood-onset disabilities, 1997-2013,

Disabil Health J. 2016 Oct;9(4):713-8. doi: 10.1016/j.dhjo.2016.05.004. Epub 2016 May 18. PMID: 27265773., <https://pubmed.ncbi.nlm.nih.gov/27265773/#affiliation-1>

- Comparative study showing that Americans with childhood-onset disabilities are less likely to marry.

Gabriella Garbero, *Rights Not Fundamental: Disability and the Right to Marry*, 14 St. Louis U. J. Health L. & Pol'y (2021), <https://scholarship.law.slu.edu/jhlp/vol14/iss2/17>.

- Law Student Comment that discusses marriage penalties for those on SSI/SSDI and discusses the potential loss of Medicaid post-marriage. Discusses potential solutions

Factsheets

“Disabled Adult Child (DAC) Marriage Penalty,” Disability Rights Education & Defense Fund (2022), <https://dredf.org/2022/03/28/disabled-adult-child-dac-marriage-penalty/>.

- DREDF factsheet on the DAC marriage penalty and laws that were proposed to address it. Discusses the loss of Medicaid/Medicare

“Supplemental Security Income (SSI) Marriage Penalty,” Disability Rights Education & Defense Fund (2022), <https://dredf.org/2022/08/22/supplemental-security-income-ssi-and-the-25-percent-marriage-penalties/>

- DREDF factsheet discussing the SSI 25% marriage penalties, including laws that were proposed to address them

“Supplemental Security Income (SSI) Marriage Penalties: ‘Spousal Deeming’,” Disability Rights Education & Defense Fund (2022), <https://dredf.org/2022/08/22/supplemental-security-income-ssi-and-the-spousal-deeming-marriage-penalty/>.

- DREDF factsheet about the SSI “spousal deeming” marriage penalty, including laws that were proposed to address it. Discusses the potential loss of Medicaid post-marriage

“Make the Expanded Spousal Impoverishment Protection Permanent,” Justice In Aging, <https://www.justiceinaging.org/wp-content/uploads/2019/01/Justice-in-Aging-Federal-Spousal-Impoverishment-Fact-Sheet-11-8-18.pdf>.

- JIA factsheet that discusses the spousal impoverishment protection program, which “makes it possible for an individual who needs a nursing home level of care to qualify for Medicaid as a household of one, while allowing their spouse to keep income and assets so they will not become impoverished.” This protection expires in December 2023

Presentations

Social Security Advisory Board (SSAB) Hosted Briefing on Social Security Marriage Penalties (July 29, 2022), <https://www.ssab.gov/announcements/ssab-to-host-briefing-on-social-security-marriage-penalties/>

- Consortium for Constituents with Disabilities working group provided a policy briefing hosted by SSAB on marriage penalties in SSA programs. Participants discussed how marital status affects Social Security benefits and Supplemental Security Income payments.
- Presenters included:
 - Claudia Center, Legal Director, Disability Rights, Education, and Defense Fund (DREDF)
 - Ayesha Elaine Lewis, Staff Attorney, DREDF
 - Kate Lang, Senior Staff Attorney, Justice in Aging
 - David Goldfarb, Director of Financial Security Policy, The Arc

Proposed Legislation

MAPSA Act, H.R.761, 117th Cong. (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/761/text>.

- This act would eliminate consideration of spouse's income and assets and disregard marital status for SSI recipients with intellectual and developmental disabilities

Supplemental Security Income Restoration Act of 2021, S.2065, 117th Cong. (2021-2022), <https://www.congress.gov/bill/117th-congress/senate-bill/2065>.

- This act would:
 - Eliminate the 25% marriage penalty (stipend and asset cap) on SSI-SSI couples
 - Allow individual SSI recipients to have up to \$10,000 in assets and married couples to have up to \$20,000
 - Raise SSI's sub-poverty-level monthly benefits, currently \$794 per month, to 100% of the federal poverty level
 - Allow individuals to earn up to \$416/month through working and receive up to \$128/month from other sources
 - And more

Marriage Equality for Disabled Adults Act, H.R.6405, 117th Cong. (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/6405>.

- This act would eliminate the statutory marriage penalty for DAC recipients, and would protect SSI recipients in DAC-SSI marriages

SSI Savings Penalty Elimination Act, S.4102, 117th Cong. (2021-2022), <https://www.congress.gov/bill/117th-congress/senate-bill/4102/text>.

- This act would allow individual SSI recipients to have up to \$10,000 in assets and married couples to have up to \$20,000

Social Security Disability Insurance: disabled adult child benefit, SJR-8, California Legislature (2021-

2022), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SJR8

- This bill would eliminate marriage penalties for DAC recipients in California

Applicable Laws, Regulations, and Guidance Documents

42 U.S.C. § 402(d)

- Social Security Act provision allowing for Childhood Disability (including Disabled Adult Child, aka “DAC) benefit

42 CFR 406.12(a)

- SSA Regulation regarding eligibility for Medicare

20 CFR § 416.1165

- SSA regulations on income deeming to disabled children from their ineligible parents

20 CFR § 416.1163

- SSA regulations on income deeming to disabled people from their ineligible spouse

20 CFR § 416.1161

- SSA regulations on determining the income of an ineligible spouse, ineligible parent, or essential person for deeming purposes

42 U.S. Code § 1382

- SSI rules on eligibility for benefits for individuals and couples

42 U.S. Code § 1382c

- Continued: SSI rules on eligibility for benefits for individuals and couples

42 U.S. Code § 1396r-5

- More information on spousal impoverishment protection

P.L. 116-3, SEC. 3

- More information on spousal impoverishment protection

Centers for Medicaid and Medicare Services, Groups Deemed to be Receiving SSI for Medicaid Purposes, (June 12, 2002), <https://www.hhs.gov/guidance/document/2002groups-deemed-be-receiving-ssi-medicaid-purposes>

- Guidance document that includes information about the special path to medicaid through SSI for DAC beneficiaries.

Testimonies:

Pam Katz, “When People With Disabilities Are Forced to Choose Between Love and Needed Benefits: Marriage Penalties,” The Arc (2021), <https://thearc.org/blog/when-people-with-disabilities-are-forced-to-choose-between-love-needed-benefits-marriage-penalties/>.

- The Arc’s story about a couple who was impacted by SSI marriage penalties

Gabriella Garbero, “The ‘Fundamental’ Right to Marriage,” The Girl Who Sits, (Jan. 10, 2021), <https://thegirlwhosits.com/2021/01/10/the-fundamental-right-to-marriage/>

- Discusses the experience of Gabriella Garbero with marriage penalties

B.J. Stasio, “People with Disabilities and the Federal Marriage Penalties,” Impact (2010), <https://publications.ici.umn.edu/impact/23-2/people-with-disabilities-and-the-federal-marriage-penalties>.

- Article from the University of Minnesota’s Institute on Community Integration briefly describing the SSI/Medicaid marriage penalties and stories about three people who were impacted by them

SSA-Provided Resources

ORDP & OISP, “Supplemental Security Income (SSI) Overview,” The United States Social Security Administration (2022), <https://www.ssa.gov/ssi/text-over-ussi.htm>.

- Explanation of what SSI is

ORDP & OISP, “Supplemental Security Income (SSI) Benefits,” The United States Social Security Administration (2022), <https://www.ssa.gov/ssi/text-benefits-ussi.htm>.

- Information on SSI benefits

ORDP & OISP, “Supplemental Security Income (SSI) Resources,” The United States Social Security Administration (2022), <https://www.ssa.gov/ssi/text-resources-ussi.htm>.

- Information on how SSI defines “resources” and the asset limit

Michelle Stegman Bailey & Jeffrey Hemmeter, “Characteristics of Noninstitutionalized DI and SSI Program Participants, 2013 Update,” The United States Social Security Administration, Research and Statistics Note No. 2015-02 (Sep. 2015), <https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html>.

- Data on Disability Insurance (DI) and SSI recipients in 2013. Over 40% of people receiving SSI live below the federal poverty line

Richard Balkus & Susan Wilschke, “Treatment of Married Couples in the SSI Program,” The United States Social Security Administration, Issue Paper No. 2003-01 (Dec. 2003), <https://www.ssa.gov/policy/docs/issuepapers/ip2003-01.html>.

- A report by the SSA on marriage penalties for those on SSI (includes “holding out”) and potential solutions