

Elsenheimer v Orange County Department of Child Social Services
(12/17/04 – Cal.App.4th No. G033250)

The court determined that income derived from SSI payments must be excluded from the calculation of parent's gross income.

Mother was unemployed due to disability and received \$778 per month SSI. She had custody of two children, 51% of time. Father sought modification of support based on material change in circumstances, because of mother's receipt of SSI. The trial court reduced father's support from \$1,308 to \$465 per month.

Orange County Department of Child Support Services was the Intervener and the Appellant. The trial court's decision was reversed and remanded.

Family Code Section 4058 (a) defines gross income as income from whatever source derived, except as specified in subdivision (c). Income includes disability insurance and social security benefits but, Family Code Section 4058 (c) states that income does not include income from any public assistance program, eligibility for which is based on a determination of need.

SSI is distinguishable from Social Security and Social Security disability benefits, which are benefits as a result of workers' covered employment. SSI is a federally funded welfare program administered by the Social Security Administration provided to aged, blind, and disabled individuals who have income and resources below certain statutory amounts. It is a need-based public assistance program, which falls within the scope of Family Code Section 4058 (c).

The appellate court did not want to transfer the noncustodial parent's financial responsibility to the government.