



Facts about Rental Liability

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Introduction to Rental Liability

Social Security considers an SSI recipient to be living in his or her own household when there is liability to a landlord for payment of any of the rental charges on the part of:

- the individual;
- the living-with eligible spouse; or
- any person whose income may be deemed to the eligible individual.

While we typically think about rental liability in terms of an individual living in his or her own apartment or house, rental liability may actually take several different forms. For example, renting a room within someone else's private dwelling may be a form of rental liability. This would apply when an individual lives in the same dwelling with the landlord, but maintains a "separate household" from the landlord. A separate household functions as a separate economic unit, and more than one economic unit may exist in a single dwelling. If the individual and the landlord do not function as separate economic units, the individual isn't in a separate household and can't have rental liability.

A flat fee for room and board may be another form of rental liability. It's a variation of separate room rental within a private dwelling. With flat fee, the individual maintains a separate household from the landlord and pays a flat rate for food and shelter.

Separate Household Development

When deciding if separate households exists, Social Security will obtain signed statements from both the individual and the landlord as to whether they consider themselves members of the same household or separate households. If the landlord will not affirm or deny the individual's allegation of separate households, the separate household determination must be based on the individual's allegation and any available evidence. Social Security will also consider the following factors:

Household Organization: Although not conclusive by itself, a “yes” answer to any of the following questions is an indication that the individual may not be in a separate household within the dwelling.

- Do the individual and landlord make joint decisions regarding home repairs, improvements, and other aspects of daily activities (e.g., food purchases, TV cable service, phone service)?
- Is the individual responsible for any bills connected with the operation of the residence (e.g., are any bills in the individual's name)?
- Do the individual and the landlord pool money for any household expenses?

Rent: Although not conclusive by itself, a “yes” answer to any of the following questions is an indication that the individual may be in a separate household.

- Does the landlord charge rent (or a flat fee for food and shelter) based on the current market value?
- Would the landlord ask the individual to move out if individual stopped paying rent?
- Would the landlord continue to hold the individual responsible for back rent if the individual stopped paying rent?

Meals: Although not conclusive by itself, a “yes” answer to any of the following questions is an indication that the individual may be in a separate household.

- Does the individual purchase most of his/her food separately from the rest of the household?
- Does the individual store food separately from the rest of the household?
- Does the individual prepare or eat meals separately from the rest of the household?

Access: Although not conclusive by itself, a “yes” answer to any of the following questions is an indication that the individual may be in a separate household.

- Does the individual have access to only part of the residence?
- Does the individual have a bedroom, cooking facilities, or a bathroom for his/her exclusive use?

The above factors are listed in the POMS to help Social Security personnel determine whether separate households exist. Each factor may not apply in every case and no single factor is controlling. Social Security personnel make rental liability determinations based upon their best judgment after considering all of the facts in the case.

Flat Fee for Food and Shelter

The development for flat fee is essentially the same as for room rental in a private dwelling except for the additional consideration that the individual's payment is a payment for both food and shelter. Social Security will first determine if the individual lives in a separate household. Next, Social Security will determine that a flat fee for room and board exists and that rental liability is the living arrangement basis. If the individual doesn't live in a separate household, Social Security will conclude that the individual doesn't have rental liability and proceed with sequential development.

The amount charged for the flat fee should be based upon current fair market value. Social Security will generally ask the individual and the landlord how the flat fee was determined and whether this same amount would be charged to any other renter. If the landlord would charge a higher amount to some other renter, then the difference between what the SSI recipient pays and what another renter would pay may be counted as in-kind support and maintenance (ISM). Social Security always uses the PMV rule to determine ISM for an individual who has rental liability. The VTR never applies when an individual is in his/her own household. If the landlord indicates that the flat fee is what would be charged any renter and represents market value, then no ISM will be assessed.

Examples

EXAMPLE 1: Separate Households in a Private Dwelling

Mr. Smith, an SSI eligible individual, lives with a family. Mr. Smith rents an upstairs bedroom and bathroom for \$200 per month. Mr. Smith tells the Claims Representative (CR) that he considers himself to be living in a separate household from the family. He tells the CR that he eats some of his meals in restaurants. The landlord states that Mr. Smith doesn't pool his money with the family's for food and utility bills or pay any money toward property taxes or household repairs. Mr. Smith is allowed to make local phone calls but pays for any long distance calls he makes. He frequently uses the family's kitchen to prepare his own food which he stores on a shelf reserved for him in the family's refrigerator. Based on the facts in this case, the CR determines that Mr. Smith is living in a separate household and documents the file as required. The CR determines that Mr. Smith has rental liability based on "room rental in a private dwelling."

EXAMPLE 2: Not Separate Households

Ms. Jones, an aged individual, lives with her brother, Mr. White, in a home he owns. Ms. Jones signs a statement that she considers herself a separate household and pays \$200 a month rent to her brother each month. To determine whether Ms. Jones' payment is actually a rent payment, the CR proceeds to develop whether Ms. Jones is in a separate household. The CR discovers that Ms. Jones pays \$200 per month most of the year, but pays more in the winter when utility bills are higher. Ms. Jones states that she and her brother each put \$125 in a

drawer on the first of the month and use this money for groceries. They take turns shopping and cooking, and if the grocery money runs out before the end of the month, they both contribute additional money. Mr. White confirms this information and tells the CR that the amount his sister pays is based on what it costs to operate the home. Based on all the facts, the CR determines that Ms. Jones and Mr. White are not in separate households operating as separate economic units. Therefore, the CR rules out rental liability and flat fee rental.

Conducting Independent Research

[POMS SI 00835.120 – Rental Liability as LA Basis](https://secure.ssa.gov/apps10/poms.nsf/lnx/0500835120)

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