ALABAMA DEPARTMENT OF HUMAN RESOURCES ECONOMIC ASSISTANCE DIVISION ADMINISTRATIVE CODE

CHAPTER 660-2-4
STATE SUPPLEMENTATION

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660-2-4-.01 General.

Prior to January 1, 1974, the State administered the adult category public assistance programs partially funded with federal monies under the Social Security Act. These programs, Old Age Pension (OAP), Aid to the Blind (AB), and Aid to the Permanently

and Totally Disabled (APTD), were modified after January 1, 1974, to provide supplementary assistance payments from State funds alone for certain aged, blind, and disabled person. Alabama administers a program meeting the requirements of mandatory supplementation, Public Law 93-66, to provide for payments to all December 1973 recipients of OAP, APTD, and AB (or referred to collectively as State Supplemental) whose income level under SSI during any month (CIL - Current Income Level) is less than their income level as of December 1973 (MIL - Minimum Income Level); make payments equal to at least the difference between the December 1973 income level and the income level under SSI; and maintain the December 1973 income level, reducing it only as a decrease in needs would have caused a decrease in the December 1973 payment had such decrease been reported then. In addition to required or mandatory supplementation, optional payments are made in Alabama to eligible individuals who were not receiving assistance in December 1973. Optional supplementation payments are provided to individuals who receive SSI and to those non-SSI SUP recipients who were receiving optional supplementation payments as of March 7, 1986 provided all such individuals require independent homelife care, formerly personal care (only for persons who were receiving payment for such care as of September 30, 1986), or specialized independent homelife care in their own home or in a foster home licensed or approved by the Department of Human Resources, or care in a Cerebral Palsy Treatment Center (only for persons who were eligible for such care in May 1981).
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of_Ala. 1975, Title 38.
History: Effective June 28, 1983. Emergency amendment effective March 10, 1986. Permanent amendment effective June 17, 1986. Succedent permanent amendment effective September 9, 1986. Succedent permanent amendment effective December 9, 1986. Succedent permanent amendment effective January 15, 1992.

660-2-4-.02 Administration.

The Department has the responsibility for administering the Supplementation Program. All activities must be in compliance with the Civil Rights Act of 1964 and § 504 of the Rehabilitation Act of 1973. The Department of Human Resources is responsible for program policy formulation, monitoring, program planning, standard setting and quality assurance in the administration of the Supplementation Program.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983.

660-2-4-.03 Rights And Responsibilities.

(1) Any person has the right to apply for assistance, have his/her eligibility determined, and if found eligible, to receive an established monthly amount. Although persons receiving a direct payment are to use these funds for their personal care needs, there are no restrictions otherwise on their use. The recipient of public assistance funds must assume the responsibilities of furnishing all necessary facts and documentation to establish or reestablish eligibility, advise the Department of any changes in his/her circumstances within 10 days which might affect eligibility and/or the amount of the assistance grant, and to provide the Department with any channel of information concerning his/her affairs that may be determined necessary. An applicant/ recipient who refuses to cooperate with the Department by not providing required information, verification or documentation shall be denied/terminated as eligibility cannot be established.

(2) The individual has the right of confidentiality, to receive prompt action, equitable treatment, notification of any case action taken, and to receive a fair hearing (see Chapter 660-1-5, Hearings in the General Administration Division) due to an appeal of case action.

(3) Removed

Author:

Statutory Authority: Social Security Act Titles XVI and XIX; P.L. 98-369; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38, §§ 41-22-1 through -27.

History: Effective June 28, 1983. Emergency amendment effective October 1, 1983. Permanent amendment effective January 9, 1984. Succedent emergency amendment effective January 1, 1985. Succedent permanent amendment effective January 9, 1985. Succedent emergency amendment effective January 1, 1986. Succedent permanent amendment effective March 14, 1986. Succedent emergency amendment effective June 17, 1986. Succedent permanent amendment effective September 9, 1986. Succedent permanent amendment effective December 9, 1986. Succedent emergency amendment effective June 1, 1988. Succedent permanent amendment effective September 13, 1988. Succedent permanent amendment effective January 15, 1992.

660-2-4-.04 Application And Initial Determination Of Eligibility.

(1) An individual must apply for SSI and learn the decision on that application before he can apply for supplementation under OAP, APTD, or AB. The individual's status with SSA for SSI benefits must be cleared prior to accepting a formal application.

If an individual is ineligible for SSI benefits for any reason, he is not eligible for supplementation.

(2) An application is a specific written request on the designated agency application form, which has been completed, dated and signed by the applicant, to have eligibility for Supplementation (SUP) determined. An applicant may withdraw the application for SUP at any time without affecting the right to reapply at any time. Eligibility for SUP must be determined initially at application and at other intervals thereafter as provided in 660-2-4-.08, if the applicant is determined eligible.

Author:

Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.

History: Effective June 28, 1983. Emergency amendment effective March 10, 1986. Permanent amendment effective June 17, 1986.

660-2-4-.05 Definitions: Application Process.

The administrative definitions applicable to the application process are as follows:

(a) A proper applicant is a competent adult who is physically able to apply for himself or on behalf of a minor (child under 19) or physically or mentally handicapped adult and who has made application for public assistance to the County Department and whose application has not been disposed of by appropriate County Department action. A proper applicant for a minor who is not in foster care or a physically or mentally handicapped adult is the person with whom he lives and who is responsible for his care, or a legal guardian, committee, or other legal representative. When the minor is mentally competent and between 16 and 19 years old with no legally appointed guardian, committee, or other representative, and he is not in the care of another person, he may be the proper applicant for himself. The proper applicant for a minor who is in foster care under supervision of the County or State Department is the County Director or his/her designee.

(b) An application is the action taken by an individual in filling out and signing an application form requesting assistance. The application may be new (initial) or it may be a reapplication.

(c) An inquiry is a request for information only. An inquiry differs from an application in that the person's intent is to obtain information rather than to receive financial aid.

(d) A referral is cleared as an inquiry. It is a request for information, service, or aid in behalf of an individual. It

may be made by an agency, an institution, or another person. The County Department will consider a referral as an inquiry until application is made.

Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983.

660-2-4-.06 Standard Of Promptness.

Not more than 45 days in OAP and AB, and not more than 60 days in APTD, shall elapse between the date of application and date the first payment or the notice of denial is mailed. Only the following pending reasons are acceptable for exceeding the standard of promptness:

(a) Agency failure to secure needed verification after repeated attempts. To meet this requirement, all efforts to secure the verification must be documented.

(b) Client's request that application be continued beyond the standard of promptness in order to provide additional information and/or verification.

(c) Failure of client to provide information and verification requested.

(d) Administrative emergencies that could not reasonably be controlled by the agency. (Illness and staff vacancies do not meet this definition.)

Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Amendment effective September 9, 1985.

660-2-4-.07 Accrual Rights.

(1) An applicant's right to a money payment accrues on the first day of the month in which his money payment is authorized, provided he was alive and eligible on that day and is eligible on the day the eligibility worker completes the award documents. Payments authorized for the month of application are prorated from the date the application was received.

(2) A recipient's right to a money payment accrues on the first day of each month provided he is alive on that date.

Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38; SSA-AT-81-34.
History: Effective July 18, 1983. Emergency amendment effective April 1, 1984. Permanent amendment effective June 11, 1984. Succedent emergency amendment effective March 1, 1985. Succedent permanent amendment effective April 11, 1985. Succedent permanent amendment effective October 9, 1985.

660-2-4-.08 Determination Of Continuing Eligibility.

The Department must determine the individual's eligibility for continued assistance at any time changes which may affect eligibility are reported by the recipient or collateral sources or when information in the case record appears inconsistent. Additionally, the agreement to provide personal care must be validated at least every 12 months.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Emergency amendment effective March 1, 1986. Permanent amendment effective May 28, 1986.

660-2-4-.09 Definitions Of Terms (Phrases) Used In Continuing Eligibility.

The administrative definitions applicable to the determination of continuing eligibility process are as follows:

(a) A recipient is any person who receives a public assistance money payment and/or is certified to the Alabama Medicaid Agency for Medicaid.

(b) Determination of continued eligibility is an investigation to determine that a recipient continues to meet all eligibility requirements.

(c) Determination of Continued Eligibility Process refers to all of the activities involved in the investigation and determination of continuing eligibility for public assistance.

Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Emergency amendment effective March 1, 1986. Permanent amendment effective May 28, 1986.

660-2-4-.10 Amount Of Assistance Payment.

The amount of assistance payment that a person receives is determined by the kind of care he needs, subject to the funds available. When available funds are expended on current recipients, the State Department may freeze the caseload at the number of persons for whom funds are available.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Amendment effective September 9, 1985. Emergency amendment effective March 10, 1986. Succedent permanent amendment effective June 17, 1986.

660-2-4-.11 Payee.

The individual applying for or receiving assistance will be the payee of the State SUP payment unless a legal guardian or legal representative has been appointed.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983.

660-2-4-.12 Duplicate Grants.

The needs of an individual shall not be considered in more than one grant simultaneously.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983.

660-2-4-.13 Erroneous Payments.

Any overpayments whether agency or client error, fraud or nonfraud, must be reported to the State Department. All necessary steps shall be taken to correct underpayments and to recover overpayments, except those due to agency error, including recoupment from current assistance.
Author:

Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective July 18, 1983. Amendment effective January 9, 1985.

660-2-4-.14 Advance Notice.

(1) A person receiving State SUP must be given or mailed written notification ten days in advance of action to terminate his/her grant or reduce the amount of assistance. In the following situations, ten day advance notice is not necessary, but written notification must be provided to the individual no later than the effective date of action.

(2) Exceptions to advance notice:

(a) The County Department has factual information confirming the death of the recipient.

(b) The County Department receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance; and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information.

(c) The recipient has been admitted or committed to a public institution.

(d) The recipient's whereabouts are unknown and agency mail directed to him has been returned by the Post Office indicating no known forwarding address. The recipient's check must, however, be made available to him if his whereabouts became known before the last day of the month covered by the returned check.

(e) The recipient has been accepted for assistance in another county or state and that fact has been established by the County Department previously providing assistance.

(f) The recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

(g) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of award that the allowance shall automatically terminate at the end of the specified period.

(h) The recipient has left, or has been removed from, a foster home, whether or not he will be in another foster home.

Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Amendment effective December 9, 1983.

660-2-4-.15 General Eligibility Criteria.

Eligibility on the factors of age, disability, blindness, residence, citizenship, resources, and income is established by Supplemental Security Income (SSI) Program staff based on Title XVI of the Social Security Act.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38; Opinion to Gary Cooper, Commissioner, State Department of Human Resources, under date of September 27, 1979.
History: Effective June 28, 1983. Emergency amendment effective March 10, 1986. Permanent amendment effective June 17, 1986.

660-2-4-.16 Eligibility Factors Other Than Need.

A person meeting general eligibility criteria (1) must be certified as needing independent homelife care, formerly personal care in a private home, or foster home licensed or approved by the Department (only for persons who were receiving payment for such care as of September 30, 1986) or (2) must be certified as needing (on or after October 1, 1986) specialized independent homelife care in a private home, or foster home licensed or approved by the Department; and must be receiving benefits under the Elderly/ Disabled Medicaid Waiver Program; and must meet the definition of skilled nursing facility criteria outlined in 660-2-4-.28. The determination of whether an applicant/recipient meets such definition will be made by the Alabama Medicaid Agency after review of the applicant/recipient's medical and social records. Recommendation for care must be made by a legally licensed physician of the person's choice. The applicant/recipient and the provider (as defined in 660-2-4-.29) of care must also sign statements indicating care will be provided and paid for.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Amendment effective January 9, 1985. Succedent amendment effective July 9, 1985. Succedent permanent amendment effective September 9, 1986. Succedent permanent amendment effective December 9, 1986. Succedent

permanent amendment effective January 9, 1987. Succedent permanent amendment effective January 15, 1992.

660-2-4-.17 **Definition Of Independent Homelife Care.**

Care from someone else to enable a person to live as independently as possible outside a nursing home. Services considered as enabling a person to live as independently as possible include: help with conducting a prescribed exercise routine; changing bandages or dressings on the advice of the physician; administering prescribed medication; assisting in the use of prostheses or ambulation aids; assistance in locomotion; maintaining an acceptable state of cleanliness; maintaining orientation to time, place, and events; reminding of the need for medication, or other health related functions; and performing other activities needed to help a person care for himself when his illness or disability prevents him from adequately doing so. Companionship for pleasure or convenience rather than protection and necessity is not included in this definition.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Succedent permanent amendment effective January 15, 1992.

660-2-4-.18 **Care In Cerebral Palsy Treatment Centers.**

(1) Eligible recipients receiving care in Cerebral Palsy Treatment Centers who were eligible for optional supplementation as of June 1, 1981 may continue to receive a monthly payment to supplement their other income to help pay for the cost of their care and certain basic needs. "Eligible for" includes persons actually receiving APTD in the Center in June 1981, as well as persons who before June 1981 were: 18 years of age or older and in a Cerebral Palsy Treatment Center and had applied for APTD before June 1981 and were later determined eligible. Eligibility continues only for as long as he remains in the Center and receives SSI, or would receive SSI except for income. (An interruption for any length of time in the stay in the Center has no effect on the person's eligibility upon his return to the Center.)

(2) The amount of the supplement for persons in Cerebral Palsy Treatment Centers who receive SSI is $196 per month. No separate statement of income/resources nor budget is necessary. Persons who do not receive SSI due to income are eligible for a supplement in the amount of the difference between $196 and the amount of income in excess of the SSI federal benefit rate.
Author:

Statutory Authority: Code of Ala. 1975, Title 38.
History: Effective June 28, 1983.

660-2-4-.19 Need Requirement - General.

To be eligible for SUP based on need an individual must be a recipient of Supplemental Security Income through the Social Security Administration. (See Attachments 660-2-4-.19 a and b.)
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Amendment effective September 9, 1985. Succedent emergency amendment effective January 1, 1986. Succedent emergency amendment effective March 10, 1986. Succedent permanent amendment effective April 24, 1986. Succedent permanent amendment effective June 17, 1986. Succedent permanent amendment effective September 9, 1986.

660-2-4-.20 Resources (Repealed 6/17/86).
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; P.L. 98-369; 20 C.F.R. 416; 42 C.F.R. 435; 42 U.S.C. 1382 (b); Title XIX State Plan; Code of Ala. 1975, Title 38 and § 35-1-2.
History: Effective June 28, 1983. Amendment effective October 9, 1984. Emergency amendment effective January 1, 1985. Succedent permanent amendment effective January 9, 1985. Succedent emergency repealer effective March 10, 1986. Succedent permanent repealer effective June 17, 1986.

660-2-4-.21 Home Property (Repealed 6/17/86).
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983. Amendment effective August 9, 1984. Succedent emergency repealer effective March 10, 1986. Succedent permanent repealer effective June 17, 1986.

660-2-4-.22 Income (Repealed 6/17/86).
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.

History: Effective June 28, 1983. Emergency repealer effective March 10, 1986. Permanent repealer effective June 17, 1986.

660-2-4-.23 Medicaid.

A non-SSI individual receiving State supplementation is automatically eligible for Alabama Medicaid benefits except for individuals in Cerebral Palsy Treatment Centers. See Chapter 660-2-5.
Author:
Statutory Authority: 42 C.F.R. 435.
History: Effective June 28, 1983.

660-2-4-.24 Referral To Social Services.

At any time the worker suspects abuse or neglect of any child or adult, he must immediately refer the case to the appropriate service unit. All persons receiving State supplementation are referred to the service unit when problems or needs of individuals are evidenced or services are desired.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective June 28, 1983.

660-2-4-.25 Social Security Account Numbers.

To be eligible for State SUP, an individual must either provide the Social Security account number when known, or apply for a Social Security account number when one has not been assigned, or is unknown or the individual is otherwise unable to provide an accurate account number. Failure of the individual to comply with this requirement will result in ineligibility for State SUP benefits.

(a) The worker will assist the client who cannot provide the Social Security account number to secure it through the Welfare Enumeration System. Assistance will not be denied/ delayed/discontinued when the client has applied through the Welfare Enumeration System for a SSN, pending issuance and/or verification.

Author:
Statutory Authority: Social Security Act Titles XVI and XIX; P.L. 98-369; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.

History: **Emergency rule** effective April 1, 1985. **Permanent rule** effective June 10, 1985.

660-2-4-.26 **Non-SSI Supplementation (SUP) Recipients.**

(1) Eligible non-SSI SUP recipients receiving optional supplementation as of March 7, 1986 may continue to receive a monthly payment to supplement their other income to help pay for the cost of their care. Eligibility continues only for as long as all optional supplementation program eligibility requirements as outlined in chapter 660-2-4 are met as well as the requirement of only being ineligible for SSI due to income.

(2) Eligibility on the factors of age, disability, blindness, residence, citizenship, resources and income is based on the criteria of Title XVI of the Social Security Act.

(3) A separate income and resource determination is necessary in these cases. Persons determined eligible receive a supplement in the amount of the difference in countable income and the amount of the applicable supplement payable dependent upon type of care needed. The individual must not have currently available resources in excess of the maximum established by Title XVI or gross countable income in excess of the limit established by the Alabama Medicaid Agency or total net countable income in excess of the appropriate supplement. (See attachments 660-2-4-.19a and 660-2-4-.26a.) Rules in 20 C.F.R. 416, Subpart K, govern types of countable income and income exclusions. Rules in 20 C.F.R. 416, Subpart L, govern types of countable resources and resource exclusions. The provisions of Title 20, Code of Federal Regulations, Part 416, Subparts K and L, such regulations being in effect October 30, 1972 through April 1, 1984, and as all of the same may be amended, are hereby adopted by reference. A copy of the adopted matter may be found in the attached Appendix A.
Author:
Statutory Authority: Social Security Act, Title XVI, 20 C.F.R. 416; Code of Ala. 1975, Title 38.
History: **Emergency rule** effective March 10, 1986. **Permanent rule** effective June 17, 1986. Succedent permanent amendment effective September 9, 1986. Succedent permanent amendment effective December 9, 1986. Succedent emergency amendment effective January 1, 1987. Succedent permanent amendment effective March 11, 1987. Succedent emergency amendment effective January 1, 1988. Succedent permanent amendment effective February 17, 1988.

660-2-4-.27 Definition Of Specialized Independent Homelife Care.

Specialized Independent Homelife care includes services incidental to a medical need to assist the functionally impaired individual with personal hygiene, dressing, ambulation, meal preparation, eating, self-administering medications and maintaining a safe and sanitary environment.
Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of Ala. 1975, Title 38.
History: Effective January 9, 1987. Succedent permanent amendment effective January 15, 1992.

660-2-4-.28 Definition Of Skilled Nursing Facility (SNF).

(1) Definition. As used in this section, "skilled nursing and skilled rehabilitation services" means services that:

(a) Are ordered by a physician;

(b) Require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists; and

(c) Are furnished directly by, or under the supervision of, such personnel.

(d) The beneficiary must require skilled nursing or skilled rehabilitation services, or both, on a daily basis.

(2) Criteria for skilled services and the need for skilled services.

(a) The service must be so inherently complex that it can be safely and effectively performed only by, or under the supervision of, professional or technical personnel.

(b) A condition that does not ordinarily require skilled services may require them because of special medical complications. Under those circumstances, a service that is usually non-skilled may be considered skilled because it must be performed or supervised by skilled nursing or rehabilitation personnel. For example, a plaster cast on a leg does not usually require skilled care. However, if the patient has a preexisting acute skin condition or needs traction,

skilled personnel may be needed to adjust traction or watch for complications. In situations of this type, the complications, and the skilled services they require, must be documented by physicians' orders and nursing or therapy notes.

(c) The restoration potential of a patient is not the deciding factor in determining whether skilled services are needed. Even if full recovery or medical improvement is not possible, a patient may need skilled services to prevent further deterioration or preserve current capabilities.

(3) Examples of skilled nursing and rehabilitation services.

(a) Services that could qualify as either skilled nursing or skilled rehabilitation services.

1. Overall management and evaluation of care plan. The development, management, and evaluation of a patient care plan based on the physician's orders constitute skilled services when, because of the patient's physical or mental condition, those activities require the involvement of technical or professional personnel in order to meet the patient's needs, promote recovery, and ensure medical safety. This would include the management of a plan involving only a variety of personal care services when, in light of the patient's condition, the aggregate of those services requires the involvement of technical or professional personnel. For example, an aged patient with a history of diabetes mellitus and angina pectoris who is recovering from an open reduction of a fracture of the neck of the femur requires, among other services, careful skin care, appropriate oral medications, a diabetic diet, an exercise program to preserve muscle tone and body condition, and observation to detect signs of deterioration in his or her condition or complications resulting from restricted, but increasing, mobility. Although any of the required services could be performed by a properly instructed person, such a person would not have the ability to understand the relationship between the services and evaluate the ultimate effect of one service on the other. Since the nature of the patient's condition, age, and immobility create a high potential for serious complications, such an understanding is essential to ensure the patient's recovery and safety. Under these circumstances, the management of the plan of care would require the skills of a nurse even though the individual services are not skilled. Skilled planning and management activities are not always specifically identified in the patient's clinical record. Therefore, if the patient's overall condition would support a finding that recovery and safety can be assured only if the total care is planned, managed, and evaluated by technical or

professional personnel, it would be appropriate to infer that skilled services are being provided.

2. Observation and assessment of the patient's changing condition. Observation and assessment constitute skilled services when the skills of a technical or professional person are required to identify and evaluate the patient's need for modification or treatment for additional medical procedures until his or her condition is stabilized. For example, a patient with congestive heart failure may require continuous close observation to detect signs of decompensation, abnormal fluid balance, or adverse effects resulting from prescribed medication(s) which serve as indicators for adjusting therapeutic measures. Likewise, surgical patients transferred from a hospital to a skilled nursing facility while in the complicated, unstabilized postoperative period, e.g., after hip prosthesis or cataract surgery, may need continued close skilled monitoring for postoperative complications, and adverse reaction. Patients who, in addition to their physical problems, exhibit acute psychological symptoms such as depression, anxiety, or agitation, etc., may also require skilled observation and assessment by technical or professional personnel to assure their safety and/or the safety of others, i.e., to observe for indications of suicidal or hostile behavior. The need for services of this type must be documented by physicians' orders and/or nursing or therapy notes.

3. Patient education services. Patient education services are skilled services if the use of technical or professional personnel is necessary to teach a patient self-maintenance. For example, a patient who has had a recent leg amputation needs skilled rehabilitation services provided by technical or professional personnel to provide gait training and to teach prosthesis care. Likewise, a patient newly diagnosed with diabetes requires instruction from technical or professional personnel to learn the self-administration of insulin or foot-care precautions, etc.

(b) Services that qualify as skilled nursing services.

1. Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

2. Levin tube and gastrostomy feeding;

3. Nasopharyngeal and tracheostomy aspiration;

4. Insertion and sterile irrigation and replacement of catheters;

5. Application of dressings involving prescription medications and aseptic techniques;

6. Treatment of extensive decubitus ulcers or other widespread skin disorder;

7. Heat treatments which have been specifically ordered by a physician as part of active treatment and which require observation by nurses to adequately evaluate the patient's progress;

8. Initial phases of a regimen involving administration of medical gases;

9. Rehabilitation nursing procedures, including the related-teaching and adaptive aspects of nursing, that are part of active treatment, e.g., the institution and supervision of bowel and bladder training programs.

(c) Services which would qualify as skilled rehabilitation services.

1. Ongoing assessment of rehabilitation needs and potential: Services concurrent with the management of a patient care plan, including tests and measurements of range of motion, strength, balance, coordination, endurance, functional ability, activities of daily living, perceptual deficits, speech and language or hearing disorders;

2. Therapeutic exercises or activities: Therapeutic exercises or activities which, because of the type of exercises employed or the condition of the patient, must be performed by or under the supervision of a qualified physical therapist or occupational therapist to ensure the safety of the patient and the effectiveness of the treatment;

3. Gait evaluation and training: Gait evaluation and training furnished to restore function in a patient whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality;

4. Range of motion exercises: Range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility (as evidenced by a therapist's notes showing the degree of motion lost and the degree to be restored);

5. Maintenance therapy: Maintenance therapy, when the specialized knowledge and judgment of a qualified therapist is required to design and establish a

maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance. For example, a patient with Parkinson's disease who has not been under a rehabilitation regimen may require the services of a qualified therapist to determine what type of exercises will contribute the most to the maintenance of his present level of functioning;

6. Ultrasound, short-wave, and microwave therapy treatment by a qualified physical therapist;

7. Hot pack, hydrocollator, infrared treatments, paraffin baths, and whirlpool in particular cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures, or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required; and

8. Services of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(d) Personal care services.

1. Administration of routine oral medications, eye drops, and ointments;

2. General maintenance care of colostomy and ileostomy;

3. Routine services to maintain satisfactory functioning of dwelling bladder catheters;

4. Changes of dressings for noninfected postoperative or chronic conditions;

5. Prophylactic and pallative skin care, including bathing and application of creams, or treatment of minor skin problems;

6. Routine care of the incontinent patient, including use of diapers and protective sheets;

7. General maintenance care in connection with a plaster cast;

8. Routine care in connection with braces and similar devices;

9. Use of heat as a palliative and comfort measure, such as whirlpool and hydrocollator;

10. Routine administration of medical gases after a regimen of therapy has been established;

11. Assistance in dressing, eating, and going to the toilet;

12. Periodic turning and positioning in bed; and

13. General supervision of exercises which have been taught to the patient; including the actual carrying out of maintenance programs, i.e., the performance of the repetitive exercises required to maintain function do not require the skills of a therapist and would not constitute skilled rehabilitation services (see paragraph (c) of this section). Similarly, repetitious exercises to improve gait, maintain strength, or endurance; passive exercises to maintain range of motion in paralyzed extremities, which are not related to a specific loss of function; and assistance walking do not constitute skilled rehabilitation services.

(4) Criteria for "daily basis".

(a) To meet the daily basis requirement the following frequency is required:

1. Skilled nursing services or skilled rehabilitation services must be needed and provided 7 days a week; or

2. As an exception, if skilled rehabilitation services are not available 7 days a week those services must be needed and provided at least 5 days a week.

(b) A break in one or two days in the furnishing of rehabilitation services will not preclude coverage if discharge would not be practical for the one or two days during which, for instance, the physician has suspended the therapy sessions because the patient exhibited extreme fatigue.

Author:
Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Code of Ala. 1975, Title 38.
History: Emergency new rule effective August 14, 1991. Succedent permanent new rule effective November 12, 1991.

660-2-4-.29 Care Provider Requirements.

Effective February 14, 1992, the care provider of independent homelife care or specialized independent homelife care must be an employee of a certified home health agency or (if the County Health Department does not make homelife services available in the

county or to this individual) an individual who declares in writing that he/she has at least a 6th grade education; is physically and mentally able to provide care as evidenced by a medical statement; has not been convicted of a serious crime; and has not been fired or forced to resign from a position as a care provider due to dereliction of duty. The care provider cannot be of any of the following degrees of relationship to the applicant/ recipient: child, stepchild, adoptive child, son or daughter-in-1aw; parent, stepparent, adoptive parent; spouse; or brother, sister, brother-in-1aw, sister-in-1aw.

A certified home health agency is an agency so certified by the Alabama Department of Public Health, Division of Licensure and Certification.

Author:

Statutory Authority: Social Security Act Titles XVI and XIX; 20 C.F.R. 416; 42 C.F.R. 435; Title XIX State Plan; Code of_Ala. 1975, Title 38.

History: Effective January 15, 1992. Succedent emergency amendment effective January 15, 1992. Succedent permanent amendment effective April 10, 1992.

660-2-4-A Appendix A Attachments.

APPENDIX A - CHAPTER 660-2-4 ATTACHMENTS (DELETED)

Attachment 660-2-4-.03a (DELETED)

DEPARTMENT OF HUMAN RESOURCES

OLD AGE PENSION

SUMMARIZED ELIGIBILITY REQUIREMENTS

APPENDIX A - CHAPTER 660-2-4 ATTACHMENTS (DELETED)

Attachment 660-2-4-.03b (DELETED)

DEPARTMENT OF HUMAN RESOURCES

AID TO THE BLIND

SUMMARIZED ELIGIBILITY REQUIREMENTS

APPENDIX A - CHAPTER 660-2-4 ATTACHMENTS (DELETED)

Attachment 660-2-4-.03c (DELETED)

DEPARTMENT OF HUMAN RESOURCES

AID TO THE PERMANENTLY AND TOTALLY DISABLED

SUMMARIZED ELIGIBILITY REQUIREMENTS

APPENDIX A - CHAPTER 660-2-4 ATTACHMENTS

Attachment 660-2-4-.19a

SPECIAL NEEDS OF APPLICANTS AND RECIPIENTS

Payment	Monthly Amount To Be	Maximum Budgeted
FCMP Nursing Care (when required)	$100.00	$60.00
Nursing Care Supplement	$60.00	$60.00
Personal Care Supplement – Level Of Independence "A"	$60.00	$60.00
Personal Care Supplement – Level of Independence "B"	$56.00	$56.00
Personal Care or Nursing Care Supplement in Foster Care	$110.00	$110.00
Care in a Cerebral Palsy Treatment Center (APTD)	$196.00	$196.00

APPENDIX A - CHAPTER 660-2-4 ATTACHMENTS

Attachment 660-2-4-.19b

BASIC REQUIREMENTS FOR MANDATORY MONEY PAYMENT NURSING HOME CASES

Table 4

Basic Requirements	OAP	APTD	AB
Clothing	$18	$12	$15
Incidentals	$19	$10	$17
Personal Care	$11	$10	$0
TOTALS	$48	$22	$32

APPENDIX A - CHAPTER 660-2-4 ATTACHMENTS

Attachment 660-2-4-.26a

FEDERAL BENEFIT RATE (FBR) CHART (Effective January 1, 1995)

		Gross Income Limit
Individual in own home	$458.00	$1,374.00
Individual in household of another and receiving support and maintenance	$305.34	$916.02
Individual with spouse both in household of another and receiving support and maintenance - (Couple standard)	$687.00	$2,748.00
Individual with spouse both in household of another and receiving support and maintenance - (Couple standard)	$458.00	$1,832.04
One-half of individual FBR	$229.00	
One - half of individual FBR Individual in household of another	$152.67	
Allowance for dependent child	$229.00	
Individual in nursing home	$30.00	
Medicare premium	$46.10	
Reference Only:		

Author:
Statutory Authority: Social Security Act, Title XVI, 20 C.F.R 416; Code of Ala. 1975, Title 38.
History: Emergency rule effective March 10, 1986. Permanent rule effective June 17, 1986. Succedent permanent amendment effective September 9, 1986. Succedent emergency amendment effective January 1, 1987. Succedent permanent amendment effective March 11, 1987. Succedent emergency amendment effective January 1, 1988. Succedent permanent amendment effective February 17, 1988. Succedent emergency amendment effective January 1, 1991. Succedent permanent amendment effective April 11, 1991. Succedent permanent amendment effective January 1, 1994. Succedent emergency amendment effective

January 1, 1995. Succedent permanent amendment filed March 7, 1995; effective April 11, 1995.

APPENDIX A - CHAPTER 660-2-4 ATTACHMENTS
Attachment 660-2-4-.26b

Subpart K—Income

AUTHORITY: Secs. 1102, 1611, 1612, 1613, 1614, and 1631, Social Security Act as amended; sec. 211 of Pub. L. 93-66; 49 Stat. 647 as amended, 86 Stat. 1466, 86 Stat. 1468; 86 Stat. 1470, 86 Stat. 1471, 86 Stat. 1457, 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383, unless otherwise noted.

SOURCE: 45 FR 65547, Oct. 3, 1980, unless otherwise noted.

GENERAL

§ 416.1100 Income and SSI eligibility.

You are eligible for supplemental security income (SSI) benefits if you are an aged, blind, or disabled person who meets the requirements described in Subpart B and who has limited income and resources. Thus, the amount of income you have is a major factor in deciding whether you are eligible for SSI benefits and the amount of your benefit. Generally, the more income you have the less your benefit will be. If you have too much income you are not eligible for a benefit. However, we do not count all of your income to determine your eligibility and benefit amount. We explain in the following sections how we treat your income for the SSI program. These rules apply to the Federal benefit and to any optional State supplement paid by us on behalf of a State (§ 416.2025). While this subpart explains generally how we count income, Subpart D of these regulations explains how we compute your benefit.

§ 416.1101 Definition of terms.

As used in this subpart—

"Child" means someone who is not married, is not the head of a household, and is either under age 18 or is under age 22 and a student. (See § 416.1050)

"Couple" means an eligible individual and his or her eligible spouse.

"Current market value" means the price of an item on the open market in your locality.

"Federal benefit rate" means the quarterly payment rate (or the monthly rate if appropriate under Subpart D) for an eligible individual or couple. It is the figure from which we subtract countable income to find out how much your Federal SSI benefit should be. The Federal benefit rate does not include the rate for any State supplement paid by us on behalf of a State.

"Institution" means an establishment which makes available some treatment or services beyond food and shelter to four or more persons who are not related to the proprietor. (See § 416.231(b))

"Spouse" means someone who lives with another person as that person's husband or wife. (See §§ 416.1001 through 416.1041)

"We," "Us," or "Our" means the Social Security Administration.

"You" or "Your" means a person who is applying for, or already receiving, SSI benefits.

§ 416.1102 What is income.

Income is anything you receive in cash or in kind that you can use to meet your needs for food, clothing, or shelter. In-kind income is not cash, but is actually food, clothing, or shelter, or something you can use to get one of these.

§ 416.1103 What is not income.

Some things you receive are not income because you cannot use them as food, clothing, or shelter, or use them to obtain food, clothing, or shelter. In addition, what you receive from the sale or exchange of your own property is not income; it remains a resource. The following are some items that are not income:

(a) *Medical care and services.* Medical care and services are not income if they are any of the following:

(1) Given to you free of charge or paid for directly to the provider by someone else;

(2) Room and board you receive during a medical confinement;

(3) Assistance provided in cash or in kind (including food, clothing, or shelter) under a Federal, State, or local government program, whose purpose is to provide medical care or services (including vocational rehabilitation);

(4) In-kind assistance (except food, clothing, or shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

(5) Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy (except cash to cover food, clothing, or shelter) if the cash is either:

(i) Repayment for program-approved services you have already paid for; or

(ii) A payment restricted to the future purchase of a program-approved service.

Example: If you have paid for prescription drugs and get the money back from your health insurance, the money is not income.

(6) Direct payment of your medical insurance premiums by anyone on your behalf.

(b) *Social services.* Social services are not income if they are any of the following:

(1) Assistance provided in cash or in kind (but not received in return for a service you perform) under any Federal, State, or local government program whose purpose is to provide social services including vocational rehabilitation (Example: Cash given you by the Veterans Administration to purchase aid and attendance);

(2) In-kind assistance (except food, clothing, or shelter) provided under a nongovernmental program whose purpose is to provide social services; or

(3) Cash provided by a nongovernmental social services program (except cash to cover food, clothing, or shelter) if the cash is either:

(i) Repayment for program-approved services you already have paid for; or

(ii) A payment restricted to the future purchase of a program-approved service.

Example: If you are unable to do your own household chores and a private social services agency provides you with cash to pay a homemaker the cash is not income.

(c) *Receipts from the sale, exchange, or replacement of a resource.* Receipts from the sale, exchange, or replacement of a resource are not income but are resources that have changed their form. This includes any cash or in-kind item that is provided to replace or repair a resource (see Subpart L) that has been lost, damaged, or stolen. Sections 416.1150 and 416.1151 discuss treatment of receipts to replace or repair a resource following a major disaster or following some other event causing damage or loss of a resource.

Example: If you sell your automobile, the money you receive is not income; it is another form of a resource.

(d) *Income tax refunds.* Any amount refunded on income taxes you have already paid is not income.

(e) *Payments by credit life or credit disability insurance.* Payments made under a credit life or credit disability insurance policy on your behalf are not income.

Example: If a credit disability policy pays off the mortgage on your home after you become disabled in an accident, we do not consider either the payment or your increased equity in the home to be income.

(f) *Proceeds of a loan.* Money you borrow or money you receive as repayment of a loan is not income. However, interest you receive on money you have lent is income. Buying on credit is treated as though you were borrowing money and what you purchase this way is not income.

(g) *Bills paid for you.* Payment of your bills by someone else directly to the supplier is not income. However, we count the value of anything you receive because of the payment if it is in-kind income as defined in § 416.1102.

Examples: If your daughter uses her own money to pay the grocer to provide you with food, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the grocer provides you with food; the food is in-kind income to you. Similarly, if you buy clothing on credit and your son later pays the bill, the payment to the store is not income to you but the clothing is in-kind income to you. In this example, if your son pays for the clothing in a quarter after the quarter of purchase, we will count the in-kind income to you in the quarter in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food, clothing, or shelter. Therefore, it is not in-kind income as defined in § 416.1102.

(h) *Replacement of income you have already received.* If income is lost, destroyed, or stolen and you receive a replacement, the replacement is not income.

Example: If your paycheck is stolen and you get a replacement check, we count the first check as income. The replacement check is not income.

(i) *Weatherization assistance.* Weatherization assistance (Examples: Insulation, storm doors and windows) is not income.

§416.1104 Income we count.

We have described generally what income is and is not for SSI purposes (§416.1103). There are different types of income, earned and unearned, and we have rules for counting each. The earned income rules are described in §§416.1110 through 416.1112 and the unearned income rules are described in §§416.1120 through 416.1124. One type of unearned income is in-kind support and maintenance (food, clothing, or shelter). The way we value it depends on your living arrangement. These rules are described in §§416.1130 through 416.1146. In some situations we must consider the income of certain people with whom you live as available to you and part of your income. These rules are described in §§416.1160 through 416.1169. We use all of these rules to determine the amount of your countable income—the amount that is left after we subtract what is not income or is not counted.

Earned Income

§416.1110 What is earned income.

Earned income may be in cash or in kind and consists of the following types of payments:

(a) *Wages.* Wages are what you receive (before any deductions) for working as someone else's employee. Wages are the same for SSI purposes as for the earnings test in the social security retirement program. (See §404.429(c) of this chapter.) Wages include salaries, commissions, bonuses, severance pay, and any other special payments received because of your employment. They may also include the value of food, clothing, or shelter, or other items provided instead of cash. We refer to this as in-kind earned income. However, if you are a domestic or agricultural worker, the law requires us to treat your in-kind pay as unearned income.

(b) *Net earnings from self-employment.* Net earnings from self-employment are your gross income from any trade or business that you operate, less allowable deductions for that trade or business. Net earnings also include your share of profit or loss in any partnership to which you belong. These are the same net earnings that we would count under the social security retirement insurance program and that you would report on your Federal income tax return. (See §404.1050 of this chapter.)

(c) *Refunds of Federal income taxes and advance payments by employers made in accordance with the earned income credit provisions of the Internal Revenue Code.* Refunds on account of earned income credits are payments made to you under the provisions of section 43 of the Internal Revenue Code of 1954, as amended. These "refunds" may be greater than taxes you have paid. You may receive earned income tax credit payments along with any other Federal income tax refund you receive because of overpayment of your income tax. (Federal income tax refunds made on the basis of taxes you have already paid are not income to you as stated in §416.1103(d).) Advance payments of earned income tax credits are made by your employer under the provisions of section 3507 of the same code. You can receive earned income tax credit payments only if you meet certain requirements of family composition and income limits.

(d) *Payments for services performed in a sheltered workshop or work activities center.* Payments for services performed in a sheltered workshop or work activities center are what you receive for participating in a program designed to help you become self-supporting.

(Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614 and 1631, Social Security Act as amended; sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471, 1473, 1475, 87 Stat. 154; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1383c and 1383; sec. 202 of Pub. L. 96-265, 94 Stat. 449; 42 U.S.C. 1382c)

[45 FR 65547, Oct. 3, 1980, as amended at 48 FR 23179, May 24, 1983]

§ 416.1111 How we count earned income.

(a) *Wages.* We count wages at the earliest of the following points: when you receive them or when they are credited to your account or set aside for your use. We determine wages for each calendar quarter.

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. However, we divide the total of these earnings equally among the quarters in the taxable year to get your earnings for each calendar quarter. For example, if your net earnings for a taxable year are $2,000, we consider that you received $500 in each quarter. If you have net losses from self-employment, we divide them over the taxable year in the same way, and we deduct them only from your other earned income.

(c) *Refunds of Federal income taxes and advance payments by employers made under the earned income credit provisions of the Internal Revenue Code.* We count payments advanced by your employer and refunds of Federal income taxes made under the earned income credit provisions of the Internal Revenue Code of 1954 in the quarters in which you receive them. You receive refunds in a single quarter if they are paid as a result of the filing of your income tax return and as an addition to the refund of taxes withheld by your employer. You receive payments advanced by your employer along with your wages spread over the period of your employment. If we do not pay you the correct amount of benefits (that is, we withheld too much from your benefits) because your employer has advanced you more than was actually due, SSA will make up the difference in benefits when the correct amount of your earned income credits is determined by the Internal Revenue Service (see § 416.542 for the rules on underpayments). If your employer advanced less than you were actually due we will count the additional amount in the quarter in which you receive it from Internal Revenue Service.

(d) *Payments for services in a sheltered workshop or activities center.* We count payments you receive for services performed in a sheltered workshop or work activities center when you receive them or when they are set aside for your use. We determine the amount of the payments for each calendar quarter.

(e) *In-kind earned income.* We use the current market value of in-kind earned income for SSI purposes. (See § 416.1101 for a definition of current market value.) If you receive an item that is not fully paid for and are responsible for the unpaid balance, only the paid-up value is income to you. (See the example in § 416.1123(c)).

(Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614 and 1631, Social Security Act as amended; sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471, 1473, 1475, 87 Stat. 154; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1383c and 1383, sec. 202 of Pub. L. 96-265, 94 Stat. 449; 42 U.S.C. 1382c)

[45 FR 65547, Oct. 3, 1980, as amended at 48 FR 23179, May 24, 1983; 48 FR 30357, July 1, 1983]

§ 416.1112 Earned income we do not count.

(a) *General.* While we must know the source and amount of all of your earned income for SSI, we do not count all of it to determine your eligibility and benefit amount. We first exclude income as authorized by other Federal laws (see paragraph (b) of this section). Then we apply the other exclusions in the order listed in paragraph (c) of this section to the rest of your income in the calendar quarter. We never reduce your earned income below zero or apply any unused earned income exclusion to unearned income.

(b) *Other Federal laws.* Some Federal laws other than the Social Security Act provide that we cannot count some of your earned income for SSI purposes. We list the laws and exclusions in the appendix to this subpart which we update periodically.

(c) *Other earned income we do not count.* We do not count as earned income—

(1) Up to $30 of earned income in a calendar quarter if you receive it infrequently or irregularly, that is, if you receive it only once during the quarter or if you cannot reasonably expect to receive it. If the total amount of infrequent or irregular earned income you

receive in a quarter exceeds $30, we cannot use this exclusion;

(2) Up to $1,200 of earned income in a calendar quarter, but no more than $1,620 in a calendar year, if you are a blind or disabled child who is a student regularly attending school as described in § 416.1060;

(3) Any portion of the $60 quarterly exclusion in § 416.1124(c)(10) which has not been excluded from your unearned income in that same quarter;

(4) $65 of earned income in a month;

(5) Earned income you use to pay impairment-related work expenses described in § 416.976, if you are disabled (but not blind) and under age 65 or you are disabled (but not blind) and received SSI as a disabled person for the month before you reached age 65. (However, if your countable income without benefit of the exclusion exceeds the Federal SSI limit when we determine your initial eligibility, we cannot apply this provision until your countable income without benefit of this exclusion is within the Federal SSI limit.) Once you qualify for the exclusion of impairment-related work expenses, you continue to be entitled to the exclusion for all subsequent consecutive months in which your countable income after the exclusion is within the Federal SSI limit or, if applicable, the higher income limit for an optional supplement which we administer for the State where you live. If in a subsequent month your countable income after the exclusion exceeds either of these limits, you no longer qualify for the exclusion until your countable income without benefit of this exclusion is again within the Federal limit);

(6) One-half of remaining earned income in a month;

(7) Earned income used to meet any expenses reasonably attributable to the earning of the income if you are blind and under age 65 or if you receive SSI as a blind person for the month before you reach age 65. (We consider that you "reach" a certain age on the day before that particular birthday.); and

(8) Any earned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See §§ 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies.

(Secs. 205, 223, 1102, 1612, 1614, 1631, Social Security Act, as amended; sec. 302, of Pub. L. 96-265; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; and 86 Stat. 1468, 1471, 1475, as amended; 94 Stat. 450, 451; 42 U.S.C. 405, 423, 1302, 1382a, 1382c and 1383)

[45 FR 65547, Oct. 3, 1980, as amended at 48 FR 21943, May 16, 1983]

Unearned Income

§ 416.1120 What is unearned income.

Unearned income is all income that is not earned income. We describe some of the types of unearned income in § 416.1121. We consider all of these items as unearned income, whether you receive them in cash or in kind.

§ 416.1121 Types of unearned income.

Some types of unearned income are—

(a) *Annuities, pensions, and other periodic payments.* This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits.

(b) *Alimony and support payments.* For SSI purposes, alimony and support payments are cash or in-kind contributions to meet some or all of a person's needs for food, clothing, or shelter. Support payments may be made voluntarily or because of a court order. Alimony (sometimes called "maintenance") is an allowance made by a court from the funds of one spouse to the other spouse in connection with a suit for separation or divorce.

(c) *Dividends, interest, and royalties.* Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are payments to the holder of a copyright or patent. Royalties may also be paid to the owner of a mine, oil well,

timber tract, or other resource, for extraction of a product. (See § 416.1110(b) if you receive this type of income as part of your trade or business.)

(d) *Rents.* Rents are payments you receive for the use of real or personal property such as land, housing, or machinery. We deduct from rental payments your ordinary and necessary expenses in the same taxable year. These include only those expenses necessary for the production or collection of the rental income and they must be deducted when paid, not when they are incurred. Some examples of deductible expenses are interest on debts, State and local taxes on real and personal property and on motor fuels, general sales taxes, and expenses of managing or maintaining the property. (Sections 163, 164, and 212 of the Internal Revenue Code of 1954 and related regulations explain this in more detail.) We do not consider depreciation or depletion of property a deductible expense. (See § 416.1110(b) for rules on rental income that is earned from self-employment. For example, you may be in the business of renting properties.)

(e) *Proceeds of life insurance policy.* We count payments you get as a beneficiary of a life insurance policy except for any amount up to $1,500 that you spend on the insured's last illness and burial expenses. Illness and burial expenses include related hospital and medical expenses, funeral, burial plot, and interment expenses, and other related costs.

Example: If you receive $2,000 from your uncle's life insurance policy and you spend $500 on his last illness and burial expenses, the balance, $1,100, is unearned income. If you spend the entire $2,000 for the last illness and burial, $500 is unearned income to you because of the $1,500 limit in the rule.

(f) *Prizes and awards.* A prize is generally something you win in a contest, lottery or game of chance. An award is usually something you receive as the result of a decision by a court, board of arbitration, or the like.

(g) *Gifts and inheritances.* A gift is something you receive which is not repayment to you for goods or services you provided and which is not given to you because of a legal obligation on the giver's part. An inheritance is something that comes to you as the result of someone's death. It can be in cash or in kind, including any right in real or personal property.

(h) *Support and maintenance in kind.* This is food, clothing, or shelter furnished to you. Our rules for valuing this income depend on your living arrangement. We use one rule if you are living in the household of a person who provides you with both food and shelter. We use different rules for other situations where you receive food, clothing, or shelter. We discuss all of the rules in §§ 416.1130 through 416.1147.

§ 416.1123 How we count unearned income.

(a) *When we count unearned income.* We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each calendar quarter. We describe an exception to the rule on how we count unearned income in paragraph (d) of this section.

(b) *Amount considered as income.* We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see § 416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. *Exception:* We do not include more than you actually receive if you received both SSI benefits and the other benefit at the time the overpayment of the other benefit occurred and the overpaid amount was included in figuring your SSI benefit at that time.

Example: Joe, an SSI beneficiary, is also entitled to social security insurance benefits in the amount of $200 per month. However, because of a prior overpayment of his social security insurance benefits, $20 per month is being withheld to recover the overpayment. In figuring the amount of his SSI benefits, the full monthly social security in-

surance benefit of $200 is included in Joe's unearned income. However, if Joe was receiving both benefits when the overpayment of the social security insurance benefit occurred and we then included the overpaid amount as income, we will compute his SSI benefit on the basis of receiving $180 as a social security insurance benefit. This is because we recognize that we computed his SSI benefit on the basis of the higher amount when he was overpaid.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment or to make certain payments such as payment of your Medicare premiums.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program other than SSI, legal fees connected with the claim are subtracted. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(4) In certain situations, we may consider someone else's income to be available to you, whether or not it actually is. (For the rules on this process, called deeming, see §§ 416.1160 through 416.1169.)

(c) *In-kind income.* We use the current market value (defined in § 416.1101) of in-kind unearned income to determine its value for SSI purposes. We describe some exceptions to this rule in §§ 416.1131 through 416.1147. If you receive an item that is not fully paid for and are responsible for the balance, only the paid-up value is income to you.

Example: You are given a $1500 automobile but must pay the $1000 due on it. You are receiving income of $500.

(d) *Retroactive monthly social security benefits.* When you file an application for social security benefits and retroactive monthly social security benefits are payable on that application for a period for which you also received SSI payments (including federally administered State supplementary payments), we count your retroactive monthly social security benefits as unearned income received in that period. Rather than reducing your SSI payments in quarters prior to your receipt of a retroactive monthly social security benefit, we will reduce the retroactive social security benefits by an amount equal to the amount of SSI payments (including federally administered State supplementary payments) that we would not have paid to you if your social security benefits had been paid when regularly due rather than retroactively (see § 404.408b(b)). If a balance is due you from your retroactive social security benefits after this reduction, for SSI purposes we will not count the balance as unearned income in a subsequent quarter in which you receive it. This is because your social security benefits were used to determine the amount of the reduction. This exception to the unearned income counting rule does not apply to any monthly social security benefits for a period for which you did not receive SSI.

(The reporting and recordkeeping requirements have been approved by the Office of Management and Budget under control number 0960-0128 for § 416.1123(b))

[45 FR 65547, Oct. 3, 1980, as amended at 47 FR 4988, Feb. 3, 1982; 47 FR 13794, Apr. 1, 1982]

§ 416.1124 Unearned income we do not count.

(a) *General.* While we must know the source and amount of all of your unearned income for SSI, we do not count all of it to determine your eligibility and benefit amount. We first exclude income as authorized by other Federal laws (see paragraph (b) of this section). Then we apply the other exclusions in the order listed in paragraph (c) of this section to the rest of your unearned income in the calendar quarter. We never reduce your unearned income below zero or apply any unused unearned income exclusion to earned income except for the $60 general exclusion described in paragraph (c)(10) of this section.

(b) *Other Federal laws.* Some Federal laws other than the Social Security Act provide that we cannot count

some of your unearned income for SSI purposes. We list the laws and the exclusions in the appendix to this subpart which we update periodically.

(c) *Other unearned income we do not count.* We do not count as unearned income—

(1) Any public agency's refund of taxes on real property or food;

(2) Assistance based on need which is wholly funded by a State or one of its political subdivisions. (For purposes of this rule, an Indian tribe is considered a political subdivision of a State.) Assistance is based on need when it is provided under a program which uses the amount of your income as one factor to determine your eligibility. Assistance based on need includes State supplementation of Federal SSI benefits as defined in Subpart T of this part but does not include payments under a Federal/State grant program such as Aid to Families with Dependent Children under title IV-A of the Social Security Act;

(3) Any portion of a grant, scholarship, or fellowship used for paying tuition, fees, or other necessary educational expenses. However, we do count any portion set aside or actually used for food, clothing, or shelter;

(4) Food which you or your spouse raise if it is consumed by you or your household;

(5) Assistance received under the Disaster Relief Act of 1974 and assistance provided under any Federal statute because of a catastrophe which the President of the United States declares to be a major disaster. See § 416.1150 for a more detailed discussion of this assistance, particularly the treatment of in-kind support and maintenance received as the result of a major disaster;

(6) Up to $60 of unearned income in a calendar quarter if you receive it infrequently or irregularly; that is, if you receive it only once during the quarter or if you cannot reasonably expect to receive it. If the total amount of infrequent or irregular unearned income you receive in a quarter exceeds $60, we cannot use this exclusion;

(7) Periodic payments made by a State under a program established before July 1, 1973, and based solely on your length of residence and attainment of age 65;

(8) Payments for providing foster care to an ineligible child who was placed in your home by a public or private nonprofit child placement or child care agency;

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separately identifiable burial fund. (See § 416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later.

(10) Certain home energy assistance as described in §§ 416.1155 and 416.1156.

(11) One-third of support payments made to or for you by an absent parent if you are a child;

(12) The first $60 (or proportionately less for less than a full quarter) of any unearned income in a calendar quarter other than income based on need. Income based on need is a benefit that uses the amount of your income as a factor to determine your eligibility. The $60 exclusion does not apply to a benefit based on need that is totally or partially funded by the Federal government or by a nongovernmental agency. (However, assistance which is based on need and funded wholly by a State or one of its political subdivisions is excluded totally from income as described in § 416.1124(c)(2).) If you receive less than $60 of unearned income in a quarter and you have earned income in that quarter, we will use the rest of the $60 exclusion to reduce the amount of your countable earned income; and

(13) Any unearned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See §§ 416.1180 through 416.1182 for an

explanation of plans to achieve self-support and for the rules on when this exclusion applies.

(Secs. 1102 and 1631, Social Security Act, as amended, 42 U.S.C. 1302 and 1383; sec. 128 of Pub. L. 97-377 and sec. 1612(b) as amended by sec. 545 of Pub. L. 97-424; secs. 205, 223, 1102, 1612, 1614, and 1631, Social Security Act, as amended; sec. 302 of Pub. L. 96-265; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; and 86 Stat. 1468, 1471, 1475, as amended; 94 Stat. 450, 451; 42 U.S.C. 405, 423, 1302, 1382a, 1382c and 1383)

[45 FR 65547, Oct. 3, 1980, as amended at 47 FR 55213, Dec. 8, 1982; 48 FR 21943, May 16, 1983; 48 FR 33258, July 21, 1983; 48 FR 57127, Dec. 28, 1983]

In-Kind Support and Maintenance

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules.

(b) *How we define in-kind support and maintenance.* In-kind support and maintenance means any food, clothing, or shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement.

(c) *How we value in-kind support and maintenance.* Essentially, we have two rules for valuing the in-kind support and maintenance which we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with both food and shelter (§§ 416.1131 through 416.1133). The presumed value rule applies in all other situations where you are receiving countable in-kind support and maintenance (§§ 416.1140 through 416.1145). In some living arrangements, if certain conditions exist, we do not count in-kind support and maintenance. These are discussed in §§ 416.1141 through 416.1145. Also, we apply special rules when members of a couple have different living arrangements (§ 416.1147).

§ 416.1131 The one-third reduction rule.

(a) *What the rule is.* Instead of determining the actual dollar value of in-kind support and maintenance, we reduce the Federal benefit rate by one-third if you (or you and your eligible spouse)—

(1) Live in another person's household (see § 416.1132) for a full calendar month except for temporary absences (see § 416.1149), and

(2) Receive both food and shelter from the person in whose household you are living. (If you do not receive both food and shelter from this person, see § 416.1140.)

(b) *How we apply the one-third reduction rule.* The one-third reduction is a flat reduction of your Federal benefit rate. It applies in full or not at all. When you are living in another person's household, and the one-third reduction rule applies, we do not apply any income exclusions to the reduction amount. However, we do apply appropriate exclusions to any other earned or unearned income you receive. If you have an eligible spouse we apply the rules described in § 416.1147.

(c) *If you receive other support and maintenance.* If the one-third reduction rule applies to you, we do not count any other in-kind support and maintenance you receive.

§ 416.1132 What we mean by "living in another person's household".

(a) *Household.* For purposes of this subpart, we consider a household to be a personal place of residence. A commercial establishment such as a hotel or boarding house is not a household but a household can exist within a commercial establishment. If you live in a commercial establishment, we do not automatically consider you to be a member of the household of the proprietor. You may, however, live in the

the presumed value to figure your unearned income.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the food, clothing, or shelter you receive, we use the actual amount to figure your unearned income.

§ 416.1141 When the presumed value rule applies.

The presumed value rule applies whenever we must count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the presumed value rule applies if you are living—

(a) In another person's household (as described in § 416.1132(b)) but not receiving both food and shelter from that person;

(b) In your own household (as described in § 416.1132(c)). For exceptions, see § 416.1142 if you are in a public assistance household and § 416.1143 if you are in a noninstitutional care situation;

(c) In a nonmedical institution including any—

(1) Public nonmedical institution if you are there for less than a full calendar month;

(2) Public or private nonprofit educational or vocational training insitution;

(3) Private nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. For exceptions, see § 416.1144; and

(4) For-profit institution where someone else pays for your support and maintenance. If you or the institution pay for it, see § 416.1145.

§ 416.1142 If you live in a public assistance household.

(a) *Definition.* A public assistance household is one in which every member receives some kind of public income-maintenance payments. These are payments made under—

(1) Title IV-A of the Social Security Act (Aid to Families with Dependent Children);

(2) Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);

(3) The Refugee Act of 1980 (Those payments based on need);

(4) The Disaster Relief Act of 1974;

(5) General assistance programs of the Bureau of Indian Affairs;

(6) State or local government assistance programs based on need (tax credits or refunds are not assistance based on need), and

(7) U.S. Veterans Administration programs (those payments based on need).

(b) *How the presumed value rule applies.* If you live in a public assistance household, we consider that you are not receiving in-kind support and maintenance from members of the household. In this situation, we use the presumed value rule only if you receive food, clothing, or shelter from someone outside the household.

§ 416.1143 If you live in a noninstitutional care situation.

(a) *Definitions.* For purposes of this subpart you live in a noninstitutional care situation if all the following conditions exist:

(1) You are placed by a public or private agency under a specific program such as foster or family care;

(2) The placing agency is responsible for your care;

(3) You are in a private household (not an institution) which is licensed or approved by the placing agency to provide care; and

(4) You, a public agency, or someone else pays for your care.

(b) *How the presumed value rule applies.* You are not receiving in-kind support and maintenance and the presumed value rule does not apply if you pay the rate the placing agency establishes. We consider this established rate to be the current market value for the in-kind support and maintenance you are receiving. The presumed value rule applies if you pay less than the established rate and the difference is paid by someone else other than a public or private agency providing social services described in

§ 416.1103(b) or assistance based on need described in § 416.1121(c)(2).

§ 416.1144 If you live in a nonprofit retirement home or similar institution.

(a) *Definitions.* For purposes of this section the following definitions apply:

(1) "Nonprofit retirement home or similar institution" means a nongovernmental institution which is, or is controlled by, a private nonprofit organization and which does not provide you with—

(i) Services which are (or could be) covered under Medicaid, or

(ii) Education or vocational training.

(2) "Nonprofit organization" means a private organization which is tax exempt under section 501(a) of the Internal Revenue Code of 1954 and is of the kind described in section 501(c) or (d) of that code.

(3) An "express obligation to provide your full support and maintenance" means there is either a legally enforceable written contract or set of membership rules providing that the home, institution, or organization—

(i) Will provide at least all of your food and shelter needs; and

(ii) Does not require any current or future payment for that food and shelter. (For purposes of this paragraph, a lump sum prepayment for lifetime care is not a current payment.)

(b) *How the presumed value rule applies.* The presumed value rule applies if you are living in a nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. The rule does not apply to the extent that—

(1) The home, institution, or nonprofit organization does not have an express obligation to provide your full support and maintenance; and

(2) The home, institution, or nonprofit organization receives no payment for your food, clothing, or shelter, or receives payment from another nonprofit organization.

§ 416.1145 How the presumed value rule applies in a nonmedical for-profit institution.

If you live in a nonmedical for-profit institution, we consider the amount accepted by that institution as payment in full to be the current market value of whatever food, clothing, or shelter the institution provides. If you are paying or are legally indebted for that amount, you are not receiving in-kind support and maintenance. We do not use the presumed value rule unless someone else pays for you.

In-Kind Support and Maintenance in Special Circumstances

§ 416.1146 How we value in-kind support and maintenance when you are ineligible for part of a quarter.

We do not count in-kind support and maintenance you receive during a month in which you are ineligible for benefits for a reason other than having too much income.

Example: Mary D is ineligible for benefits for May 1980, because she is a resident of a public institution throughout the month. (§ 416.231) She is eligible for April and June. When we figure her benefit for the quarter, we do not count the in-kind support and maintenance she received in May. We figure other countable earned and unearned income she received in the quarter and apply it to each month of the quarter (§ 416.426). Her income includes any in-kind support and maintenance other than what she received in May.

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *General.* The way we value any food, clothing, or shelter you or your eligible spouse receive depends on your living arrangements. We continue to consider you and your spouse as a couple even though you are living in different locations as long as you are not apart for more than 6 months (§ 416.1040 explains the 6-month rule). See paragraphs (c) and (f) if one of you is in an institution that receives payment from Medicaid for your care for a full month. This section contains the rules for various possible living arrangements when you and your spouse are both eligible.

(b) *Both members of a couple live in another person's household and receive food and shelter from that person.* When both of you live in another person's household throughout a month and receive food and shelter from that person, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131). The one-third reduction applies whether you are both in the same household or in different households.

(c) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is in a medical institution that receives Medicaid payments for his or her care (§ 416.231(b)(5)[4]), we compute your benefits as if you were separately eligible individuals. This begins with the first full calendar month one of you is in the medical institution as described in § 416.231(a)(2).[5] The one living in another person's household is eligible at an eligible individual's Federal benefit rate reduced by one-third. The one in the medical institution is eligible at the reduced Federal benefit rate described in § 416.231(a)(2)(i).[5]

(d) *One member of a couple lives in the household of another and receives food and shelter from that person and the other is subject to the presumed value rule.* When one of you is living in the household of another and receiving both food and shelter from that person and the other is subject to the presumed value rule—

(1) We value the food and shelter received by the one in the household of another at one-sixth of the couple's Federal benefit rate unless you can show that the value is less as described in § 416.1140(a)(2).

(2) We value any food, clothing, or shelter received by the one to whom the presumed value rule applies at one-sixth of the couple's Federal benefit rate plus one-half the amount of the general income exclusion (§ 416.1124(c)(10)), unless you can show that the value is less as described in § 416.1140(a)(2).

(e) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any food, clothing, or shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(10)), unless you can show that their value is less as described in § 416.1140(a)(2).

(f) *One member of a couple is subject to the presumed value rule and the other is in a medical institution.* If one of you is subject to the presumed value rule and the other is in a medical institution that receives Medicaid payments for his or her care (see § 416.231(b)(5)[5]), we compute your benefits as if you were separately eligible individuals. This begins with the first full calendar month that one of you is in the medical institution (§ 416.231(a)(2)). We value any food, clothing, or shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(10)), unless you can show that their value is less as described in § 416.1140(a)(2). The one in the medical institution is eligible at the reduced Federal benefit rate (§ 416.231(a)(2)(i)).[5]

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

(a) *The one-third reduction and deeming of income.* If you live in the household of someone whose income can be deemed to you as described in §§ 416.1160 through 416.1169, the one-third reduction does not apply to you. However, if you live in another person's household as described in § 416.1131, and someone whose income can be deemed to you lives in the same household, we must apply both the one-third reduction and the deeming rules to you.

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you

[5] See footnote 5 to § 416.410.

(§§ 416.1160 through 416.1169), any food, clothing, or shelter that person provides is not income to you. However, if you receive any food, clothing, or shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 21 who lives in the same household with an ineligible parent, and you are temporarily absent from the household to attend school (§ 416.1167(a)(2)), any food, clothing, or shelter you receive at school is income to you unless your parent purchases it. We value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

Temporary Absence

§ 416.1149 What is a temporary absence from your living arrangement.

(a) *General.* A temporary absence may be due to employment, hospitalization, vacations, or visits. The length of time an absence can be temporary varies depending on the reason for your absence. For purposes of valuing in-kind support and maintenance under §§ 416.1130 through 416.1148, we apply the rules in this section. In general, we consider that you are temporarily absent from your permanent living arrangement if you (or you and your eligible spouse)—

(1) Were in your permanent living arrangement for at least one full calendar month prior to your absence; and

(2) Intend to, and do, return to your permanent living arrangement in the same calendar month in which you leave, or in the next month.

(b) *Rules we apply during a temporary absence.* During a temporary absence, we continue to value your support and maintenance the same way that we did in your permanent living arrangement. For example, if the one-third reduction applies in your permanent living arrangement, we continue to apply the same rule during a temporary absence. However, if you receive in-kind support and maintenance only during a temporary absence we do not count it since you are still responsible for maintaining your permanent quarters during the absence.

(c) *Rules for temporary absence in certain circumstances.* (1) If you enter a medical care facility that receives Medicaid payments for your care (as described in § 416.231(a)(2) and (b)(5))[4] with the intention of returning to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month you enter or leave the facility. During any full calendar month you are in the medical care facility you are eligible at the reduced Federal benefit rate (§ 416.231(a)(2)(i)[4]). We do not consider food or shelter provided during a medical confinement to be income.

(2)(i) Generally, if you are a child under age 22, you are temporarily absent while you are away at school, regardless of how long you are away, if you come home on some weekends, lengthy holidays, and vacations (or for extended visits as provided in school regulations).

(ii) However, if you are a child under age 21, and your permanent living arrangement is with an ineligible parent or essential person (§ 416.243[4]) we follow the rules in § 416.1148(b)(2).

Disasters

§ 416.1150 How we treat income received because of a major disaster.

(a) *General.* The Disaster Relief Act of 1974 and other Federal statutes provide assistance to victims of major disasters. In this section we describe when we do not count certain kinds of assistance you receive under these statutes.

(b) *Support and maintenance.* We do not count the value of support and maintenance (in cash or in kind) and the one-third reduction rule does not apply for up to 18 months after you begin to receive it if—

(1) You live in a household which you or you and another person main-

[4] See footnote 5 to § 416.410.

tain as your home when a catastrophe occurs in the area;

(2) The President declares the catastrophe to be a major disaster for purposes of the Disaster Relief Act of 1974;

(3) You stop living in the home because of the catastrophe and within 30 days after the catastrophe you begin to receive support and maintenance; and

(4) You receive the support and maintenance while living in a residential facility (including a private household) maintained by another person.

(c) *Other assistance you receive.* We do not consider other assistance to be income if you receive it under the Disaster Relief Act of 1974 or under another Federal statute because of a catastrophe which the President declares to be a major disaster. For example, you may receive payments to repair or replace your home or other property.

(d) *Interest payments.* We do not count any interest earned on the assistance payments described in paragraph (c) if the interest is earned within 9 months of the date you receive the assistance. We can extend the 9-month period for up to an additional 9 months if we find you have good cause for not repairing or replacing the property within the initial period. Good cause exists, for example, if you show that circumstances beyond your control prevent the repair or replacement, or contracting for the repair or replacement, of a home or other kinds of property within the first 9-month period.

§ 416.1151 How we treat the repair or replacement of lost, damaged, or stolen resources.

(a) *General rule.* If a resource is lost, damaged, or stolen, you may receive cash to repair or replace it or the resource may be repaired or replaced for you. We do not count the cash or the repair or replacement of the resource as your income.

(b) *Interest on cash for repair or replacement of a noncash resource.* We do not count any interest earned on the cash you receive for repair or replacement of a noncash resource if the interest is earned within 9 months of the date you receive the cash. We can extend the 9-month period for up to an additional 9 months if we find you have good cause for not repairing or replacing the resource within the initial period. Good cause exists, for example, if you show that circumstances beyond your control prevent the repair or replacement, or contracting for the repair or replacement, of the resource within the first 9-month period.

(c) *Temporary replacement of a damaged or destroyed home.* In determining the amount of in-kind support and maintenance you receive (§§ 416.1130 through 416.1140), we do not count temporary housing if—

(1) Your excluded home is damaged or destroyed, and

(2) You receive the temporary housing only until your home is repaired or replaced.

Home Energy Assistance

§ 416.1155 Home energy assistance.

(a) *General.* Section 128 of Pub. L. 97-377 and section 545 of Pub. L. 97-424 (which adds section 1612(b)(13) to the Social Security Act) provide that certain home energy assistance will not be counted as income. (See § 416.1201(a) regarding resources.) These provisions are effective for different time periods. Section 128 of Pub. L. 97-377 is effective from December 18, 1982 through September 30, 1983, while section 545 of Pub. L. 97-424 is effective from February 1, 1983 through June 30, 1985. However, for the period February 1, 1983 through September 30, 1983 both provisions are in effect. See § 416.1156 for a detailed discussion of how these provisions are applied.

(b) *Definitions.* For home energy assistance purposes—

"Appropriate State agency" means the agency designated by the chief executive officer of the State to handle the State's responsibilities as set out in § 416.1156.

"Based on need" means the provider of the assistance states that the aid is given for the purpose of home energy assistance (e.g., vouchers for heating or cooling bills, storm doors) and that aid is provided for an SSI claimant.

member of an SSI claimant's household, or an SSI claimant's ineligible spouse, parent, sponsor (or a sponsor's spouse) of an alien, or essential person.

"Home energy assistance" means any assistance related to home energy (e.g., heating cooling, weatherization, blankets, storm doors, etc). It does not include food or clothing.

"Private, nonprofit organization" means a religious, charitable, educational or other organization such as described in section 501(c) of the Internal Revenue Code of 1954. (Actual tax exempt certification by IRS is not necessary.)

"Rate-of-return entity" means an entity whose revenues are primarily received from the entity's charges to the public for goods or services and such charges are based on rates established and regulated by a State or Federal governmental body.

(Secs. 1102 and 1631, Social Security Act, as amended, 42 U.S.C. 1302 and 1383; sec. 128 of Pub. L. 97-377 and sec. 1612(b) as amended by sec. 545 of Pub. L. 97-424)

[48 FR 33258, July 21, 1983]

§ 416.1156 How we treat home energy assistance.

(a) *Introduction.* We do not count as income certain home energy assistance received by you or your ineligible spouse, parent, sponsor (or a sponsor's spouse) of an alien, or essential person. We also will not consider certain home energy assistance in determining a pro rata share of household operating expenses under § 416.1133. We explain the rules for not counting home energy assistance in paragraphs (b) through (d) of this section.

(b) *December 18, 1982 through January 31, 1983.* We do not count as income home energy assistance, either in cash or in kind, which the appropriate State agency certifies is both based on need and provided by:

(1) A private nonprofit organization; or

(2) A rate-of-return entity.

(c) *February 1, 1983 through September 30, 1983.* We do not count as income home energy assistance, either in cash or in kind, which the appropriate State agency certifies is both based on need and provided by:

(1) A source described in paragraph (b) of this section;

(2) A supplier of home heating gas or oil; or

(3) A municipal utility providing home energy.

(d) *October 1, 1983 through June 30, 1985.* We do not count as income home energy assistance which the appropriate State agency certifies is both based on need and provided by:

(1) A source described in paragraphs (c)(2) or (c)(3) of this section, regardless of whether home energy assistance is in cash or in kind;

(2) A rate-of-return entity which provides home energy regardless of whether home energy assistance is in cash or in kind; or

(3) A private nonprofit organization only if home energy assistance is in kind.

(Secs. 1102 and 1631, Social Security Act, as amended, 42 U.S.C. 1302 and 1383; sec. 128 of Pub. L. 97-377 and sec. 1612(b) as amended by sec. 545 of Pub. L. 97-424)

[48 FR 33259, July 21, 1983]

Deeming of Income

§ 416.1160 What is deeming.

(a) *General.* (1) If you live in the same household as your ineligible spouse, or if you are a child living in the same household as your ineligible parent, we look at that person's income to determine whether we must consider (deem) some of it to be your income. If you live in the same household as your essential person (see § 416.1160(c)(4)), we must also look at that person's income to determine whether we must deem some of it to be your income.

(2) We use the term "deeming" to identify the process of considering another person's income to be your own income. When the rules for deeming apply, it does not matter whether the income of the other person is actually available to you; we must apply these rules anyway. We deem income because we expect your ineligible spouse or ineligible parent with whom you live to use part of his or her income to take care of some of your needs. Similarly, we consider your essential person's income to be available to you

since we have increased your benefit to help meet that person's needs.

(b) *Steps in deeming.* Although the way we deem income varies depending upon whether you are an eligible individual, eligible child, or an individual with an essential person, we follow several general steps to determine how much income to deem.

(1) We determine how much earned and unearned income your ineligible spouse, ineligible parent, or essential person has and we apply the appropriate exclusions. (See § 416.1161 for exclusions that apply to an ineligible parent or spouse and § 416.1168 for those that apply to an essential person.)

(2) We then allocate an amount for each ineligible child in the household, before we deem income to you from either your ineligible spouse or ineligible parent. (Allocations for ineligible children are explained in § 416.1163(b).)

(3) We then follow the deeming rules which apply to you.

(i) For deeming income from you ineligible spouse, see § 416.1163.

(ii) For deeming income from your ineligible parent, see § 416.1165.

(iii) For deeming income from your ineligible spouse when you also have an eligible child, see § 416.1166.

(iv) For deeming income from your essential person, see § 416.1168.

(v) for provisions on change in status, see §§ 416.1167 and 416.1169.

(c) *Definitions for deeming purposes.* For deeming purposes—

"Essential person" means someone who was identified as essential to your welfare under a State program that preceded the SSI program.

(See § § 416.241 through 416.249 for the rules on essential persons)[1]

"Ineligible child" means your natural child, adopted child, or the child of your spouse (as defined in § 416.1101), who is under age 21, lives in the same household with you, and is not eligible for SSI benefits. This definition applies if you are not a child. If you are a child, "ineligible child" means a natural or adopted child of your parent or of your parent's spouse.

[1] See footnote 5 to § 416.410.

"Ineligible parent" means a natural or adoptive parent, or the spouse (as defined in § 416.1101) of a natural or adoptive parent, who lives with you and is not eligible for SSI benefits. The income of ineligible parents affects your benefit only if you are a child.

"Ineligible spouse" means someone who lives with you as your husband or wife and is not eligible for SSI benefits.

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

The first step in deeming is determining how much income your ineligible spouse, ineligible parent, or essential person has. (See § 416.1160 for definitions of these terms.) We do not always include all of their income when we determine how much income to deem to you. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or ineligible parent we must determine the amount of income of any ineligible children in the household.

(a) *For an ineligible spouse or parent.* We do not include any of the following types of income (see § 416.1102) of an ineligible spouse or parent:

(1) Income excluded by Federal laws other than the Social Security Act (See the appendix to this subpart.)

(2) Any public income-maintenance payments (§ 416.1142(a)) your ineligible spouse or parent receives, and any income which was counted or excluded in figuring the amount of that payment;

(3) Any of the income of your ineligible spouse or parent that is used by a public income-maintenance program (§ 416.1142(a)) to determine the amount of that program's benefit to someone else;

(4) Any portion of a grant, scholarship, or fellowship used to pay tuition or fees;

(5) Money received for providing foster care to an ineligible child;

(6) The value of food stamps and the value of Department of Agriculture donated foods;

(7) Food raised by your parent or spouse and consumed by members of the household in which you live;

(8) Tax refunds on income, real property, or food purchased by the family;

(9) Income used to fulfill an approved plan for achieving self-support (see §§ 416.1180 through 416.1182);

(10) Income used to comply with the terms of court-ordered support, or support payments enforced under title IV-D of the Act;

(11) The value of in-kind support and maintenance;

(12) Periodic payments made by a State under a program established before July 1, 1973, and based solely on duration of residence and attainment of age 65;

(13) Disaster assistance as described in § § 416.1150 and 416.1151.

(14) Income received infrequently or irregularly (see § § 416.1112(c)(1) and 416.1124(c)(6)); or

(15) Work expenses if the ineligible spouse or parent is blind.

(16) Income of your ineligible spouse or ineligible parent which was paid under a Federal, State, or local government program (For example, payments under title XX of the Social Security Act) to provide you with chore, attendant or homemaker services.

(17) Certain home energy assistance as described in §§ 416.1155 and 416.1156.

(b) *For an essential person.* We include all of an essential person's income as defined in § 416.1102, except for home energy assistance as described in §§ 416.1155 and 416.1156 and income excluded under Federal laws other than the Social Security Act. (See the appendix to this subpart.)

(c) *For an ineligible child.* Although we do not deem any income to you from an ineligible child, we reduce his or her allocation if the ineligible child has income (see § 416.1163(b)(2)). For this purpose, we do not include any of the child's income listed in paragraph (a) of this section. In addition, if the ineligible child is a student (see § 416.1060), we exclude any of the child's earned income up to $1,200 a calendar quarter, but not more than $1,620 per year.

(Secs. 1102 and 1631, Social Security Act, as amended, 42 U.S.C. 1302 and 1383, sec. 128 of Pub. L. 97-377 and sec. 1612(b) as amended by sec. 545 of Pub. L. 97-424)

[45 FR 65547, Oct. 3, 1980, as amended at 46 FR 57276, Nov. 23, 1981; 48 FR 33259, July 21, 1983]

§ 416.1161a Income for deeming purposes where Medicaid eligibility is affected.

(a) *General.* In many States, an individual who is eligible for SSI or a Federally administered State optional supplementary payment is in turn eligible for Medicaid. Also, several other States use SSI deeming rules in determining eligibility for Medicaid. In all of these States, in extraordinary cases, the Department will not apply the usual rules on deeming of income where those rules would result in an individual's being ineligible for SSI (or a Federally administered State optional supplementary payment) and Medicaid. Any determination made under this section may at any time be revised based on new information or changed circumstances.

(b) *When special deeming rules apply:* (1) The Department will consider not applying the usual deeming rules only upon application by a State Medicaid agency (requirement approved under OMB No. 096003(04) and on condition that the agency must show:

(i) Deeming would result in lack of Medicaid eligibility for the individual.

(ii) Medicaid eligibility would, prospectively, result in savings to the Medicaid program; and

(iii) The quality of medical care necessary for the individual would be maintained under the arrangements contemplated.

(2) The Department may also in particular cases require that additional facts be demonstrated, or that other criteria or standards be met, before it determines not to apply the usual deeming rules.

(c) *Amount of income to be deemed.* If the usual rules of deeming do not apply, the Department will determine an amount, if any, to be deemed.

(d) *Temporary effect of special deeming rules.* This provision is temporary and will be continued only through December 31, 1984. Determinations made under this section will nevertheless remain in effect unless they are revised based on changed circumstances (including establishment in the State of a Medicaid program of home and community-based services or eligibility under a State plan provision) or new information.

[49 FR 5747, Feb. 15, 1984]

§ 416.1163 How we deem income to you from your ineligible spouse.

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. Exception: We do not allocate for children who are receiving public income-maintenance payments (see § 416.1142(a)).

(1) The allocation for each ineligible child is one-half of the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. If the allocation only applies to one or two months of a calendar quarter, we reduce the allocation by two-thirds or one-third, as appropriate.

(2) Each ineligible child's allocation is reduced by the amount of his or her own income as described in § 416.1161(c).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations we deduct the balance from your ineligible spouse's earned income.

(c) *Your SSI benefit.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than one-half of the Federal benefit rate for an eligible individual we do not deem any of the income to you. In this situation, only your own countable income is deducted from the Federal benefit rate for an individual to determine the amount of your benefit.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than one-half of the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the total countable income from the Federal benefit rate for an eligible couple.

(3) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the amount computed under the rules in paragraph (c)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate, whichever is lower.

(d) *Examples.* These examples describe how we deem income in a calendar quarter to an eligible individual. Therefore, the income, the income exclusions, and the allocations are all quarterly amounts. The Federal benefit rates used are those effective July 1, 1980.

Example 1. Ted, an aged individual, lives with his ineligible spouse, Alice, and their ineligible son, Mike. Ted has a Federal benefit rate of $714.00 per quarter. Alice receives $500 unearned income in a quarter. She has no earned income and Mike has no income at all. Before we deem any income we allocate to Mike $357.00 (half of the Federal benefit rate for an eligible individual). We take the allocation ($357.00) from Alice's unearned income ($500) leaving $143.00. Since Alice's remaining income ($143.00) is not more than one-half of the Federal benefit rate for an individual ($357.00) we do not deem any income to Ted. Instead, we subtract only Ted's own countable income from the Federal benefit rate for an eligible individual to determine his benefit.

Example 2. George, a disabled individual, lives with his ineligible spouse, Ellen, and ineligible child, Christine. George and Christine have no income. Ellen has earned income of $1,000 a quarter and unearned income of $750 a quarter. Before we deem any income we allocate $357.00 to Christine. We take the allocation ($357.00) from Ellen's unearned income ($750) leaving $393.00 in unearned income. Since Ellen's remaining income is more than one-half the Federal benefit rate for an individual we deem the remaining unearned income ($393.00) and the earned income ($1,000) to be available to George and Ellen and treat them as a couple. We apply the $60 general income exclusion to the unearned income reducing it further to $333.00. We then apply the earned income exclusion ($195 plus one-half the remainder) to Ellen's earned income of $1,000, leaving $402.50. We combine the countable unearned income ($333.00) and the countable earned income ($102.50) and subtract it ($735.50) from the Federal benefit rate for a couple ($1,071.00) leaving a benefit of $335.50 for that quarter. (George would receive a Federal benefit of $111.84 each month.)

Example 3. Joe, a disabled individual, lives with his ineligible spouse, Mary. She earns $600 in a quarter. Joe receives a pension (unearned income) of $300 a quarter. Since Mary's income is greater than one-half the Federal benefit rate for an individual ($357.00), we deem all of her income to be available to both Joe and Mary and treat them as a couple. We apply the $60 general income exclusion to Joe's $300 unearned income, leaving $240. Then we apply the earned income exclusion ($195 plus one-half the remainder) to Mary's $600, leaving $202.50. This gives the couple total countable income of $442.50 for the quarter ($240 plus $202.50). Subtracting $442.50 from the $1,071.00 Federal benefit rate for a couple leaves a benefit of $628.50. However, if Joe were not subject to deeming rules, his benefit would only be $474.00. This is because Joe's own unearned income of $360, minus the $60 general income exclusion, leaves $240 countable income. Subtracting $240 countable income from the $714.00 Federal benefit rate for an individual leaves a benefit of $474.00. Since Joe's benefit cannot exceed the amount he would receive if deeming did not apply, his benefit is $474.00 for the quarter ($158.00 each month).

§ 416.1165 How we deem income to you from your ineligible parent.

If you are a child under age 21 living with one or both of your parents, we apply the deeming rules to their income in the following order.

(a) *Determining your ineligible parents' income.* We first determine how much earned and unearned income your ineligible parents have, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Allocations for your ineligible parents.* We next deduct allocations for your parents. These vary depending on the type of income they have. We do not allocate for a parent who is receiving public income-maintenance payments (see § 416.1142(a)).

(1) *All parental income is earned.* If your parents have only earned income, we allocate $255 (the sum of the $60 general income exclusion and the $195 earned income exclusion) plus—

(i) Double the Federal benefit rate for a couple if both parents live with you; or

(ii) Double the Federal benefit rate for an individual if only one parent lives with you.

(2) *All parental income is unearned.* If your parents have only unearned income, we allocate $60 (the amount of the general income exclusion) plus—

(i) The Federal benefit rate for a couple if both parents live with you; or

(ii) The Federal benefit rate for an individual if only one parent lives with you.

(3) *Parental income is both earned and unearned.* If your parents have both earned and unearned income, we allocate for them as follows. We first deduct $60 from their combined unearned income. If they have less than $60 in unearned income we subtract the balance of the $60 from their combined earned income. Next, we subtract $195 plus one-half the remainder of their earned income. We total the remaining earned and unearned income, and subtract—

(i) The Federal benefit rate for a couple if both parents live with you; or

(ii) The Federal benefit rate for an individual if only one parent lives with you.

(d) *Your SSI benefit.* We deem any of your parents' income that remains to be your unearned income. We com-

bine it with your own unearned income and apply the exclusions in § 416.1124 to determine your countable unearned income. We add this to any countable earned income you may have and subtract the total from the Federal benefit rate for an individual to determine your benefit.

(e) *When you are not the only eligible child.* If your parents have more than one eligible child in the household, we divide the parental income to be deemed equally among the eligible children. However, we do not deem more income to an eligible child than the amount which, when combined with the child's own income, reduces his or her SSI benefit to zero. (For purposes of this paragraph, an SSI benefit includes any federally administered State supplement.) If the share of parental income that would be deemed to a child makes that child ineligible because that child has other countable income, we deem any remaining parental income to other eligible children in the household in the manner described in this paragraph.

(f) *Examples.* These examples describe how we deem income in a calendar quarter to an eligible child. Therefore, the income, the income exclusions, and the allocations are all quarterly amounts. The Federal benefit rates used are those effective July 1, 1980.

Example 1. Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $700 quarter, and his father earns $1,900 a quarter. Henry and his brother have no income. First we allocate $357.00 for Henry's brother from the unearned income of $700. This leaves $343.00 in unearned income. Since the remaining parental income is both earned and unearned, we reduce the unearned income further by $60, leaving $283.00. We then reduce the $1,900 of earned income by $195 plus one-half the remainder, leaving $852.50. From the total remaining income of $1,135.50, we subtract $1,071.00 (the Federal benefit rate for a couple), leaving $64.50 to be deemed as Henry's unearned income. We then apply Henry's $60 general income exclusion which reduces his countable income to $4.50. We subtract that amount from the $714.00 Federal benefit rate for an individual, leaving a benefit of $709.50 for the quarter ($236.50 each month).

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives $1,100.00 a quarter in unearned income. Since all of the mother's income is unearned, the amount we allocate for her needs is $774.00 (the Federal benefit rate for an individual, $714.00 plus the $60 general income exclusion). After subtracting this allocation from her $1,100.00 we divide the remaining $326.00 equally between the two children ($163.00 each) as unearned income. We then apply the $60 general income exclusion leaving each child with $103.00 countable income. Subtracting $103.00 countable income from the $714.00 Federal benefit rate for an individual gives each child a benefit of $611.00 for the quarter ($203.67 each month).

§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Your SSI benefits.* We then follow the rules in § 416.1163 to find out how much of your ineligible spouse's income is deemed to you and the amount of your benefit.

(d) *Your eligible child's benefit.* (1) If you are eligible to receive an SSI benefit after your ineligible spouse's income has been deemed to you, we do not deem any income to your eligible child. We determine your child's benefit by subtracting only his or her own countable income from the Federal benefit rate for an individual.

(2) If you are not eligible for an SSI benefit after your ineligible spouse's income has been deemed to you, we deem to your eligible child any of your spouse's income which was not used to reduce your benefit to zero. (For purposes of this section your SSI benefit includes any federally administered State supplement.) We then follow the

rules in § 416.1165(d) and (e) to determine the child's SSI benefit.

(e) *Examples.* These examples describe how we deem income in a calendar quarter to an eligible individual and an eligible child in the same household. Therefore, the income, the income exclusions, and the allocations are all quarterly amounts. The Federal benefit rates used are those effective July 1, 1980.

Example 1. Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns $1,700 a quarter. We determine Mary's eligibility first. Since John's income is more than one-half the Federal benefit rate for an eligible individual, we treat the entire $1,700 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the $1,700 by the $60 general income exclusion and then by the earned income exclusion of $195 plus one-half the remainder. This leaves John and Mary with $722.50 in countable income. Subtracting the $722.50 countable income from the $1,071.00 Federal benefit rate for a couple gives Mary a benefit of $348.50 for a quarter ($116.17 a month). Since Mary is eligible for an SSI benefit, there is no income to be deemed to Peter. His benefit for the quarter is $714.00 or $238.00 each month (the Federal benefit rate for an individual) because he has no countable income.

Example 2. Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns $2,600 a quarter. Since Dora's income is more than one-half the Federal benefit rate for an eligible individual, we treat the entire $2,600 as earned income available to Al and Dora as a couple. We reduce this income by the $60 general income exclusion and then by $195 plus one-half the remainder (earned income exclusion), leaving $1,172.50 in countable income. Al is ineligible because the countable income ($1,172.50) exceeds the Federal benefit rate for a couple ($1,071.00). Since Al is ineligible, we deem to Jeff $101.50 the amount of income over and above the amount which causes Al to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the income deemed to Jeff ($101.50) as unearned income and we apply the $60 general income exclusion reducing Jeff's countable income to $41.50. Subtracting the countable income ($41.50) from the Federal benefit rate for an individual ($714.00) gives Jeff a benefit of $672.50 for the quarter ($224.17 each month).

§ 416.1167 When a change in status affects the use of deeming rules.

(a) *When you are no longer living in the same household with your spouse or parent.* If you and your ineligible spouse or parent stop living in the same household, we stop applying deeming rules with the first full month that one of you is absent, unless the absence is temporary. For example, if you leave the household in September with no intention of returning, the deeming rules do not apply to you beginning in October.

(1) A temporary absence, for purposes of deeming, occurs when you or your ineligible spouse or parent leave the household but intend to, and do, return in the same month or the month immediately following. If the absence is temporary, we continue to deem.

(2) If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider you temporarily absent from your parents' household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income to you. Being subject to parental control affects whether income is deemed to you only if you are away at school.

(b) *When you move into the same household with your spouse or parent.* If you have not been subject to deeming rules and then move into a household with your ineligible spouse or parent, or if you become the spouse of an ineligible person, we start applying the deeming rules with the month following the change. For example, if you marry in September, the deeming rules apply to your spouse's income beginning in October.

(c) *When you are no longer a child.* If you are a child living with your parent, we stop deeming with the month following the month you reach age 18. For example, if you reach age 18 in June, the deeming rules do not apply to you beginning in July. However, if you are a student and continue living with a parent (see § 416.1167(a)(2)), we do not stop deeming until the month following the

month in which you reach age 21. (You "reach" a certain age on the day before your birthday.)

(d) *When you are age 18 to 21 and become a student.* If you are at least age 18 but are not yet 21 and you are not a student, deeming rules do not apply even if you live with a parent. However, if you become a student during this period and continue to live with a parent, we begin to apply deeming rules in the month after you become a student. For example, if you become a student in September, the deeming rules apply beginning in October.

§ 416.1168 How we deem income to you from your essential person.

(a) *Essential person's income.* If you have an essential person, we deem all of that person's income (except any not counted because of other Federal statutes as described in § 416.1161(b)) to be your own unearned income. If your essential person is also your ineligible spouse, or if you a child whose essential person is your ineligible parent, we apply the essential person deeming rules in this section. See § 416.1169 for the rules that apply when an ineligible spouse or parent ceases to be your essential person.

(b) *Your SSI benefit.* We apply the exclusions to which you are entitled under §§ 416.1112 and 416.1124 to your earned income and to your unearned income which includes any deemed from your essential person. After combining the remaining amounts of countable income, we subtract the total from the Federal benefit rate for a qualified individual (see § 416.413) to determine your SSI benefit.

§ 416.1169 When we stop deeming income from an essential person.

If your countable income, including the income deemed to you from your essential person, causes you to be ineligible for an SSI payment, you are no longer considered to have the essential person whose income makes you ineligible and only your own countable income is deducted from your Federal benefit rate. However, other deeming rules may then apply as follows:

(a) *Essential person is your spouse.* If the person who was your essential person is your ineligible spouse, we apply the deeming rules in § 416.1163 to determine your benefit.

(b) *Essential person is your parent.* If you are a child, and the person who was your essential person is your ineligible parent, we apply the deeming rules in § 416.1165 to determine your benefit.

Alternative Income Counting Rules for Certain Blind Individuals

§ 416.1170 General.

(a) *What the alternative is.* If you are blind and meet the requirements in § 416.1171, we use one of two rules to see how much countable income you have. We use whichever of the following rules results in the lower amount of countable income:

(1) The SSI income exclusions in §§ 416.1112 and 416.1124; or

(2) The disregards that would have applied under the State plan for October 1972.

(b) *State plan.* As used in this subpart, "State plan for October 1972" means a State plan for providing assistance to the blind under title X or XVI (AABD) of the Social Security Act. That plan must have been approved under the provisions of 45 CFR Chapter II as in effect for October 1972.

§ 416.1171 When the alternative rules apply.

(a) *Eligibility for the alternative.* We use the alternative income counting rules for you if you meet all the following conditions:

(1) You were eligible for, and received, assistance for December 1973 under a State plan for October 1972;

(2) You have continued to live in that same State since December 1973;

(3) You were transferred to the SSI rolls and received a benefit for January 1974; and

(4) You have not been ineligible for an SSI benefit for any period of more than 6 consecutive months. (For purposes of this section, an SSI benefit means a Federal benefit; it does not include any State supplementation.)

(b) *Living in the same State.* For purposes of this section, you have continued to live in the same State since

December 1973 unless you have left it at any time with the intention of moving to another State. If there is no evidence to the contrary, we assume that—

(1) If you leave the State for 90 calendar days or less, the absence is temporary and you still live in that State; and

(2) If you leave the State for more than 90 calendar days, you are no longer living there.

Rules for Helping Blind and Disabled Individuals Achieve Self-Support

§ 416.1180 General.

One of the objectives of the SSI program is to help blind or disabled persons become self-supporting. If you are blind or disabled, we will pay you SSI benefits and will not count the part of your income that you use of set aside to use under a plan to become self-supporting. (See §§ 416.1112(c)(6) and 1124(c)(11).) You may develop a plan for achieving self-support on your own or with our help. As appropriate, we will refer you to a State rehabilitation agency or agency for the blind for additional assistance in developing a plan.

§ 416.1181 What a plan to achieve self-support is.

A plan to achieve self-support must—

(a) Be designed especially for you;

(b) Be in writing;

(c) Be approved by us (a change of plan must also be approved);

(d) Be designed for an initial period of not more than 18 months. We may extend the period for up to another 18 months if you cannot complete the plan in the first period. We may allow a total of up to 48 months to fulfill a plan for a lengthy education or training program;

(e) Show your specific occupational goal;

(f) Show what money you have and will receive, how you will spend it, and how you will use it to attain your occupational goal; and

(g) Show how the money you set aside under the plan will be separated from your other funds.

§ 416.1182 When we begin to count the income excluded under the plan.

We will begin to count the earned and unearned income that would have been excluded under your plan in the quarter in which any of the following circumstances first exist:

(a) You fail to follow the conditions of your plan;

(b) You abandon your plan;

(c) You complete the time schedule outlined in the plan; or

(d) You reach your goal as outlined in the plan.

Appendix—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

Many Federal statutes in addition to the Social Security Act provide assistance or benefits for individuals and specify that the assistance or benefit will not be considered in deciding eligibility for SSI. We have listed these statutes in this appendix and have placed them in categories according to the kind of income or assistance they provide. The list gives the name of the Federal statute (where possible), the public law number, and the citation. Each item briefly describes what the statute provides that will not reduce or eliminate an SSI payment. More detailed information is available from a social security office or by reference to the statutes.

We update this list periodically. However, when new Federal statutes of this kind are enacted, or existing statutes are changed, we apply the law currently in effect, even before this appendix is updated.

I. Food

(a) Value of food coupons under the Food Stamp Act of 1977, section 1301 of Pub. L. No. 95-113 (91 Stat. 968, 7 U.S.C. 2017(b)).

(b) Value of federally donated foods distributed under section 32 of Pub. L. No. 74-320 (49 Stat. 774) or section 416 of the Agriculture Act of 1949 (63 Stat. 1058, 7 CFR 250.6(e)(3)).

(c) Value of free or reduced price food for women and children under the—

(1) Child Nutrition Act of 1966, section 11(b) of Pub. L. No. 89-642 (80 Stat. 889, 42 U.S.C. 1780(b)) and section 17 of that Act as added by Pub. L. No. 92-433 (86 Stat. 729, 42 U.S.C. 1786); and

(2) National School Lunch Act, section 13(h)(3), as amended by section 3 of Pub. L. No. 90-302 (82 Stat. 119, 42 U.S.C. 1761(h)(3)).

II. Housing and Utilities

(a) Assistance to prevent fuel cut-offs and to promote energy efficiency under the Emergency Energy Conservation Services Program or the Energy Crisis Assistance Program as authorized by section 222(a)(5) of the Economic Opportunity Act of 1964, as amended by section 5(d)(1) of Pub. L. No. 93-644 and section 5(a)(2) of Pub. L. No. 95-568 (88 Stat. 2294 as amended, 42 U.S.C. 2809(a)(5)).

(b) Fuel assistance payments and allowances under the Home Energy Assistance Act of 1980, section 313(c)(1) of Pub. L. 96-223 (94 Stat. 299, 42 U.S.C. 8612(c)(1)).

(c) Value of any assistance paid with respect to a dwelling unit under—

(1) The United States Housing Act of 1937;

(2) The National Housing Act;

(3) Section 101 of the Housing and Urban Development Act of 1965; or

(4) Title V of the Housing Act of 1949.

(d) Payments for relocating, made to persons displaced by Federal or federally assisted programs which acquire real property, under section 216 of Pub. L. No. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1902, 42 U.S.C. 4636).

III. Education and Employment

(a) Incentive allowances for individuals under section 124(a)(3) of the Comprehensive Employment and Training Act (CETA) (92 Stat. 1943, 29 U.S.C. 826(a)), also earnings and allowances paid to a youth in certain training or employment programs (applies to the youth and the youth's family) under section 446 of CETA (92 Stat. 1992, 29 U.S.C. 921).

(b) Grants or loans to undergraduate students made or insured under programs administered by the Secretary of Education under section 507 of the Higher Education Amendments of 1968, Pub. L. No. 90-575 (82 Stat. 1063).

(c) Any wages, allowances, or reimbursement for transportation and attendant care costs, unless excepted on a case-by-case basis, when received by an eligible handicapped individual employed in a project under title VI of the Rehabilitation Act of 1973 as added by title II of Pub. L. No. 95-602 (92 Stat. 2992, 29 U.S.C. 795(b)(c)).

IV. Native Americans

(a) Revenues from the Alaska Native Fund paid under section 21(a) of the Alaska Native Claims Settlement Act, Pub. L. No. 92-203 (85 Stat. 713, 43 U.S.C. 1620(a)).

(b) Indian tribes—distribution of per capita judgment funds to members of—

(1) The Blackfeet and Gros Ventre Tribes under section 4 of Pub. L. 92-254 (86 Stat. 65, 25 U.S.C. 1264).

(2) The Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40-K under section 6 of Pub. L. No. 94-540 (90 Stat. 2504);

(3) Tribes or groups under section 7 of Pub. L. No. 93-134 (87 Stat. 468, 25 U.S.C. 1407); and

(4) The Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation as authorized by section 2 of Pub. L. No. 95-433 (92 Stat. 1047, 25 U.S.C. 609c-1).

(c) Receipts from land held in trust by the Federal government and distributed to members of certain Indian tribes under section 6 of Pub. L. No. 94-114 (89 Stat. 579).

V. Other

(a) Compensation provided volunteers in the foster grandparents program and other similar programs under sections 404(g) and 418 of the Domestic Volunteer Service Act of 1973 (87 Stat. 409, 413, 42 U.S.C. 5044(g) and 5058).

(b) Any assistance to an individual (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102(h)(1) of Pub. L. No. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a).

Subpart L—Resources and Exclusions

AUTHORITY: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f), and 1631(d), Social Security Act, as amended, 49 Stat. 647 as amended, 86 Stat. 1465, 1466, 1468, 1470, and 1473; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f), and 1383(d), unless otherwise noted.

SOURCE: 40 FR 48915, Oct. 20, 1975, unless otherwise noted.

§ 416.1201 Resources; general.

(a) *Resources; defined.* For purposes of this Subpart L, resources mean cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his support and maintenance. If the individual has the right, authority or power to liquidate the property, or his share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse). In addition, home energy assistance not counted as income under §§ 416.1155 and 416.1156 will not be considered a resource.

(b) *Liquid resources; defined.* Liquid resources are those assets that are in cash or are financial instruments

which are convertible to cash. Liquid resources include cash on hand, cash in savings accounts or checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, and similar properties. Liquid resources, other than cash, are evaluated according to their equity value.

(c) *Nonliquid resources; defined.* (1) Nonliquid resources include all other properties. the term includes both real and personal property. Nonliquid resources are evaluated according to their equity value except as otherwise provided. (See § 416.1218 for treatment of automobiles.)

(2) For purposes of this Subpart L, the "equity value" of an item is defined as:

(i) The price that item can reasonably be expected to sell for on the open market in the particular geographic area involved; minus

(ii) Any encumbrances.

(Secs. 1102, 1613(a), 1614(f), and 1631, Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1470, as amended, 86 Stat. 1471, and 86 Stat. 1475 (42 U.S.C. 1302, 1382b(a), 1382c(f), and 1383); secs. 1102 and 1631, Social Security Act, as amended, 42 U.S.C. 1302 and 1383; sec. 128 of Pub. L. 97-377 and sec. 1612(b) as amended by sec. 545 of Pub. L. 97-424)

[40 FR 48915, Oct. 20, 1975, as amended at 44 FR 43266, July 24, 1979; 47 FR 55213, Dec. 8, 1982; 48 FR 33259, July 21, 1983]

§ 416.1202 Deeming of resources.

(a) *Married individual.* In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in § 416.1005, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual.

(b) *Child.* In the case of a child (as defined in § 416.1050) who is under age 21, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of a parent of such child (or the spouse of such a parent) who is living in the same household (as defined in § 416.1070) as such child, whether or not available to such child, to the extent that the resources of such parent (or such spouse of a parent) exceed $1,500 in the case of one parent or $2,250 in the case of two parents (or one parent and the spouse of such parent). As used in this section, the term "parent" means the natural or adoptive parent of a child and "spouse of a parent" means the spouse (as defined in Subpart R of this part) of such natural or adoptive parent.

(c) *Applicability.* When used in this Subpart L, the term "individual" refers to an eligible aged, blind, or disabled person, and also includes a person whose resources are deemed to be the resources of such individual (as provided in paragraphs (a) and (b) of this section).

§ 416.1203 Deeming of resources of an essential person.

In the case of a qualified individual (as defined in § 416.242[3]) whose payment standard has been increased because of the presence of an essential person (as defined in § 416.243[3]), the resources of such qualified individual shall be deemed to include all the resources of such essential person. If such qualified individual would not meet the resource criteria for eligibility (as defined in §§ 416.1205 and 416.1260) because of the deemed resources, then the payment standard increase because of the essential person will be nullified and the provision of this section will not apply; essential person status is lost permanently. However, if such essential person is an ineligible spouse of a qualified individual or a parent (or spouse of a parent) of a qualified individual who is a child under age 21, then the resources of such person will be deemed to such qualified individual in accordance with the provision in § 416.1202.

(Sec. 211, Pub. L. 93-66; sec. 4, Pub. L. 93-233; 87 Stat. 154, as amended; 87 Stat. 953 (42 U.S.C. 1382 nts))

[39 FR 33797, Sept. 20, 1974]

§ 416.1204a Deeming of resources where Medicaid eligibility is affected.

Section 416.1161a of this part describes certain circumstances affecting

[3] See footnote 5 to § 416.410.

Medicaid eligibility in which the Department will not deem family income to an individual. The Department will follow the same standards, procedures, and limitations set forth in that section with respect to deeming of resources.

[49 FR 5747, Feb. 15, 1984]

§ 416.1205 Limitation on resources.

(a) *Individual with no eligible spouse.* An aged, blind, or disabled individual with no spouse shall be eligible for benefits under title XVI of the Act if his nonexcludable resources do not exceed $1,500 and all other eligibility requirements are met. An individual who is living with an ineligible spouse shall be eligible for benefits under title XVI of the Act if his nonexcludable resources, including the resources of such spouse, do not exceed $2,250 and all other eligibility requirements are met.

(b) *Individual with an eligible spouse.* An aged, blind, or disabled individual who has an eligible spouse shall be eligible for benefits under title XVI of the Act if their nonexcludable resources do not exceed $2,250 and all other eligibility requirements are met.

§ 416.1210 Exclusions from resources; general.

In determining the resources of an individual (and spouse, if any) the following items shall be excluded:

(a) The home (including the land appertaining thereto) to the extent its value does not exceed the amount set forth in § 416.1212;

(b) Household goods and personal effects to the extent that their total value does not exceed the amount provided in § 416.1216;

(c) An automobile to the extent that its value does not exceed the amount provided in § 416.1218;

(d) Property of a trade or business which is essential to the means of self-support as provided in § 416.1222;

(e) Nonbusiness property which is essential to the means of self-support as provided in § 416.1224;

(f) Resources of a blind or disabled individual which are necessary to fulfill an approved plan for achieving self-support as provided in § 416.1226;

(g) Stock in regional or village corporations held by natives of Alaska during the twenty-year period in which the stock is inalienable pursuant to the Alaska Native Claims Settlement Act (see § 416.1228);

(h) Life insurance owned by an individual (and spouse, if any) to the extent provided in § 416.1230; and

(i) Restricted allotted land owned by an enrolled member of an Indian tribe as provided in § 416.1234.

(j) Payments or benefits provided under a Federal statute other than title XVI of the Social Security Act where exclusion is required by such statute.

(k) Disaster relief assistance as provided in § 416.1237.

(l) Burial spaces and certain funds up to $1,500 for burial expenses as provided in § 416.1231.

(Secs. 1102, 1611, 1612, 1613, and 1631, Social Security Act, 49 Stat. 647, as amended, 86 Stat. 1466, 1468, 1470, and 1475; 42 U.S.C. 1302, 1382, 1382a, 1382b, and 1383, secs. 2 and 4 of Pub. L. 94-331, 90 Stat. 781 and 782; secs. 6,7,8 and 9 of Pub. L. 95-171, 91 Stat. 1355)

[40 FR 48915, Oct. 20, 1975, as amended at 41 FR 13338, Mar. 30, 1976; 44 FR 15664, Mar. 15, 1979; 48 FR 57127, Dec. 28, 1983]

§ 416.1212 Exclusion of the home.

(a) (1) Prior to October 1976, a home is excluded in determining the resources of an individual (and spouse, if any) to the extent its current market value does not exceed $25,000 ($35,000 in Alaska and Hawaii). Where the current market value of the home exceeds $25,000 ($35,000 in Alaska and Hawaii), only the excess is counted toward the resource limitation as defined in § 416.1205.

(2) Effective October 1976, the entire value of a home is excluded in determining the resources of an individual (and spouse, if any).

(b) A home, for purposes of this part, is any shelter in which the individual (and spouse, if any) has ownership interest and which is used by the individual (and spouse, if any) as his principal place of residence. The home includes any land that appertains thereto and any related outbuildings

necessary to the operation of the home.

(c) Where a State or locality imposes a value-based property tax or levy, the current market value of a home shall be based on the most recent assessed value placed on it by such State or locality, taking into consideration the ratio between such assessed value and the market value.

(d) The proceeds from the sale of a home which is excluded from the individual's resources will also be excluded from resources to the extent they are intended to be used and are, in fact, used to purchase another home, which is similarly excluded, within 3 months of the date of receipt of the proceeds.

(Sec. 1631, Social Security Act, as amended, 86 Stat. 1475; 42 U.S.C. 1383)

[40 FR 48915, Oct. 20, 1975, as amended at 42 FR 40192, Aug. 9, 1977]

§ 416.1216 Exclusion of household goods and personal effects.

(a) *Household goods and personal effects; defined.* Household goods are defined as including household furniture, furnishings and equipment which are commonly found in or about a house and are used in connection with the operation, maintenance and occupancy of the home. Household goods would also include the furniture, furnishings and equipment which are used in the functions and activities of home and family life as well as those items which are for comfort and accommodation. Personal effects are defined as including clothing, jewelry, items of personal care, individual education and

(b) *Limitation on household goods and personal effects.* In determining the resources of an individual (and spouse, if any), household goods and personal effects are excluded if their total equity value is $2,000 or less. If the total equity value of household goods and personal effects is in excess of $2,000, the excess is counted against the resource limitation.

(c) *Additional exclusions of household goods and personal effects.* In determining the resources of an individual (and spouse, if any) and in determining the value of the household goods and personal effects of such individual (and spouse), there shall be excluded a wedding ring and an engagement ring and household goods and personal effects such as prosthetic devices, dialysis machines, hospital beds, wheel chairs and similar equipment required because of a person's physical condition. The exclusion of items required because of a person's physical condition is not applicable to items which are used extensively and primarily by members of the household in addition to the person whose physical condition requires the item.

[40 FR 48915, Oct. 20,1975, as amended at 44 FR 43266, July 24, 1979]

§ 416.1218 Exclusion of the automobile.

(a) *Automobile; defined.* As used in this section, the term "automobile" includes, in addition to passenger cars, other vehicles used to provide necessary transportation.

(b) *Limitation on automobiles.* In determining the resources of an individual (and spouse, if any), automobiles are excluded or counted as follows:

(1) *Total exclusion.* One automobile is totally excluded regardless of its value if, for the individual or a member of the individual's household—

(i) It is necessary for employment;

(ii) It is necessary for the medical treatment of a specific or regular medical problem; or

(iii) It is modified for operation by or transportation of a handicapped person.

(2) *Exclusion to $4,500 of the market value.* If no automobile is excluded under paragraph (b)(1) of this section, one automobile is excluded from counting as a resource to the extent its current market value does not exceed $4,500. If the market value of the automobile exceeds $4,500, the excess is counted against the resource limit.

(3) *Other automobiles.* Any other automobiles are treated as nonliquid resources and counted to the extent of their equity value (see § 416.1201(c)) against the resource limit. However, see § 416.1224(d).

(c) *Current market value.* The "current market value" of an automobile is the average price an automobile of

that particular year, make, model, and condition will sell for on the open market (to a private individual) in the particular geographic area involved.

[40 FR 48915, Oct. 20, 1975, as amended at 44 FR 43266, July 24, 1979]

§ 416.1220 Exclusion of property essential to self-support.

In determining the resources of an individual (and spouse, if any) there shall be excluded, subject to the criteria and limitations in §§ 416.1222 and 416.1224, property so essential to the self-support of the individual (and spouse, if any) as to warrant its exclusion. Such property shall include both the property used in a trade or business (as defined in § 404.1070 of Part 404) and property not used in a trade or business but which nevertheless produces income or is otherwise necessary to the self-support of the individual (and spouse, if any). In the case of property not used in a trade or business, however, it shall not include cash, stocks, bonds, or any other liquid resources (as defined in § 416.1201) even though such liquid resources may be producing income.

§ 416.1222 Exclusion of property of a trade or business essential to self-support.

(a) In determining the resources of an individual (and spouse, if any) there shall be excluded property used by the individual (and spouse, if any) in his trade or business (as defined in § 404.1070 of this chapter) to the extent that such property is essential to the self-support of such individual (and spouse, if any).

(b) Property of a trade or business is considered essential for self-support if its current market value does not exceed limits which take into account the nature of the business and the gross and net income such business may be expected to produce in the light of such property.

(c) For purposes of this section, "property of a trade or business" means items commonly referred to as tangible business assets such as land and buildings, equipment and supplies, inventory, cash on hand, accounts receivable, etc.

§ 416.1221 Exclusion of nonbusiness property essential to self-support.

(a) In determining the resources of an individual (and spouse, if any) there shall be excluded nonliquid property (as defined in § 416.1201) which although not used in a trade or business is essential to the self-support of the individual (and spouse, if any). Nonbusiness property is considered essential for self-support if it is relied upon by the individual as a significant factor in producing income on which he can live, it is used to produce goods essential to the support of the individual, or it is used to provide services essential to the individual's support.

(b) Property used exclusively to produce items for home consumption is considered essential for self-support if the items produced are a significant factor in the support and maintenance of the individual.

(c) Tools, equipment, uniforms, and similar items required by the individual's employer are considered essential for self-support.

(d) A motor vehicle (in addition to that otherwise excludable under this Subpart L) is considered essential for self-support if, because of climate, terrain, distance, or similar factors, additional or specially modified vehicles are required to provide necessary transportation. The limitations on value of otherwise excluded vehicles in this Subpart L are applicable to vehicles in this category.

§ 416.1226 Exclusion of resources necessary to fulfill an approved plan for self-support.

In determining the resources of a blind or disabled individual, there shall be excluded such resources as an approved plan for achieving self-support pursuant to § 416.1731, specifies as being necessary for the fulfillment of such plan for so long as such plan remains in effect.

§ 416.1228 Exclusion of Alaskan natives' stock in regional or village corporations.

(a) In determining the resources of a native of Alaska (and spouse, if any) there will be excluded from resources, shares of stock held in a regional or

ge corporation during the period) years in which such stock is in- ıable, as provided by sections 7(h) 8(c) of the Alaska Native Claims lement Act (43 U.S.C. 1606, 1607).

20-year period of inalienability ıinates on January 1, 1992.

) As used in this section, "native of ka" has the same meaning as that ained in section 3(b) of the Alaska ve Claims Settlement Act (43 C. 1602(b)).

.1230 Exclusion of life insurance.

) *General.* In determining the re- ces of an individual (and spouse, if), life insurance owned by the indi- ıal (and spouse, if any) will be con- red to the extent of its cash sur- ler value. If, however, the total value of all life insurance policies ıny person does not exceed $1,500, ɔart of the cash surrender value of ı life insurance will be taken into ɔunt in determining the resources he individual (and spouse, if any). Determining the face value of life ırance on the individual (and ɔse, if any), term insurance and ial insurance will not be taken into ɔunt.

) *Definitions*—(1) *Life insurance.* : insurance is a contract under ch the insurer agrees to pay a spec- d amount upon the death of the in- ed.

) *Insurer.* The insurer is the com- ıy or association which contracts ı the owner of the insurance.

) *Insured.* The insured is the son upon whose life insurance is ef- ted.

) *Owner.* The owner is the person ɔ has the right to change the icy. This is normally the person ɔ pays the premiums.

) *Term insurance.* Term insurance ı form of life insurance having no h surrender value and generally nishing insurance protection for y a specified or limited period of e.

) *Face value.* Face value is the ic death benefit of the policy exclu- : of dividend additions or additional ounts payable because of accidental th or under other special provi- ns.

(7) *Cash surrender value.* Cash surrender value is the amount which the insurer will pay (usually to the owner) upon cancellation of the policy before death of the insured or before maturity of the policy.

(8) *Burial insurance.* Burial insurance is insurance whose terms specifically provide that the proceeds can be used only to pay the burial expenses of the insured.

§ 416.1231 Burial spaces and certain funds set aside for burial expenses.

(a) *Burial spaces*—(1) *General.* In determining the resources of an individual, the value of burial spaces for the individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources.

(2) *Burial spaces defined.* For purposes of this section "burial spaces" means conventional gravesites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons.

(3) *Immediate family defined.* For purposes of this section "immediate family" means an individual's minor and adult children, including adopted children and step-children; an individual's brothers, sisters, parents, adoptive parents, and the spouses of those individuals. Neither dependency nor living-in-the-same-household will be a factor in determining whether a person is an immediate family member.

(b) *Funds set aside for burial expenses*—(1) *Exclusion.* In determining the resources of an individual (and spouse, if any) there shall be excluded an amount not in excess of $1,500 each of funds specifically set aside for the burial arrangements of the individual or the individual's spouse. This exclusion applies if the inclusion of any portion of such amount would cause the resources of the individual (or spouse, if any) to exceed the limits specified in 416.1205. This exclusion is in addition to the burial space exclusion. Funds set aside for burial expenses must be kept separate from other resources not set aside for burial. If such funds are mixed with other resources not in-

tended for burial, the exclusion will not apply to any portion of the funds. Burial funds mixed with other resources will be treated as nonexcluded resources.

(2) *Exception for parental deeming situations.* If an individual is an eligible child, the burial funds (up to $1,500) that are set aside for the burial arrangements of the eligible child's ineligible parent or parent's spouse will not be counted in determining the resources of such eligible child.

(3) *Burial funds defined.* For purposes of this section "burial funds" means a revocable burial contract, burial trust or other burial arrangement or any other separately identifiable fund which is clearly designated as set aside for the individual's (or spouse's, if any) burial expenses.

(4) *Reductions.* Each person's (as described in §§ 416.1231(b)(1) and 416.1231(b)(2)) $1,500 exclusion must be reduced by:

(i) The face value of insurance policies on the life of an individual owned by the individual or spouse (if any) if the cash surrender value of those policies has been excluded from resources as provided in § 416.1230; and

(ii) Amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial expenses.

(5) *Irrevocable trust or other irrevocable arrangement.* Funds in an irrevocable trust or other irrevocable arrangement which are available for burial are funds which are held in an irrevocable burial contract, an irrevocable burial trust, or an amount in an irrevocable trust which is specifically identified as available for burial expenses.

(6) *Increase in value of burial funds.* Interest earned on excluded burial funds and appreciation on the value of excluded burial arrangements which occur beginning November 1, 1982, or the date of first SSI eligibility, whichever is later, are excluded from resources if left to accumulate and become part of the separately identifiable burial fund.

(7) *Burial funds used for some other purpose.* Funds or interest earned on funds and appreciation in the value of burial arrangements which have been excluded from resources because they are burial funds must be used solely for that purpose. If any excluded funds, interest or appreciated value set aside for burial expenses are used for a purpose other than the burial arrangements of the individual or the individual's spouse for whom the funds were set aside, future SSI benefits of the individual (or the individual and eligible spouse) will be reduced by an amount equal to the amount of burial funds, interest or appreciated value used for another purpose.

[48 FR 57127, Dec. 28, 1983]

§ 416.1232 Replacement of lost, damaged, or stolen excluded resources.

(a) Cash (including any interest earned on the cash) or in-kind replacement received from any source for purposes of repairing or replacing an excluded resource (as defined in § 416.1210) that is lost, damaged, or stolen is excluded as a resource. This exclusion applies if the cash (and the interest) is used to repair or replace the excluded resource within 9 months of the date the individual received the cash. Any of the cash (and interest) that is not used to repair or replace the excluded resource will be counted as a resource beginning with the quarter after the 9-month period expires.

(b) The initial 9-month time period will be extended for a reasonable period up to an additional 9 months where we find the individual had good cause for not replacing or repairing the resource. An individual will be found to have good cause when circumstances beyond his or her control prevented the repair or replacement or the contracting for the repair or replacement of the resource. If good cause is found for an individual, any unused cash (and interest) is counted as a resource beginning with the quarter after the good cause extension period expires.

(c) Where an extension of the time period is made for good cause and the individual changes his or her intent to repair or replace the excluded resource, funds previously held for replacement or repair will be counted as a resource effective with the month that the individual reports this change of intent.

(Secs. 1102, 1611, 1612, 1613, and 1631, Social Security Act, 49 Stat. 647, as amended, 86 Stat. 1466, 1468, 1470, and 1475; 42 U.S.C. 1302, 1382, 1382a, 1382b, and 1383)

[44 FR 15662, Mar. 15, 1979]

§ 416.1234 Exclusion of Indian lands.

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, there shall be excluded such restricted, allotted lands as such individual (and spouse, if any) may possess if such individual (and spouse, if any) cannot sell, transfer or otherwise dispose of such land without permission of other individuals, his tribe or an agency of the Federal Government.

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) For the purpose of § 416.1210(j), payments or benefits provided under a Federal statute other than title XVI of the Social Security Act where exclusion from resources is required by such statute include:

(1) Payments made under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1902, 42 U.S.C. 4636).

(2) Judgment payments to members of the Blackfeet and Gros Ventre tribes of Indians under the provisions of Pub. L. 92-254 (86 Stat. 65, 25 U.S.C. 1264); and judgment payments distributed to, or held in trust for, members of the Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 49-K under the provisions of Pub. L. 94-540 (90 Stat. 2503).

(3) Indian per capita judgment payments under the provisions of Pub. L. 93-134 (87 Stat. 468, 25 U.S.C. 1407), awarded from the date of that act (October 19, 1973), excluding such payments when made to any tribe or group whose trust relationship with the Federal Government has been terminated and for which there already existed legislation authorizing the disposition of its judgment funds; but including all funds deriving from judgments entered prior to the date of the act for which there has been no enacting legislation.

(4) The value of the coupon allotment in excess of the amount paid for the coupons under the Food Stamp Act of 1964 (78 Stat. 705, as amended, 7 U.S.C. 2016(c)).

(5) The value of assistance to children under the National School Lunch Act (60 Stat. 230, 42 U.S.C. 1751 et seq.) as amended by Pub. L. 90-302 (82 Stat. 117, 42 U.S.C. 1761(h)(3)).

(6) The value of assistance to children under the Child Nutrition Act of 1966 (80 Stat. 889, 42 U.S.C. 1780(b)).

(7) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education as provided by section 507 of the Higher Education Amendments of 1968, Pub. L. 90-575 (82 Stat. 1063).

(8) Incentive allowances received under title I of the Comprehensive Employment and Training Act of 1973 (87 Stat. 849, 29 U.S.C. 821(a)).

(9) Payments to volunteers under the Domestic Volunteer Service Act of 1973 as provided by section 404(g) of that act (87 Stat. 409, 42 U.S.C. 5044).

(10) Payments received under the Alaska Native Claims Settlement Act to the same extent that those payments are exempt from taxation by reason of section 21(a) of that act (85 Stat. 713, 43 U.S.C. 1620(a)).

(11) Value of Federally donated foods distributed pursuant to section 32 of Pub. L. 74-320 or section 416 of the Agriculture Act of 1949 (7 CFR 250.6(e)(9) as authorized by 5 U.S.C. 301).

(12) Effective October 1, 1976, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or title V of the Housing Act of 1949, as provided by section 2(h) of Pub. L. 94-375 (90 Stat. 1068).

(13) Effective October 17, 1975, pursuant to section 6 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459e), receipts distributed to members of certain Indian tribes which are referred to in section 5 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459d).

(b) In order for payments and benefits listed in paragraph (a) to be ex-

that the individual had "good cause" for failing to dispose of the resources within the original time period.

(c) An individual will be found to have "good cause" for failing to dispose of a resource if, despite reasonable and diligent effort on his part, he was prevented by circumstances beyond his control from disposing of the resource.

§ 416.1244 Treatment of proceeds from disposition of resources.

(a) Upon disposition of the resources, the net proceeds to the individual from the sale are considered available to repay that portion of the payments that would not have been made had the disposition occurred at the beginning of the period for which payment was made.

(b) The net proceeds from disposition will normally be the sales price less any encumbrance on the resource and the expenses of sale such as transfer taxes, fees, advertising costs, etc. where, however, a resource has been sold (or otherwise transferred) by an individual to a friend or relative for less than its current market value, the net proceeds will be the current market value less costs of sale and encumbrance.

(c) After deducting any amount necessary to raise the individual's (and spouse's, if any) resources to $1,509 or $2,250 (as applicable), as of the beginning of the disposition period, the balance of the net proceeds will be used to recover the payments made to the individual (and spouse, if any). Any remaining proceeds are considered liquid resources.

(d) The overpayment to be recovered is equal to the balance of the net proceeds (as described in paragraph (c) of this section) or the total payments made to the individual (and spouse, if any) for the period of disposition, whichever is less.

416.1246 Disposal of resources at less than fair market value.

(a) *General.* (1) An individual (or eligible spouse) who gives away or sells a nonexcluded resource for less than fair market value for the purpose of establishing SSI or Medicaid eligibility will be charged with the difference between the fair market value of the resource and the amount of compensation received. The difference is referred to as uncompensated value and is counted toward the resource limit ($1,500 for an eligible individual, $2,250 for a couple) for a period of 24 months from the date of transfer.

(2) If the transferred resource (asset) is returned to the individual, the uncompensated value is no longer counted as of the date of return. If the transferred asset is cash, the uncompensated value is reduced as of the date of return by the amount of cash that is returned. No income will be charged as a result of such returns. The returned asset will be evaluated as a resource according to the rules described in §§ 416.1201 through 416.1230 as of the first day of the following month.

(3) If the individual receives additional compensation in the form of cash for the transferred asset the uncompensated value is reduced, as of the date the additional cash compensation is received, by the amount of that additional compensation.

(b) *Fair market value.* Fair market value is equal to the current market value of a resource at the time of transfer or contract of sale, if earlier. See § 416.1101 for definition of current market value.

(c) *Compensation.* The compensation for a resource includes all money, real or personal property, food, shelter, or services received by the individual (or eligible spouse) at or after the time of transfer in exchange for the resource if the compensation was provided pursuant to a binding (legally enforceable) agreement in effect at the time of transfer. Compensation also includes all money, real or personal property, food, shelter, or services received prior to the actual transfer if they were provided pursuant to a binding (legally enforceable) agreement whereby the eligible individual would transfer the resource or otherwise pay for such items. In addition, payment or assumption of a legal debt owed by the eligible individual in exchange for the asset is considered compensation.

(d) *Uncompensated value.* The uncompensated value is the fair market value of a resource at the time of

transfer minus the amount of compensation received by the individual (or eligible spouse) in exchange for the resource. However, if the transferred resource was partially excluded, we will not count uncompensated value in an amount greater than the countable value of the resource at the time of transfer.

(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility.* Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferrred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

(f) *Applicability.* These rules apply to all individuals who filed for SSI benefits on March 1, 1981, or later and to all redeterminations of claims which were filed on March 1, 1981, or later.

(Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f) and 1631(d), Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471(f) and 1475(d), as amended; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f) and 1383(d); sec. 5 of Pub. L. 96-611, 94 Stat. 3567)

[48 FR 40885, Sept. 12, 1983]

§ 416.1260 Special resource provision for recipients under a State plan.

(a) *General.* In the case of any individual (or individual and spouse, as the case may be) who for the month of December 1973 was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI, of the Act (see § 416.121), the resources of such individual (or individual and spouse, as the case may be) shall be deemed not to exceed the amount specified in § 416.1205 during any period that the resources of such individual (or individual and spouse, as the case may be) do not exceed the maximum amount of resources specified in such State plan as in effect in October 1972, provided that such individual:

(1) Has, since December 1973, resided continuously in the State under whose plan he was eligible for the month of December 1973; and

(2) Has not, since December 1973, been ineligible for a period exceeding 6 consecutive months for a supplemental security income benefit.

(b) For purposes of this section, an individual will cease to reside continuously in a State if he leaves the State with the present intention to abandon his home there. In the absence of evidence to the contrary,

(1) If an individual leaves the State for a period of 90 calendar days or less, his absence from the State will be considered temporary and he will be considered to continue to reside in such State; and

(2) If an individual leaves the State for a period in excess of 90 calendar days, he will no longer be considered to reside continuously in such State.

(c) *State plan; defined.* As used in this subpart, "an approved State plan as in effect in October 1972" and "State plan for October 1972" means a State plan as approved under the provisions of 45 CFR Ch. II as in effect in October 1972.

[41 FR 47424, Oct. 29, 1976]

§ 416.1261 Application of special resource provision.

In determining the resources of an individual (and spouse, if any) who meets the conditions specified in § 416.1260(a), either the State plan resource limit and exclusions (as specified in § 416.1260) or the resource limit (as specified in § 416.1205) and exclusions (as specified in § 416.1210), whichever is most advantageous to the individual (and spouse, if any) will be used.

6.1262 Special resource provision applicable in cases involving essential persons.

.) *Essential persons continuously t criteria of eligibility.* In deter- ing the resources of an individual d spouse, if any) who meet the con- ons specified in § 416.1260 and se payment standard is increased ause such individual has in his e an essential person (as defined 416.243[3]), either the State plan re- ce limit and exclusions (as speci- in § 416.1260) applicable to cases which the needs of an essential son are taken into account in deter- ing the individual's needs, or the urce limit as specified in § 416.1205 exclusions as specified in 6.1210, whichever is most advanta- us to the individual (and spouse), be used.

) *Essential person fails to meet cri- a of eligibility.* If for any month r December 1973 a person fails to t the criteria for an essential son as specified in § 416.243[3], in de- ining the resources of an individ- (and spouse, if any) either the e plan resource limit and criteria pecified in § 416.1260 applicable to individual or individual and se, as the case may be, or the re- ce limit as specified in § 416.1205 exclusions as specified in 6.1210, whichever is most advanta- us to the individual (and spouse), be used.

211, Pub. L. 93-66, sec. 4, Pub. L. 93- 87 Stat. 154, as amended; 87 Stat. 955 J.S.C. 1382 nts))

Fr 33797, Sept. 20, 1974)

6.1264 Spouse ineligible under a State plan in December 1973.

the case of an individual who ts the conditions specified in 6.1260 but whose spouse does not t such conditions, whichever of following is most advantageous for individual (and spouse, if any) will pplied:

) The resource limitation and ex- ons for an individual as in effect r the approved State plan for De- r 1972, or

(b) The resource limitation (as specified in § 416.1205) and exclusions (as specified in § 416.1210) for an individual and eligible spouse or an individual living with an ineligible spouse.

§ 416.1266 Individual under special resource provision dies after December 1973.

Where only one person, either the eligible individual or the eligible spouse, meets the conditions specified in § 416.1260 and that person dies after December 1973, the State plan resource limitation and exclusions will not be applied to determine the amount of resources of the surviving individual. The resource limitation (as specified in § 416.1205) and exclusions (as specified in § 416.1210) will be applied for the now eligible individual beginning with the month such person is considered the eligible individual as defined in Subpart A of this part.

Subpart M—Suspensions and Terminations

AUTHORITY: Secs. 1102, 1611-1615, and 1631, Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1466-1477, (42 U.S.C. 1302, 1382-1382d, 1383), unless otherwise noted.

SOURCE: 40 FR 1510, Jan. 8, 1975, unless otherwise noted.

§ 416.1321 Suspensions; general.

(a) *When suspension is proper.* Suspension of benefit payments is required when a recipient is alive but no longer meets the requirements of eligibility under title XVI of the Act (see Subpart B of this part) and termination in accordance with §§ 416.1331 through 416.1335 does not apply. (This subpart does not cover suspension of payments for administrative reasons, as, for example, when mail is returned as undeliverable by the Postal Service and the Administration does not have a valid mailing address for a recipient or when the representative payee dies and a search is underway for a substitute representative payee.)

(b) *Effect of suspension.* When payments are correctly suspended due to the ineligibility of a recipient, payments shall not be resumed until the

[3] footnote 5 to § 416.410.

Author:
Statutory Authority:
History: