

you are engaging in substantial gainful activity. These payments may include compensation, travel expenses, and special assistance. We also will exclude the services you perform as a member or consultant of an advisory committee established under FACA in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a member or consultant of an advisory committee specifically authorized by statute, or by the President, or determined as a matter of formal record by the head of a federal government agency. This exclusion from the substantial gainful activity provisions will not apply if your service as a member or consultant of an advisory committee is part of your duties or is required as an employee of any governmental or non-governmental organization, agency, or business.

[46 FR 4869, Jan. 19, 1981, as amended at 48 FR 21936, May 16, 1983; 49 FR 22272, May 29, 1984; 54 FR 53605, Dec. 29, 1989; 64 FR 18570, Apr. 15, 1999; 64 FR 22903, Apr. 28, 1999; 65 FR 42783, July 11, 2000; 65 FR 82910, Dec. 29, 2000; 71 FR 3219, Jan. 20, 2006; 71 FR 66853, Nov. 17, 2006]

§ 404.1574a When and how we will average your earnings.

(a) If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, we will average your earnings over the entire period of work requiring evaluation to determine if you have done substantial gainful activity. See § 404.1592a for information on the reentitlement period.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to

determine if any of your work efforts were substantial gainful activity.

(d) We will not average your earnings in determining whether benefits should be paid for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. See § 404.1592a for information on the reentitlement period. The following examples illustrate what we mean by a significant change in the work pattern of an employee and when we will average and will not average earnings.

Example 1: Mrs. H. began receiving disability insurance benefits in March 1993. In January 1995 she began selling magazines by telephone solicitation, expending a minimum of time, for which she received \$225 monthly. As a result, Mrs. H. used up her trial work period during the months of January 1995 through September 1995. After the trial work period ended, we determined that Mrs. H. had not engaged in substantial gainful activity during her trial work period. Her reentitlement period began October 1995. In December 1995, Mrs. H. discontinued her telephone solicitation work to take a course in secretarial skills. In January 1997, she began work as a part-time temporary secretary in a banking firm. Mrs. H. worked 20 hours a week, without any subsidy or impairment-related work expenses, at beginner rates. She earned \$285 per month in January 1997 and February 1997. In March 1997 she had increased her secretarial skills to journeyman level and was assigned as a part-time private secretary to one of the vice presidents of the banking firm. Mrs. H.'s earnings increased to \$525 per month effective March 1997. We determined that Mrs. H. was engaging in substantial gainful activity beginning March 1997 and that her disability ceased that month, the first month of substantial gainful activity after the end of the trial work period. Mrs. H. is due payment for March 1997, the month of cessation, and the following 2 months (April 1997 and May 1997) because disability benefits terminate the third month following the earliest month in which she performed substantial gainful activity. We did not average earnings for the period January 1997 and February 1997 with the period beginning March 1997 because there was a significant change in earnings and work activity beginning March 1997. Thus, the earnings of January 1997 and February 1997 could not be averaged with those of March 1997 to reduce March 1997 earnings below the substantial gainful activity level. After we determine that Mrs. H.'s disability had ceased because of her performance of substantial

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gainful activity, we cannot average her earnings to determine whether she is due payment for any month during or after the re-entitlement period. Beginning June 1997, the third month following the cessation month, we would evaluate all of Mrs. H.'s work activity on a month-by-month basis (see § 404.1592a(a)).

Example 2: Ms. M. began receiving disability insurance benefits in March 1992. In January 1995, she began selling cable television subscriptions by telephone solicitation, expending a minimum of time, for which she received \$275 monthly. Ms. M. did not work in June 1995, and she resumed selling cable television subscriptions beginning July 1995. In this way, Ms. M. used up her 9-month trial work period during the months of January 1995 through May 1995 and July 1995 through October 1995. After Ms. M.'s trial work period ended, we determined that she had not engaged in substantial gainful activity during her trial work period. Ms. M.'s reentitlement period began November 1995. In December 1995, Ms. M. discontinued her telephone solicitation work to take a course in secretarial skills. In January 1997, she began work as a part-time temporary secretary in an accounting firm. Ms. M. worked, without any subsidy or impairment-related work expenses, at beginner rates. She earned \$460 in January 1997, \$420 in February 1997, and \$510 in March 1997. In April 1997, she had increased her secretarial skills to journeyman level, and she was assigned as a part-time private secretary to one of the vice presidents of the firm. Ms. M.'s earnings increased to \$860 per month effective April 1997. We determined that Ms. M. was engaging in substantial gainful activity beginning April 1997 and that her disability ceased that month, the first month of substantial gainful activity after the end of the trial work period. She is due payment for April 1997, May 1997 and June 1997, because disability benefits terminate the third month following the earliest month in which she performs substantial gainful activity (the month of cessation). We averaged her earnings for the period January 1997 through March 1997 and determined them to be about \$467 per month for that period. We did not average earnings for the period January 1997 through March 1997 with earnings for the period beginning April 1997 because there was a significant change in work activity and earnings beginning April 1997. Therefore, we found that the earnings for January 1997 through March 1997 were under the substantial gainful activity level. After we determine that Ms. M.'s disability has ceased because she performed substantial gainful activity, we cannot average her earnings in determining whether she is due payment for any month during or after the reentitlement period. In this example, beginning July 1997, the third month following the month of cessation, we would

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evaluate all of Ms. M.'s work activity on a month-by-month basis (see § 404.1592a(a)).

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§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (e) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both.

(1) *How we evaluate the work you do after you have become entitled to disability benefits.* If you are entitled to social security disability benefits and you work as a self-employed person, the way we will evaluate your work activity will depend on whether the work activity occurs before or after you have received such benefits for at least 24 months and on the purpose of the evaluation. For purposes of paragraphs (a) and (e) of this section, social security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability. We will use the rules in paragraph (e)(2) of this section to determine if you have received such benefits for at least 24 months.

(i) We will use the guides in paragraph (a)(2) of this section to evaluate any work activity you do before you have received social security disability benefits for at least 24 months to determine whether you have engaged in substantial gainful activity, regardless of the purpose of the evaluation.

(ii) We will use the guides in paragraph (e) of this section to evaluate any work activity you do after you have received social security disability