

Pt. 418

20 CFR Ch. III (4–1–14 Edition)

PART 418—MEDICARE SUBSIDIES

Subpart A [Reserved]

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

INTRODUCTION, GENERAL PROVISIONS, AND DEFINITIONS

Sec.

- 418.1001 What is this subpart about?
- 418.1005 Purpose and administration.
- 418.1010 Definitions.

DETERMINATION OF THE INCOME-RELATED MONTHLY ADJUSTMENT AMOUNT

- 418.1101 What is the income-related monthly adjustment amount?
- 418.1105 What is the threshold?
- 418.1110 What is the effective date of our initial determination about your income-related monthly adjustment amount?
- 418.1115 What are the modified adjusted gross income ranges?
- 418.1120 How do we determine your income-related monthly adjustment amount?
- 418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?
- 418.1130 [Reserved]
- 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?
- 418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?
- 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?
- 418.1150 When will we use your amended tax return filed with IRS?

DETERMINATIONS USING A MORE RECENT TAX YEAR'S MODIFIED ADJUSTED GROSS INCOME

- 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?
- 418.1205 What is a major life-changing event?
- 418.1210 What is not a major life-changing event?
- 418.1215 What is a significant reduction in your income?
- 418.1220 What is not a significant reduction in your income?
- 418.1225 Which more recent tax year will we use?

- 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?
- 418.1235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?
- 418.1240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?
- 418.1245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?
- 418.1250 What evidence will you need to support your request that we use a more recent tax year?
- 418.1255 What kind of major life-changing event evidence will you need to support your request for us to use a more recent tax year?
- 418.1260 What major life-changing event evidence will we not accept?
- 418.1265 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?
- 418.1270 What modified adjusted gross income evidence will we not accept?

DETERMINATIONS AND THE ADMINISTRATIVE REVIEW PROCESS

- 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?
- 418.1305 What is not an initial determination regarding your income-related monthly adjustment amount?
- 418.1310 When may you request that we make a new initial determination?
- 418.1315 How will we notify you and what information will we provide about our initial determination?
- 418.1320 What is the effect of an initial determination?
- 418.1322 How will a Medicare prescription drug coverage income-related monthly adjustment amount determination for the effective year affect your Medicare Part B?
- 418.1325 When may you request a reconsideration?
- 418.1330 Can you request a reconsideration when you believe the IRS information we used is incorrect?
- 418.1335 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?
- 418.1340 What are the rules for our administrative review process?
- 418.1345 Is reopening of an initial or reconsidered determination made by us ever appropriate?
- 418.1350 What are the rules for review of a reconsidered determination or an administrative law judge decision?

Social Security Administration

Pt. 418

418.1355 What are the rules for reopening a decision by an administrative law judge of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

Subpart C—Income-Related Monthly Adjustments to Medicare Prescription Drug Coverage Premiums

INTRODUCTION, GENERAL PROVISIONS, AND DEFINITIONS

- 418.2001 What is this subpart about?
- 418.2005 Purpose and administration.
- 418.2010 Definitions.

DETERMINATION OF THE INCOME-RELATED MONTHLY ADJUSTMENT AMOUNT

- 418.2101 What is the income-related monthly adjustment amount?
- 418.2105 What is the threshold?
- 418.2110 What is the effective date of our initial determination about your income-related monthly adjustment amount?
- 418.2112 Paying your income-related monthly adjustment amount.
- 418.2115 What are the modified adjusted gross income ranges?
- 418.2120 How do we determine your income-related monthly adjustment amount?
- 418.2125 How will the income-related monthly adjustment amount affect your total Medicare prescription drug coverage premium?
- 418.2135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?
- 418.2140 What will happen if the modified adjusted gross income information from the IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?
- 418.2145 How do we determine your income-related monthly adjustment amount if the IRS does not provide information about your modified adjusted gross income?
- 418.2150 When will we use your amended tax return filed with the IRS?

DETERMINATIONS USING A MORE RECENT TAX YEAR'S MODIFIED ADJUSTED GROSS INCOME

- 418.2201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?
- 418.2205 What is a major life-changing event?
- 418.2210 What is not a major life-changing event?
- 418.2215 What is a significant reduction in your income?

418.2220 What is not a significant reduction in your income?

418.2225 Which more recent tax year will we use?

418.2230 What is the effective date of an income-related monthly adjustment amount initial determination based on a more recent tax year?

418.2235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?

418.2240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?

418.2245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

418.2250 What evidence will you need to support your request that we use a more recent tax year?

418.2255 What kind of evidence of a major life-changing event will you need to support your request for us to use a more recent tax year?

418.2260 What major life-changing event evidence will we not accept?

418.2265 What kind of evidence of a significant modified adjusted gross income reduction will you need to support your request?

418.2270 What modified adjusted gross income evidence will we not accept?

DETERMINATIONS AND THE ADMINISTRATIVE REVIEW PROCESS

418.2301 What is an initial determination regarding your income-related monthly adjustment amount?

418.2305 What is not an initial determination regarding your income-related monthly adjustment amount?

418.2310 When may you request that we make a new initial determination?

418.2315 How will we notify you and what information will we provide about our initial determination?

418.2320 What is the effect of an initial determination?

418.2322 How will a Medicare Part B income-related monthly adjustment amount determination for the effective year affect your Medicare prescription drug coverage?

418.2325 When may you request a reconsideration?

418.2330 Can you request a reconsideration when you believe that the IRS information we used is incorrect?

418.2332 Can you request a reconsideration when you believe that the CMS information we used is incorrect?

418.2335 What should you do if we base our initial determination on modified adjusted gross income information you believe to be incorrect?

Pt. 418

20 CFR Ch. III (4–1–14 Edition)

- 418.2340 What are the rules for our administrative review process?
- 418.2345 Is reopening of an initial or reconsidered determination made by us ever appropriate?
- 418.2350 What are the rules for review of a reconsidered determination or an ALJ decision?
- 418.2355 What are the rules for reopening a decision by an ALJ of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

Subpart D—Medicare Part D Subsidies

INTRODUCTION, GENERAL PROVISIONS, AND DEFINITIONS

- 418.3001 What is this subpart about?
- 418.3005 Purpose and administration of the program.
- 418.3010 Definitions.

ELIGIBILITY FOR A MEDICARE PRESCRIPTION DRUG SUBSIDY

- 418.3101 How do you become eligible for a subsidy?
- 418.3105 Who does not need to file an application for a subsidy?
- 418.3110 What happens when you apply for a subsidy?
- 418.3115 What events will make you ineligible for a subsidy?
- 418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?
- 418.3123 When is a change in your subsidy effective?
- 418.3125 What are redeterminations?

FILING OF APPLICATION

- 418.3201 Must you file an application to become eligible for a subsidy?
- 418.3205 What makes an application a claim for a subsidy?
- 418.3210 What is a prescribed application for a subsidy?
- 418.3215 Who may file your application for a subsidy?
- 418.3220 When is your application considered filed?
- 418.3225 How long will your application remain in effect?
- 418.3230 When will we use your subsidy inquiry as your filing date?

INCOME

- 418.3301 What is income?
- 418.3305 What is not income?
- 418.3310 Whose income do we count?
- 418.3315 What is earned income?
- 418.3320 How do we count your earned income?
- 418.3325 What earned income do we not count?
- 418.3330 What is unearned income?

- 418.3335 What types of unearned income do we count?
- 418.3340 How do we count your unearned income?
- 418.3350 What types of unearned income do we not count?

RESOURCES

- 418.3401 What are resources?
- 418.3405 What types of resources do we count?
- 418.3410 Whose resources do we count?
- 418.3415 How do we determine countable resources?
- 418.3420 How are funds held in financial institution accounts counted?
- 418.3425 What resources do we exclude from counting?

ADJUSTMENTS AND TERMINATIONS

- 418.3501 What could cause us to increase or reduce your subsidy or terminate your subsidy eligibility?
- 418.3505 How would an increase, reduction or termination affect you?
- 418.3510 When would an increase, reduction or termination start?
- 418.3515 How could you qualify for a subsidy again?

DETERMINATIONS AND THE ADMINISTRATIVE REVIEW PROCESS

- 418.3601 When do you have the right to administrative review?
- 418.3605 What is an initial determination?
- 418.3610 Is there administrative or judicial review for administrative actions that are not initial determinations?
- 418.3615 Will we mail you a notice of the initial determination?
- 418.3620 What is the effect of an initial determination?
- 418.3625 What is the process for administrative review?
- 418.3630 How do you request administrative review?
- 418.3635 Can anyone request administrative review on your behalf?
- 418.3640 How do we determine if you had good cause for missing the deadline to request administrative review?
- 418.3645 Can you request that the decision-maker be disqualified?
- 418.3650 How do we make our decision upon review?
- 418.3655 How will we notify you of our decision after our review?
- 418.3665 Can your request for a hearing or case review be dismissed?
- 418.3670 How will you be notified of the dismissal?
- 418.3675 How does our decision affect you?
- 418.3678 What is the process for correcting Agency clerical errors?
- 418.3680 What happens if your case is remanded by a Federal court?

Social Security Administration

§418.1005

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Subpart A [Reserved]

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

AUTHORITY: Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C. 902(a)(5) and 1395r(i)).

SOURCE: 71 FR 62931, Oct. 27, 2006, unless otherwise noted.

INTRODUCTION, GENERAL PROVISIONS, AND DEFINITIONS

§ 418.1001 What is this subpart about?

This subpart relates to section 1839(i) of the Social Security Act (the Act), as added by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173). Section 1839(i) establishes an income-related monthly adjustment to the Medicare Part B premium. Beneficiaries enrolled in Medicare Part B who have modified adjusted gross income over a threshold amount established in the statute will pay an income-related monthly adjustment amount in addition to the Medicare Part B standard monthly premium and any applicable premium increases as described in 42 CFR 408.20. The regulations in this subpart explain how we decide whether you are required to pay an income-related monthly adjustment amount, and if you are, the amount of your adjustment. The rules are divided into the following groups of sections:

(a) Sections 418.1001 through 418.1010 contain the introduction, a statement of the general purpose of the income-related monthly adjustment amount, general provisions that apply to the income-related monthly adjustment amount, and definitions of terms that we use in this subpart.

(b) Sections 418.1101 through 418.1150 describe what information about your modified adjusted gross income we will use to determine if you are required to pay an income-related monthly adjustment amount. In these sections, we also describe how the income-related monthly adjustment amount will affect your total Medicare Part B premium.

(c) Sections 418.1201 through 418.1270 contain an explanation of the standards that you must meet for us to grant your request to use modified adjusted gross income information that you provide for a more recent tax year rather than the information described in paragraph (b) of this section. These sections explain when we may consider such a request, and the evidence that you will be required to provide. These sections also explain when income-related monthly adjustment amount determinations based on information you provide will be effective, and how long they will remain in effect. Additionally, these sections describe how retroactive adjustments of the income-related monthly adjustment amount will be made based on information you provide, updated information you provide, and information we later receive from the Internal Revenue Service (IRS).

(d) Sections 418.1301 through 418.1355 contain the rules that we will apply when you disagree with our determination regarding your income-related monthly adjustment amount. These sections explain your appeal rights and the circumstances under which you may request that we make a new initial determination of your income-related monthly adjustment amount.

[71 FR 62931, Oct. 27, 2006, as amended at 78 FR 57259, Sept. 18, 2013]

§ 418.1005 Purpose and administration.

(a) The purpose of the income-related monthly adjustment amount is to reduce the Federal subsidy of the Medicare Part B program for beneficiaries with modified adjusted gross income above an established threshold. These beneficiaries will pay a greater share of actual program costs. Medicare Part B premiums paid by beneficiaries cover approximately 25 percent of total Medicare Part B program costs and the remaining 75 percent of program costs are subsidized by the Federal Government's contributions to the Federal Supplementary Medical Insurance Trust Fund. The reduction in the Medicare Part B premium subsidy results in an increase in the total amount that affected beneficiaries pay for Medicare Part B coverage. A beneficiary with modified adjusted gross income above the threshold amount will pay:

(1) The Medicare Part B standard monthly premium; plus

(2) Any applicable increase in the standard monthly premium for late enrollment or reenrollment; plus

(3) An income-related monthly adjustment amount.

(b) The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS) publishes the Medicare Part B standard monthly premium each year. CMS also establishes rules for entitlement to a nonstandard premium, as well as premium penalties for late enrollment or reenrollment (42 CFR 408.20 through 408.27).

(c) We use information that we get from IRS to determine if beneficiaries who are enrolled in Medicare Part B are required to pay an income-related monthly adjustment amount. We also change income-related monthly adjustment amount determinations using information provided by a beneficiary under certain circumstances. In addition, we notify beneficiaries when the social security benefit amounts they receive will change based on our income-related monthly adjustment amount determination.

§ 418.1010 Definitions.

(a) *Terms relating to the Act and regulations.* For the purposes of this subpart:

(1) *Administrator* means the Administrator of the Centers for Medicare & Medicaid Services (CMS) in HHS.

(2) *CMS* means the Centers for Medicare & Medicaid Services in HHS.

(3) *Commissioner* means the Commissioner of Social Security.

(4) *HHS* means the Department of Health and Human Services which oversees the Centers for Medicare & Medicaid Services, the Office of Medicare Hearings and Appeals (OMHA) and the Medicare Appeals Council (MAC).

(5) *IRS* means the Internal Revenue Service in the Department of the Treasury.

(6) *MAC* means the Medicare Appeals Council in HHS.

(7) *OMHA* means the Office of Medicare Hearings and Appeals in HHS.

(8) *Section* means a section of the regulations in this part unless the context indicates otherwise.

(9) *The Act* means the Social Security Act, as amended.

(10) *Title* means a title of the Act.

(11) *We, our, or us* means the Social Security Administration (SSA).

(b) *Miscellaneous.* For the purposes of this subpart:

(1) *Amended tax return* means a Federal income tax return for which an amended tax return using the required IRS form(s) has been filed by an individual or couple and accepted by IRS.

(2) *Effective year* means the calendar year for which we make an income-related monthly adjustment amount determination.

(3) *Federal premium subsidy* is the portion of the full cost of providing Medicare Part B coverage that is paid by the Federal Government through transfers into the Federal Supplementary Medical Insurance Trust Fund.

(4) *Income-related monthly adjustment amount* is an additional amount of premium that you will pay for Medicare Part B coverage if you have income above the threshold. The amount of your income-related monthly adjustment amount is based on your modified adjusted gross income.

(5) *Medicare Part B standard monthly premium* means the monthly Medicare Part B premium amount which is set annually by CMS, according to regulations in 42 CFR 408.20 through 408.27.

(6) *Modified adjusted gross income* is your adjusted gross income as defined by the Internal Revenue Code, plus the following forms of tax-exempt income:

(i) Tax-exempt interest income;

(ii) Income from United States savings bonds used to pay higher education tuition and fees;

(iii) Foreign earned income;

(iv) Income derived from sources within Guam, American Samoa, or the Northern Mariana Islands; and

(v) Income from sources within Puerto Rico.

(7) *Modified adjusted gross income ranges* are the groupings of modified adjusted gross income above the threshold. There are four ranges for most individuals, based on their tax filing status. There are two ranges for those with a tax filing status of married, filing separately, who also lived with their spouse for part of the year.

Social Security Administration

§418.1110

The dollar amounts of the modified adjusted gross income ranges are specified in §418.1115.

(8) *Non-standard premium* means a Medicare Part B premium that some beneficiaries pay for Medicare Part B, rather than the standard premium. The rules for applying a non-standard premium are in 42 CFR 408.20(e). The non-standard premium does not apply to beneficiaries who must pay an income-related monthly adjustment amount.

(9) *Premium* is a payment that an enrolled beneficiary pays for Medicare Part B coverage. The rules that CMS uses to annually establish the premium amount are found in 42 CFR 408.20 through 408.27.

(10) *Representative* means, for the purposes of the initial determination and reconsidered determination, an individual as defined in §404.1703 of this chapter, and for purposes of an ALJ hearing or review by the MAC, an individual as defined in 42 CFR 405.910.

(11) *Tax filing status* means the filing status shown on your individual income tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child.

(12) *Tax year* means the year for which your Federal income tax return has been filed or will be filed with the IRS.

(13) *Threshold* means a modified adjusted gross income amount above which the beneficiary will have to pay an income-related monthly adjustment amount described in paragraph (b)(4) of this section. The dollar amount of the threshold is specified in §418.1105.

(14) *You or your* means the person or representative of the person who is subject to the income-related monthly adjustment amount.

DETERMINATION OF THE INCOME-RELATED MONTHLY ADJUSTMENT AMOUNT

§418.1101 What is the income-related monthly adjustment amount?

(a) The income-related monthly adjustment amount is an amount that you will pay in addition to the Medicare Part B standard monthly premium plus any applicable increase in that premium as described in 42 CFR 408.22

for your Medicare Part B coverage when your modified adjusted gross income is above the threshold described in §418.1105.

(b) Your income-related monthly adjustment amount is based on your applicable modified adjusted gross income as described in §418.1115 and your tax filing status.

(c) We will determine your income-related monthly adjustment amount using the method described in §418.1120.

[71 FR 62931, Oct. 27, 2006, as amended at 78 FR 57259, Sept. 18, 2013]

§418.1105 What is the threshold?

(a) The threshold is a level of modified adjusted gross income above which the beneficiary will have to pay the income-related monthly adjustment amount.

(b) From January 1, 2011 through December 31, 2019, the modified adjusted gross income threshold is \$170,000 for individuals with a Federal income tax filing status of married filing jointly. The threshold is \$85,000 for individuals with any other filing status.

(c) Starting on January 1, 2020, the threshold amounts will resume adjustment for inflation as required by section 1839(i)(5) of the Act. In each year thereafter, CMS will set all modified adjusted gross income threshold amounts for the following year by increasing the preceding year's threshold amounts by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000. CMS will publish the amounts in the FEDERAL REGISTER in September of each year. Published threshold amounts will be effective January 1 of the next calendar year, for the full calendar year.

[71 FR 62931, Oct. 27, 2006, as amended at 78 FR 57259, Sept. 18, 2013]

§418.1110 What is the effective date of our initial determination about your income-related monthly adjustment amount?

(a) Generally, an income-related monthly adjustment amount will be effective for all months that you are enrolled in Medicare Part B during the year for which we determine you must pay an income-related monthly adjustment amount. We will follow the rules in 42 CFR part 408, subpart C, regarding

premium collections to withhold your income-related monthly adjustment amount from a benefit payment or to determine if you will be billed directly.

(b) When we have used modified adjusted gross income information from IRS for the tax year 3 years prior to the effective year to determine your income-related monthly adjustment amount and modified adjusted gross income information for the tax year 2 years prior later becomes available from IRS, we will review the new information to determine if we should revise our initial determination. If we revise our initial determination, the effective date of the new initial determination will be January 1 of the effective year, or the first month you were enrolled or re-enrolled in Medicare Part B if later than January.

(c) When we use your amended tax return, as described in §418.1150, the effective date will be January 1 of the year(s) that is affected, or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

Example: You are enrolled in Medicare Part B throughout 2011. We use your 2009 modified adjusted gross income as reported to us by IRS to determine your 2011 income-related monthly adjustment amount. In 2012 you submit to us a copy of your 2009 amended tax return that you filed with IRS. The modified adjusted gross income reported on your 2009 amended tax return is significantly less than originally reported to IRS. We use the modified adjusted gross income that was reported on your 2009 amended tax return to determine your income-related monthly adjustment amount. That income-related monthly adjustment amount is effective January 1, 2011. We will retroactively adjust for any differences between the amount paid in 2011 and the amount that should have been paid based on the amended tax return.

(d) When we use evidence that you provide which proves that the IRS modified adjusted gross income information we used is incorrect, as described in §418.1335, the effective date will be January of the year(s) that is affected or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

(e) When we use information from a more recent tax year that you provide due to a major life-changing event, as described in §418.1201, the effective date is described in §418.1230.

§418.1115 What are the modified adjusted gross income ranges?

(a) We list the modified adjusted gross income ranges for the calendar years 2011 through and including 2019 for each Federal tax filing category in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment for these calendar years.

(b) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$85,000 and less than or equal to \$107,000;
- (2) Greater than \$107,000 and less than or equal to \$160,000;
- (3) Greater than \$160,000 and less than or equal to \$214,000; and
- (4) Greater than \$214,000.

(c) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$170,000 and less than or equal to \$214,000;
- (2) Greater than \$214,000 and less than or equal to \$320,000;
- (3) Greater than \$320,000 and less than or equal to \$428,000; and
- (4) Greater than \$428,000.

(d) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for married individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

- (1) Greater than \$85,000 and less than or equal to \$129,000; and
- (2) Greater than \$129,000.

Social Security Administration

§418.1120

(e) In 2019, CMS will set all modified adjusted gross income ranges for 2020 and publish them in the FEDERAL REGISTER. In each year thereafter, CMS will set all modified adjusted gross income ranges by increasing the preceding year's ranges by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000 and will publish the amounts for the following year in September of each year.

[78 FR 57259, Sept. 18, 2013]

§418.1120 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount by using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for calendar years 2011 through and including 2019 in the column on the left in each table. The middle column in each table shows the percentage of the unsubsidized Medicare Part B premium that will be paid by individuals with modified adjusted gross income that falls within each of the ranges. The column on the right in each table shows

the percentage of the Medicare Part B premium that will be subsidized by contributions from the Federal Government. We use your tax filing status and your modified adjusted gross income for the tax year to determine which income-related monthly adjustment amount to apply to you. The dollar amount of income-related monthly adjustment for each range will be set annually for each year after 2019 as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually after 2019 as described in §418.1115(e).

(1) *General table of applicable percentages.* If, for the tax year, we use your filing status for your Federal income taxes for the tax year is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column.

You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)	Federal premium subsidy (percent)
More than \$85,000 but less than or equal to \$107,000	35	65
More than \$107,000 but less than or equal to \$160,000	50	50
More than \$160,000 but less than or equal to \$214,000	65	35
More than \$214,000	80	20

(2) *Table of applicable percentages for joint returns.* If, for the tax year, we use your Federal tax filing status is married filing jointly for the tax year and your modified adjusted gross income for that tax year is in the range listed in the left column in the following

table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)	Federal premium subsidy (percent)
More than \$170,000 but less than or equal to \$214,000	35	65
More than \$214,000 but less than or equal to \$320,000	50	50
More than \$320,000 but less than or equal to \$428,000	65	35
More than \$428,000	80	20

§ 418.1125

20 CFR Ch. III (4–1–14 Edition)

(3) *Table of applicable percentages for married individuals filing separate returns.* If, for the tax year, we use your Federal tax filing status is married filing separately, you lived with your spouse at some time during that tax year, and your modified adjusted gross

income is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)	Federal premium subsidy (percent)
More than \$85,000 but less than or equal to \$129,000	65	35
More than \$129,000	80	20

(c) For each year after 2019, CMS will annually publish in the FEDERAL REGISTER the dollar amounts for the income-related monthly adjustment amount described in paragraph (b) of this section.

[78 FR 57259, Sept. 18, 2013]

§ 418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?

(a) If you must pay an income-related monthly adjustment amount, your total Medicare Part B premium will be the sum of:

(1) The Medicare Part B standard monthly premium, determined using the rules in 42 CFR 408.20; plus

(2) Any applicable increase in the Medicare Part B standard monthly premium as described in 42 CFR 408.22; plus

(3) Your income-related monthly adjustment amount.

(b) The nonstandard Medicare Part B premium amount described in 42 CFR 408.20 does not apply to individuals who must pay an income-related monthly adjustment amount. Such individuals must pay the full Medicare Part B standard monthly premium plus any applicable penalties for late enrollment or reenrollment plus the income-related adjustment.

[71 FR 62931, Oct. 27, 2006, as amended at 78 FR 57260, Sept. 18, 2013]

§ 418.1130 [Reserved]

§ 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?

(a) In general, we will use your modified adjusted gross income provided by IRS for the tax year 2 years prior to the effective year of the income-related monthly adjustment amount determination. Modified adjusted gross income is based on information you provide to IRS when you file your Federal income tax return.

(b) We will use your modified adjusted gross income for the tax year 3 years prior to the effective year of the income-related monthly adjustment amount determination when IRS does not provide the information specified in paragraph (a) of this section. If IRS can provide modified adjusted gross income for the tax year 3 years prior to the income-related monthly adjustment amount effective year, we will temporarily use that information to determine your income-related monthly adjustment amount and make adjustments as described in § 418.1110(b) to all affected income-related monthly adjustment amounts when information for the year specified in paragraph (a) of this section is provided by IRS.

(c) When we have used the information in paragraph (b) of this section, you may provide us with evidence of your modified adjusted gross income for the year in paragraph (a) of this section. You must provide a retained copy of your signed Federal income tax return for that year, if available. If you filed a return for that year, but did not retain a copy, you must request a transcript or a copy of your return from IRS and provide it to us. When we use

this evidence, we will later confirm this information with IRS records.

(d) When you meet the conditions specified in §418.1150 because you have amended your Federal income tax return, or when you believe we have used information provided by IRS which is incorrect, as described in §418.1335, we will use information that you provide directly to us regarding your modified adjusted gross income.

(e) We may use information that you give us about your modified adjusted gross income for a more recent tax year than those discussed in paragraphs (a) or (b) of this section as described in §§418.1201 through 418.1270.

(f) If you fail to file an income tax return for any year after 2004 and IRS informs us that you had modified adjusted gross income above the threshold applicable 2 years after the tax year when you failed to file an income tax return, we will impose the highest income-related adjustment percentage applicable to your income filing status for the effective year. If we later determine that the amount of the income-related monthly adjustment amount imposed was inconsistent with your modified adjusted gross income, we will correct it. The rules in 42 CFR 408.40 through 408.92 will apply to the collection of any retroactive premiums due.

§418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?

In general, we will use modified adjusted gross income information from IRS to determine your income-related monthly adjustment. We will make retroactive adjustments to your income-related monthly adjustment amount as described in paragraphs (a), (b), and (d) of this section.

(a) When we have used modified adjusted gross income from the tax year 3 years prior to the effective year as described in §418.1135(b), and IRS provides modified adjusted gross income information from the tax year 2 years prior to the effective year, we will use the new information to make an initial determination for the effective year.

We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(b) When we have used the modified adjusted gross income information that you provided for the tax year 2 years prior to the effective year and the modified adjusted gross income information we receive from IRS for that same year is different from the information you provided, we will use the modified adjusted gross income information provided to us by IRS to make a new initial determination. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we have used information from your amended Federal tax return that you provide, as explained in §418.1150, or you provide proof that the information IRS provided to us is incorrect as described in §418.1335, we will not make any adjustments to your income-related monthly adjustment amount for the effective year or years based on IRS information we receive later from IRS.

(d) When we use modified adjusted gross income information that you provided due to a qualifying life-changing event and we receive different information from IRS, we will use the IRS information to make retroactive corrections to all months in the effective year(s) during which you were enrolled in Medicare Part B, except when paragraph (c) of this section applies.

(e) When we used the table in §418.1120(b)(3) to determine your income-related monthly adjustment amount, and you lived apart from your spouse throughout that year, we will ask you for a signed statement or attestation that you lived apart from your spouse throughout that year. We will also ask you to provide information about the addresses of you and your spouse during that year. If you provide a signed statement or attestation that you lived apart from your spouse throughout that year, and information about your respective addresses that year, we will use the table in

§ 418.1145

20 CFR Ch. III (4–1–14 Edition)

§ 418.1120(b)(1) to determine your income-related monthly adjustment amount.

§ 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?

In general, if we do not receive any information for you from IRS showing that you had modified adjusted gross income above the threshold in the tax year we request, we will not make an income-related monthly adjustment amount determination.

§ 418.1150 When will we use your amended tax return filed with IRS?

You may provide your amended tax return for a tax year we used within 3 calendar years following the close of the tax year for which you filed the amended tax return. You must provide us with your retained copy of your amended U.S. Individual Income Tax Return on the required IRS form and a copy of the IRS letter confirming the amended tax return was filed or a transcript from IRS if they did not send a letter. If you cannot provide your retained copy of the amended tax return, you must obtain a copy of the return from IRS. We will then make any necessary retroactive corrections as defined in § 418.1110(c) to your income-related monthly adjustment amount.

DETERMINATIONS USING A MORE RECENT TAX YEAR'S MODIFIED ADJUSTED GROSS INCOME

§ 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?

We will use a more recent tax year than the years described in § 418.1135(a) or (b) to reduce or eliminate your income-related monthly adjustment amount when all of the following occur:

- (a) You experience a major life-changing event as defined in § 418.1205; and
- (b) That major life-changing event results in a significant reduction in your modified adjusted gross income

for the year which you request we use and the next year, if applicable. For purposes of this section, a significant reduction in your modified adjusted gross income is one that results in the decrease or elimination of your income-related monthly adjustment amount; and

(c) You request that we use a more recent tax year's modified adjusted gross income; and

(d) You provide evidence as described in §§ 418.1255 and 418.1265.

§ 418.1205 What is a major life-changing event?

For the purposes of this subpart, we will consider the following to be major life-changing events:

- (a) Your spouse dies;
- (b) You marry;
- (c) Your marriage ends through divorce or annulment;
- (d) You or your spouse stop working or reduce the hours you work;
- (e) You or your spouse experiences a loss of income-producing property, provided the loss is not at the direction of you or your spouse (e.g., due to the sale or transfer of the property) and is not a result of the ordinary risk of investment. Examples of the type of property loss include, but are not limited to: Loss of real property within a Presidentially or Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, loss from real property due to arson, or loss of investment property as a result of fraud or theft due to a criminal act by a third party;

(f) You or your spouse experiences a scheduled cessation, termination, or reorganization of an employer's pension plan;

(g) You or your spouse receives a settlement from an employer or former employer because of the employer's closure, bankruptcy, or reorganization.

[71 FR 62931, Oct. 27, 2006, as amended at 75 FR 41086, July 15, 2010]

§ 418.1210 What is not a major life-changing event?

We will not consider events other than those described in § 418.1205 to be major life-changing events. Certain types of events are not considered

Social Security Administration

§418.1235

major life-changing events for the purposes of this subpart, such as:

- (a) Events that affect your expenses, but not your income; or
- (b) Events that result in the loss of dividend income because of the ordinary risk of investment.

[71 FR 62931, Oct. 27, 2006, as amended at 75 FR 41086, July 15, 2010]

§418.1215 What is a significant reduction in your income?

For purposes of this subpart, we will consider a reduction in your income to be significant if your modified adjusted gross income decreases; and

(a) The decrease reduces the percentage of the income-related monthly adjustment amount you must pay according to the Table of Applicable Percentages in §418.1120; or

(b) The decrease reduces your modified adjusted gross income to an amount below the threshold described in §418.1105 and eliminates any income-related monthly adjustment amount you must pay.

§418.1220 What is not a significant reduction in your income?

For purposes of this subpart, we will not consider a reduction in your income to be significant unless the reduction affects the amount of income-related monthly adjustment you must pay.

§418.1225 Which more recent tax year will we use?

We will consider evidence of your modified adjusted gross income that you provide for a tax year that is more recent than the year described in §418.1135 (a) or (b) when you meet all of the requirements described in §418.1201. We will always ask you for your retained copy of your filed Federal income tax return for the more recent year you request that we use and will use that information to make an initial determination. If you have not filed your Federal income tax return for the more recent year you request that we use, you must provide us with evidence that is equivalent to a copy of a filed Federal income tax return. Evidence that is equivalent to a copy of a filed Federal income tax return is defined in §418.1265(c).

§418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?

(a) Subject to paragraph (b) of this section, when your modified adjusted gross income for the more recent tax year is significantly reduced as a result of a major life-changing event, our initial determination is generally effective on January 1 of the year in which you make your request. If your first month of enrollment or reenrollment in Medicare Part B is after January of the year for which you make your request, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(b) We will make a determination about your income-related monthly adjustment amount for the year preceding the year that you make your request in the limited circumstances explained in §418.1310(a)(4). When we make a determination for the preceding year, our initial determination is generally effective on January 1 of that year. If your first month of enrollment or reenrollment in Medicare Part B is after January of that year, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(c) Our initial determination will be effective January 1 of the year following the year you make your request, when your modified adjusted gross income will not be significantly reduced as a result of one or more of the events described in §418.1205(a) through (g) until the year following the year you make your request.

[71 FR 62931, Oct. 27, 2006, as amended at 75 FR 41086, July 15, 2010; 78 FR 57260, Sept. 28, 2013]

§418.1235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?

We will use your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount effective with the month and year described in

§ 418.1240

20 CFR Ch. III (4–1–14 Edition)

§ 418.1230 and for each year thereafter until one of the following occurs:

(a) We receive your modified adjusted gross income from IRS for the more recent tax year we used or a later tax year;

(b) Your more recent tax year modified adjusted gross income that we used is for a tax year more than 3 years prior to the income-related monthly adjustment amount effective year;

(c) You request we use a more recent tax year based on another major life-changing event as described in § 418.1201; or

(d) You notify us of a change in your modified adjusted gross income for the more recent tax year we used as described in § 418.1240.

§ 418.1240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?

If you know that the information you provided to us about the more recent tax year that we used has changed, you should tell us so that we can determine if your income-related monthly adjustment amount should be eliminated or adjusted. We will accept new modified adjusted gross income information at any time after your request until the end of the calendar year following the more recent tax year(s) that we used. For us to make a new initial determination using your new modified adjusted gross income information, you must provide evidence as described in § 418.1265 to support the reduction or increase in your modified adjusted gross income. If you amend your Federal income tax return for the more recent tax year we used, we will use the rules in § 418.1150.

§ 418.1245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

(a) If you notify us that your modified adjusted gross income for the more recent tax year has changed from what is in our records, we may make a new initial determination for each effective year involved. To make a new initial determination(s) we will take into account:

(1) The new modified adjusted gross income information for the more recent tax year you provide; and

(2) Any modified adjusted gross income information from IRS, as described in § 418.1135, that we have available for each effective year; and

(3) Any modified adjusted gross income information from you, as described in § 418.1135, that we have available for each effective year.

(b) For each new initial determination that results in a change in your income-related monthly adjustment amount, we will make retroactive adjustments that will apply to all enrolled months of the effective year.

(c) We will continue to use a new initial determination described in paragraph (a) of this section to determine additional yearly income-related monthly adjustment amount(s) until an event described in § 418.1235 occurs.

(d) We will make a new determination about your income-related monthly adjustment amount when we receive modified adjusted gross income for the effective year from IRS, as described in § 418.1140(d).

§ 418.1250 What evidence will you need to support your request that we use a more recent tax year?

When you request that we use a more recent tax year to determine your income-related monthly adjustment amount, we will ask for evidence of the major life-changing event and how the event significantly reduced your modified adjusted gross income as described in §§ 418.1255 and 418.1265. Unless we have information in our records that raises a doubt about the evidence, additional evidence documenting the major life-changing event(s) will not be needed.

§ 418.1255 What kind of major life-changing event evidence will you need to support your request for us to use a more recent tax year?

(a) If your spouse died and we do not have evidence of the death in our records, we will require proof of death as described in § 404.720(b) or (c) or § 404.721 of this chapter.

(b) If you marry and we do not have evidence of the marriage in our

Social Security Administration

§418.1265

records, we will require proof of marriage as described in §§404.725 through 404.727 of this chapter.

(c) If your marriage ends and we do not have evidence that the marriage has ended in our records, we will require proof that the marriage has ended as described in §404.728(b) or (c) of this chapter.

(d) If you or your spouse stop working or reduce your work hours, we will require evidence documenting the change in work activity. Examples of acceptable documentation include, but are not limited to, documents we can corroborate such as a signed statement from your employer, proof of the transfer of your business, or your signed statement under penalty of perjury, describing your work separation or a reduction in hours.

(e) If you or your spouse experiences a loss of income-producing property, we will require evidence documenting the loss. Examples of acceptable evidence include, but are not limited to, insurance claims or an insurance adjuster's statement. If the claim of loss is due to criminal fraud or theft by a third party, we will also require proof of conviction for the fraud or theft, such as a court document.

(f) If you or your spouse experiences a scheduled cessation, termination, or reorganization of an employer's pension plan, we will require evidence documenting the change in or loss of the pension. An example of acceptable evidence includes, but is not limited to, a statement from your pension fund administrator explaining the reduction or termination of your benefits.

(g) If you or your spouse receives a settlement from an employer or former employer because of the employer's closure, bankruptcy, or reorganization, we will require evidence documenting the settlement and the reason(s) for the settlement. An example of acceptable evidence includes, but is not limited to, a letter from the former employer stating the settlement terms and how they affect you or your spouse.

[71 FR 62931, Oct. 27, 2006, as amended at 75 FR 41086, July 15, 2010]

§418.1260 What major life-changing event evidence will we not accept?

(a) We will not accept evidence of death that fails to meet the requirements in §§404.720 through 404.721 of this chapter.

(b) We will not accept evidence of marriage that fails to meet the requirements in §§404.725 through 404.727 of this chapter.

(c) We will not accept evidence that your marriage has ended if the evidence fails to meet the requirements in §404.728 of this chapter.

(d) We will not accept documents supporting loss of income from income-producing property, or failure of or loss from a defined benefit pension plan unless the documents are original documents or copies from the original source.

(e) We will not accept evidence of work reduction or work stoppage that cannot be substantiated.

§418.1265 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?

(a) You must provide evidence that one or more of the major life-changing events described in §418.1205 resulted in a significant reduction in your modified adjusted gross income for the tax year you request we use.

(b) The preferred evidence is your retained copy of your filed Federal income tax return, your retained copy of your amended tax return with an IRS letter of receipt of the amended tax return, your copy of proof of a correction of the IRS information we used or a copy of your return or amended or proof of a correction of tax return information that you obtain from IRS for the more recent tax year you request we use.

(c) When a copy of your filed Federal income tax return is not available for the more recent tax year in which your modified adjusted gross income was significantly reduced, we will accept equivalent evidence. Equivalent evidence is the appropriate proof(s) in paragraphs (c)(1), (2) and (3) of this section, plus your signed statement under penalty of perjury that the information you provide is true and correct. When the major life-changing event changes

§418.1270

your tax filing status, or the income-related monthly adjustment amount determination could be affected by your tax filing status, you will also be required to sign a statement regarding your intended income tax filing status for the tax year you request we use.

(1) If you experience one or more of the events described in §418.1205(a), (b), or (c), you must provide evidence as to how the event(s) significantly reduced your modified adjusted gross income. Examples of the type of evidence include, but are not limited to, evidence of your spouse's modified adjusted gross income and/or your modified adjusted gross income for the tax year we use.

(2) If you experience one or more of the events described in §418.1205(d), (e), (f), or (g), you must provide evidence of how the event(s) significantly reduced your modified adjusted gross income, such as a statement explaining any modified adjusted gross income changes for the tax year we used and a copy of your filed Federal income tax return (if you have filed one).

(3) If your spouse experiences one or more of the events described in §418.1205(d), (e), (f), or (g), you must provide evidence of the resulting significant reduction in your modified adjusted gross income. The evidence requirements are described in paragraph (c)(2) of this section.

(d) When we use information described in paragraph (c) of this section, we will request that you provide your retained copy of your Federal income tax return for the year we used when you file your taxes. We will use that information to make timely adjustments to your Medicare premium, if necessary. We will later verify the information you provide when we receive information about that tax year from IRS, as described in §418.1140(d).

[71 FR 62931, Oct. 27, 2006, as amended at 75 FR 41087, July 15, 2010]

§418.1270 What modified adjusted gross income evidence will we not accept?

We will not accept a correction or amendment of your income tax return without a letter from IRS acknowledging the change. We will also not accept illegible or unsigned copies of in-

20 CFR Ch. III (4–1–14 Edition)

come tax returns or attestations or other statements of income unless they are provided under penalty of perjury.

DETERMINATIONS AND THE ADMINISTRATIVE REVIEW PROCESS

§418.1301 What is an initial determination regarding your income-related monthly adjustment amount?

An initial determination is the determination we make about your income-related monthly adjustment amount that is subject to administrative review. For the purposes of administering the income-related monthly adjustment amount, initial determinations include but are not limited to determinations about:

(a) The amount of your income-related monthly adjustment amount based on information provided by IRS; and

(b) Any change in your income-related monthly adjustment amount based on one of the circumstances listed in §418.1310(a)(1) through (a)(4).

§418.1305 What is not an initial determination regarding your income-related monthly adjustment amount?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process as provided by §§418.1320 through 418.1325 and §§418.1340 through 418.1355, and they are not subject to judicial review. These actions include, but are not limited to, our dismissal of a request for reconsideration as described in §418.1330 and our dismissal of a request for a new initial determination as described in §418.1310(d).

§418.1310 When may you request that we make a new initial determination?

(a) You may request that we make a new initial determination in the following circumstances:

(1) You provide a copy of your filed Federal income tax return for the tax year 2 years prior to the effective year when IRS has provided information for the tax year 3 years prior to the effective year. You may request a new initial determination beginning with the date you receive a notice from us regarding your income-related monthly

adjustment amount until the end of the effective year, with one exception. If you receive the notice during the last 3 months of a calendar year, you may request a new initial determination beginning with the date you receive the notice until March 31 of the following year. We will follow the rules and procedures in §§418.1110(b) and 418.1140(b) to make a new initial determination and any necessary retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled in Medicare Part B in the effective year if later than January.

(2) You provide a copy of an amended tax return filed with IRS, as defined in §418.1010(b)(1). We will use your amended tax return for the same tax year as the year used to determine your income-related monthly adjustment amount. You must request the new initial determination within the time-frame described in §418.1150.

(3) You provide proof that the tax return information about your modified adjusted gross income or tax filing status IRS gave us is incorrect. We will use proof that you obtain from IRS of a correction of your tax return information for the same tax year instead of the information that was provided to us by IRS, as explained in §418.1335(a). You may request a new initial determination at any time after you receive a notice from us regarding your income-related monthly adjustment amount if you have such proof. We will use the rules and procedures in §418.1335.

(4) You have a major life-changing event. You may request a new initial determination based on a major life-changing event when you meet all the requirements described in §418.1201. You may make such a request at any time during the calendar year in which you experience a significant reduction in your modified adjusted gross income caused by a major life-changing event. When you have a major life-changing event that occurs in the last 3 months of a calendar year and your modified adjusted gross income for that year is significantly reduced as a result of the event, you may request that we make a new initial determination based on your major life-changing event from

the date of the event until March 31 of the next year. We will follow the rules in §418.1230 when we make a new initial determination based on your major life-changing event.

(b) If a request for a new initial determination based on any of the circumstances in paragraph (a) of this section is made after the time frame provided for each type of listed circumstance, we will review the request under the rules in §404.911 of this chapter to determine if there is good cause for a late request.

(c) We will notify you of the new initial determination as described in §418.1315.

(d) We will dismiss your request to make a new initial determination if it does not meet one of the circumstances specified in paragraphs (a)(1) through (a)(4) of this section. Our dismissal of your request for a new initial determination is not an initial determination subject to further administrative or judicial review.

§418.1315 How will we notify you and what information will we provide about our initial determination?

(a) We will mail a written notice of all initial determinations to you. The notice of the initial determination will state the important facts and give the reasons for our conclusions. Generally, we will not send a notice if your income-related monthly adjustment amount stops because of your death.

(b) The written notice that we send will tell you:

- (1) What our initial determination is;
- (2) What modified adjusted gross income information we used to make our determination;
- (3) The reason for our determination;
- (4) The effect of the initial determination; and
- (5) Your right to a reconsideration or a new initial determination.

§418.1320 What is the effect of an initial determination?

An initial determination is binding unless you request a reconsideration within the time period described in §§404.909 and 404.911 of this chapter or we revise the initial determination or issue a new initial determination.

§ 418.1322 How will a Medicare prescription drug coverage income-related monthly adjustment amount determination for the effective year affect your Medicare Part B?

If we make an income-related monthly adjustment amount determination for you for the effective year under subpart C of this part (Medicare Prescription Drug Coverage Income-Related Monthly Adjustment Amount), we will apply that income-related monthly adjustment amount determination under this subpart to determine your Part D income-related monthly adjustment amount for the same effective year. Therefore, if you become enrolled in Medicare Part B in the effective year after we make an income-related monthly adjustment amount determination about your Medicare prescription drug coverage, the income-related monthly adjustment amount determination for your Medicare prescription drug coverage will also be used to determine your Medicare Part B income-related monthly adjustment amount. Any change in your net benefit due will be accompanied by a letter explaining the change in your net benefit and your right to appeal the change.

[75 FR 75890, Dec. 7, 2010]

§ 418.1325 When may you request a reconsideration?

If you are dissatisfied with our initial determination about your income-related monthly adjustment amount, you may request that we reconsider it. In addition, a person who shows that his or her rights may be adversely affected by the initial determination may request a reconsideration. We may accept requests for reconsideration that are filed by electronic or other means that we determine to be appropriate. Subject to the provisions of this section and § 418.1330, when you request a reconsideration, we will use the rules in §§ 404.907 through 404.922 of this chapter.

§ 418.1330 Can you request a reconsideration when you believe that the IRS information we used is incorrect?

If you request a reconsideration solely because you believe that the infor-

mation that IRS gave us is incorrect, we will dismiss your request for a reconsideration and notify you to obtain proof of a correction from IRS and request a new initial determination (§ 418.1335). Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.1335 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?

If you believe that IRS or you provided incorrect modified adjusted gross income information to us that we used to determine your income-related monthly adjustment amount, you can request information from us on how to contact IRS regarding the information we used.

(a) If IRS determines that the information it provided is not correct, IRS will provide you with documentation of the error, such as a copy of your Federal income tax return. If you would like us to use the revised or corrected information to determine your income-related monthly adjustment amount, you will need to request that we use that information and provide us with the IRS documentation confirming the error. We will make any necessary retroactive corrections as described in § 418.1110(d) to your income-related monthly adjustment amount.

(b) If you provided information to us about your modified adjusted gross income that we used to determine your income-related monthly adjustment amount, and that information is not correct, you may provide revised or corrected information. We will use the revised or corrected information if it reduces or eliminates your income-related monthly adjustment amount. We will make any necessary retroactive corrections as described in § 418.1110 to your income-related monthly adjustment amount. If you are providing corrected information about a more recent tax year's modified adjusted gross income that we used due to your major life-changing event, as described in § 418.1240, we will use the rules in § 418.1245 to determine how it will affect your income-related monthly adjustment amount.

Social Security Administration

§418.2001

§418.1340 What are the rules for our administrative review process?

To the extent that they are not inconsistent with the rules in this subpart for making initial determinations and reconsidered determinations, we will use the same rules for the administrative review process that we use for determinations and decisions about your rights regarding non-medical issues under title II of the Act, as described in subpart J of part 404 of this chapter. We will accept oral requests as well as the written requests required in subpart J of part 404 of this chapter for requesting administrative review of our determination. If you are dissatisfied with our reconsidered determination, you may request review in accordance with §418.1350 for this subpart. A request for a new initial determination, described in §418.1310, is not the same as a request for reconsideration or further administrative review.

§418.1345 Is reopening of an initial or reconsidered determination made by us ever appropriate?

We may reopen an initial or reconsidered determination made by us when the conditions for reopening are met as described in §404.988 of this chapter. We will use the rules in §§404.987 through 404.991a of this chapter when we reopen determinations made by us.

§418.1350 What are the rules for review of a reconsidered determination or an administrative law judge decision?

You may request a hearing before an OMHA administrative law judge consistent with HHS' regulations at 42 CFR part 405. You may seek further review of the administrative law judge's decision by requesting MAC review and judicial review in accordance with HHS' regulations.

[78 FR 57260, Sept. 18, 2013]

§418.1355 What are the rules for reopening a decision by an administrative law judge of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

The rules in 42 CFR 405.980 through 405.986 govern reopenings of decisions by an administrative law judge of the

OMHA and decisions by the MAC. A decision by an administrative law judge of the OMHA may be reopened by the administrative law judge or by the MAC. A decision by the MAC may be reopened only by the MAC.

Subpart C—Income-Related Monthly Adjustments to Medicare Prescription Drug Coverage Premiums

AUTHORITY: Secs. 702(a)(5), 1860D–13(a) and (c) of the Social Security Act (42 U.S.C. 902(a)(5), 1395w–113(a) and (c)).

SOURCE: 75 FR 75891, Dec. 7, 2010, unless otherwise noted.

INTRODUCTION, GENERAL PROVISIONS, AND DEFINITIONS

§418.2001 What is this subpart about?

This subpart implements sections 1860D–13(a)(7) and 1860D–13(c)(4) of the Social Security Act (the Act), as added by section 3308 of the Affordable Care Act (Pub. L. 111–148). Section 3308(a) establishes an income-related monthly adjustment to Medicare prescription drug coverage premiums. Persons enrolled in Medicare prescription drug plans, Medicare Advantage plans with prescription drug coverage, Programs of All-Inclusive Care for the Elderly plans, and cost plans offering prescription drug coverage who have modified adjusted gross income over a threshold amount established in the statute will pay an income-related monthly adjustment amount in addition to their Medicare prescription drug coverage plan's monthly premium and any applicable premium increases as described in 42 CFR 423.286. The regulations in this subpart explain how we determine whether you are required to pay an income-related monthly adjustment amount, and if you are, the amount of your adjustment. We have divided the rules into the following groups of sections:

(a) Sections 418.2001 through 418.2010 contain the introduction, a statement of the general purpose of the income-related monthly adjustment amount, general provisions that apply to the income-related monthly adjustment amount, and definitions of terms that we use in this subpart.

(b) Sections 418.2101 through 418.2150 describe what information about your modified adjusted gross income we will use to determine if you are required to pay an income-related monthly adjustment amount. In these sections, we also describe how the income-related monthly adjustment amount will affect your total Medicare prescription drug coverage premium.

(c) Sections 418.2201 through 418.2270 contain an explanation of the standards that you must meet for us to grant your request to use modified adjusted gross income information that you provide for a more recent tax year rather than the information described in paragraph (b) of this section. These sections explain when we may consider such a request, and the evidence that you will be required to provide. These sections also explain when an income-related monthly adjustment amount determination based on information you provide will be effective, and how long it will remain in effect. Additionally, these sections describe how we make retroactive adjustments of the income-related monthly adjustment amount based on information you provide, updated information you provide, and information we later receive from the Internal Revenue Service.

(d) Sections 418.2301 through 418.2355 explain how we will notify you of our determination regarding your income-related monthly adjustment amount and contain the rules that we will apply when you disagree with our determination. These sections explain your appeal rights and the circumstances under which you may request that we make a new initial determination of your income-related monthly adjustment amount.

§ 418.2005 Purpose and administration.

(a) The purpose of the income-related monthly adjustment amount is for beneficiaries who have modified adjusted gross income above an established threshold to reimburse the Federal Government for a portion of the Federal subsidy of the Medicare prescription drug coverage. Persons who have modified adjusted gross income above the thresholds described in § 418.2105 will pay an income-related monthly adjustment amount in addi-

tion to the premium for their prescription drug coverage. The income-related monthly adjustment amount due will be determined based on the base beneficiary premium amount that represents 25.5 percent of the cost of the basic Medicare prescription drug coverage. The application of an income-related monthly adjustment amount results in an increase in the total amount that those who are affected pay for Medicare prescription drug coverage plans. A person who has modified adjusted gross income above the threshold amount will pay:

- (1) The Medicare prescription drug coverage plan monthly premium; plus
- (2) Any applicable increase for late enrollment or reenrollment;
- (3) An income-related monthly adjustment amount; and

(b) The Centers for Medicare & Medicaid Services in the Department of Health and Human Services establishes rules for eligibility for Medicare prescription drug coverage and enrollment in Medicare prescription drug coverage plans, as well as premium penalties for late enrollment or reenrollment (42 CFR 423.30 through 423.56).

(c) We use information from CMS about enrollment in Medicare prescription drug coverage plans to determine the records that we must send to the IRS.

(d) We use information that we get from the IRS to determine if persons enrolled in Medicare prescription drug coverage plans are required to pay an income-related monthly adjustment amount. We also change income-related monthly adjustment amount determinations using information you provide under certain circumstances. In addition, we notify beneficiaries when the social security benefit amounts they receive will change based on our income-related monthly adjustment amount determination.

§ 418.2010 Definitions.

(a) *Terms relating to the Act and regulations.* For the purposes of this subpart:

- (1) *Administrator* means the Administrator of CMS in HHS.
- (2) *ALJ* means administrative law judge.

Social Security Administration

§418.2010

(3) *CMS* means the Centers for Medicare & Medicaid Services in HHS.

(4) *Commissioner* means the Commissioner of Social Security.

(5) *HHS* means the Department of Health and Human Services, which oversees the Centers for Medicare & Medicaid Services (CMS), the Office of Medicare Hearings and Appeals (OMHA) and the Medicare Appeals Council (MAC)

(6) *IRS* means the Internal Revenue Service in the Department of the Treasury.

(7) *MAC* means the Medicare Appeals Council in HHS.

(8) *Medicare Prescription Drug Coverage Plan* means a Medicare prescription drug plan, a Medicare Advantage plan with prescription drug coverage, a Program for All-inclusive Care for the Elderly plan offering qualified prescription drug coverage, or a cost plan offering qualified prescription drug coverage.

(9) *OMHA* means the Office of Medicare Hearings and Appeals in HHS.

(10) *Section* means a section of the regulations in this part unless the context indicates otherwise.

(11) *The Act* means the Social Security Act, as amended.

(12) *Title* means a title of the Act.

(13) *We, our, or us* means the Social Security Administration (SSA).

(b) *Miscellaneous*. For the purposes of this subpart:

(1) *Amended tax return* means a Federal income tax return for which an individual or couple has filed an amended tax return that has been accepted by the IRS.

(2) *Effective year* means the calendar year for which we make an income-related monthly adjustment amount determination.

(3) *Federal premium subsidy* is the portion of the cost of providing Medicare prescription drug coverage that is paid by the Federal Government. The Federal Government pays this amount to Medicare Prescription Drug coverage Plans from payments made into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

(4) *Income-related monthly adjustment amount* is an additional amount of premium that you will pay for Medicare

prescription drug coverage if you have modified adjusted gross income above the threshold described in 418.2105.

(5) *Modified adjusted gross income* is your adjusted gross income as defined by the Internal Revenue Code, plus the following forms of tax-exempt income:

(i) Tax-exempt interest income;

(ii) Income from United States savings bonds used to pay higher education tuition and fees;

(iii) Foreign earned income;

(iv) Income derived from sources within Guam, American Samoa, or the Northern Mariana Islands; and

(v) Income from sources within Puerto Rico.

(6) *Modified adjusted gross income ranges* are the groupings of modified adjusted gross income above the threshold. There are four ranges for most individuals, based on their tax filing status. There are two ranges for those with a tax filing status of married, filing separately, who also lived with their spouse for part of the year. The dollar amounts of the modified adjusted gross income ranges are specified in §418.2115.

(7) *Premium* is a payment that an enrolled beneficiary pays for Medicare prescription drug coverage to a Medicare prescription drug plan, a Medicare Advantage plan with prescription drug coverage, a Program of All-Inclusive Care for the Elderly Plan offering qualified prescription drug coverage, or a cost plan offering qualified prescription drug coverage. The rules that CMS use annually to establish premium amounts for Medicare prescription drug coverage are contained in 42 CFR 423.286.

(8) *Representative* means, for the purposes of the initial determination and reconsidered determination, an individual as defined in §404.1703 of this chapter, and for purposes of an ALJ hearing or review by the MAC, an individual as defined in 42 CFR 423.560.

(9) *Tax filing status* means the filing status shown on your individual income tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child.

(10) *Tax year* means the year for which you have filed or will file your

§418.2101

20 CFR Ch. III (4–1–14 Edition)

Federal income tax return with the IRS.

(11) *Threshold* means a modified adjusted gross income amount above which you will have to pay an income-related monthly adjustment amount described in paragraph (b)(4) of this section. The dollar amount of the threshold is specified in §418.2105.

(12) *You or your* means the person or representative of the person who is subject to the income-related monthly adjustment amount.

DETERMINATION OF THE INCOME-RELATED MONTHLY ADJUSTMENT AMOUNT

§418.2101 What is the income-related monthly adjustment amount?

(a) The income-related monthly adjustment amount is an amount that you will pay in addition to the Medicare prescription drug coverage plan monthly premium, plus any applicable increase in that premium as described in 42 CFR 423.286, for your Medicare prescription drug coverage plan when your modified adjusted gross income is above the threshold described in §418.2105.

(b) Your income-related monthly adjustment amount is based on your applicable modified adjusted gross income as described in §418.2115 and your tax filing status.

(c) We will determine your income-related monthly adjustment amount using the method described in §418.2120.

§418.2105 What is the threshold?

(a) The threshold is a level of modified adjusted gross income above which you will have to pay the income-related monthly adjustment amount.

(b) For calendar years 2011 through and including 2019, the modified adjusted gross income threshold is \$85,000 for individuals with a Federal income tax filing status of single, married filing separately, head of household, and qualifying widow(er) with dependent child. The threshold is \$170,000 for individuals with a Federal income tax filing status of married filing jointly.

(c) Starting at the end of calendar year 2019 and for each calendar year thereafter, CMS will set the threshold amounts for the following year. CMS

will publish the threshold amounts annually in the FEDERAL REGISTER. Published threshold amounts will be effective January 1 of the next calendar year, and remain unchanged for the full calendar year.

§418.2110 What is the effective date of our initial determination about your income-related monthly adjustment amount?

(a) Generally, an income-related monthly adjustment amount determination will be effective for all months that you are enrolled in a prescription drug coverage plan during the year for which we determine you must pay an income-related monthly adjustment amount.

(b) When we have used modified adjusted gross income information from the IRS for the tax year 3 years prior to the effective year to determine your income-related monthly adjustment amount, and modified adjusted gross income information for the tax year 2 years prior later becomes available from the IRS, we will review the new information to determine if we should revise our initial determination concerning the income-related monthly adjustment amount. If we revise our initial determination, the effective date of the new initial determination will be January 1 of the effective year, or the first month your enrollment or re-enrollment in a Medicare prescription drug coverage plan became effective if later than January.

(c) When we use your amended tax return, as described in §418.2150, the effective date will be January 1 of the year(s) that is affected, or the first month in that year that your enrollment or re-enrollment in a Medicare prescription drug coverage plan became effective if later than January.

Example: You are enrolled in Medicare prescription drug coverage throughout 2011. We use your 2009 modified adjusted gross income as reported to us by the IRS to determine your 2011 income-related monthly adjustment amount. In 2012, you submit to us a copy of your 2009 amended tax return that you filed with the IRS. The modified adjusted gross income reported on your 2009 amended tax return is significantly less than originally reported to the IRS. We use the modified adjusted gross income reported on your 2009 amended tax return to determine

Social Security Administration

§418.2115

your income-related monthly adjustment amount. That income-related monthly adjustment amount is effective January 1, 2011. We will retroactively correct any differences between the amount paid in 2011 and the amount you should have paid based on the amended tax return.

(d) When we use evidence that you provide to prove the IRS modified adjusted gross income information we used was incorrect, as described in §418.2335, the effective date will be January of the year(s) that is affected or the first month in that year that your enrollment or re-enrollment in a Medicare prescription drug coverage plan became effective if later than January.

(e) When we use information from a more recent tax year that you provide due to a major life-changing event, as described in §418.2201, the effective date is described in §418.2230.

§418.2112 Paying your income-related monthly adjustment amount.

(a) We will deduct the income-related monthly adjustment amount from your Social Security benefits if they are sufficient to cover the amount owed. If the amount of your Social Security benefits is not sufficient to pay the full amount of your income-related monthly adjustment amount, CMS will bill you for the full amount owed.

(b) If you do not receive Social Security or Railroad Retirement Board benefits, but you receive benefits from the Office of Personnel Management, the Office of Personnel Management will deduct the income-related monthly adjustment amount from your benefits if they are sufficient to cover the amount owed. If the amount of your Office of Personnel Management benefits is not sufficient to pay the full amount of your income-related monthly adjustment amount, CMS will bill you for the full amount owed.

(c) If you do not receive Social Security, Railroad Retirement Board, or Office of Personnel Management benefits, CMS will bill you for your income-related monthly adjustment amount.

§418.2115 What are the modified adjusted gross income ranges?

(a) We list the modified adjusted gross income ranges for the calendar years 2011 through and including 2019 for each Federal tax filing category in

paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment for these calendar years.

(b) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

(1) Greater than \$85,000 and less than or equal to \$107,000;

(2) Greater than \$107,000 and less than or equal to \$160,000;

(3) Greater than \$160,000 and less than or equal to \$214,000; and

(4) Greater than \$214,000.

(c) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$170,000 and less than or equal to \$214,000;

(2) Greater than \$214,000 and less than or equal to \$320,000;

(3) Greater than \$320,000 and less than or equal to \$428,000; and

(4) Greater than \$428,000.

(d) For calendar years 2011 through and including 2019, the modified adjusted gross income ranges for married individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$85,000 and less than or equal to \$129,000; and

(2) Greater than \$129,000.

(e) In 2019, CMS will set all modified adjusted gross income ranges for 2020 and publish them in the FEDERAL REGISTER. In each year thereafter, CMS will set all modified adjusted gross income ranges and publish the amounts

§ 418.2120

for each range prior to the beginning of each subsequent year.

§ 418.2120 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount by using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for calendar years 2011 through and including 2019, and the corresponding percentage of the cost of basic Medicare prescription drug coverage that individuals with modified adjusted gross incomes that fall within each of the ranges will pay. The monthly dollar amounts will be determined by CMS using the formula in § 1860D-13(a)(7)(B) of the Act. Based on your tax filing status for the tax year we use to make a determination about your income-related monthly adjustment amount, we will determine which table is applicable to you. We will use your modified adjusted gross income to determine which income-related monthly adjustment amount to apply to you. The dollar amounts used for each of the ranges of income-related monthly adjustment will be set annually after 2019 as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually after 2019 as described in § 418.2115(e).

(1) *General table of applicable percentages.* If your filing status for your Federal income taxes for the tax year we use is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table, you will pay an amount based on the percentage listed in the right column, which represents a percentage of the cost of basic Medicare prescription drug coverage.

20 CFR Ch. III (4–1–14 Edition)

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)
More than \$85,000 but less than or equal to \$107,000	35
More than \$107,000 but less than or equal to \$160,000	50
More than \$160,000 but less than or equal to \$214,000	65
More than \$214,000	80

(2) *Table of applicable percentages for joint returns.* If your Federal tax filing status is married filing jointly for the tax year we use and your modified adjusted gross income for that tax year is in the range listed in the left column in the following table, you will pay an amount based on the percentage listed in the right column, which represents a percentage of the cost of basic Medicare prescription drug coverage.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)
More than \$170,000 but less than or equal to \$214,000	35
More than \$214,000 but less than or equal to \$320,000	50
More than \$320,000 but less than or equal to \$428,000	65
More than \$428,000	80

(3) *Table of applicable percentages for married individuals filing separate returns.* If, for the tax year we use, your Federal tax filing status is married filing separately, you lived with your spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, you will pay an amount based on the percentage listed in the right column, which represents a percentage of the cost of basic Medicare prescription drug coverage.

Modified adjusted gross income effective in 2011–2019	Beneficiary percentage (percent)
More than \$85,000 but less than or equal to \$129,000	65
More than \$129,000	80

(c) For each year after 2019, CMS will announce the modified adjusted gross income ranges for the income-related monthly adjustment amount described in paragraph (b) of this section.

Social Security Administration

§418.2215

§418.2125 How will the income-related monthly adjustment amount affect your total Medicare prescription drug coverage premium?

(a) If you must pay an income-related monthly adjustment amount, your total Medicare prescription drug coverage premium will be the sum of:

(1) Your prescription drug coverage monthly premium, as determined by your plan; plus

(2) Any applicable increase in the prescription drug coverage monthly premium as described in 42 CFR 423.286; plus

(3) Your income-related monthly adjustment amount.

(b) Regardless of the method you use to pay your Medicare prescription drug coverage premiums to your Medicare prescription drug coverage plan, you will pay any income-related monthly adjustment amount you owe using the method described in 418.2112.

§418.2135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?

We will follow the rules in §418.1135, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2140 What will happen if the modified adjusted gross income information from the IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?

We will follow the rules in §418.1140, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2145 How do we determine your income-related monthly adjustment amount if the IRS does not provide information about your modified adjusted gross income?

We will follow the rules in §418.1145, except that any references in that section to regulations in subpart B of this part shall be treated as references to

the corresponding regulation in this subpart.

§418.2150 When will we use your amended tax return filed with the IRS?

We will follow the rules in §418.1150, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

DETERMINATIONS USING A MORE RECENT TAX YEAR'S MODIFIED ADJUSTED GROSS INCOME

§418.2201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?

We will follow the rules in §418.1201, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2205 What is a major life-changing event?

We will follow the rules in §418.1205, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2210 What is not a major life-changing event?

We will follow the rules in §418.1210, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2215 What is a significant reduction in your income?

We will follow the rules in §418.1215, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2220

20 CFR Ch. III (4–1–14 Edition)

§ 418.2220 What is not a significant reduction in your income?

We will follow the rules in § 418.1220, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2225 Which more recent tax year will we use?

We will follow the rules in § 418.1225, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2230 What is the effective date of an income-related monthly adjustment amount initial determination based on a more recent tax year?

We will follow the rules in § 418.1230, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?

We will follow the rules in § 418.1235, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?

We will follow the rules in § 418.1240, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

(a) If you notify us that your modified adjusted gross income for the more recent tax year has changed from what is in our records, we may make a new

initial determination for each effective year involved. To make a new initial determination(s) we will take into account:

(1) The new modified adjusted gross income information for the more recent tax year you provide; and

(2) Any modified adjusted gross income information from the IRS, as described in § 418.2135, that we have available for each effective year; and

(3) Any modified adjusted gross income information from you, as described in § 418.2135, that we have available for each effective year.

(b) For each new initial determination that results in a change in your income-related monthly adjustment amount, we will make retroactive corrections that will apply to all enrolled months of the effective year.

(c) We will continue to use a new initial determination described in paragraph (a) of this section to determine additional yearly income-related monthly adjustment amount(s) until an event described in § 418.2235 occurs.

(d) We will make a new determination about your income-related monthly adjustment amount when we receive modified adjusted gross income for the effective year from the IRS, as described in § 418.1140(d).

§ 418.2250 What evidence will you need to support your request that we use a more recent tax year?

We will follow the rules in § 418.1250, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2255 What kind of evidence of a major life-changing event will you need to support your request for us to use a more recent tax year?

We will follow the rules in § 418.1255, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2260 What major life-changing event evidence will we not accept?

We will follow the rules in § 418.1260, except that any references in that section to regulations in subpart B of this

Social Security Administration

§418.2325

part shall be treated as references to the corresponding regulation in this subpart.

§418.2265 What kind of evidence of a significant modified adjusted gross income reduction will you need to support your request?

We will follow the rules in §418.1265, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2270 What modified adjusted gross income evidence will we not accept?

We will follow the rules in §418.1270, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

DETERMINATIONS AND THE ADMINISTRATIVE REVIEW PROCESS

§418.2301 What is an initial determination regarding your income-related monthly adjustment amount?

We will follow the rules in §418.1301, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2305 What is not an initial determination regarding your income-related monthly adjustment amount?

We will follow the rules in §418.1305, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2310 When may you request that we make a new initial determination?

We will follow the rules in §418.1310, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2315 How will we notify you and what information will we provide about our initial determination?

We will follow the rules in §418.1315, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2320 What is the effect of an initial determination?

We will follow the rules in §418.1320, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§418.2322 How will a Medicare Part B income-related monthly adjustment amount determination for the effective year affect your Medicare prescription drug coverage?

If we make an income-related monthly adjustment amount determination for you for the effective year under subpart B of this part (Medicare Part B Income-Related Monthly Adjustment Amount), we will apply that income-related monthly adjustment amount determination under this subpart to determine your Part D income-related monthly adjustment amount for the same effective year. Therefore, if you obtain Medicare prescription drug coverage in the effective year after we make an income-related monthly adjustment amount determination about your Medicare Part B, the income-related monthly adjustment amount determination we made for your Medicare Part B will also apply to your Medicare prescription drug coverage. Any change in your net benefit due will be accompanied by a letter explaining the change in your net benefit and your right to appeal the change.

§418.2325 When may you request a reconsideration?

We will follow the rules in §418.1325, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2330

§ 418.2330 Can you request a reconsideration when you believe that the IRS information we used is incorrect?

If you request a reconsideration solely because you believe that the information that the IRS gave us is incorrect, we will dismiss your request for a reconsideration and notify you to obtain proof of a correction from the IRS and request a new initial determination (§ 418.2335). Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.2332 Can you request a reconsideration when you believe that the CMS information we used is incorrect?

If you request a reconsideration solely because you believe that the information that CMS gave us about your participation in a Medicare prescription drug coverage plan is incorrect, we will dismiss your request for a reconsideration and notify you that you must contact CMS to get your records corrected. Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.2335 What should you do if we base our initial determination on modified adjusted gross income information you believe to be incorrect?

We will follow the rules in § 418.1335, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2340 What are the rules for our administrative review process?

We will follow the rules in § 418.1340, except that any references in that section to regulations in subpart B of this part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2345 Is reopening of an initial or reconsidered determination made by us ever appropriate?

We will follow the rules in § 418.1345, except that any references in that section to regulations in subpart B of this

20 CFR Ch. III (4–1–14 Edition)

part shall be treated as references to the corresponding regulation in this subpart.

§ 418.2350 What are the rules for review of a reconsidered determination or an ALJ decision?

You may request a hearing before an OMHA administrative law judge consistent with HHS' regulations at 42 CFR part 423. You may seek further review of the administrative law judge's decision by requesting MAC review and judicial review in accordance with HHS' regulations.

§ 418.2355 What are the rules for reopening a decision by an ALJ of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

The rules in 42 CFR 423.1980 through 423.1986 govern reopenings of decisions by an administrative law judge of the OMHA and decisions by the MAC. A decision by an administrative law judge of the OMHA may be reopened by the administrative law judge or the MAC. A decision by the MAC may be reopened only by the MAC.

Subpart D—Medicare Part D Subsidies

AUTHORITY: Secs. 702(a)(5) and 1860D–1, 1860D–14 and –15 of the Social Security Act (42 U.S.C. 902(a)(5), 1395w–101, 1395w–114, and –115).

INTRODUCTION, GENERAL PROVISIONS, AND DEFINITIONS

§ 418.3001 What is this subpart about?

This subpart D relates to sections 1860D–1 through 1860D–24 of title XVIII of the Social Security Act (the Act) as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Sections 1860D–1 through 1860D–24 established Part D of title XVIII of the Act to create a Medicare program known as the Voluntary Prescription Drug Benefit Program. Section 1860D–14, codified into the Act by section 101, includes a provision for subsidies of prescription drug premiums and of Part D cost-sharing requirements for Medicare beneficiaries whose income and resources do not exceed certain

Social Security Administration

§418.3010

levels. The regulations in this subpart explain how we decide whether you are eligible for a Part D premium subsidy as defined in 42 CFR 423.780 and cost-sharing subsidy as defined in 42 CFR 423.782. The rules are divided into the following groups of sections according to subject content:

(a) Sections 418.3001 through 418.3010 contain the introduction, a statement of the general purpose underlying the subsidy program for the Voluntary Prescription Drug Benefit Program under Medicare Part D, general provisions that apply to the subsidy program, a description of how we administer the program, and definitions of terms that we use in this subpart.

(b) Sections 418.3101 through 418.3125 contain the general requirements that you must meet in order to be eligible for a subsidy. These sections set forth the subsidy eligibility requirements of being a Medicare beneficiary, of having income and resources below certain levels, and of filing an application. These sections also explain when we will redetermine your eligibility for a subsidy and the period covered by a redetermination.

(c) Sections 418.3201 through 418.3230 contain the rules that relate to the filing of subsidy applications.

(d) Sections 418.3301 through 418.3350 contain the rules that explain how we consider your income (and your spouse's income, if applicable) and define what income we count when we decide whether you are eligible for a subsidy.

(e) Sections 418.3401 through 418.3425 contain the rules that explain how we consider your resources (and your spouse's resources, if applicable) and define what resources we count when we decide whether you are eligible for a subsidy.

(f) Sections 418.3501 through 418.3515 contain the rules that explain when we will adjust or when we will terminate your eligibility for a subsidy.

(g) Sections 418.3601 through 418.3680 contain the rules that we apply when you appeal our determination regarding your subsidy eligibility or our determination of whether you should receive a full or partial subsidy. They also contain the rules that explain that our decision is binding unless you file

an action in Federal district court seeking review of our final decision and what happens if your case is remanded by a Federal court

§418.3005 Purpose and administration of the program.

The purpose of the subsidy program is to offer help with the costs of prescription drug coverage for individuals who meet certain income and resources requirements under the law as explained in this subpart. The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services has responsibility for administration of the Medicare program, including the new Medicare Part D Voluntary Prescription Drug Benefit Program. We notify Medicare beneficiaries who appear to have limited income, based on our records, about the availability of the subsidy if they are not already eligible for this help, and take applications for and determine the eligibility of individuals for a subsidy.

§418.3010 Definitions.

(a) *Terms relating to the Act and regulations.*

(1) *CMS* means the Centers for Medicare & Medicaid Services in the Department of Health and Human Services.

(2) *Commissioner* means the Commissioner of Social Security.

(3) *Section* means a section of the regulations in part 418 of this chapter unless the context indicates otherwise.

(4) *The Act* means the Social Security Act, as amended.

(5) *Title* means a title of the Act.

(6) *We, our* or *us* means the Social Security Administration (SSA).

(b) *Miscellaneous.*

(1) *Claimant* means the person who files an application for himself or herself or the person on whose behalf an application is filed.

(2) *Date you receive a notice* means 5 calendar days after the date on the notice, unless you show us you did not receive it within the 5-day period.

(3) *Decision* means the decision we make after a hearing.

(4) *Determination* means the initial determination that we make as defined in §418.3605.

§ 418.3101

(5) *Family size*, for purposes of this subpart, means family size as defined in 42 CFR 423.772.

(6) *Federal poverty line*, for purposes of this subpart, has the same meaning as Federal poverty line in 42 CFR 423.772.

(7) *Full-benefit dual eligible individual* for purposes of this subpart, has the same meaning as full-benefit dual eligible individual in 42 CFR 423.772.

(8) *Medicare beneficiary* means an individual who is entitled to or enrolled in Medicare Part A (Hospital Insurance) or enrolled in Part B (Supplementary Medical Insurance) or both under title XVIII of the Act.

(9) *Periods of limitations ending on Federal non-workdays* Title XVIII of the Act and regulations in this subpart require you to take certain actions within specified time periods or you may lose your right to a portion of or your entire subsidy. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

(10) *Representative or personal representative* means a personal representative as defined in 42 CFR 423.772.

(11) *State*, unless otherwise indicated, means:

- (i) A State of the United States; or
- (ii) The District of Columbia.

(12) *Subsidy eligible individual*, for purposes of this subpart, has the same meaning as subsidy eligible individual as defined in 42 CFR 423.773.

(13) *Subsidy* means an amount CMS will pay on behalf of Medicare beneficiaries who are eligible for a subsidy of their Medicare Part D costs. The amount of a subsidy for a Medicare beneficiary depends on the beneficiary's income as related to household size, resources, and late enrollment penalties (if any) as explained in 42 CFR 423.780 and 42 CFR 423.782. We do not determine the amount of the subsidy, only whether or not the individual is eligible for a full or partial subsidy.

(14) *United States* when used in a geographical sense means:

- (i) The 50 States; and
- (ii) The District of Columbia

20 CFR Ch. III (4–1–14 Edition)

(1) *You* or *your* means the person who applies for the subsidy, the person for whom an application is filed or anyone who may consider applying for a subsidy.

ELIGIBILITY FOR A MEDICARE PRESCRIPTION DRUG SUBSIDY

§ 418.3101 How do you become eligible for a subsidy?

Unless you are deemed eligible as explained in § 418.3105 and 42 CFR 423.773(c), you are eligible for a Medicare Part D prescription drug subsidy if you meet all of the following requirements:

(a) You are entitled to or enrolled in Medicare Part A (Hospital Insurance) or enrolled in Medicare Part B (Supplementary Medical Insurance) or both under title XVIII of the Act.

(b) You are enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage. We can also determine your eligibility for a subsidy before you enroll in one of the above programs. However, as explained in § 418.3225(b), if we determine that you would be eligible for a subsidy before you have enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage, you must enroll in one of these plans to actually receive a subsidy.

(c) You reside in the United States as defined in § 418.3010.

(d) You (and your spouse, if applicable) meet the income requirements as explained in §§ 418.3301 through 418.3350 and 42 CFR 423.773.

(e) You (and your spouse, if applicable) meet the resources requirements as explained in §§ 418.3401 through 418.3425 and 42 CFR 423.773.

(f) You or your personal representative file an application for a subsidy as explained in §§ 418.3201 through 418.3230.

§ 418.3105 Who does not need to file an application for a subsidy?

Regulations in 42 CFR 423.773(c) explain who is deemed eligible and does not need to file an application for a subsidy to be eligible for this assistance. Full-benefit dual eligible beneficiaries are in this category. If beneficiaries have deemed eligibility status

Social Security Administration

§418.3120

because they receive Medicaid coverage, are enrolled in a Medicare Savings Program within their State, or receive SSI and have Medicare, then their subsidy is effective with the first month they have deemed eligibility status.

§418.3110 What happens when you apply for a subsidy?

(a) When you or your personal representative apply for a subsidy, we will ask for information that we need to determine if you meet all the requirements for a subsidy. You must give us complete information. If, based on the information you present to us, you do not meet all the requirements for eligibility listed in §418.3101, or if one of the events listed in §418.3115 exists, or you fail to submit information we request, we will deny your claim.

(b) If you meet all the requirements for eligibility listed in §418.3101, or you meet all the requirements except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice telling you the following:

(1) You are eligible for a full or partial subsidy for a period not to exceed 1 year;

(2) What information we used to make this determination including how we calculated your income and resources;

(3) What you may do if your circumstances change as described in §418.3120; and

(4) Your appeal rights.

(c) If you are not already enrolled with a Medicare prescription drug plan or a Medicare Advantage plan with prescription drug coverage, you must enroll in order to receive your subsidy.

(d) If you do not meet all the requirements for eligibility listed in §418.3101 or if §418.3115 applies to you except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage as described in §418.3225, we will send you a notice telling you the following:

(1) You are not eligible for a subsidy;

(2) The information we used to make this determination including how we calculated your income or resources;

(3) You may reapply if your situation changes; and

(4) Your appeal rights.

§418.3115 What events will make you ineligible for a subsidy?

Generally, even if you meet the other requirements in §§418.3101 through 418.3125, we will deny your claim or you will lose your subsidy if any of the following apply to you:

(a) You lose entitlement to or are not enrolled in Medicare Part A and are not enrolled in Medicare Part B.

(b) You do not enroll or lose your enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage.

(c) You do not give us information we need to determine your eligibility and if eligible, whether you should receive a full or partial subsidy; or you do not give us information we need to determine whether you continue to be eligible for a subsidy and if eligible, whether you should receive a full or partial subsidy.

(d) You knowingly give us false or misleading information.

§418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?

(a) After we determine that you are eligible for a subsidy, your subsidy eligibility could change if:

(1) You marry.

(2) You and your spouse, who lives with you, divorce.

(3) Subject to the provisions of paragraph (b)(4) of this section, your spouse, who lives with you, dies.

(4) You and your spouse separate (*i.e.*, you or your spouse move out of the household and you are no longer living with your spouse) unless the separation is a temporary absence as described in §404.347 of this chapter.

(5) You and your spouse resume living together after having been separated.

(6) You and your spouse, who lives with you, have your marriage annulled.

(7) You (or your spouse, who lives with you, if applicable) expect your estimated annual income to increase or decrease in the next calendar year.

(8) You (or your spouse, who lives with you, if applicable) expect your resources to increase or decrease in the next calendar year.

§ 418.3123

20 CFR Ch. III (4–1–14 Edition)

(9) Your family size as defined in 42 CFR 423.772 has changed or will change (other than a change resulting from one of the events in paragraphs (a)(1) through (6) of this section).

(10) You become eligible for one of the programs listed in 42 CFR 423.773(c).

(b)(1) When you report one of the events listed in paragraphs (a)(1) through (a)(6) of this section, or we receive such a report from another source (e.g., a data exchange of reports of death), we will send you a redetermination form upon receipt of the report. You must return the completed form within 90 days of the date of the form.

(2) When you report one of the events listed in paragraphs (a)(7) through (a)(9) of this section or we receive such a report from another source (e.g., a data exchange involving income records), we will send you a redetermination form between August and December to evaluate the change. You must return the completed form to us within 30 days of the date of the form.

(3) If we increase, decrease, or terminate your subsidy as a result of the redetermination, we will send you a notice telling you:

(i) Whether you can receive a full or partial subsidy as described in 42 CFR 423.780 and 423.782.

(ii) How we calculated your income and resources;

(iii) When the change in your subsidy is effective;

(iv) Your appeal rights;

(v) What to do if your situation changes.

(4) If your spouse who lives with you dies, your spouse's death may result in changes in your income or resources that could decrease or eliminate your subsidy. If we are informed of the death of your spouse and the death would cause a decrease in or elimination of your subsidy, we will notify you that we will not immediately change your subsidy because of your spouse's death. We will defer your redetermination for 1 year from the month following the month we are notified of the death of your spouse, unless we receive a report of another event specified in 418.3120(a) that would affect your eligibility for a subsidy.

(c) If you become eligible for one of the programs listed in 42 CFR 423.773(c), CMS will notify you of any change in your subsidy.

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 81845, Dec. 29, 2010]

§ 418.3123 When is a change in your subsidy effective?

(a) If we redetermine your subsidy as described in § 418.3120(b)(1), any change in your subsidy will be effective the month following the month of your report.

(b) If we redetermine your subsidy as described in § 418.3120(b)(2), any change in your subsidy will be effective in January of the next year.

(c) If you do not return the redetermination form described in § 418.3120(b)(1), we will terminate your subsidy effective with the month following the expiration of the 90-day period described in § 418.3120(b)(1).

(d) If you do not return the redetermination forms described in § 418.3120(b)(2), we will terminate your subsidy effective in January of the next year.

(e) *Special rule for widows and widowers.* If your spouse who lives with you dies and the changes in your income or resources resulting from your spouse's death would decrease or eliminate your subsidy, we will defer your next redetermination for 1 year from the month following the month we are notified of the death of your spouse, unless we receive a report of another event specified in 418.3120(a) that would affect your eligibility for a subsidy.

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 81845, Dec. 29, 2010]

§ 418.3125 What are redeterminations?

(a) *Redeterminations defined.* A redetermination is a periodic review of your eligibility to make sure that you are still eligible for a subsidy and if so, to determine whether you should continue to receive a full or partial subsidy. This review deals with evaluating your income and resources (and those of your spouse, who lives with you) and will not affect past months of eligibility. It will be used to determine your future subsidy eligibility and whether you should receive a full or

Social Security Administration

§418.3220

partial subsidy for future months. We will redetermine your eligibility if we made the initial determination of your eligibility or if you are deemed eligible because you receive SSI benefits. Rules regarding redeterminations of initial eligibility determinations made by a State are described in 42 CFR 423.774.

(b) *When we make redeterminations.* (1) We will redetermine your subsidy eligibility within one year after we determine that you are eligible for the subsidy.

(2) After the first redetermination, we will redetermine your subsidy eligibility at intervals determined by the Commissioner. The length of time between redeterminations varies depending on the likelihood that your situation may change in a way that affects your eligibility and whether you should receive a full or partial subsidy.

(3) We may also redetermine your eligibility and whether you should receive a full or partial subsidy when you tell us of a change in your circumstances described in §418.3120.

(4) We may redetermine your eligibility when we receive information from you or from data exchanges with Federal and State agencies that may affect whether you should receive a full or partial subsidy or your eligibility for the subsidy.

(5) We will also redetermine eligibility on a random sample of cases for quality assurance purposes. For each collection of sample cases, all factors affecting eligibility and/or whether you should receive a full or partial subsidy may be verified by contact with primary repositories of information relevant to each individual factor (e.g., we may contact employers to verify wage information). Consequently, we may contact a variety of other sources, in addition to recontacting you, to verify the completeness and accuracy of our information.

FILING OF APPLICATION

§418.3201 Must you file an application to become eligible for a subsidy?

Unless you are a person covered by §418.3105, in addition to meeting other requirements, you or your personal representative must file an application to become eligible for a subsidy. If you

believe you may be eligible for a subsidy, you should file an application. Filing a subsidy application does not commit you to participate in the Part D program. Filing an application will:

(a) Permit us to make a formal determination on your eligibility for the subsidy and whether you should receive a full or partial subsidy;

(b) Assure that you can receive the subsidy for any months that you are eligible and are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage; and

(c) Give you the right to appeal if you disagree with our determination.

§418.3205 What makes an application a claim for a subsidy?

We will consider your application a claim for the subsidy if:

(a) You, or someone acting on your behalf as described in §418.3215, complete an application on a form prescribed by us;

(b) You, or someone acting on your behalf as described in §418.3215, file the application with us pursuant to §418.3220; and

(c) You are alive on the first day of the month in which the application is filed.

§418.3210 What is a prescribed application for a subsidy?

If you choose to apply with SSA, you must file for the subsidy on an application prescribed by us. A prescribed application may include a printed form, an application our employees complete on computer screens, or an application available online on our Internet Web site (www.socialsecurity.gov). See §418.3220 for places where an application for the subsidy may be filed and when it is considered filed.

§418.3215 Who may file your application for a subsidy?

You or your personal representative (as defined in 42 CFR 423.772) may complete and file your subsidy application.

§418.3220 When is your application considered filed?

(a) *General rule.* We consider an application for a subsidy as described in §418.3210 to be filed with us on the day

it is received by either one of our employees at one of our offices or by one of our employees who is authorized to receive it at a place other than one of our offices or it is considered filed on the day it is submitted electronically through our Internet Web site. If a State Medicaid agency forwards to us a subsidy application that you gave to it, we will consider the date you submitted that application to the State Medicaid agency as the filing date. (See 42 CFR 423.774 for applications filed with a State Medicaid agency.)

(b) *Exceptions.* (1) When we receive an application that is mailed, we will assume that we received it 5 days earlier (unless you can show us that you did not receive it within the 5 days) and use the earlier date as the application filing date if it would result in another month of subsidy eligibility.

(2) We may consider an application to be filed on the date a written or oral inquiry about your subsidy eligibility is made, or the date we receive a partially completed Internet subsidy application from our Internet Web site where the requirements set forth in § 418.3230 are met.

§ 418.3225 How long will your application remain in effect?

(a) Your application will remain in effect until our determination or decision has become final and binding under § 418.3620. If you appeal our initial determination, the determination does not become final until we issue a decision on any appeal you have filed under § 418.3655 (see § 418.3675) or dismiss the request for a hearing under § 418.3670.

(b) If, at the time your application is filed or before our determination or decision becomes final and binding, you meet all the requirements for a subsidy as described in 42 CFR 423.773 except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice advising you of your eligibility for the subsidy and the requirement to enroll in such a plan.

(c) If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B at the time your subsidy application is filed but you appear to be in an enrollment period, we will send you

a notice advising you that we will not make a determination on your application until you become entitled to Medicare Part A and/or enrolled in Medicare Part B. If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B at the time your application is filed and you do not appear to be in an enrollment period, we will send you a notice advising you that you are not eligible for the subsidy because you are not entitled to Medicare Part A and/or enrolled in Medicare Part B and explain your appeal rights.

§ 418.3230 When will we use your subsidy inquiry as your filing date?

If you or your personal representative (as defined in 42 CFR 423.772) make an oral or written inquiry about the subsidy, or partially complete an Internet subsidy application on our Web site, we will use the date of the inquiry or the date the partial Internet application was started as your filing date if the following requirements are met:

(a) The written or oral inquiry indicates your intent to file for the subsidy, or you submit a partially completed Internet application to us;

(b) The inquiry, whether in person, by telephone, or in writing, is directed to an office or an official described in § 418.3220, or a partially completed Internet subsidy application is received by us;

(c) You or your personal representative (as defined in 42 CFR 423.772) file an application (as defined in § 418.3210) within 60 days after the date of the notice we will send in response to the inquiry. The notice will say that we will make an initial determination of your eligibility for a subsidy, if an application is filed within 60 days after the date of the notice. We will send the notice to you. Where you are a minor or adjudged legally incompetent and your personal representative made the inquiry, we will send the notice to your personal representative; and

(d) You are alive on the first day of the month in which the application is filed.

Social Security Administration

§418.3320

INCOME

§ 418.3301 What is income?

Income is anything you and your spouse, who lives with you, receive in cash or in-kind that you can use to meet your needs for food and shelter. Income can be earned income or unearned income.

§ 418.3305 What is not income?

Some things you receive are not considered income because you cannot use them to meet your needs for food or shelter. The things that are not income for purposes of determining eligibility and whether you should receive a full or partial subsidy are described in §416.1103 of this chapter.

§ 418.3310 Whose income do we count?

(a) We count your income. If you are married and live with your spouse in the month you file for a subsidy, or when we redetermine your eligibility for a subsidy as described in §418.3125, we count your income and your spouse's income regardless of whether one or both of you apply or are eligible for the subsidy.

(b) We will determine your eligibility based on your income alone if you are not married or if you are married but you are separated from your spouse (*i.e.*, you or your spouse move out of the household and you are no longer living with your spouse) at the time you apply for a subsidy or when we redetermine your eligibility for a subsidy as described in §418.3125.

(c) If your subsidy is based on your income and your spouse's income and we redetermine your subsidy as described in §418.3120(b)(1), we will stop counting the income of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on your income and your spouse's income, we will continue counting the income of both you and your spouse if one of you is temporarily away from home as described in §404.347 of this chapter.

§ 418.3315 What is earned income?

Earned income is defined in §416.1110 of this chapter and may be in cash or in kind. We may count more of your earned income than you actually receive. We count gross income, which is more than you actually receive, if amounts are withheld from earned income because of a garnishment, or to pay a debt or other legal obligation such as taxes, or to make any other similar payments.

§ 418.3320 How do we count your earned income?

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

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. If you have net losses from self-employment, we deduct them from your other earned income. We do not deduct the net losses from your unearned income.

(c) *Payments for services performed in a sheltered workshop or work 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.

(d) *In-kind earned income.* We count the current market value of in-kind earned income. For purposes of this part, we use the definition of current market value in §416.1101 of this chapter. If you receive an item that is not fully paid for and you are responsible for the unpaid balance, only the paid-up value is income to you (see example in §416.1123(c) of this chapter).

(e) *Certain honoraria and royalties.* We count honoraria for services rendered and royalty payments that you receive in connection with any publication of your work. We will consider these payments as available to you when you receive them, when they are credited to your account, or when they are set aside for your use, whichever is earliest.

(f) *Period for which earned income is counted.* For purposes of determining subsidy eligibility and, if eligible, whether you should receive a full or partial subsidy, we consider all of the

countable earned income you receive (or expect to receive) during the year for which we are determining your eligibility for this subsidy. However, in the first year that you or your spouse apply for the subsidy, we consider all of the countable earned income you and your living-with spouse receive (or expect to receive) starting in the month for which we determine your eligibility based on your application for a subsidy through the end of the year for which we are determining your eligibility. If we count your income for only a portion of the year, the income limit for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

§ 418.3325 What earned income do we not count?

(a) While we must know the source and amount of all of your earned income, we do not count all of it to determine your subsidy eligibility and whether you should receive a full or partial subsidy. We apply these income exclusions in the order listed in paragraph (b) of this section to your income. We never reduce your earned income below zero or apply any unused earned income exclusion to unearned income.

(b) For the year or partial year that we are determining your eligibility for the subsidy, we do not count as earned income:

(1) Any refund of Federal income taxes you or your living-with spouse receive under section 32 of the Internal Revenue Code (relating to the earned income tax credit) and payment you receive from an employer under section 3507 of the Internal Revenue Code (relating to advance payments of earned income tax credit);

(2) Earned income which is received infrequently or irregularly as explained in § 416.1112(c)(2) of this chapter;

(3) Any portion of the \$20 per month exclusion described in § 416.1124(c)(12) of this chapter which has not been excluded from your combined unearned income (or the combined unearned in-

come of you and your living-with spouse);

(4) \$65 per month of your earned income (or the combined earned income you and your living-with spouse receive in that same year);

(5) Earned income you use to pay impairment-related work expenses described in § 416.976 of this chapter, if you are receiving a social security disability insurance benefit, your disabling condition(s) does not include blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these work expenses is equal to a standard percentage of your total earned income per month if you tell us that you have impairment-related work expenses. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for impairment-related work expenses will be 16.3 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for supplemental security income (SSI) recipients changes. If we make such a change we will publish a notice in the FEDERAL REGISTER. If excluding impairment-related work expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your total earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of impairment-related work expenses also applies to the earnings of your living-with spouse if he or she is receiving a social security disability insurance benefit, the disabling condition(s) does not include blindness and he or she is under age 65;

(6) One-half of your remaining earned income (or combined earned income of you and your living-with spouse); and

(7) Earned income as described in § 416.1112(c)(8) of this chapter that you use to meet any expenses reasonably attributable to the earning of the income if you receive a social security disability insurance benefit based on

blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these expenses is equal to a standard percentage of your total earned income per month. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for blind work expenses will be 25 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for SSI recipients changes. If we make such a change we will publish a notice in the FEDERAL REGISTER. If excluding work expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of work expenses also applies to the earnings of your living-with spouse if he or she receives a social security disability insurance benefit based on blindness and is under age 65.

§418.3330 What is unearned income?

Unearned income is all income that is not earned income. We describe some of the types of unearned income we count in §418.3335.

§418.3335 What types of unearned income do we count?

(a) Some of the types of unearned income we count are described in §416.1121(a) through (g) of this chapter.

(b) For claims filed before January 1, 2010, and redeterminations that are effective before January 1, 2010, we also count in-kind support and maintenance as unearned income. In-kind support and maintenance is any food and shelter given to you or that you receive because someone else pays for it.

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 81845, Dec. 29, 2010]

§418.3340 How do we count your unearned income?

(a) *When income is received.* We count unearned income as available to you at the earliest of the following points: when you receive it, when it is credited to your account, or when it is set aside for your use.

(b) *When income is counted.* For purposes of determining eligibility and whether you should receive a full or partial subsidy, we consider all of the countable unearned income you and your living-with spouse receive (or expect to receive) during the year for which we are determining your eligibility for this benefit. However, in the first year you or your spouse apply for the subsidy, we consider all of the countable unearned income both you and your living-with spouse receive (or expect to receive) starting in the month for which we determine eligibility for you or your living-with spouse based on an application for the subsidy. If we count your income for only a portion of the year, the income limits for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

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

(1) We include more than you actually receive where another benefit payment (such as a social security benefit) has been reduced to recover an overpayment. In such a situation, you are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of this withholding is part of your unearned income.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment 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

§ 418.3350

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, we subtract legal fees connected with the claim. 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.

(d) *Retroactive benefits.* We count retroactive monthly benefits such as social security benefits as unearned income in the year you receive the retroactive benefits.

(e) *Certain veterans benefits.* If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent. If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned income if you reside with the veteran or you receive your own separate payment from the Department of Veterans Affairs.

(f) *Social Security cost-of-living adjustment.* We will not count as income the amount of the cost-of-living adjustment for social security benefits for any month through the month following the month in which the annual revision of the Federal poverty guidelines is published.

§ 418.3350 What types of unearned income do we not count?

(a) For claims filed on or after January 1, 2010 and redeterminations that are effective on or after January 1, 2010, we do not count as income in-kind support and maintenance.

(b) While we must know the source and amount of all of your unearned income, we do not count all of it to determine your eligibility for the subsidy. We apply to your unearned income the exclusions in § 418.3350(c) in the order listed. However, we do not reduce your unearned income below zero, and we do not apply any unused unearned income exclusion to earned income except for the \$20 per month exclusion described in § 416.1124(c)(12) of

20 CFR Ch. III (4–1–14 Edition)

this chapter. For purposes of determining eligibility for a subsidy and whether you should receive a full or partial subsidy, we treat the \$20 per month exclusion as a \$240 per year exclusion.

(c) We do not count as income the unearned income described in § 416.1124(b) and (c) of this chapter, except for paragraph (c)(13).

(d) We do not count as income any dividends or interest earned on resources you or your spouse owns.

[75 FR 81846, Dec. 29, 2010]

RESOURCES

§ 418.3401 What are resources?

For purposes of this subpart, resources are cash or other assets that an individual owns and could convert to cash to be used for his or her support and maintenance.

§ 418.3405 What types of resources do we count?

(a) We count liquid resources. Liquid resources are cash, financial accounts, and other financial instruments that can be converted to cash within 20 workdays, excluding certain non-workdays as explained in § 416.120(d) of this chapter. Examples of resources that are ordinarily liquid include: stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies (for claims filed before January 1, 2010, and redeterminations that are effective before January 1, 2010), financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit), retirement accounts (such as individual retirement accounts or 401(k) accounts), revocable trusts, funds in an irrevocable trust if the trust beneficiary can direct the use of the funds, and similar items. We will presume that these types of resources can be converted to cash within 20 workdays and are countable as resources for subsidy determinations. However, if you establish that a particular resource cannot be converted to cash within 20 workdays, we will not count it as a resource.

(b) We count the equity value of real property as a resource regardless of

Social Security Administration

§418.3420

whether it can be sold within 20 work-days. However, we do not count the home that is your principal place of residence and the land on which it is situated as a resource as defined in §418.3425(a).

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 81846, Dec. 29, 2010]

§418.3410 Whose resources do we count?

(a) We count your resources. We count the resources of both you and your spouse regardless of whether one or both of you apply or are eligible for the subsidy if you are married and live with your spouse as of the month for which we determine your eligibility based on an application for a subsidy, as of the month for which we redetermine your eligibility for a subsidy as described in §418.3125, or as of the month for which we determine your eligibility due to a change you reported as described in §418.3120.

(b) We will determine your eligibility based on your resources alone if you are not married or if you are married but you are separated from your spouse at the time you apply for a subsidy or at the time we redetermine your eligibility for a subsidy as described in §418.3125.

(c) If your subsidy is based on the resources of you and your spouse and we redetermine your subsidy as described in §418.3120(b)(1), we will stop counting the resources of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on the resources of you and your spouse, we will continue counting the resources of both you and your spouse if one of you is temporarily away from home as described in §404.347 of this chapter.

§418.3415 How do we determine countable resources?

(a) *General rule.* Your countable resources are determined as of the first moment of the month for which we determine your eligibility based on your application for a subsidy or for which we redetermine your eligibility for a subsidy. A resource determination is

based on what assets you (and your living-with spouse, if any) have, what their values are, and whether they are excluded as of the first moment of the month. We will use this amount as your countable resources at the point when we determine your eligibility for the subsidy unless you report to us that the value of your resources has changed as described in §418.3120.

(b) *Equity value.* Resources, other than cash, are evaluated according to your (and your spouse's, if any) equity in the resources. For purposes of this subpart, the equity value of an item is defined as the price for which that item, minus any encumbrances, can reasonably be expected to sell on the open market in the particular geographic area involved.

(c) *Relationship of income to resources.* Cash you receive during a month is evaluated under the rules for counting income during the month of receipt. If you retain the cash until the first moment of the following month, the cash is countable as a resource unless it is otherwise excludable.

§418.3420 How are funds held in financial institution accounts counted?

(a) *Owner of the account.* Funds held in a financial institution account (including savings, checking, and time deposits also known as certificates of deposit) are considered your resources if you own the account and can use the funds for your support and maintenance. We determine whether you own the account and can use the funds by looking at how the account is held.

(b) *Individually-held account.* If you are designated as the sole owner by the account title and you can withdraw and use funds from that account for your support and maintenance, all of that account's funds are your resource regardless of the source. For as long as these conditions are met, we presume that you own 100 percent of the funds in the account. This presumption is not rebuttable.

(c) *Jointly-held account.* (1) If you are the only subsidy claimant or subsidy recipient who is an account holder on a jointly held account, we presume that all of the funds in the account belong

§ 418.3425

20 CFR Ch. III (4–1–14 Edition)

to you. If more than one subsidy claimant or subsidy recipient are account holders, we presume that the funds in the account belong to those individuals in equal shares.

(2) If you disagree with the ownership presumption as described in paragraph (c)(1) of this section, you may rebut the presumption. Rebuttal is a procedure which permits you to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to you.

§ 418.3425 What resources do we exclude from counting?

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

(a) *Your home.* For purposes of this exclusion, a home is any property in which you (and your spouse, if any) have an ownership interest and which serves as your principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located, and outbuildings;

(b) *Non-liquid resources, other than nonhome real property.* Non-liquid resources are resources that are not liquid resources as defined in § 418.3405. Irrevocable burial trusts and the irrevocable portion of prepaid burial contracts are considered non-liquid resources;

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

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

(e) 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 of this chapter);

(f) For claims filed on or after January 1, 2010, and redeterminations that are effective on or after January 1, 2010, life insurance owned by an individual (and spouse, if any);

(g) Restricted allotted Indian lands as provided in § 416.1234 of this chapter;

(h) Payments or benefits provided under a Federal statute where exclusion is required by such statute;

(i) Disaster relief assistance as provided in § 416.1237 of this chapter;

(j) Funds up to \$1,500 for the individual and \$1,500 for the spouse who lives with the individual if these funds are expected to be used for burial expenses of the individual and spouse;

(k) Burial spaces, as provided in § 416.1231(a) of this chapter;

(l) Title XVI or title II retroactive payments as provided in § 416.1233 of this chapter;

(m) Housing assistance as provided in § 416.1238 of this chapter;

(n) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1235 of this chapter;

(o) Payments received as compensation incurred or losses suffered as a result of a crime, as provided in § 416.1229 of this chapter;

(p) Relocation assistance from a State or local government, as provided in § 416.1239 of this chapter;

(q) Dedicated financial institution accounts as provided in § 416.1247 of this chapter;

(r) A gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. The resource exclusion applies to any in-kind gift that is not converted to cash, or to a cash gift that does not exceed \$2,000; and

(s) Funds received and conserved to pay for medical and/or social services as provided in § 416.1103 of this chapter.

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 81846, Dec. 29, 2010]

ADJUSTMENTS AND TERMINATIONS

§ 418.3501 What could cause us to increase or reduce your subsidy or terminate your subsidy eligibility?

(a) Certain changes in your circumstances could cause us to increase or reduce your subsidy or terminate your subsidy eligibility. These changes include (but are not limited to) changes to:

(1) Your income;

(2) Your spouse's income if you are married and living with your spouse;

Social Security Administration

§418.3605

(3) Your resources;

(4) Your spouse's resources if you are married and living with your spouse; and

(5) Your family size.

(b) We will periodically review your circumstances (as described in §418.3125) to make sure you are still eligible for a subsidy and, if eligible, whether you should receive a full or partial subsidy.

(c) If you report that your circumstances have changed or we receive other notice of such a change after we determine that you are eligible, we will review your circumstances as described in §418.3120 to determine if you are still eligible.

§418.3505 How would an increase, reduction or termination affect you?

(a) An *increase* in your subsidy means that you would be able to pay a lower premium to participate in the Medicare Part D prescription drug program. An increased subsidy may also result in a reduction in any deductible or copayments for which you are responsible.

(b) A *reduction* in your subsidy means that you would have to begin to pay a premium or a higher premium to participate in the Medicare Part D prescription drug program. You may also have to begin to pay a deductible and higher copayments or increase the amounts of these payments.

(c) A *termination* means that you would no longer be eligible for a subsidy under the Medicare Part D prescription drug program.

§418.3510 When would an increase, reduction or termination start?

We are required to give you a written notice of our proposed action before increasing, reducing, or terminating your subsidy. We will not give this advance notice where we have factual information confirming your death, such as through a report by your surviving spouse, a legal guardian, a close relative, or a landlord. The notice will tell you the first month that we plan to make the change. The notice will also give you appeal rights which are explained in detail in §§418.3601 through 418.3670. Your appeal rights for a reduction or termination will include the

right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request if your appeal is filed within 10 days after you receive our notice. You will not be required to pay back any subsidy you received while your appeal was pending.

§418.3515 How could you qualify for a subsidy again?

Unless you subsequently qualify as a deemed eligible person (per 42 CFR 423.773(c)), you must file a new application for a subsidy and meet all the requirements in §418.3101.

DETERMINATIONS AND THE ADMINISTRATIVE REVIEW PROCESS

§418.3601 When do you have the right to administrative review?

You have the right to an administrative review of the initial determination we make about your eligibility and about your continuing eligibility for a subsidy and any other matter that gives you the right to further review as discussed in §418.3605. If you are married and living with your spouse and your spouse's eligibility for a subsidy may be adversely affected by our decision upon review, we will notify your spouse before our review and give him or her the opportunity to present additional information for us to consider.

§418.3605 What is an initial determination?

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the relevant facts and will give the reasons for our conclusions. Examples of initial determinations that are subject to administrative and judicial review include but are not limited to:

(a) The initial calculation of your income and/or resources;

(b) The determination about whether or not you are eligible for a subsidy and if so, whether you receive a full or partial subsidy;

(c) The determination to reduce your subsidy; and

(d) The determination to terminate your subsidy.

§418.3610 Is there administrative or judicial review for administrative actions that are not initial determinations?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative or judicial review process as provided by these sections. For example, changes in your prescription drug program or voluntary disenrollment in the Part D program are not initial determinations that are subject to the administrative review process.

§418.3615 Will we mail you a notice of the initial determination?

(a) We will mail a written notice of the initial determination to you at your last known address. Generally, we will not send a notice if your premium subsidy stops because of your death or if the initial determination is a redetermination that your eligibility for a subsidy and the amount of your subsidy has not changed.

(b) The written notice that we send will tell you:

- (1) What our initial determination is;
- (2) The reasons for our determination; and
- (3) The effect of our determination on your right to further review.

(c) We will mail you a written notice before increasing, reducing, or terminating your subsidy. The notice will tell you the first month that we plan to make the change and give you appeal rights. Your appeal rights for a reduction or termination will include the right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request if your appeal is filed within 10 days after you receive our notice.

§418.3620 What is the effect of an initial determination?

An initial determination is binding unless you request an appeal within the time period stated in §418.3630(a) or we revise it as provided in §418.3678.

§418.3625 What is the process for administrative review?

The process for administrative review of initial determinations is either a hearing conducted by telephone or a

case review. We will provide you with a hearing by telephone when you appeal the initial determination made on your claim, unless you choose not to participate in a telephone hearing. If you choose not to participate in a telephone hearing, the review will consist of a case review. The hearing will be conducted by an individual who was not involved in making the initial determination. The individual who conducts the hearing will make the final decision after the hearing. If you are dissatisfied after we have made a final decision, you may file an action in Federal district court.

(a) *Notice scheduling the telephone hearing.* Once you request a telephone hearing, we will schedule the hearing and send you a notice of the date and time of the hearing at least 20 days before the hearing. The notice will contain a statement of the specific issues to be decided and tell you that you may designate a personal representative (as defined in 42 CFR 423.772) to represent you during the proceedings. The notice will explain the opportunity and procedure for reviewing your file and for submitting additional evidence prior to the hearing. It also will provide a brief explanation of the proceedings, of the right and process to subpoena witnesses and documents, of the procedures for requesting a change in the time or date of your hearing, and of the procedure for requesting interpreter services.

(b) *Opportunity to review your file.* Prior to the telephone hearing, you will be able to review the information that was used to make an initial determination in your case. You can provide us with additional information you wish to have considered at the hearing.

(c) *Hearing waived, rescheduled, or missed.* If you decide you do not want a hearing by telephone or if you are not available at the time of the scheduled hearing, the decision in your case will be made by a case review. This means that the decision will be based on the information in your file and any additional information you provide. You may ask for a change in the time and date of the telephone hearing; this should be done at the earliest possible opportunity prior to the hearing. Your request must state your reason(s) for

needing the change in time or date and state the new time and date you want the hearing to be held. We will change the time and date, but not necessarily to your preferred time or date, of the telephone hearing if you have good cause. If you miss the scheduled hearing and the decision in your case is decided by a case review, we will provide a hearing, at your written request, if we decide you had good cause for missing the scheduled hearing. Examples of good cause include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for your hearing;

(4) A witness who will testify to facts material to your case would be unavailable to participate in the scheduled hearing and the evidence cannot be obtained any other way;

(5) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that you may have; or

(6) You did not receive notice of the hearing appointment.

(d) *Witnesses at hearing.* When we determine that it is reasonably necessary for the full presentation of a case, we may issue a subpoena to compel the production of certain evidence or testimony.

§418.3630 How do you request administrative review?

(a) *Time period for requesting review.* You must request administrative review within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section). You can request administrative review in person, by phone, fax, or mail. If you miss the time frame for requesting administrative review, you may ask us

for more time to request a review. The process for requesting an extension is explained further in paragraph (c) of this section.

(b) *Where to file your request.* You can request administrative review by mailing or faxing a request or calling or visiting any Social Security office.

(c) *When we will extend the time period to request administrative review.* If you want a review of the initial determination but do not request one within 60 days after the date you receive notice of the initial determination, you may ask us for more time to request a review. Your request for an extension must explain why it was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in §418.3640.

§418.3635 Can anyone request administrative review on your behalf?

Your personal representative (as defined in 42 CFR 423.772) may request administrative review on your behalf. That person can send additional information to us on your behalf and participate in the hearing.

§418.3640 How do we determine if you had good cause for missing the deadline to request administrative review?

(a) In determining whether you have shown that you have good cause for missing a deadline to request review we consider:

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

(b) Examples of circumstances where good cause may exist include, but are

§ 418.3645

not limited to, the following situations:

(1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.

(2) There was a death or serious illness in your immediate family.

(3) Important records were destroyed or damaged by fire or other accidental cause.

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested a review.

(6) We gave you incorrect or incomplete information about when and how to request administrative review.

(7) You did not receive notice of the initial determination.

(8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known the need to file timely, or which prevented you from filing timely.

§ 418.3645 Can you request that the decision-maker be disqualified?

The person designated to conduct your hearing will not conduct the hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. If you object to the person who will be conducting your hearing, you must notify us at your earliest opportunity. The Commissioner or the Commissioner's designee will decide whether to appoint another person to conduct your hearing.

§ 418.3650 How do we make our decision upon review?

After you request review of our initial determination, we will review the information that we considered in making the initial determination and

20 CFR Ch. III (4–1–14 Edition)

any other information we receive. We will make our decision based on this information. The issues that we will review are the issues with which you disagree. We may consider other issues, but we will provide you with advance notice of these other issues as explained in § 418.3625. If you are dissatisfied with our final decision, you may file an action in Federal district court.

§ 418.3655 How will we notify you of our decision after our review?

We will mail a written notice of our decision on the issue(s) you appealed to you at your last known address. Generally, we will not send a notice if your subsidy stops because of your death. The written notice that we send will tell you:

- (a) What our decision is;
- (b) The reasons for our decision;
- (c) The effect of our decision; and
- (d) Your right to judicial review of the decision.

§ 418.3665 Can your request for a hearing or case review be dismissed?

We will dismiss your request for a hearing or case review under any of the following conditions:

- (a) At any time before notice of the decision is mailed, you ask that your request for administrative review be withdrawn; or
- (b) You failed to request administrative review timely and did not have good cause for missing the deadline for requesting review.

§ 418.3670 How will you be notified of the dismissal?

We will mail a written notice of the dismissal of your request for administrative review to you at your last known address. The dismissal is not subject to judicial review and is binding on you unless we vacate it. The decision-maker may vacate any dismissal of your request for administrative review if, within 60 days after the date you receive the dismissal notice, you request that the dismissal be vacated and show good cause why the request should not be dismissed. The decision-maker shall advise you in writing of any action he or she takes.

§ 418.3675 How does our decision affect you?

Our decision is binding unless you file an action in Federal district court seeking review of our final decision or we revise it as provided in § 418.3678. You may file an action in Federal district court within 60 days after the date you receive notice of the decision. You may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the decision-maker who issued the final decision in your case. If you show that you had good cause for missing the deadline, we will extend the deadline. We will use the standards in § 418.3640 to decide if you had good cause to miss the deadline.

§ 418.3678 What is the process for correcting Agency clerical errors?

If we become aware within 60 days of the date of our initial determination or our decision following a case review or telephone hearing, that a clerical error was made in determining whether or not you are eligible for a subsidy (either in whole or in part), we may issue a revised initial determination which would be effective back to the date you originally filed your application or the effective date of a subsidy changing event, provided you meet the requirements in § 418.3101. We may revise an initial determination or decision regardless of whether such revised determination or decision is favorable or unfavorable to you. If the revised determination or decision (which is a new initial determination) is not favorable to you, you will not be responsible for paying back any subsidy received prior to the revised determination or decision. We will mail you a notice of the revised determination which will explain to you that we have made a revised determination and that this determination replaces an earlier determination, how this determination affects your subsidy eligibility, and your right to request a hearing.

§ 418.3680 What happens if your case is remanded by a Federal court?

When a Federal court remands a case to the Commissioner for further consideration, the decision-maker (as described in § 418.3625) acting on behalf of the Commissioner, may make a decision. That component will follow the procedures in § 418.3625, unless we decide that we can make a decision that is fully favorable to you without another hearing. Any issues relating to your subsidy may be considered by the decision-maker whether or not they were raised in the administrative proceedings leading to the final decision in your case.

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 33169, June 11, 2010]

PART 422—ORGANIZATION AND PROCEDURES**Subpart A—Organization and Functions of the Social Security Administration**

Sec.

422.1 Organization and functions.

422.5 District offices and branch offices.

Subpart B—General Procedures

422.101 Material included in this subpart.

422.103 Social security numbers.

422.104 Who can be assigned a social security number.

422.105 Presumption of authority of non-immigrant alien to engage in employment.

422.106 Filing applications with other government agencies.

422.107 Evidence requirements.

422.108 Criminal penalties.

422.110 Individual's request for change in record.

422.112 Employer identification numbers.

422.114 Annual wage reporting process.

422.120 Earnings reported without a social security number or with an incorrect employee name or social security number.

422.122 Information on deferred vested pension benefits.

422.125 Statements of earnings; resolving earnings discrepancies.

422.130 Claim procedure.

422.135 Reports by beneficiaries.

422.140 Reconsideration of initial determination.

Subpart C—Procedures of the Office of Disability Adjudication and Review

422.201 Material included in this subpart.