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SSI cash benefits, federally-administered State supplementation, special SSI cash benefits described in §416.262, or special SSI eligibility status described in §416.265. We will count the 12-month suspension period from the start of the first month that you are no longer eligible for SSI benefits (see §416.1320(a)) or the start of the month after the month your special SSI eligibility status described in §416.265 ended. This termination is effective with the start of the 13th month after the suspension began.

[60 FR 8153, Feb. 10, 1995, as amended at 64 FR 31975, June 15, 1999]

§416.1336 Notice of intended action affecting recipient's payment status.

(a) *Advance written notice requirement.* Advance written notice of intent to discontinue payment because of an event requiring suspension, reduction (see subpart D of this part), or termination of payments shall be given in all cases, prior to effectuation of the action, except where the Social Security Administration has factual information confirming the death of the recipient, e.g., as enumerated in §404.704(b) of this chapter, or a report by a surviving spouse, a legal guardian, a parent or other close relative, or a landlord.

(b) *Continuation of payment pending an appeal.* The written notice of intent to suspend, reduce, or terminate payments shall allow 60 days after the date of receipt of the notice for the recipient to request the appropriate appellate review (see subpart N of this part). If appeal is filed within 10 days after the individual's receipt of the notice, the payment shall be continued or reinstated at the previously established payment level (subject to the effects of intervening events on the payment which are not appealed within 10 days of receipt of a required advance notice or which do not require advance notice, e.g., an increase in the benefit amount) until a decision on such initial appeal is issued, unless the individual specifically waives in writing his right to continuation of payment at the previously established level in accordance with paragraph (c) of this section. (See §416.1337 for exceptions to the continuation of payment level.) Where the re-

quest for the appropriate appellate review is filed more than 10 days after the notice is received but within the 60-day period specified in §416.1413 or §416.1425 of this part, there shall be no right to continuation or reinstatement of payment at the previously established level unless good cause is established under the criteria specified in §416.1411 of this part for failure to appeal within 10 days after receipt of the notice. For purposes of this paragraph, the date of receipt of the notice of intent to suspend, reduce, or terminate payments shall be presumed to be 5 days after the date on the face of such notice, unless there is a reasonable showing to the contrary.

(c) *Waiver of right to continued payment.* Notwithstanding any other provisions of this section, the recipient, in order to avoid the possibility of an overpayment of benefits, may waive continuation of payment at the previously established level (subject to intervening events which would have increased the benefit for the month in which the incorrect payment was made, in which case the higher amount shall be paid), after having received a full explanation of his rights. The request for waiver of continuation of payment shall be in writing, state that waiver action is being initiated solely at the recipient's request, and state that the recipient understands his right to receive continued payment at the previously established level.

[43 FR 18170, Apr. 28, 1978, as amended at 65 FR 16815, Mar. 30, 2000]

§416.1337 Exceptions to the continuation of previously established payment level.

(a) *Multiple payments exception.* (1) Where it is determined that a recipient is receiving two or more regular monthly payments in one month, the Social Security Administration shall determine the correct payment amount and, as soon as practicable thereafter, send the recipient an advance written notice of intent to make subsequent payment in that amount. Payment for the following month shall be made in the correct amount, except as provided in paragraph (a)(3) of this section.

(2) The advance notice shall explain:

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(i) That multiple payments were made in the one or more months identified in the notice;

(ii) The correct amount of monthly benefits that the recipient is eligible to receive; and

(iii) The recipient's appeal rights.

(3) If an appeal is filed within 10 days after receipt of the written notice of intent, the highest of the two or more check amounts, or the correct amount if higher (subject to the dollar limitation provisions), shall be continued until a decision on such initial level of appeal is issued. See § 416.1474 for criteria as to good cause for failure to file a timely appeal. For purposes of this paragraph, the date of receipt of the notice of intent shall be presumed to be 5 days after the date on the face of such notice, unless there is a reasonable showing to the contrary.

(4) The fact that a recipient is receiving multiple payments is established if the records of the Social Security Administration show that:

(i) Two or more checks are being sent to an individual under the same name or a common logical spelling variation of the name;

(ii) The social security number is the same or a pseudo number appears;

(iii) The checks are being sent to the same address;

(iv) The sex code for such individual is the same; and

(v) The date of birth for such individual is the same.

(b) *Dollar limitation exception.* (1) Where it is determined that a recipient is receiving an erroneous monthly payment which exceeds the dollar limitation applicable to the recipient's payment category, as set forth in paragraph (b)(4) of this section, the Social Security Administration shall determine the correct payment amount and, as soon as practicable thereafter, send the recipient an advance written notice of intent to make subsequent payment in that amount. Payment for the following month shall be made in the correct amount, except as provided in paragraph (b)(3) of this section.

(2) The advance notice shall explain:

(i) That an erroneous monthly payment which exceeds the dollar limitation applicable to the recipient's pay-

ment category was made in the one or more months identified in the notice;

(ii) The correct amount of monthly benefits that the recipient is eligible to receive; and

(iii) The recipient's appeal rights.

(3) If an appeal is filed within 10 days after receipt of the written notice of the intent (see § 416.1474 for criteria as to good cause for failure to file a timely appeal), the amount of payment to be continued, pending decision on appeal, shall be determined as follows:

(i) *Recipient in payment status.* Where the recipient is in payment status, the payment shall be in the amount the recipient received in the month immediately preceding the month the dollar limitation was first exceeded (subject to intervening events which would have increased the benefit for the month in which the incorrect payment was made, in which case the higher amount shall be paid).

(ii) *Recipient in nonpayment status.* If the recipient's benefits were suspended in the month immediately preceding the month the dollar limitation was first exceeded, the payment shall be based on that amount which should have been paid in the month in which the incorrect payment was made. However, if the individual's benefits had been correctly suspended as provided in §§ 416.1320 through 416.1330 or § 416.1339 and they should have remained suspended but a benefit that exceeded the dollar limitation was paid, no further payment shall be made to him or her at this time and notice of the planned action shall not contain any provision regarding continuation of payment pending appeal.

For purposes of this paragraph, the date of receipt of the notice of planned action shall be presumed to be 5 days after the date on the face of such notice, unless there is a reasonable showing to the contrary.

(4) The payment categories and dollar limitations are as follows:

PAYMENT CATEGORY AND DOLLAR LIMITATION

(i) *Federal supplemental security income benefit only—\$200.*

Recipients whose records indicate eligibility for Federal supplemental security income benefits for the month before the

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month the dollar limitation was first exceeded.

(i) *Federal supplemental security income benefit and optional supplementation, or optional supplementation only—\$700*

Recipients whose records indicate they were eligible for Federal supplemental security income benefits plus federally-administered optional supplementation, or eligible for federally-administered optional supplementation only, for the month before the month the dollar limitation was first exceeded.

(iii) *Federal supplemental security income benefit and mandatory or other supplementation, or mandatory supplementation only—\$2,000*

Recipients whose records show eligibility for Federal supplemental security income benefits and federally-administered mandatory supplementation or essential person increment for the month before the month the dollar limitation was first exceeded. This category also includes those eligible for federally-administered mandatory supplementation only and those eligible for Federal supplemental security income benefits plus an essential person increment and federally-administered optional supplementation.

[43 FR 18170, Apr. 28, 1978, as amended at 65 FR 40495, June 30, 2000]

§ 416.1338 If you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services.

(a) *When may your benefits based on disability or blindness be continued?* Your benefits based on disability or blindness may be continued after your impairment is no longer disabling, you are no longer blind as determined under § 416.986(a)(1), (a)(2) or (b), or your disability has ended as determined under § 416.987(b) and (e)(1) in an age-18 redetermination, if—

(1) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in paragraphs (c) and (d) of this section;

(2) You began participating in the program before the date your disability or blindness ended; and

(3) We have determined under paragraph (e) of this section that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return

to the disability or blindness benefit rolls.

(b) *When will we stop your benefits?* We generally will stop your benefits with the earliest of these months—

(1) The month in which you complete the program; or

(2) The month in which you stop participating in the program for any reason (see paragraph (d) of this section for what we mean by “participating” in the program); or

(3) The month in which we determine under paragraph (e) of this section that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

Exception to paragraph (b): In no case will we stop your benefits with a month earlier than the second month after the month your disability or blindness ends, provided that you are otherwise eligible for benefits through such month.

(c) *What is an appropriate program of vocational rehabilitation services, employment services, or other support services?*

An appropriate program of vocational rehabilitation services, employment services, or other support services means—

(1) A program that is carried out under an individual work plan with an employment network under the Ticket to Work and Self-Sufficiency Program under part 411 of this chapter;

(2) A program that is carried out under an individualized plan for employment with—

(i) A State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720-751)) under 34 CFR part 361; or

(ii) An organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741);

(3) A program of vocational rehabilitation services, employment services, or other support services that is carried out under a similar, individualized written employment plan with—