

(b) *Beginning and end of entitlement.*

(1) Entitlement begins with the first day of the first month in which the individual meets the requirements of paragraph (a) of this section.

(2) Entitlement continues until the individual dies or no longer meets the requirements of paragraph (a) of this section. An individual is not entitled to railroad retirement benefits and is neither entitled to, nor eligible for, monthly social security benefits in the month in which he or she dies. However, an individual who meets all other requirements for hospital insurance entitlement is entitled to hospital insurance in the month in which he or she dies if he or she—

(i) Would have been entitled to monthly railroad retirement benefits or social security benefits in that month if he or she had not died; or

(ii) Has filed an application for hospital insurance and would have been eligible for monthly social security benefits in that month if he or she had not died.

**§ 406.11 Individual age 65 or over who is not eligible as a social security or railroad retirement benefits beneficiary, or on the basis of government employment.**

(a) *Basis.* Section 103 of the law that established the Medicare program in 1965 (Pub. L. 89-97) provided for eligibility for certain individuals who were age 65 or would soon attain age 65 but would not be able to qualify for social security or railroad retirement benefits.

(b) *Requirements.* Unless he or she is excluded under paragraph (c) of this section, an individual age 65 or over who does not meet the requirements of § 406.10 or § 406.15 (and who would not meet those requirements if he or she filed an application), is entitled to Medicare Part A benefits if he or she meets the following requirements:

(1) *Age and quarters of coverage.* (i) He or she attained age 65 before 1968; or

(ii) If he or she attained age 65 in 1968 or later, he or she must have at least 3 quarters of coverage for each year that elapsed after 1966 and before the year in which he or she attained age 65. (The quarters of coverage may have been acquired at any time, not necessarily during the elapsed years.)

(2) *Residence and citizenship.* He or she is a resident of the United States and—

(i) A citizen of the United States; or

(ii) An alien lawfully admitted for permanent residence who has continuously resided in the United States for 5 years immediately preceding the first month in which he or she meets all other requirements for entitlement to hospital insurance.

(3) *Application.* He or she has filed an application for Medicare Part A no earlier than the third month before the first month of eligibility.

(c) *Bases for exclusion.* An individual who meets the requirements of paragraph (b) of this section is excluded from Medicare Part A if he or she—

(1) Has been convicted of spying, sabotage, or treason, sedition, and subversive action under chapter 37, 105, or 115 of title 18 of the United States Code;

(2) Has been convicted of conspiracy to establish a dictatorship under section 4 of the Internal Security Act of 1950;

(3) On February 16, 1965, was or could have been covered under the Federal Employees Health Benefits Act (FEHBA) of 1959; or

(4) In his or her first month of eligibility;

(i) Is covered by an enrollment under the FEHBA; or

(ii) Could have been covered by an enrollment under that Act if he or she (or any other person who could provide him or her with coverage) was a Federal employee at any time after February 15, 1965, and had enrolled and retained coverage under that Act.

(d) *End of exclusion.* An individual excluded under paragraph (c)(3) or (4) of this section can become entitled beginning with the first month in which he or she loses the right to FEHBA coverage solely because he or she or the other person leaves Federal employment.

(e) *Beginning and end of entitlement.*

(1) Entitlement begins—

(i) In the first month of eligibility if the application is filed no later than 12 months after the first month of eligibility;

(ii) In the 12th month before the month of application if the application is filed more than 12 months after the first month of eligibility.

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(2) Entitlement continues until death or until the month before the month in which the individual becomes entitled under § 406.10 or § 406.15.

[48 FR 12536, Mar. 25, 1983, as amended at 50 FR 33033, Aug. 16, 1985; 53 FR 47202, Nov. 22, 1988]

### **§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.**

(a) *Basic requirements.* An individual under age 65 is entitled to hospital insurance benefits if, for 25 months, he or she has been—

(1) Entitled or deemed entitled to social security disability benefits as an insured individual, child, widow, or widower who is “under a disability” or

(2) A disabled qualified beneficiary certified under Section 7(d) of the Railroad Retirement Act.

(b) *Previous periods of disability benefits entitlement.* Months of a previous period of entitlement or deemed entitlement to disability benefits count toward the 25-month requirement if any of the following conditions is met:

(1) Entitlement was as an insured individual or a disabled qualified railroad retirement beneficiary, and the previous period ended within the 60 months preceding the month in which the current disability began.

(2) Entitlement was as a disabled child, widow, or widower, and the previous period ended within the 84 months preceding the month in which the current disability began.

(3) The previous period ended on or after March 1, 1988 and the current impairment is the same as, or directly related to, the impairment on which the previous period of entitlement was based.

(c) *Deemed entitlement to disabled widow's or widower's monthly benefits—(1) Purpose.* The provisions of paragraphs (c) (2), (3), and (4) of this section are intended to enable individuals—

(i) To meet the 25-month requirement of paragraph (a) of this section; or

(ii) To retain hospital insurance entitlement when they are no longer entitled to monthly disability benefits.

(2) *Deemed entitlement for certain individuals entitled to old-age insurance benefits.* An individual who becomes entitled to monthly old-age insurance ben-

efits before age 65, is, by law, precluded from establishing or retaining entitlement to disabled widow's or widower's monthly benefits. However, for purposes of meeting the 25-month requirement, a widow or widower who meets all other requirements for disability benefits and is excluded solely because of entitlement to old-age insurance benefits, shall be deemed to be (or to continue to be) entitled to disability benefits. A widow or widower who is not entitled to disability benefits for the month before attaining age 60 must file two applications, one for old-age insurance benefits and one for hospital insurance.

(3) *Deemed entitlement for certain individuals entitled to mother's benefits.* An individual entitled to mother's insurance benefits under section 202(g) of the Social Security Act cannot at the same time be entitled to disabled widow's benefits. However, if she applies for hospital insurance, she will be deemed to be entitled to disabled widow's monthly benefits in the first month (of the 12 months before application) in which she would have been entitled to those benefits if she had filed an application for them.

(4) *Deemed entitlement for certain individuals entitled to father's benefits.* An individual who is entitled to father's insurance benefits under section 202(g) of the Act cannot at the same time be entitled to disabled widower's benefits. However, if he applies for hospital insurance benefits, he will be deemed to be entitled to disabled widower's monthly benefits as follows:

(i) If he applied for hospital insurance benefits before May 1984, he was deemed entitled to disabled widower's benefits for any month after April 1981 for which he would have been entitled to those benefits if he had filed an application for them.

(ii) If he applies for hospital insurance benefits in or after May 1984, he is deemed entitled to disabled widower's benefits for any month, up to 12 months before the month of application, for which he would have been entitled to those benefits if he had filed an application for them.

(iii) Hospital insurance entitlement under this paragraph (c)(4) could not begin before May 1983.