

§ 406.12

42 CFR Ch. IV (10–1–24 Edition)

(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.

(5) *Deemed retroactive entitlement for certain disabled widows and widowers.* In some cases, disabled widows or widowers cannot become entitled to monthly cash benefits before the month in which they file application. However, for purposes of meeting the 25-month requirement, disability benefit entitlement will be deemed to have begun with the earliest month (of the 12 months before the application for cash benefits) in which the individual met all the requirements except the filing of an application. (This provision is effective for applications filed on or after January 1, 1978.)

(d) *When entitlement begins and ends.*

(1) Entitlement to hospital insurance begins with the 25th month of an individual's entitlement or deemed entitlement to disability benefits. Although an individual is not entitled to disability benefits for the month in which he or she dies, for purposes of this paragraph the individual will be deemed to be entitled for the month of death.

(2) Except as provided in paragraph (e) of this section, entitlement to hospital insurance ends with the earliest of the following:

(i) The last day of the last month in which he or she was entitled or deemed entitled to disability benefits or was qualified as a disabled railroad retirement beneficiary, if he or she was notified of the termination of entitlement before that month.

(ii) The last day of the month following the month in which he or she is mailed a notice that his or her entitlement or deemed entitlement to disability benefits, or his or her status as a qualified disabled railroad retirement beneficiary, has ended.

(iii) The last day of the month before the month he or she attains age 65. (An individual who is entitled to social security or railroad retirement cash benefits for the month of attainment of age 65 is automatically entitled to hospital insurance under § 406.10.)

(iv) The day of death.

(e) *Continuation of Medicare entitlement when disability benefit entitlement ends because of substantial gainful activity (SGA).*—(1) *Definitions.* As used in this section—

Trial work period means the 9-month period provided under title II of the Act and as defined 20 CFR 404.1592, during which the individual may test his or her ability to work and still receive disability cash benefits; and

Reentitlement period means a period as defined in 20 CFR 404.1592a that begins with the first month after the trial work period and ends with the 36th month after the trial work period or, if earlier, with the first month in which the impairment no longer exists or is no longer disabling. (During the reentitlement period, benefits may be discontinued because of SGA. However, if SGA is later discontinued, benefits may be reinstated without a new application and a new disability determination.)

(2) *Duration of continued Medicare entitlement.* If an individual's entitlement to disability benefits or status as a qualified disabled railroad retirement beneficiary ends because he or she engaged in, or demonstrated the ability to engage in, substantial gainful activity after the 36 months following the end of the trial work period, Medicare entitlement continues until the earlier of the following:

(i) The last day of the 78th month following the first month of substantial gainful activity occurring after the 15th month of the individual's reentitlement period or, if later, the end of the month following the month the individual's disability benefit entitlement ends.

(ii) The last day of the month following the month in which notice is mailed to the individual indicating that he or she is no longer entitled to hospital insurance because of an event or circumstance (for example, there has been medical improvement, or the disabled widow has remarried) that would terminate disability benefit entitlement if it had not already been terminated because of substantial gainful activity.

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