SUPPLEMENTARY INFORMATION:
free number, 1±800±772±1213.
about this rule.
21235, (410) 965±3298 for information
Social Security Administration, 6401
Division of Regulations and Rulings,
Daniel T. Bridgewater, Legal Assistant,
FOR FURTHER INFORMATION CONTACT :
this situation.
The Omnibus Budget Reconciliation Act
the Act), as amended by
Supplemental Security Income (SSI) claimants and
eligible spouse or parent affected
the household due solely to active
Military Service
AGENCY: Social Security Administration.
ACTION: Final rule.
SUMMARY: We are adding a rule on how
the income and resources of ineligible
spouses or parents affect the eligibility
and benefit amounts of Supplemental
Security Income (SSI) claimants and
recipients when those spouses or parents
are absent from their households due solely to a duty
assignment as a member of the Armed
Forces on active duty. We are adding
this rule because the current rules
do not reflect the provision of the Social
Security Act (the Act), as amended by
the Omnibus Budget Reconciliation Act
of 1993 (OBRA 1993), that addresses
this situation.
DATES: This rule is effective
September 8, 1997.
FOR FURTHER INFORMATION CONTACT:
Daniel T. Bridgewater, Legal Assistant,
Division of Regulations and Rulings,
Social Security Administration, 6401
Security Boulevard, Baltimore, MD
21235, (410) 965–3298 for information
about this rule.
For information on eligibility or
claiming benefits, call our national toll-
free number, 1–800–772–1213.
SUPPLEMENTARY INFORMATION:
Regulations at § 416.1167(a) state that a
“temporary” absence, for SSI deeming
purposes, occurs when an SSI claimant/
recipient, an ineligible spouse or parent,
or an ineligible child leaves the
household but intends to, and does,
return in the same month or the month
immediately following. If the absence
is temporary, we continue to consider
the person a member of the household for
deeing purposes.
Under our policy prior to October 1,
1993, an ineligible spouse or parent who
was absent from an SSI claimant’s or
recipient’s household for any reason,
including active duty military service,
and whose absence was not temporary
(§ 416.1167(a)), was not considered to be
a member of the household for deeming
purposes effective with the first day of
the month following the month the
spouse or parent left the household.
Section 13733(a) of OBRA 1993 (Pub.
L. 103–66) changed SSI policy, effective
October 1, 1993, on the treatment of
ineligible spouses and parents who are
absent from deeming households solely
because of active duty military
assignments. Under this legislation,
which added paragraph (4) to section
1614(f) of the Act, the service member
continues to be considered a member of
the household, absent evidence to the
contrary, for income and resources
deeing purposes. Current regulations
do not specifically address this
situation.
The change in the deeming rules
made by section 13733(a) of Public Law
103–66 was intended to prevent an
absent deemer’s active military service
from adversely affecting an SSI
claimant’s or recipient’s benefits. Prior
to the change in the deeming rules, and
under certain circumstances, it was
possible for an individual to receive a
smaller SSI benefit—or no benefit at all—as a result of a spouse’s or parent’s
absence from the household due to
military service.
For SSI purposes, the treatment of an
ineligible spouse’s or parent’s earnings
differs depending on whether the
spouse or parent is considered to be
living in the same household as the SSI
recipient. If the spouse or parent is
considered to be living in the same
household as the SSI recipient, the
earnings are treated as earned income.
If the spouse or parent is not considered
to be living in the same household, any
earnings that are made available to the
household are treated as unearned
income. In the SSI program, more
generous exclusions apply to earned
income than to unearned income.
For example, under prior policy, if an
absent military member whose income
and resources were no longer deemed
sent wages home, or his or her wages
were directly deposited into a bank
account held jointly with other family
members, income so received by
household members was considered to be
unearned for SSI eligibility and
payment computation purposes. In
contrast, wages received while the
military deemer resided in the
household were considered to be earned
income for program purposes.
Accordingly, prior policy had the effect
of disadvantaging certain SSI claimants
and recipients.
As a result of section 13733(a) of
OBRA 1993, a military spouse’s or
parent’s absence from the SSI household
because of an active duty assignment is
generally not considered for program
purposes; the same deeming rules that
apply to “at home” spouses and parents
will generally apply to spouses and
parents who are temporarily absent from
the household due to active duty
military service. Therefore, we are
amending our regulations at § 416.1167
to reflect section 13733(a) of OBRA
1993.
The statute and the rule recognize that
circumstances may change, and an
absent service member who originally
intended to continue to live in the
deeing household may decide not to
do so. Taking this into consideration,
under the final rule, we provide that if
an absent service member’s intent to
continue to live in the household
changes, deeming stops beginning with
the month following the month in
which the intent changed.
We assume, absent evidence to the
contrary, that the absent service member
intends to return to the deeming
household upon conclusion of the
military assignment. “Evidence to the
contrary” is evidence indicating that
the service member does not intend to
return to the deeming household upon
conclusion of the military assignment.
Evidence to the contrary includes (but is
defined only to a signed statement by the
“at home” spouse or parent, or by the
absent service member, indicating that
the service member does not intend to
return to the deeming household. Other
examples of evidence to the contrary are
evidence of divorce or legal separation
that will result in the service member
not returning to the deeming household.
Also, diminished support from the
absent service member to the
household—e.g., an absent spouse who
no longer makes his or her military
wages available to the deeming
household—may be evidence that the
absent service member no longer
intends to return to the deeming
household.
On January 24, 1997, we published
this final rule as a proposed rule in the
Federal Register at 62 FR 3633 with a
60-day comment period. We received no
comments during the public comment
period. Therefore, we are publishing the
final rule unchanged from the proposed
rule.
Regulatory Procedures
Executive Order 12866
We have consulted with the Office of
Management and Budget and
determined that this rule does not meet
the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities since this rule affects only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule imposes no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006-Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).


John J. Callahan,
Acting Commissioner for Social Security.

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:


2. Section 416.1167 is amended by adding new paragraph (c) to read as follows:

§ 416.1167 Temporary absences and deeming rules.

(c) Active duty military service. If your ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty, we continue to consider that person to be living in the same household as you, absent evidence to the contrary. If we determine that during such an absence, evidence indicates that your spouse or parent should no longer be considered to be living in the same household as you, then deeming will cease. When such evidence exists, we determine the month in which your spouse or parent should no longer be considered to be living in the same household as you and stop deeming his or her income and resources beginning with the month following that month.

Example. Tom is a child who receives SSI. In January 1996, Tom's father leaves the household due solely to an active duty assignment as a member of the Armed Forces. Five months later in June 1996, while Tom's father is still on an active duty assignment, Tom's parents file for divorce. As a result, Tom's father will not be returning to live in Tom's household. Therefore, Tom's father should no longer be considered to be living in the same household with Tom. Beginning July 1, 1996, deeming from Tom's father will cease.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Rulemaking No. 16]

RIN 0960–AE61

Reduction in Supplemental Security Income (SSI) Payable to Institutionalized Children Whose Medical Costs Are Covered by Private Insurance

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: The interim final rules published at 62 FR 1053, on January 8, 1997, are adopted as final without change. These rules implement an amendment to section 1611(e)(1)(B) of the Social Security Act (the Act) made by section 214 of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

DATES: These rules are effective beginning January 8, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Section 1611(e)(1)(A) of the Act generally precludes eligibility for SSI benefits when a claimant is a resident of a public institution throughout a month. However, section 1611(e)(1)(B) provided an exception to that bar. Under that section, payments could be made at the reduced Federal benefit rate to individuals in institutions “receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX * * *”. This language was implemented through regulations to mean that individuals in institutions would receive only the reduced benefit amount when “Medicaid (title XIX of the Social Security Act) pays a substantial part (more than 50 percent) of the cost of” the claimant’s care (§ 416.211(b)).

Section 214 of Pub. L. 104–193, effective for benefits beginning with the month of December 1996, amends section 1611(e)(1)(B) of the Act by extending applicability of the reduced SSI benefit rate to children under age 18 in medical care facilities receiving payments on their behalf under a health insurance policy issued by a private provider (hereinafter referred to as private health insurance). Prior to the enactment of section 214, children under the age of 18 in private institutions with private health insurance generally could be eligible for a full SSI payment. Section 214 now restricts the SSI payment for such children to the Federal reduced benefit rate. Also, prior to this legislation, individuals in public institutions not receiving substantial Medicaid payments on their behalf generally were ineligible for SSI. However, as a result of this legislation, children under age 18 in public institutions receiving private health insurance on their behalf now are eligible for SSI payments at the reduced Federal benefit amount. The final rules apply the reduced Federal benefit amount to children under age 18 with private health insurance when it, either alone or in combination with Medicaid, pays a substantial part (more than 50 percent) of the cost of their care in the institution.

Regulatory Changes

During the public comment period, we received two comments within the scope of this rulemaking. One commenter, representing a major advocacy group for retarded citizens, expressed agreement with the Social Security Administration’s interpretation of the provision regarding the amount of private insurance payments required in order for the reduced Federal SSI benefit rate to apply. Another commenter asked that we add a clarification specifying that Health Maintenance Organizations (HMOs) are