

Digest
Director of Retirement Claims

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General Counsel

Change in application of monthly earnings test
under the 1977 Social Security Act amendments

This is in reply to your memorandum dated May 1, 1978, which requested my opinion as to the accuracy of certain assumptions you have made in connection with changes in procedure required by the enactment of Public Law 95-216, the "Social Security Amendments 1977," approved December 20, 1977.

Your assumptions concern section 303(a) of that Public Law, which section eliminates the monthly earnings test for a social security beneficiary for all years except that in which he is first entitled to a benefit and has a month in which either his earnings are below the monthly exempt amount or he did not engage in substantial services in self-employment.

The effect of this restriction upon an annuitant under the Railroad Retirement Act is more limited than the effect under the Social Security Act since there is no earnings restriction upon an employee annuitant unless that employee has a work deduction insured status. See section 2(f)(1) of the Railroad Retirement Act. Furthermore, in the case of a spouse annuitant whose entitlement is based on that of an employee who does not have a work deduction insured status only the windfall portion of the spouse's annuity is subject to work deductions. Therefore, your assumption that entitlement for purposes of determining the existence of a non-service month (defined in your memorandum as the first month of entitlement which is also a non-work month or a month where the earnings are less than the monthly exempt amount and no substantial services are rendered in self-employment) for an employee with a work deduction insured

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status begins with the month an annuity begins to accrue if awarded under section 2(a)(1)(i), (ii), or (iii) is correct. For disability annuitants with a work deduction insured status, entitlement for purposes of determining the existence of a non-service month begins with the month such individuals attain age 65, which is the month an annuity subject to the normal work deduction rules first begins to accrue to such individuals.

Entitlement for the purpose of determining the existence of a non-service month for an annuitant who does not attain a work deduction insured status until after the annuity begins to accrue would be the first month of the quarter the annuitant acquired the qualifying quarter of coverage for a work deduction insured status. This, of course, would not be true for a disability annuitant who continues to receive a disability annuity because such an annuitant would still be under age 65 at the time the work deduction insured status is attained.

Where a spouse has a work deduction insured status based on the employee annuitant's work deduction insured status, entitlement for the purpose of determining the existence of a non-service month begins with the month the annuity begins to accrue. However, where the spouse annuitant qualifies for a windfall based on her own earnings, in cases where the employee has no work deduction insured status, entitlement begins with the month the windfall becomes payable if the spouse's annuity is awarded under section 2(c)(1)(ii)(B) or (C) of the Act (45 U.S.C. § 231a(c)(1)(ii)(B) or (C)). However, if the annuity is awarded under section 2(c)(1)(ii)(A) or section 2(c)(2) of the Act (45 U.S.C. § 231a(c)(1)(ii)(A) or 231a(c)(2)) then entitlement begins with the month the annuity begins to accrue.

Entitlement for the purpose of determining the existence of a non-service month for a disabled widow would be the month the widow attains age 60, the first month in which normal work deduction rules apply to such an annuity.

As is true under the Social Security Act, the year the monthly earnings test can be used may have already occurred for individuals entitled to benefits in December 1977.

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