

109TH CONGRESS
1ST SESSION

H. R. 4095

To amend titles II and XVI of the Social Security Act to provide for equitable treatment of disability beneficiaries with waxing and waning medical conditions.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2005

Mr. FILNER introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend titles II and XVI of the Social Security Act to provide for equitable treatment of disability beneficiaries with waxing and waning medical conditions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Encourage Initiative
5 and Promote Self-Esteem Act of 2005”.

1 **SEC. 2. AMENDMENTS TO TITLE II OF THE SOCIAL SECUR-**
2 **RITY ACT.**

3 (a) IN GENERAL.—Section 222 of the Social Security
4 Act (42 U.S.C. 422) is amended by adding at the end the
5 following new subsection:

6 “Special Rules for Benefits Based on Waxing and
7 Waning Medical Condition

8 “(f)(1) In the case of any qualifying disabled indi-
9 vidual—

10 “(A) the termination month for purposes of sec-
11 tion 223(a)(1) or subsection (d)(1)(G), (e)(1), or
12 (f)(1) of section 202 shall be, in lieu of the termi-
13 nation month otherwise described therein, the third
14 month following the end of the individual’s special
15 entitlement period,

16 “(B) the extent to which benefits of the indi-
17 vidual under section 223 or subsection (d), (e), or
18 (f) of section 202 are payable for any month during
19 the individual’s special entitlement period shall be
20 determined without regard to whether the individual
21 engages in substantial gainful activity,

22 “(C) the amount of the individual’s monthly in-
23 surance benefit payable for any month during the
24 special entitlement period shall not exceed the max-
25 imum benefit payment for the month determined
26 under paragraph (4), and

1 “(D) the Commissioner shall not undertake a
2 review of such individual’s disability during any
3 month following a month in which such individual
4 performs services from which such individual earns
5 the greater of \$300 or the dollar amount derived for
6 the month for purposes of this subparagraph under
7 paragraph (6).

8 “(2) For purposes of paragraph (1), the term ‘quali-
9 fying disabled individual’ means an individual—

10 “(A) who is entitled to disability insurance ben-
11 efits under section 223, child’s insurance benefits
12 under section 202(d) based on the individual’s dis-
13 ability, or widow’s or widower’s insurance benefits
14 under subsection (e) or (f) of section 202 based on
15 the individual’s disability, and

16 “(B) whose disability is based (in whole or in
17 part) on a waxing and waning medical condition.

18 “(3) For purposes of paragraph (1), the special enti-
19 tlement period of an individual under this subsection—

20 “(A) begins with the month in which the indi-
21 vidual becomes entitled to benefits described in para-
22 graph (2)(A), and

23 “(B) ends with any month during which the
24 Commissioner determines that the impairment on

1 the basis of which such benefits are provided has
2 ceased, does not exist, or is not disabling.

3 “(4) The amount of a qualifying disabled individual’s
4 benefit described in paragraph (2) which is payable for
5 any month under this title commencing with or after such
6 individual’s 7th month of entitlement shall not exceed the
7 amount of such benefit otherwise payable under this title,
8 reduced (to not less than zero), by $\frac{2}{3}$ of the individual’s
9 excess trial earnings amount for such month.

10 “(5) For purposes of this paragraph—

11 “(A) The term ‘waxing and waning medical
12 condition’ means, in connection with an individual,
13 any medical condition which, prior to the first month
14 of entitlement of the individual, has been certified to
15 the Commissioner by a qualified physician as a con-
16 dition which, in the case of such individual, may rea-
17 sonably be expected to involve, in the absence of re-
18 covery, periods for which the individual will be able
19 to engage in substantial gainful activity interspersed
20 among periods for which the individual will not, by
21 reason of a lack of adequate and reasonably avail-
22 able assistive technology, be able to engage in sub-
23 stantial gainful activity.

24 “(B) The term ‘excess trial earnings’ of an indi-
25 vidual for any month means the excess (if any) of—

1 “(i) the average amount earned by such in-
2 dividual from services performed each month
3 during the most recent test period commencing
4 with or after the first month of the such indi-
5 vidual’s special entitlement period, over

6 “(ii) the trial earnings threshold for such
7 month.

8 “(C) The term ‘test period’ in connection with
9 any month means the period of the first 3 calendar
10 months of the period of 6 calendar months imme-
11 diately preceding such month.

12 “(D) The term ‘trial earnings threshold’ for a
13 month means the greater of \$580 or the product de-
14 rived for the month for purposes of this subpara-
15 graph under paragraph (6).

16 “(6) The product derived under this paragraph for
17 any month for purposes of subparagraph (D) of paragraph
18 (1) or subparagraph (D) of paragraph (5) is the product
19 derived by multiplying the dollar amount specified in such
20 subparagraph by the ratio of—

21 “(A) the national average wage index (as de-
22 fined in section 209(k)(1)) for the first of the 2 pre-
23 ceding calendar years, to

24 “(B) the national average wage index (as so de-
25 fined) for calendar year 2003.

1 Any such product which is not a multiple of \$10 shall be
2 rounded to the next higher multiple of \$10 where such
3 product is a multiple of \$5 but not of \$10 and to the near-
4 est multiple of \$10 in any other case. The Secretary shall
5 determine and publish the trial earnings threshold for
6 each month in November of the preceding calendar year.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) TERMINATION MONTH.—

9 (A) Section 223(a)(1) of such Act (42
10 U.S.C. 423(a)(1)) is amended by inserting,
11 after the first full sentence beginning in the
12 matter following subparagraph (E), the fol-
13 lowing new sentence: “The termination month
14 of a qualifying disabled individual (as defined in
15 section 222(f)(2)) shall be determined under
16 section 222(f)(1)(A).”.

17 (B) Section 202(d)(1)(G)(i) of such Act
18 (42 U.S.C. 402(d)(1)(G)(i)) is amended by
19 striking “activity)” and inserting “activity, and,
20 in the case of a qualifying disabled individual
21 (as defined in section 222(f)(2)), the termi-
22 nation month shall be the month determined
23 under section 222(f)(1)(A))”.

24 (C) Section 202(e)(1) of such Act (42
25 U.S.C. 402(e)(1)) is amended by inserting,

1 after the first full sentence beginning in the
2 matter following subparagraph (F)(ii), the fol-
3 lowing new sentence: “The termination month
4 of a qualifying disabled individual (as defined in
5 section 222(f)(2)) shall be determined under
6 section 222(f)(1)(A).”.

7 (D) Section 202(f)(1) of such Act (42
8 U.S.C. 402(f)(1)) is amended by inserting, after
9 the first full sentence beginning in the matter
10 following subparagraph (F)(ii), the following
11 new sentence: “The termination month of a
12 qualifying disabled individual (as defined in sec-
13 tion 222(f)(2)) shall be determined under sec-
14 tion 222(f)(1)(A).”.

15 (2) CONFORMING AMENDMENT TO CURRENT
16 RULES REGARDING SUBSTANTIAL GAINFUL ACTIVITY
17 BY OTHER INDIVIDUALS DURING EXTENDED PERI-
18 ODS OF ELIGIBILITY.—Section 223(e)(1) of such Act
19 (42 U.S.C. 423(e)(1)) is amended by striking “No
20 benefit” and inserting “In the case of an individual
21 other than a qualifying disabled individual (as de-
22 fined in section 222(f)(2)), no benefit”, and by strik-
23 ing “to an individual” and inserting “to such indi-
24 vidual”.

1 gard to whether the individual is able to engage in
2 substantial gainful activity;

3 “(B) the amount of the benefit payable for any
4 month during the special entitlement period shall
5 not exceed the maximum benefit payable with re-
6 spect to the individual for the month, as determined
7 under paragraph (4); and

8 “(C) the Commissioner shall not undertake a
9 review of the individual’s disability during any
10 month following a month in which such individual
11 performs services from which the individual earns
12 the greater of \$300 or the dollar amount derived for
13 the month for purposes of section 222(f)(1)(D)
14 under section 222(f)(6).

15 “(2) For purposes of paragraph (1), the term ‘quali-
16 fying disabled individual’ means an individual who is an
17 eligible individual for purposes of this title by reason of
18 disability, and whose disability is based (in whole or in
19 part) on a waxing and waning medical condition.

20 “(3) For purposes of paragraph (1), the special enti-
21 tlement period of an individual—

22 “(A) begins with the month in which the indi-
23 vidual becomes entitled to benefits under this title by
24 reason of disability; and

1 “(B) ends with any month during which the
2 Commissioner determines that the impairment on
3 the basis of which such benefits are provided has
4 ceased, does not exist, or is not disabling.

5 “(4) The amount of the benefit of a qualifying dis-
6 abled individual which is payable for any month under this
7 title commencing with or after the 7th month for which
8 the individual is eligible for benefits under this title by
9 reason of such disability shall not exceed the amount of
10 the benefit otherwise payable under this title, reduced (to
11 not less than zero) by $\frac{2}{3}$ of the individual’s excess trial
12 earnings amount for the month.

13 “(5) For purposes of this subsection:

14 “(A) The term ‘waxing and waning medical
15 condition’ means, in connection with an individual,
16 any medical condition which, prior to the first month
17 of eligibility of the individual for benefits under this
18 title by reason of disability, has been certified to the
19 Commissioner by a qualified physician as a condition
20 which, in the case of such individual, may reasonably
21 be expected to involve, in the absence of recovery,
22 periods for which the individual will be able to en-
23 gage in substantial gainful activity interspersed
24 among periods for which the individual will not, by
25 reason of a lack of adequate and reasonably avail-

1 able assistive technology, be able to engage in sub-
2 stantial gainful activity.

3 “(B) The term ‘excess trial earnings’ of an indi-
4 vidual for any month has the meaning given the
5 term in section 222(f)(5)(B).

6 “(C) The term ‘test period’ in connection with
7 any month has the meaning given the term in sec-
8 tion 222(f)(5)(C).

9 “(D) The term ‘trial earnings threshold’ for a
10 month has the meaning given the term in section
11 222(f)(5)(D).”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to benefits payable for months
14 beginning after the date of the enactment of this Act.

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