New York Makes Work Pay

WORKING

Newsletter of the New York Makes Work Pay Initiative · Issue 10 · September 2012

Obtaining Assistive Technology to Achieve Integrated Employment

Meeting the Challenges of Funding Assistive Technology and Specialized Equipment

Assistive technology (AT) can make a tremendous difference in the ability of an individual to work, even when that individual has a severe disability. In the work context, AT can serve several functions: it can make it possible to participate in an education or training program; it can make it possible to get prepared to leave the home for work or training; it can make it possible to travel to and from work; and in many cases, the work itself could not be done or done as effectively without the AT.

We previously published a policy-to-practice brief related to this topic, Work Incentives and Assistive Technology: Using the SSDI, SSI, Medicare and Medicaid Work Incentives to Fund AT or Leverage Funding for AT (available at **www.nymakesworkpay.org/docs/WorkIncentives_AT_121310.pdf**). That brief included a very detailed analysis of the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) work incentives, with some focus on special rules for the statutorily blind and special rules governing self-employment. Like our other policy-to-practice briefs, it contains extensive references to the applicable law, regulation, and policy in its many footnotes.

Inside this issue

there have been no resource/asset limits for the QMB, SLMB, or QI-1 programs in New York State).

Sam Starts Working: Using Work Incentives to Retain Medicare, Medicaid and QMB Eligibility

The next time you hear from Sam it is to tell you that he is starting a job as an entry level social worker. It will pay $24,000 per year or $2,000 gross per month. Sam expresses a few concerns:

- He understands that he will lose his SSDI at some point in the future as his earnings are well above the $1,010 substantial gainful activity level and he used up six of his nine trial work months working during the past two summers.
- He is concerned about a loss of Medicare when he loses SSDI cash benefits.
- He is concerned that his QMB eligibility will cease and he will have to start paying for his Part B premiums.
- He is concerned because a Medicaid worker told him his Medicaid spend down will go way up as his countable income increases.
- He is concerned that ACCES-VR will no longer pay for the ramp that he has discussed recently with his ACCES counselor.
- He points out that because he cannot walk the roughly 1.5 miles to the nearest bus stop, he will need to take the paratransit system to work at $7 per round trip or $140 per month for a 20-day work month.
- His employer will provide private insurance through a group plan after 90 days of employment, with a $200 per month employee contribution. The insurance plan does not cover prescription drugs. Coverage for durable medical equipment is limited to $1,000 per item with a 50 percent co-payment. Sam worries about this extra $200 per month expense and wonders if there is any way to avoid it. He is also worried that the insurance plan might not cover certain things because he has a preexisting condition.
- He plans to gradually increase his modest savings, will have an employer-funded 401(k), and even hopes to start a 403(b) retirement account in the future. He is worried about how these new assets will affect any of his benefits.

Retaining SSDI. What is nearly certain is that Sam will lose his right to cash benefits in six months after using his final three trial work months and three-month grace period. The good news is that Sam will get both SSDI checks and paychecks during his first six months of work.

Regarding the cash benefits, we direct our readers to our newsletter discussing SSDI and work (see *Social Security Disability Insurance and Work: A Review of SSDI Rules Related to Work Activity, A Discussion of the SSDI Work Incentive Rules Available to Maximize Independence through Work*, available at **www.nymakesworkpay.org/docs/MIG_Newsletter_3.0.pdf**).

Retaining Medicare. Additional good news is that Sam can retain Medicare, after losing his right to SSDI payments, through the extended period of Medicare coverage for a minimum of 93 months after his ninth trial work month so long as his disability continues (see Medicare newsletter referenced above). Medicare Parts A, B, and D will all be available but his increased income could affect Sam's eligibility for QMB and for the Part D low-income subsidy. Importantly, Medicare will continue to be available to fund any AT (most likely as durable medical equipment) that meets that program's funding criteria.

Retaining QMB. As noted above, the countable income limit for QMB is $931 per month. During the first six months of employment Sam will have $892 of countable unearned income and $967.50 of countable earned income ($2,000 – 65 = $1,935 ÷ 2 = $967.50) using SSI budgeting rules. The combined $1,859.50 ($892 + $967.50) of countable income is well above the QMB eligibility level of $931 and also above the higher SLMB level ($1,117 per month) and QI-1 level ($1,257 per month).

You are able to tell Sam that he should again be eligible for QMB in his seventh month of employment. This is because after his final three trial work months and three-month grace period, Sam will no longer get SSDI checks and because his $140 in paratransit expenses will be deductible as an impairment-related work expense (IRWE) when calculating countable earned income. Now his countable income from wages only will be $897.50 ($2,000 – 140 IRWE = $1,860 – 65 = $1,795 ÷ 2 = $897.50). Since this is less than the $931 QMB eligibility level, he will once again be eligible for QMB after six months

New York Makes Work Pay Newsletters and Policy-to-Practice Briefs Provide Solid Reference Materials

The New York Makes Work Pay website has a wealth of resource materials, including numerous issues of the Working newsletter and many policy-to-practice briefs. To find links to these and many other publications, go to **www.nymakesworkpay.org** and click the resources link (you will then find links for the newsletters and briefs). The newsletters are designed for readers who need information about a topic, but are not expected to need the depth we offer in a policy-to-practice brief. The briefs, by contrast, take a topic and cover it in much greater depth, providing multiple footnotes with references to the relevant laws, regulations, and policy. The briefs are designed for the reader who is expected to use the information in his or her daily work and who will need to look up the policy materials reference in the footnotes.

On many of the key issues faced by individuals with disabilities as they prepare for and go to work (e.g., SSDI and work, SSI and work, Medicaid and work, Medicare and work, the Plan for Achieving Self-Support), we have published both a newsletter and policy-to-practice brief and both are available on our website. In fact, a number of those publications have been recently updated.

of work. As noted above, there is no asset test for any of the MSPs, allowing Sam to accumulate savings and build up his 401(k) and 403(b) accounts while maintaining MSP coverage.

Eligibility for the Medicaid Buy-In for Working People with Disabilities (MBI-WPD). The MBI-WPD has been available to New Yorkers since July 2003, as New York is one of 43 states to elect to implement this important program for workers with disabilities. Before July 2003, a person in Sam's position would face a dramatic increase in his Medicaid spend down as he went to work. Without going into all the eligibility criteria here,

(see our newsletter, *New York's Medicaid Buy-In for Working People with Disabilities: Program Allows Individuals with Disabilities to Work and Keep Medicaid,* available at **www.nymakesworkpay.org/docs/MIG_Newsletter_1.2/MIG_Newsletter_1.2.pdf**),

it is fairly clear that Sam will be eligible for the MBI-WPD as his countable income (also using SSI rules) will be less than $2,328 per month (based on 250 percent of the federal poverty level, the income standard used in most states with a buy-in program). Since Sam's countable income is no more than $1,859.50 (even before he loses his SSDI and even if we do not deduct for transportation-related IRWEs), he will clearly be eligible for the MBI-WPD. Also, we can assure Sam that going forward he can retain Medicaid through this program at earnings levels up to $56,892 per year and countable resources up to $20,000 (with all retirement accounts exempt). (**Note**: The exemption of retirement accounts, a new MBI-WPD rule effective October 2011, does not apply to the traditional Medicaid program).

Medicare's Part D Low-Income Subsidy Program. There are two ways to qualify for the low-income subsidy, often called "Extra Help," to eliminate many of the out-of-pocket costs related to Part D premiums, deductibles, and prescription copayments.

1 The 2012 general eligibility criteria for the full subsidy requires an individual to have countable income no greater than $1,257 per month/$15,080 per year with countable assets up to $8,440. The 2012 criteria for the partial subsidy require an individual to have countable income no greater than $1,396 per month/$16,755 per year with countable assets up to $13,070. The deductions from income and assets are very similar to the SSI rules, with the first $20 of any income excluded and $65 plus 50 percent of gross earnings excluded. Importantly for Sam, retirement accounts including IRAs, 401(k) accounts, and other retirement accounts count against the assets limits. In Sam's case, it would appear that his $1,859.50 of countable income as he starts working will make him ineligible for either subsidy program, with him becoming eligible when he loses his SSDI and his countable income goes well below $1,000 per month. When you mention the resource limits to Sam he is concerned, sharing that he definitely hopes to eventually accumulate well over the $8,440 figure in retirement accounts

The New York State AT Advocacy Project: Assistance When AT Funding is Denied

Our longtime partners at Neighborhood Legal Services in Buffalo, NY have contributed resources from their New York State Assistive Technology (AT) Advocacy Project to assist with the writing of this newsletter. This statewide project provides free legal services to individuals who are seeking funding for a wide range of AT devices. Although the AT Project is equipped to handle cases dealing with any number of funding sources, their most common work is on behalf of individuals who have been denied Medicaid funding for specialized equipment. Most of those appeals are administrative fair hearings. The AT Project will also provide technical assistance to attorneys and advocates who are working on appeals.

If you, or an individual you work with, needs assistance on any issue related to the funding of AT, please contact

Marge Gustas at 716-847-0650 ext. 256 or email Ms. Gustas at **mgustas@nls.org**.

alone. (For more detailed information on eligibility criteria for the low-income subsidy, see *Social Security's Program Operations Manual System* or POMS HI 03001.005, available at **https://secure.ssa.gov/poms.nsf/lnx/0603001005**).

2 The second way to establish Part D subsidy eligibility is through "dual eligibility" for both Medicare and Medicaid. If an individual is dually eligible, he or she will automatically be eligible for the full low-income subsidy without regard to whether countable income and resources meet the general criteria listed in the paragraph above. To be considered a Medicaid recipient, an individual could be eligible for traditional Medicaid, the MBI-WPD, or a Medicare Savings Program (since an MSP like QMB is considered a form of Medicaid benefit). In Sam's case, he is eligible for Medicaid when we first meet him, should be eligible for Medicaid through the MBI-WPD when he starts working, and should be eligible for the MBI-WPD indefinitely with the more generous resource/asset limits (up to $20,000 in countable resources) and exclusions for all retirement accounts. Current and continued eligibility for the full subsidy ensures that he will not pay for monthly prescription plan premiums (so long as he is in a typical or "benchmark" plan), will not face the high deductibles associated with the Part D coverage gap or "donut hole," and will pay the lowest copayments on individual prescriptions. Sam's actual savings will depend on the number of medications he takes, how expensive they are, whether his private insurance plan covers prescription drugs (currently it does not), and whether his insurance plan will cover prescription drugs in the future. Some beneficiaries of the full low-income subsidy have saved $6,000 or more per year in out-of-pocket expenses.

ACCES-VR Funding of Ramp. ACCES-VR, using federally approved criteria, applies an economic needs test when individuals seek payment for items like tuition, transportation, or funding of a ramp to support a vocational goal. The income eligibility levels may change from year to year. However, a person who is receiving any amount of SSI or SSDI payments is automatically deemed to meet the financial needs criteria. It thus becomes critical to arrange for the ramp installation and payment while Sam remains eligible for SSDI.

Private Insurance Premium Costs. It is possible that the Medicaid agency will pay for Sam's health insurance premium to ensure that he opts for and continues coverage. The Medicaid agency has discretion to pay for a recipient's insurance premiums if it is "cost effective," i.e., if there will be a net savings to Medicaid through the private insurance plan (since the private insurance plan will be the first payer for items it covers). This is very important so Sam or his benefits counselor/advocate may need to contact the Medicaid agency to encourage them to exercise their discretion to pay for his insurance premium costs.

Private Insurance and Coverage for Preexisting Conditions. Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Sam will not be subject to any preexisting conditions exclusion from coverage so long as key HIPAA eligibility criteria is met: this must be group health coverage; prior to his eligibility for the group health plan he must have had "creditable coverage"; and there must be no more than a 63-day break in eligibility since he last had the creditable coverage. Sam should be eligible for the HIPAA protections: his private insurance is a group health insurance plan; either Medicare or Medicaid will meet the creditable coverage requirements; and since both Medicare and Medicaid coverage have been ongoing, there would be no break in coverage of more than 63 days. (**Note**: New York State Insurance Law offers a similar protection for insurance plans subject to its regulations).

The federal Affordable Care Act, recently upheld as constitutional in most respects by the U.S. Supreme Court, will protect all citizens against preexisting conditions in most private insurance plans starting in 2014. As we get closer to that effective date, readers will want to look for news about the implementation of this provision.

2 Years Later – Sam Needs a Power Scooter, a Scooter Lift for his Car, and a Lightweight Computer

Sam has been working at the same social worker job for two years and he contacts you again. He reports that he is now earning $28,000 per year ($2,333 per month gross), having just received a significant raise; has about $1,000 in his savings account and tries to maintain a $500 cushion in his checking account; has $1,800 in his

401(k) retirement account; is about to start a self-funded 403(b) retirement account; continues eligibility for private insurance with his $200 per month contribution paid by Medicaid; continues eligibility for Medicaid through the MBI-WPD; continues eligibility for Medicare (he still has about six years of eligibility through the extended Medicare work incentive); with his increased earnings he is no longer eligible for QMB, but is eligible for SLMB to cover his monthly Part B premiums with countable income of $1,064 per month ($2,333 – 140 IRWE = 2,193 – 65 = 2,128 ÷ 2 = $1,064); and continues eligibility for the full Medicare Part D low-income subsidy, since he continues to be dually eligible for Medicare and Medicaid.

Sam explains some new concerns and new needs:

- He raises concerns about whether his eligibility for any of the above-referenced programs will be affected by the increase in earnings and increase in assets.

- He explains that even with the better wheeled walker, it has become increasingly difficult for him to get around for both work-related and personal travel outside his home. He now must travel for most of his client appointments (meeting them in their homes or at other locations). He would like to get a power scooter at a cost of $3,500. He wonders how he might get this funded.

- An aunt has offered Sam her two year old car and has agreed to pay his first year's insurance. He has a driver's license (having had training on a vehicle with hand controls) but has never been able to afford a car. He would need hand controls on this vehicle for the accelerator and break at a cost of $1,200 installed. Additionally, he would need a scooter lift for the car (hydraulic lift would allow Sam to store the scooter in the car's hatchback while he drives) at a cost of $2,500 installed. He also wonders how these items could be funded.

- With Sam's revised duties, he will be expected to carry an agency laptop to record client data (using a web-based system) when he travels to meet with individuals outside the agency. Even with the lightest agency laptop that Sam has tested it will be very challenging to carry the device in the storage area of his wheeled walker (i.e., under the seat) and he would otherwise have great difficulty carrying this heavy laptop. He has tried out a number of options and believes a MacBook Air with an external adapted keyboard will meet his needs for a smaller, light-weight computer while meeting his employer's needs for data entry. Like the existing employer-owned laptops, Sam would use either WIFI or a 4G network to access his agency's web-based database. With the needed accessories and adapted keyboard (to be connected through a USB port), this device will cost $1,750 and Sam wants to know how he will be able to pay for it.

Increased Income and Assets Affecting Eligibility. You can assure Sam that his new level of countable income, $1,064 (see calculation above) using SSI rules, will allow him to continue Medicaid buy-in eligibility and

Federal Funding Ends for Key Projects:

New York Makes Work Pay Project and Seven Separate WIPA Projects

The NY Makes Work Pay Project has been funded, since January 2010, on a grant from the federal Centers for Medicare and Medicaid Services (CMS) to the State Office of Mental Health (OMH). OMH in turn partnered with the Burton Blatt Institute at Syracuse University and the Employment and Disability Institute at Cornell University to deliver a range of services to support the work efforts of New Yorkers with Disabilities. The full range of services NY Makes Work Services is documented on the project's website, **www.nymakesworkpay.org**. Some of the services, like the publication of this newsletter and some training initiatives, have been ongoing since early 2010. Federal funding of this project officially ended on December 31, 2011 and the limited ongoing services have been funded though carryover funding (officially approved as a 12-month "no-cost extension"). At the end of December 2012 all federally-supported services for the NY Makes Work Pay Project will end. As this is written, no new funding for this project has been identified.

The Social Security Administration (SSA) has funded Work Incentives Planning and Assistance (WIPA) projects throughout the country since late 2006. Between late 2000 and 2006, very similar Benefits Planning, Assistance and Outreach (BPAO) projects were funded by SSA. The primary purpose of the WIPA and BPAO projects has been to provide benefits counseling or benefits planning services to SSDI and SSI beneficiaries about the affects of work on benefits and how to use the SSDI, SSI, Medicare and Medicaid work incentives to support their work goals. Until recently, SSA funded seven different projects within New York State to ensure that WIPA services would be available to all New Yorkers with disabilities. SSA funding of these projects officially ended on June 30, 2012. Some of the WIPA providers are using carryover funding to provide very limited services to beneficiaries they were already serving; some of the agencies that received WIPA funding are now devoting very limited agency resources to provide more limited benefits counseling services; and some of those agencies (and a few others) are accepting fee-for-services referrals from New York's ACCES-VR agency. As this is written, efforts continue to reestablish funding to continue this very important program.

MSP eligibility through the SLMB program (the SLBM will pay for monthly Part B premiums). You can assure Sam that since both programs must follow SSI rules, the gift of the car and the aunt's payment for insurance will not count against him under income or resource rules (SSI rules make the car exempt and a gift of a car is not considered income; the insurance payment is not considered income as Sam is not receiving either food or shelter through this transaction as long as she pays the insurance cost directly to the provider). With continued dual eligibility for Medicare and Medicaid he will also have continued eligibility for the full Medicare Part D low-income subsidy.

Funding for the Power Scooter. If, as it appears, Sam will not need the scooter for mobility within his home, we can assume that Medicare funding will not be available. Funding should be available, however, through the Medicaid program as Sam needs the scooter to meet his full range of mobility-related needs outside the home and the wheeled walker is no longer meeting those needs. If the private insurance plan will pay for any part of the $3,500 cost (it appears it could cover up to $500), Sam must access private insurance first with Medicaid picking up any additional cost.

Funding the Vehicle Hand Controls and Scooter Lift. These items, at a combined cost of $3,700, may be a challenge to get funded. These items will not meet Medicare's DME definition, as they are not used within the home. Medicaid does not face the same limitations as Medicare, but it would likely take a hearing and eventual court appeal to have a chance of the hand controls and lift being funded. Even if Medicaid concedes that these items can be considered DME, they will point out that their only use relates to car-related travel and that travel in a car is not medically necessary for Sam. At least one Medicaid waiver program will pay for vehicle lifts to pay for transport of a disabled child (see *Care at Home Medicaid Waiver Home Adaptations and Vehicle Modifications*, published May 22, 2000, available at **http://www.wnylc.net/pdf/2000-adms/00ommadm4.pdf**), but there is no indication that Sam participates in a waiver program or that there is a New York waiver program that pays for this equipment for adults. This could be worth exploring further as new Medicaid waiver programs surface from time to time.

These items could be available through ACCES-VR as a post-employment service to allow Sam to retain employment that will be compromised if he is not able to travel to job sites with his vehicle. One problem is that Sam is no longer an SSDI beneficiary (which had created automatic eligibility for ACCES-VR's economic need criteria) and his current income is probably too high to meet the economic need criteria. The ACCES-VR website indicates that, as of May 1, 2008, an individual may have up to $20,420 in annual income without a required contribution to the cost of services. Ordinarily, with Sam's annual income ($28,000) his "available income" (i.e., required contribution to the cost of services) would be $7,580 ($28,000 – 20,420). He will need to check with his ACCES-VR counselor (or former counselor if his case is closed) to see if available deductions, such as exceptional medical or transportation costs, might reduce this required contribution.

There is also the possibility that Sam might have a more liberal set of economic need criteria applied to his case because these items will be one-time purchases. ACCES-VR Policy Manual section 1125.00 and instructions on "available income," line 5B on form VES-310, states that they will multiply annual available income by .25 if the