



New York Makes Work Pay

Developing a path to employment for New Yorkers with disabilities

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Policy to Practice Brief #8

SUPPLEMENTAL SECURITY INCOME, MEDICAID AND WORK:

Guidelines for Proactively Using the SSI and Related
Medicaid Work Incentives to Help Individuals with
Disabilities Maximize Independence Through Work.

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About Policy-to-Practice Briefs

This document is one of a series of policy to practice briefs published as part of the New York Makes Work Pay initiative, a Comprehensive Employment Services Medicaid Infrastructure Grant funded by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to the New York State Office of Mental Health (OMH) and its management partners, the Burton Blatt Institute at Syracuse University and the Employment and Disability Institute (EDI) at Cornell University. The New York Makes Work Pay Initiative provides an array of services to employers and individuals with disabilities and the agencies and advocates that serve them, helping to remove obstacles to work and pave the way to self supporting employment.²

The thoughts and opinions expressed in these materials are those of the authors and do not necessarily reflect the viewpoints or official policy positions of the Social Security Administration (SSA), CMS, or OMH. The information, materials and technical assistance are intended solely as information guidance and are neither a determination of legal rights or responsibilities, nor binding on any agency implementation and/or administrative responsibilities.

This publication is based on federal Supplemental Security Income (SSI) laws, regulations, and policy, with a focus on how those provisions will affect New York State residents with disabilities. Although this is written for a New York audience and will focus on New York's unique SSI rates in examples, all of the SSI-related laws, regulations, and policy discussed are federally based and will play out the same in every state. Therefore, this will be a good resource for readers throughout the country.

²A detailed description of the New York Makes Work Pay Project and its services can be found at <http://www.NYMakesWorkPay.org>.

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Abbreviations Used In This Policy to Practice Brief

Social Security Disability Insurance	SSDI
Supplemental Security Income	SSI
Substantial Gainful Activity	GA
Continuing Disability Review	CDR
Social Security Administration	SSA
Childhood Disability Benefits	CDB
Disabled Adult Children	DAC
Earned Income Tax Credit	EITC
Expedited Reinstatement of Benefits	EXR
Cost of Living Adjustment	COLA
Plan for Achieving Self Support	PASS
Student Earned Income Exclusion	SEIE
Blind Work Expense	BWE
Property Essential to Self Support	PESS

I. Introduction

Many individuals with severe disabilities depend on either Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) as their primary or sole source of income. To obtain either benefit, an individual must meet a strict disability standard. In some cases, an initial application may be denied and a significant time lapse occurs before an individual is finally awarded benefits through an appeal.

Individuals who are considering going to work or returning to work will typically need answers to several important questions:

- Will my condition allow me to work?
- Will I need special supports (e.g., job coaching, on-the-job training, a modified computer, or specialized equipment) to perform a new job?
- How will my cash benefits or health insurance (Medicare or Medicaid) be affected if I go to work?
- Can I take advantage of any special work incentives while I am working?
- Will my earnings be enough to support me, after any reduction of means-tested benefits?
- How can I build assets to increase my economic self-sufficiency?
- Who can I go to for answers to questions I might have?

As many readers know, the answers to many of these questions will vary greatly depending on whether the individual receives SSDI or SSI (or a combination of both benefits).

This brief will focus on issues related to benefits and work for the SSI recipient. After first explaining what SSI is and the differences between SSI and SSDI, we will go on to explain the limited number of work incentives or special rules that the SSI applicant can use to limit the adverse impact on their SSI application. We will then turn our attention to SSI recipients and the extensive set of work incentives that apply to SSI recipients as they move ahead with their vocational goals. These SSI work incentives include:

- the \$65 plus 50 percent earned income exclusion;
- the 1619(a) rules that allow SSI recipients to earn wages above the SGA level;
- impairment related work expenses (IRWEs);
- blind work expenses (BWEs);
- the student earned income exclusion (SEIE);
- extended Medicaid coverage, under section 1619(b), for individuals who lose the right to an SSI cash payment due to work and wages;
- expedited reinstatement (EXR) of SSI benefits, allowing some individuals who lose SSI through work to return to SSI payment status when work stops or earning levels decrease; and
- SSI's Plan for Achieving Self Support (PASS).

Throughout this brief we will provide examples to reinforce how the rules will operate. We will also point out proactive steps that the beneficiary and the benefits and work incentive planner can take to maximize the use of work incentives as the beneficiary moves toward a long-range work goal and maximum levels of financial independence.

The authors realize that many SSI recipients will also receive SSDI benefits and Medicare. Many SSI recipients will also receive or qualify for other means-tested benefits, including food stamps and subsidized housing. This brief will not address SSDI or Medicare, except to briefly contrast them with SSI and Medicaid. It also; will not discuss other means-tested benefits; , and will not address any special tax considerations, including eligibility for the federal earned income tax credit.³³ Instead, this brief will address only SSI and its companion health care benefit, Medicaid. The Medicaid discussion will be very limited, focusing on the automatic Medicaid eligibility for individuals who receive any SSI payment in New York. We will further touch on the special 1619(b) provision that allows for continued Medicaid eligibility when SSI payments are lost through work activity. Future briefs will address how individual beneficiaries negotiate multiple benefit systems in the context of pursuing work goals.

II. Background on SSI and Medicaid

SSA administers SSI, a program for individuals with limited income and resources. It can be a person's only source of income or, as its name suggests, a supplement to other income, such as SSDI. Because SSI is means-tested, both earned and unearned income is always relevant in determining the amount of the monthly check. However, once approved for SSI, the amount of earnings will not affect SSA's determination of whether a person continues to be disabled.⁴

Medicaid,⁵ like SSI, is means-tested. In New York and 38 other states, the District of Columbia, and the Northern Mariana Islands, a person who receives SSI payments automatically qualifies for Medicaid.⁶ In the 11 states that exercise the section 209(b) option, Medicaid states, eligibility is not automatic for SSI recipients. These states use their own Medicaid eligibility criteria,⁷ which differs from SSI criteria. The 209(b) states include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia.⁸

³ For a detailed explanation of the earned income tax credit, see *The Federal Earned Income Tax Credit: A Work Incentive That Puts More Money in a Paycheck and Saves on Taxes*, available at http://www.ilr.cornell.edu/edi/publications/PPBriefs/PP_21.pdf.

⁴ See part III.A.2, below.

⁵ 42 U.S.C. §§ 1396 et seq.

⁶ 42 U.S.C. § 1396a(a)(10)(A)(i).

⁷ 42 U.S.C. § 1396a(f).

⁸ POMS SI 01715.020

SSDI is an insurance program. To qualify, one must meet an “insured status” test— a wage earner must have paid sufficient amounts into the Social Security trust fund.⁹ Both the wage earner and his or her dependents may be eligible for benefits. For example, SSA operates separate Social Security Disability benefit programs for widows or widowers of wage earners, and disabled adult children of wage earners (Child’s Insurance Benefits, most commonly referred to by SSA as Childhood Disability Benefits (CDB) or Disabled Adult Child (DAC) benefits).¹⁰ Current earnings would not affect the SSDI check amount for any approved disability claim. However, earnings above the SGA amount may affect whether the person is considered disabled.¹¹

Medicare¹² is most frequently associated with Social Security. After a 24-month waiting period, an SSDI beneficiary qualifies automatically for Medicare Part A, known as hospital insurance benefits. This covers such things as inpatient care and skilled nursing facility care.¹³ Medicare Part B, supplemental medical insurance, is optional and requires payment of a monthly premium (\$96.40 per month in 2010 for most individuals, but \$110.50 for those newly eligible in 2010). It covers community-based services, including physician services, durable medical equipment, prosthetic devices, and home health services.¹⁴ Medicare Part D, the prescription drug benefit, is also optional and, depending on the individual, could require substantial out-of-pocket expenses for monthly premiums, co-payments, and deductibles.¹⁵ There will be no further discussion of SSDI or Medicare in this publication, except some general references to give context to the SSI and Medicaid discussion.

III. General Background on SSI and Work

SSI recipients, their advocates, and other professionals who work with them often approach the subject of competitive employment with great apprehension. They fear loss of cash benefits and loss of health insurance coverage, and — should a work attempt fail — the time-consuming reapplication process. For those heavily dependent on Medicaid to fund a range of services, including prescription drugs, home health care services, or expensive medical equipment (e.g., power wheelchairs), the loss of health care coverage could prevent the pursuit of work goals.

While there is no foolproof way to allay every fear, the work incentives available for the SSI recipient can make a transition from benefits to work a realistic objective in the majority of cases. In fact, the various rules for disregarding or excluding major portions of an individual’s wages typically ensure that the reduction in SSI benefits is gradual. Additionally,

⁹POMS SI 01715.020.

¹⁰42 U.S.C. § 423(c).

¹¹See part III.A, below.

¹²42 U.S.C. §§ 1395 et seq.

¹³42 U.S.C. § 1395d.

¹⁴42 U.S.C. §§ 1395j, 1395k.

¹⁵POMS HI 03001.000 et seq.

in the event that SSI cash payments are lost due to earnings, the ability to retain Medicaid through 1619(b), provides the ultimate safety net that should help to motivate many SSI recipients to move forward with their work goals. Those special rules or work incentives will be discussed in detail in part IV, below.

Readers need to know that under the SGA rule, an SSDI or an SSI applicant will be denied disability benefits if they are working and earn over that year's monthly SGA amount. In 2010 that amount is \$1000 for disabled individuals and \$1640 for statutorily blind individuals. The SGA rule applies also to SSDI recipients but not to SSI recipients.¹⁶

A. Section 1619(a) Allows an SSI Recipient to Continue SSI Payments When Wages are Above the SGA Level

The Employment Opportunities for Disabled Americans Act, effective July 1987, made sections 1619(a) and (b) of the Social Security Act permanent in every state.¹⁷ Section 1619(a) allows an SSI beneficiary to continue receiving monthly SSI payments when wages are more than the monthly SGA amount.¹⁸ Because they are no longer necessary, the trial work period and extended period of eligibility were eliminated from the SSI program in 1987 when the section 1619 provisions became permanent.¹⁹

As stated above, as a practical matter, readers only need to know that the SGA rule does not apply to SSI recipients. When an SSI recipient has earned income from a job or from self employment, the earnings will be budgeted using SSI's criteria for disregarding a percentage of earned income as described in part IV.B, below.

B. SSI Recipients will be Subject to Periodic Continuing Disability Reviews

Many people fear that work increases the likelihood of a continuing disability review (CDR) and a resulting termination of benefits. Indeed, many advocates and rehabilitation professionals have discouraged work for this reason. Rather than discouraging work activity, advocates should ensure that the beneficiary understands the potential impact of work on benefits in order to make informed choices about work and use of the work incentives. Advocates must also ensure that beneficiaries are aware of special provisions that will eliminate CDRs in some circumstances, or allow for a time-limited benefits continuation after a finding of medical improvement.

¹⁶See Social Security Disability Insurance, Medicare and Work: A Review of the SSDI and Medicare Rules Related to Work Activity; Guidelines for Proactively Using the SSDI and Medicare Work Incentives to Help Individuals with Disabilities Maximize Independence Through Work, available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/SSDI%20Brief-2.0.pdf>.

¹⁷Pub. L. No. 99-643 §§ 2-7, 100 Stat. 3575 (1986).

¹⁸U.S.C. § 1382h. Continued Medicaid eligibility under section 1619(b) is discussed in part IV.C.

¹⁹See POMS SI 02302.001 A.

A medical CDR will occur periodically, for all SSI recipients, to determine whether they still meet the medical criteria of the program. A medical CDR will occur whether or not the person is working, based on three classifications:

1. Medical Improvement Not Expected: Reviewed every five to seven years.
2. Medical Improvement Possible: Reviewed every three years.
3. Medical Improvement Expected: Reviewed six to 18 months after initial entitlement.²⁰

Generally, benefits will be terminated following a CDR only if medical improvement enables the person to engage in SGA.

1. No CDR While Using a Ticket

In most cases, during the period in which an SSI beneficiary is using a “Ticket,” or voucher for rehabilitation services under the Ticket to Work and Self-Sufficiency Program, SSA may not initiate a CDR to determine if the individual is no longer disabled.²¹ The original Ticket regulations became effective on January 28, 2002. Revised Ticket regulations were published in May 2008 and became effective on July 21, 2008.²² A separate policy-to-practice brief describes the Ticket program and the criteria for the moratorium on CDRs when an individual is using a Ticket and making timely progress.²³

2. Section 301: Continuation of Benefits for Persons in Vocational Rehabilitation Programs

A special rule protects persons who medically improve after beginning a vocational rehabilitation program approved by SSA.²⁴ This is often referred to as “Section 301” because it was enacted as section 301 of the Social Security Amendments of 1980.²⁵ It protects persons who participate in any vocational rehabilitation program approved by SSA, not just those developed by a state vocational rehabilitation agency.²⁶ Historically, these provisions applied to people who medically improved while attending a college or other training program. Over the past 10 years, the Section 301 protection was expanded and now applies

²⁰42 U.S.C. § 421(i); 20 C.F.R. §§ 404.1590(d), 416.990(d). For a more detailed discussion on CDRs, see Medical Continuing Disability Reviews and Related Concepts: A Discussion of Medical CDRs and the Age Redetermination, available at http://www.ilr.cornell.edu/edi/publications/PPBriefs/PP_11.pdf.

²⁰ C.F.R. §§ 404.1590(h), 416.990(h).

²¹20 C.F.R. §§ 404.1590(h), 416.990(h).

²²See 20 C.F.R. Part 411.

²³See The “New” Ticket to Work and Self-Sufficiency Program: Enhancing Economic Self-Sufficiency of Beneficiaries Through Work Opportunities and Public / Private Partnership, available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/Ticket%20to%20Work.pdf>.

²⁴U.S.C. §§ 425(b), 1383(a)(6); 20 C.F.R. §§ 404.316(c), 416.1338; POMS DI 14505.001 et seq.

²⁵Social Security Amendments of 1980, Pub. L. No. 96-265, § 301(b), 94 Stat. 441.

²⁶42 U.S.C. §§ 425(b)(1), 1383(a)(6)(A).

to individuals participating in the Ticket to Work program²⁷ or SSI's PASS,²⁸ as well as to individuals who are attending a special education program pursuant to an individualized educational plan at the time medical improvement is determined.²⁹

In most cases, the law provides two requirements for continued SSI eligibility: (1) participation must be in the Ticket to Work program or another SSA-approved vocational rehabilitation program; and (2) participation must increase the likelihood of removal from the disability rolls. SSA's regulations add the requirement that the program must have started before the disability ceased.³⁰ In the case of an individual participating in the Ticket program and making "timely progress" as defined in the Ticket regulations, there is no need to separately satisfy the second criterion. In the case of an individual participating in the PASS program, there is also no need to separately satisfy the second criterion, as an approved PASS requires a viable work goal that is expected to lead to elimination of or reduced dependence on benefits.

As of 2005, the Section 301 protections were expanded to apply to certain SSI recipients between the ages of 18 and 21, who have been found to be not disabled under adult criteria following an Age 18 Redetermination or who have been found medically improved following a CDR. If the youth is attending a special education program pursuant to an individualized educational program in accordance with the federal Individuals with Disabilities Education Act, at the time medical improvement is found, benefits will continue so long as attendance in the special education program continues. Under this provision, there is no requirement that the special education student be enrolled in a vocational program, nor is there any requirement that the student meet the usual two-part test under section 301.³¹ Similarly, if the young person is receiving "transition services" after having completed an individualized educational program, SSA will determine that the transition services will increase the likelihood that the individual will not return to the disability rolls, thereby meeting part two of the usual two-part test.³²

²⁷20 C.F.R. § 404.327(a)(1).

²⁸POMS SI 00870.010 B, DI 14505.010 B. For more detailed information on the PASS, see Plan for Achieving Self-Support: An SSI Work Incentive and Approach to Self-Directing Vocational Rehabilitation to Support a Range of Work Goals, available at http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_PP_PASS.pdf.

²⁹20 C.F.R. §§ 404.327(a)(4), 404.328(b); POMS DI 14505.010 C.

³⁰20 C.F.R. §§ 404.316(c), 416.1338(a).

³¹20 CFR §§ 404.328(b), 416.1338(e)(2).

³²20 C.F.R. §§ 404.328(c), 416.1338(e)(3).

IV. Work Incentives and SSI

Since work incentives vary greatly between SSI and SSDI, the two programs should *always* be discussed separately. This publication will only discuss the SSI work incentives.

A. New York's SSI Rates: The Starting Point in Calculating the Monthly SSI Payment

The SSI program determines the monthly payment amount by deducting countable income from an SSI base rate. SSI rates vary from state to state, as states supplement the SSI federal benefit rate (FBR) at their option. For 2010, SSI's FBR is \$674 per month. States that do supplement the FBR do so in varying amounts. For those states that do not supplement it, the FBR serves as their base rate.

New York has three primary 2010 SSI rates, based on living arrangements and different levels of state supplement to the FBR:

- living alone - \$761 per month (includes \$87 state supplement)
- living with others (and paying pro rata share of household expenses) - \$697 (includes \$23 state supplement)
- living in the household of another (not paying the pro rata share of household expenses) - \$472.34 (includes \$23 state supplement)

In addition to these rates, higher rates exist for SSI couples and for individuals who reside in one of three "congregate care" levels. For example, the SSI rate for individuals who live in a state certified community residence is \$1,109 (with a \$435 state supplement) in New York City, Long Island, and Westchester and Rockland Counties. That community residence rate is \$1,079 in the rest of the state (with a \$405 state supplement). If an individual resides in a Medicaid certified institution, the SSI rate is a modest \$30 per month (with no supplement). All of the 2010 SSI rates for New York appear in the "SSI Benefit Levels Chart effective January 1, 2010," as published by the State Office of Temporary and Disability Assistance on its website.³³

B. Overcoming the "Living in the Household of Another" Rate

Readers should be aware that many individuals receive SSI based on the very low "living in the household of another" rate when they would, in fact, qualify for SSI payments at either the "living with others" or "living alone" rate. For example, an adult child who resides with parents is entitled to the living with others rate if he or she pays the pro rata share of key household expenses including: rent or mortgage, taxes if any, utilities for heat and electric, and food.

In many instances, the cost of rent or mortgage is so high that the SSI recipient could not possibly pay his or her share of it. For example, in some parts of the state mortgage

³³The chart is available at <http://www.otda.state.ny.us/MAIN/directives/2009/INF/09-INF-22-Attachment-1.pdf>.

payments on even a modest home (including taxes and insurance) may exceed \$2,500 per month. An adult child residing with two parents could not possibly pay one third of \$2,500, as \$833 would be more than the \$697 living with others rate. The additional costs for the share of utilities and food could bring this amount to more than \$1,000 per month. In this case, many families and adult children have entered into a “roomer/lodger agreement,” which is essentially a business agreement between adult child and parents to pay a certain monthly amount for lodging. When this agreement is approved by SSA, the SSI recipient will then be paid based on the \$761 living alone rate. Readers can get more information on how best to set up this arrangement by calling the NY Makes Work Pay “Work Incentives Hotline” at 1-888-224-3272.

Once the SSI base rate is established, the monthly SSI payment is determined by subtracting any countable earned and/or unearned income from the base rate.

Example. Walter receives SSDI benefits of \$520 per month and lives alone. The SSI program will exclude the first \$20 of this unearned income as a general income exclusion, reducing his countable income to \$500 per month. Subtracting this from the SSI base rate (\$761 – 500), Walter’s SSI payment will be \$261 per month and he will qualify for Medicaid automatically.

As will be explained in the next section, when an SSI recipient has earned income (i.e., wages) the earned income exclusions are much more generous and represent a series of work incentives designed to encourage work activity.

C. SSI’s Earned Income Exclusions as Work Incentives

As already detailed in part III.A.2, above, the SGA rule will not apply to SSI recipients because section 1619(a) eliminated that rule for SSI recipients in 1987. When an SSI recipient works, the only impact of wages or self-employment income is a gradual reduction to the SSI check as countable income increases.

The earned income exclusions can be a powerful work incentive for many SSI recipients. Because more than 50 percent of gross wages will be disregarded in the SSI check calculation, the person is frequently better off by going to work. We caution the reader that the benefit of these exclusions may be offset by other expenses, such as costs related to transportation or child care. The benefit of the exclusion can also be offset by a loss of other government benefits which are affected by changes in income. Federal housing subsidies, food stamps, and welfare benefits for the SSI recipient’s family are just some examples of means-tested benefits that could be affected. For those eligible, the federal earned income tax credit, usually received as a tax refund, helps to offset both Social Security taxes (i.e., FICA) withheld and other expenses related to work.³⁴

Moving from Policy to Practice. It is critical that benefits advisers/practitioners who are advising SSI recipients about the use of work incentives present scenarios to show how varying levels of work will affect their SSI payment level and net disposable income. To do

³⁴See note 3, above, and part IV.F.3, below.

this, the practitioner should help the recipient to account for work-related expenses, like tax withholding, transportation, and child care expenses. Whenever possible, the benefits practitioner should also make the recipient aware of the potential impact of work on other means-tested benefits, like food stamps or housing subsidies, including whether these programs have any applicable work incentives of their own. The latter information may need to come from other sources with expertise on these topics. Finally, where appropriate, the benefits practitioner should make the recipient aware of the potential benefits from the federal earned income tax credit (again, typically referring the recipient to others with expertise on the matter) which will affect the recipient's ultimate "bottom line" benefit from working.

1. First \$65 Plus 50 Percent of Remaining Gross Wages Excluded.

The SSI program distinguishes between unearned and earned income. Unearned income is anything other than wages and includes SSDI payments. Earned income includes wages received from employment or net income from self-employment.³⁵ In calculating the SSI check, the first \$20 of unearned income is disregarded as a general income exclusion.³⁶ The first \$65 plus 50 percent of the remaining gross wages is also deducted. If the person has no unearned income, the \$20 will be added to the \$65 and the first \$85 of gross wages will be disregarded.³⁷

Let's look at an example:

Roger lives alone in Syracuse, New York and receives \$761 in monthly SSI. He is offered a part-time job earning \$385 in gross pay per month.

Since Roger has no unearned income, the SSI program will exclude or disregard the first \$85 of his wages ($\$385 - 85 = \300). An additional 50 percent will then be disregarded ($\$300 - 150 = \150). Subtracting the countable income from the SSI base rate, Roger will be entitled to an SSI check of \$611 ($\$761 - 150 = \611). Since Roger lives in New York and SSI recipients in the state qualify for Medicaid automatically, he will continue getting Medicaid. His net gain from going to work is the amount of the disregards (\$235), less any amounts taken out of his paycheck for taxes and other payroll deductions, both amounts that he will get back when he files his income taxes and EITC application in the following year.

Let's take this one step further:

Roger is offered increased work hours. He would now make \$1,085 per month, but is concerned because he heard something about the \$1,000 SGA rule. Roger's disability continues and his resources are within SSI limits.

³⁵20 C.F.R. §§ 416.1110, 416.1120.

³⁶20 C.F.R. § 416.1124(c)(12).

³⁷20 C.F.R. § 416.1112(c)(4), (5) and (7).

Section 1619(a) will protect Roger since the \$1,000 SGA rule will not apply to him. For every additional \$2 in gross wages Roger's SSI check will go down by \$1. Thus, after disregarding the first \$85 ($\$1,085 - 85 = \$1,000$) and 50 percent of the remaining wages ($\$1,000 - 500 = \500), Roger will have \$500 in countable income. Subtracting this from the SSI base rate of \$761, Roger winds up with a \$261 SSI check and his Medicaid continues.

2. Impairment Related Work Expenses

Impairment-related work expenses (IRWEs) are the reasonable cost of items and services that, because of an impairment, one needs and uses in order to work.³⁸ This includes items such as attendant care, medical or prosthetic devices, drugs, medical services, residential modifications, and special transportation.

To be deductible, the expense must meet a three-part test:

1. It must be paid by the worker and not paid or reimbursed by another source;
2. It must relate to the individual's disability; and
3. Without it, the person must be unable to work.³⁹

A medical expense can be deducted as an IRWE even if it would be incurred in the absence of employment. The test is whether the person could work without paying the expense. For example, a person can deduct the cost of anticonvulsant medication as an IRWE, even though this medication would be required in any event to prevent seizures.⁴⁰

Many assistive technology or specialized equipment expenses could qualify as IRWEs. These include:

- vehicle modification expenses for persons who are mobility impaired (e.g., hand controls or a hydraulic lift for a vehicle);
- construction of ramps or lifts to allow a person to leave the home for work;
- purchase of a telecommunication device (TDD) for a person who is deaf to perform work in an office or from home; and
- specialized or modified office equipment (e.g., desks, phones, or computers) to work in an office or from home.

IRWEs were discussed extensively in our SSDI brief as a way to reduce countable income below the SGA limit.⁴¹ Any item or items that the SSI beneficiary pays for and that would meet the SSDI criteria for an IRWE, would also qualify as an IRWE for SSI purposes and reduce the countable income to be applied in calculating the SSI check.⁴²

³⁸20 C.F.R. §§ 404.1576, 416.976; POMS DI 10520.001 et seq., SI 00820.540.

³⁹20 C.F.R. §§ 404.1576(b), 416.976(b).

⁴⁰20 C.F.R. §§ 404.1576(c)(5), 416.976(c)(5).

⁴¹See note 22, above.

⁴²20 C.F.R. § 416.1112(c)(6).

Consider the following example:

Leonard, age 61, had polio as a child. He lives alone in a home which he owns. Recently, his mobility problems worsened. Leonard receives \$420 in SSDI and earns \$885 in gross wages per month. His combined countable income, \$810 (\$400 from SSDI, \$410 from wages) makes him ineligible for SSI. He is eligible for Medicare, but is not eligible for automatic Medicaid since he is not an SSI recipient. He is not eligible for Medicaid under section 1619(b) because he never received SSI in the past.⁴³ (Leonard is probably a candidate for the Medicaid Buy-In for Working People with Disabilities if he does not find a way to obtain SSI.⁴⁴)

Leonard obtains a loan to modify a spare bedroom to make it a home office that will accommodate his disability, with a widened doorway and a special work station to allow him to work from his wheelchair. The home office will allow Leonard to telecommute as an employee despite his worsening disability. After obtaining the loan and having the work done, Leonard will pay \$200 per month for the next three years. These payments would qualify as IRWEs and reduce his countable income for calculating the SSI check.

This will be Leonard's budget if he applies for SSI after taking out the loan:

Step 1	Unearned income	\$420
		<u>- 20</u>
	Counted	\$400
Step 2	Earned income	\$885
	IRWE deduction	<u>- 200</u>
		\$685
	Earned income exclusion	<u>- 65</u>
		\$620
	Additional 50% exclusion	<u>- 310</u>
	Counted	\$310
Step 3	Counted unearned income	\$400
	Counted earned income	<u>- 310</u>
	Total counted income	\$710
Step 4	Base SSI rate	\$761
	Counted income	<u>- 710</u>
	SSI benefit	\$ 51

⁴³See part IV.C, below.

⁴⁴See The Medicaid Buy-In For Working People With Disabilities: Individuals with Disabilities Can Earn Significant Wages and Qualify for This Important Health Care Benefit, available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MBI%20Brief-2.0.pdf>.

Leonard will now be eligible for SSI, but will need to file an SSI application. For every additional \$2 in IRWEs, his SSI check will increase by \$1. For example, if Leonard has difficulty typing due to arthritis and purchases a special keyboard for \$100, he will have an additional IRWE of \$100. Under the formula above, his earned income would only be decreased by \$50 and his SSI check would increase by \$50 to \$101 per month.

Could Leonard use a PASS, rather than IRWE, to pay for the home office? We will need some additional facts to answer this question. In this case, since Leonard's only income before the PASS proposal is submitted is from SSDI and wages, his goal would have to result in an income level high enough to eliminate SSDI (i.e., wages above the SGA level). The reader is encouraged to consult our policy-to-practice brief on the PASS for guidance on these issues.⁴⁵

Eligibility for this minimal SSI check makes Leonard eligible for Medicaid, as New York is one of 39 states (plus the District of Columbia and Northern Mariana Islands) in which SSI recipients are automatically eligible for Medicaid. This is important, since Medicaid may pay for many items which Medicare will not cover, including prescription drugs and more extensive home health care in New York. Also, since Medicare will pay no more than 80 percent of the cost of durable medical equipment, Medicaid should be available to pay the co-payment.

Moving from Policy to Practice. An individual like Leonard, in this case, must take at least three proactive steps to benefit from the IRWE work incentive: identify the existence of the IRWE, communicate its existence to SSA, and separately file an SSI application because he does not currently receive SSI. Typically, the SSI recipient will depend on a benefits practitioner or other advocate to help him or her identify the IRWE and communicate it to SSA to take advantage of this work incentive.

3. Student Earned Income Exclusion

To qualify for this special exclusion, the student must be under age 22 and regularly attending a school, college, university, or course of vocational training. During calendar year 2010, the first \$1,640 of monthly earnings are excluded, up to a maximum of \$6,600 per year.⁴⁶ Since 2002, the student earned income exclusion's (SEIE's) monthly and yearly maximum amounts have been adjusted annually based on a cost-of-living index.⁴⁷

This example illustrates application of the SEIE:

Juan, age 20, is deaf and receives SSI. He attends college full time and does not work during the school year. During June, July, and August, he works and earns \$2,005 gross each month.

This will be Juan's SSI budget with the student earned income exclusion:

⁴⁵See note 34, above.

⁴⁶20 C.F.R. § 416.1112(c)(3); POMS SI 00820.510.

⁴⁷20 C.F.R. § 416.1112(c)(3), Table 1.

Step 1	Unearned income	\$ 0
Step 2	Earned income	\$2005
	Student earned income exclusion	<u>-1640</u>
		385
	Unearned income exclusion (not otherwise used)	- 20
	Earned income exclusion	- 65
		300
	Additional 50% exclusion	<u>- 150</u>
	Counted	\$ 150
Step 3	Counted unearned income	\$ 0
	Counted earned income	<u>150</u>
	Total counted income	\$ 150
Step 4	Base SSI rate	\$ 761
	Counted income	<u>- 150</u>
	SSI benefit	\$ 611

The SEIE is very important to the high school or college student who makes significant money during the summer months. It allows the student SSI recipient to keep most, if not all, of their summer wages with little or no affect on the SSI payment rate.

Moving from Policy to Practice. The SEIE is a little-known work incentive and is often not implemented by SSA unless the SSI recipient, a parent, or an advocate makes SSA aware that the recipient meets the criteria. Readers who are providing benefits advisement to the recipient or assisting in other ways may need to be proactive to make sure that recipients are able to access this wonderful work incentive. However, in a case like Juan's the recipient will also need to be aware that even though all or most of the wages will be excluded in the income calculation, as of the first day of the next month any remaining wages will count toward SSI's \$2,000 resource limit. The recipient will need to make plans to use this extra money so that countable resources do not exceed \$2,000. For example, if Juan plans to use the money on college expenses he may want to look into putting the money into an approved PASS if he intends to have the money sit in a bank account for a month or more before using it.

4. Blind Work Expenses as an Earned Income Exclusion

Individuals who are statutorily blind are allowed many deductions from earned income which are not allowed for any other disability.⁴⁸ The most common blind work expenses (BWEs) include:

1. Federal, state and local income taxes;

⁴⁸20 C.F.R. § 416.1112(c)(8); POMS SI 00820.535 et seq.

2. Social Security taxes;
3. Mandatory pension contributions;
4. Meals consumed during work hours;
5. Training to use an impairment-related item or an item which is reasonably attributable to work (e.g., cane travel, Braille, computer course for computer operator);
6. A guide dog (cost of purchase and all associated expenses, including food, licenses and veterinary services);
7. Transportation to and from work;
8. Attendant care services (in the work setting, to get a person to and from work, and, in some cases, in the home);
9. Structural modifications to get a person to and from work;
10. Medical devices, medical supplies and physical therapy.⁴⁹

Any earned income used to meet “any expense reasonably attributable to the earning of income” will qualify as a BWE.⁵⁰

Many BWEs might also qualify as IRWEs.⁵¹ When an item can be used as either, it is always best to use the BWE. This is because the BWE is deducted from earned income *after* using the 50 percent earned income exclusion; the IRWE is deducted *before* using the 50 percent exclusion. The practical effect is that the person can see a dollar-for-dollar increase in the SSI check for BWEs. For IRWE expenditures, there is no more than a 50 cent increase in the SSI check for every one dollar spent.

The following is an example of an SSI budget using blind work expenses:

Maria is statutorily blind, works as a social worker, and earns \$25,020 per year or \$2,085 per month. She has the following monthly expenses that meet SSI's criteria as BWEs:

Income taxes (federal, state & local)	\$ 95
Social Security tax	160
Union dues	15
Transportation	95

⁴⁹POMS SI 00820.535 B.4.

⁵⁰20 C.F.R. § 416.1112(c).

⁵¹See POMS SI 00820.555.

Guide dog	30
Lunches (\$6 per day)	132
Readers	140
Braille paper	10
Cassette tapes	25
<u>CDs</u>	<u>15</u>
Total	\$707

Calculation of SSI check:

\$2,085	
<u>- 85</u>	(\$65 + \$20 exclusions)
\$2,000	
<u>-1,000</u>	Additional 50 % exclusion
\$1,000	
<u>- 707</u>	Blind work expenses
\$ 293	Countable income
\$ 761	Base SSI rate
<u>- 293</u>	Countable income
\$ 468	Monthly SSI check

Keep in mind that, like IRWEs, expenses are only deductible as BWEs if the wage earner pays for the item. For example, if the employer pays for the readers, Braille paper, cassette tapes, and CDs as reasonable accommodations under the Americans with Disabilities Act, those expenses cannot be taken as BWEs.

BWEs offer a tremendous opportunity to fund a wide range of work-related assistive technology:

Consider Glenda, an attorney who is blind and receives \$761 in monthly SSI. She is setting up a practice in a home office. A firm is willing to pay her \$2,500 per month, as an independent contractor. She will prepare the written arguments or briefs in up to 10 Social Security appeals. After deducting the usual business-related expenses, Glenda's self-employment income is reduced to \$24,000 per year or \$2,000 per month.

Glenda did this type of work before using paid readers and a traditional dictation machine. Knowing these methods slowed down her productivity, she seeks to invest in state-of-the-art technology that will help her boost the quality of her work and her efficiency. She plans to purchase: a personal computer with voice activation and voice output; a high quality Braille printer; and a high quality scanner. She will purchase these items through a small business loan at a total cost of \$6,600. With finance charges, Glenda will pay \$200 per month on this loan for 36 months. The full \$200 payment will qualify as a blind work expense.

The following would be Glenda's SSI budget using BWEs:

Income taxes	\$ 85
(federal, state & local)	
Social Security tax	306
(as self-employed)	
Transportation	95
Guide dog	25
Readers	100
Braille paper	20
Cassette tapes	15
CDs	10
Payments, new equipment	<u>200</u>
Total	\$856

Calculation of SSI check:

\$ 2,000.00	
<u>- 85.00</u>	(\$65 + \$20 exclusions)
\$1,915.00	
<u>- 957.50</u>	Additional 50 % exclusion
\$ 957.50	
<u>- 856.00</u>	Blind work expenses
\$ 101.50	Countable income
\$ 761.00	Base SSI rate
<u>- 101.50</u>	Countable income
\$ 659.50	Monthly SSI check

Despite \$2,500 in revenue, Glenda is able to reduce her countable monthly income for SSI purposes to just over \$100. She has done this by using traditional business deductions, the usual SSI earned income exclusions, and BWEs. This allows her to generate an extra \$659.50 per month through SSI payments plus automatic Medicaid eligibility (in New York and most states) during that critical three-year start up period for her private law practice.

Moving from Policy to Practice. We assume that New York's Commission for the Blind and Visually Handicapped (CBVH) has supported Glenda, in some fashion, through her years of education and leading up to her vocational goal. Since CBVH can provide support to start a business, Glenda will want to make sure that she takes advantage of that support up to any dollar limits imposed by CBVH policy. CBVH could, in some cases, provide funding for: supplies for Glenda's law practice, her readers, business equipment, advertising, business accounting fees, and a monthly Westlaw fee (for computerized research). Remember, however, that CBVH's support may be time-limited. A benefits practitioner involved with Glenda will want to work with her to ensure she is using CBVH funding, BWEs, and the PASS (if appropriate) to maximize her chances of success with her business. Again, if a third party such as CBVH pays for a work-related expense it cannot separately be claimed as a BWE.⁵²

⁵²For more information about services offered through the Commission for the Blind and Visually Handicapped, see <http://www.ocfs.state.ny.us/main/cbvh>.

5. Assistance under Title IV of Higher Education Act or Bureau of Indian Affairs Student Assistance Program Excluded, Regardless of Use

All student financial assistance received under the Higher Education Act (HEA), or Bureau of Indian Affairs student assistance programs, is excluded from income and resources, regardless of use.⁵³ The resource exclusion does not have a time limit, i.e., it is excluded regardless of how long the assistance is held.

Examples of HEA Title IV programs that would be eligible for this exclusion include:

- Pell Grants
- State Student Incentive Grants
- Academic Achievement Incentive Scholarships
- Byrd Scholars
- Federal Supplemental Educational Opportunities Grants (FSEOG)
- Federal Educational Loans (Federal PLUS Loans, Perkins Loans, Stafford Loans, Ford Loans, etc.)
- Upward Bound
- GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs)
- LEAP (Leveraging Educational Assistance Partnership)
- SLEAP (Special Leveraging Educational Assistance Partnership)
- Work-Study Programs

D. Section 1619(b) – Continued Medicaid for Individuals Who Lose the Right to an SSI Payment through Work Activity

Continued Medicaid coverage through section 1619(b) is one of the most important work incentives that currently exists within the SSI program.⁵⁴ In New York, Medicaid often pays for very expensive items or services, such as home health care, prescription drugs, psychiatric counseling, custom and power wheelchairs, augmentative communication devices, and a range of other services.

Section 1619(b) provides Medicaid to persons who lose cash SSI because countable earnings equal or exceed the SSI payment rate. For example, in New York where the SSI base rates are \$761 for individuals who live alone and \$697 for individuals who live with others, gross monthly wages of \$1,607 will result in \$761 in countable income, reducing the SSI check to \$0 for an individual living alone. Similarly, gross monthly wages of \$1,479 will result in \$697 in countable income, reducing the SSI check to \$0 for an individual living with others.

Under 1619(b) criteria, a person must:

⁵³POMS SI 01130.455 C.

⁵⁴42 U.S.C. § 1382h(b)

1. Continue to be blind or disabled (A person age 65 or older may qualify if he or she is also blind or disabled.);
2. Have unearned income less than the SSI limit;
3. Have resources within SSI limits;
4. Meet a prior month requirement;
5. Meet a Medicaid use test; and
6. Meet an income “threshold” test.⁵⁵

Items (2) through (6) require some discussion. If a person would be ineligible for SSI based on unearned income alone, he or she cannot be eligible for 1619(b). For example, a New York resident who lives alone and receives a private disability pension of \$900 per month would not be eligible for SSI, without regard to any additional earnings. This person, then, would be ineligible for 1619(b), even if he or she met the rest of the 1619(b) criteria. Similarly, an individual whose resources, after exclusions, exceed \$2,000 would be ineligible for 1619(b) Medicaid.⁵⁶

Under the prior month requirement, to be initially eligible for 1619(b), an individual must have been eligible to receive an SSI check during the past 12 months. An individual would lose prior month status for 1619(b) only if he or she went through a period of 12 consecutive months without any entitlement to an SSI check or 1619(b) benefits.

The Medicaid use test should be easy to meet in most cases. This test is met if the person used Medicaid within the past 12 months, expects to use Medicaid in the next 12 months, or would be unable to pay unexpected medical bills in the next 12 months without Medicaid.⁵⁷ The first two criteria are straightforward. Most people who really need Medicaid will fit into one of the categories. Furthermore, only the rare individual with superior medical insurance and great job security will be outside the scope of the last criterion.

The final 1619(b) criterion is the “income threshold” test. To meet pass this test, one must have annual gross earnings below a certain “threshold.” The purpose is to measure whether an individual has sufficient earnings to replace SSI benefits, Medicaid, and publicly funded attendant care that would be lost due to the individual’s earnings.⁵⁸ The 1619(b) eligibility thresholds vary greatly from state to state, as the threshold is based on a combination of the state’s SSI rate and its annual per capita Medicaid expenditures.

There is both a “general threshold,” which applies to all individuals in a state, and an “individualized threshold,” which will be specific to an individual. A person who meets the

⁵⁵POMS SI 02302.010 B.

⁵⁶20 C.F.R. § 416.1205(c).

⁵⁷POMS SI 02302.040 A.1.

⁵⁸POMS SI 02302.045 A.

other 1619(b) criteria will be eligible for Medicaid if annual earnings are below the general threshold. If the person's income is above that threshold, he or she may still be eligible if individual expenses are high enough.

The general threshold is a dollar amount, calculated by adding together a base amount and a Title XIX (Medicaid) amount.⁵⁹ In New York, this 2010 threshold is \$43,956 (base of \$19,284 + Title XIX of \$24,672). In other states, the threshold may be higher or lower.⁶⁰

If the general threshold is exceeded, an "individualized threshold" for 1619(b) eligibility can be determined by totaling the following: Medicaid amount from the threshold chart, or actual Medicaid expenses (whichever is higher); BWEs; IRWEs; expenditures under an approved PASS;⁶¹ and publicly funded personal/attendant care that would be lost if the individual lost SSI. These expenses are then added to the base amount. The sum is the individualized threshold.⁶²

For example, Susan is a New York resident who has gross earnings of \$55,000 and actual Medicaid expenses of \$42,000 but no additional expenses in the categories listed above. In New York, since her individualized threshold of \$61,284 (\$19,284 + \$42,000) is greater than her gross earnings (\$55,000), Susan would be eligible for 1619(b) Medicaid in 2010.

In states commonly referred to as section 209(b) states, Medicaid eligibility for persons who are aged, blind, or disabled is determined using state criteria rather than SSI's criteria. Section 209(b) states are not required to provide automatic Medicaid for SSI beneficiaries.⁶³

The law governing section 1619(b) mandates Medicaid coverage in 209(b) states to those who were eligible for Medicaid, under a state's criteria, "provided they were eligible for Medicaid in the month prior to becoming eligible for 1619."⁶⁴ So long as a person was eligible for both SSI and Medicaid in the month prior to losing SSI, 1619(b)'s prior month requirement would be met. Otherwise, the remainder of the 1619(b) criteria, as discussed above, will apply in 209(b) states.

E. An Approved PASS as an Exclusion from Income or Resources

SSI's Plan for Achieving Self Support (PASS) allows for the exclusion of income and/or resources that would usually be counted in determining SSI eligibility and payment amount. The PASS must be approved by SSA, and allows the individual to use the excluded income/resources to pay for expenses related to a vocational goal. Readers who want to learn more about the PASS can read the relevant *Working* newsletter or extensive policy-to-prac-

⁵⁹POMS SI 02302.045 B.1.

⁶⁰The thresholds for each state are published in POMS SI 02302.200.

⁶¹In New York and the 38 other states in which an SSI beneficiary automatically qualifies for Medicaid, an approved PASS would ensure SSI eligibility and, with it, automatic Medicaid eligibility.

⁶²POMS SI 02302.050 C. An individualized threshold calculation worksheet can be found at POMS SI 02302.300.

⁶³42 U.S.C. § 1396a(f). See part II, above, for a listing of the section 209(b) states.

⁶⁴42 U.S.C. § 1382h(b)(3); POMS SI 02302.010 D.

tice brief on the subject.⁶⁵ Because those publications are readily available to readers, we will only briefly describe the PASS here.

Joan is mentally ill, lives alone in a small town about 50 miles north of Albany, New York, and receives monthly SSDI benefits of \$620 and SSI benefits of \$161. She will soon begin a community college program to become an occupational therapy assistant (OTA). New York's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) will pay for her tuition and other expenses related to her school attendance, but Joan will need a car after graduation to drive to any job she is expected to get in the future. Public transportation is not available to get to any of the OTA positions, all of which are at least 20 miles from her home.

Joan proposes a PASS in which she will save \$600 monthly for 20 months (20 x \$600 = \$12,000), accumulating \$12,000 that she will use in her last semester to purchase a newer used car, pay the first six months of car insurance, and make some modest wardrobe purchases to enhance her job prospects as she goes on interviews. When the PASS is approved, the \$600 will no longer be counted by the SSI program and her SSI check will increase to the full \$761 living alone rate. The savings that she accumulates in a dedicated bank account will not count against the SSI program's \$2,000 resource limit.

The PASS program can and should be tailored to the individual. Money set aside in an approved PASS can be used for any reasonable and necessary expenses that will help support the long term vocational goal.

F. SSI Resource Rules that Serve as Work Incentives

The SSI program allows an individual to maintain no more than \$2,000 in countable resources (i.e., resources that are not otherwise excluded by the SSI rules). Typically, we say that an SSI recipient is allowed no more than \$2,000 in their bank account, but countable resources include cash or non-exempt resources that can quickly be converted to cash (e.g., stock, bonds, certificates of deposit). The following are some key resource exclusions that should be viewed as work incentives.

1. Money Saved in a Dedicated Savings Account through an Approved PASS is Excluded.

The PASS was already discussed, in part IV.D, above, as an income or resource exclusion.⁶⁶ An individual with no countable income available to set aside in a PASS can propose a PASS to exclude resources that will be used to support a vocational goal. The "resource PASS" can be used to exclude a lump sum received, such as retroactive SSI or SSDI benefits, a personal injury award, or an inheritance.

⁶⁵See note 34, for a link to the policy-to-practice brief. The PASS newsletter is available at http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_Newsletter_2009SUMMER.pdf.

⁶⁶See notes 33 and 68, above.

2. Property that is Essential to Self Support is Excluded.

SSI policy provides for three categories of resources that can be excluded under the Property Essential to Self Support (PESS) provisions:⁶⁷

a. Property Excluded Regardless of Value or Rate of Return

This category of property includes three distinct types of property:⁶⁸

1. Property used in a trade or business. SSA will verify the existence of the business and that the property in question is currently used in the business. Although a specific rate of return is not required, SSA will ask for the estimated gross and net earnings of the trade or business.
2. Property that represents government authority to engage in an income producing activity. We suspect this will be extremely uncommon, even nonexistent in New York State. The only two examples SSA refers to in its policy involves Alaska fishing permits and tobacco crop allotments.
3. Property used by an individual as an employee for work. One might describe this as a “tools of the trade” exclusion. Historically, it is common to require certain types of skilled employees to supply their own tools for work. This is very common in jobs involving auto mechanics and photography.

b. Property Excluded up to \$6,000 Equity, Regardless of Rate of Return

This policy provides for the exclusion of up to \$6,000 of equity value (i.e., fair market value minus outstanding loans or liens on the property) of “non-business property” used to produce goods or services essential to daily activities.⁶⁹ Any portion of the property’s equity value in excess of \$6,000 is not excluded under this provision and would count against the \$2,000 resource limit.

The property excluded under this provision can be real or personal property. For example, real property excluded could involve a freestanding plot of land that is used to grow food solely for home consumption. Personal property excluded could include a garden tractor used in the production of the home-grown produce.

c. Property Excluded up to \$6,000 Equity if it Produces a Six Percent Rate of Return

The SSI program will exclude up to \$6,000 of the equity value of “non-business income producing property” if the property produces a net annual return equal to

⁶⁷See POMS SI 01130.500.

⁶⁸POMS SI 01130.501.

⁶⁹POMS SI 01130.502.

at least six percent of excluded equity.⁷⁰ Any portion of the property's equity value in excess of \$6,000 is not excluded under this provision. This exclusion is often used to exclude the equity value of modestly valued rental property.

If the SSI recipient has property that produces less than a six percent return, the exclusion can apply only if the lower return is for reasons beyond the individual's control (e.g., crop failure or illness) and there is a reasonable expectation that the property will again produce a six percent return. If earnings fall below six percent for reasons beyond the owner's control, up to 24 months can be allowed for the property to resume producing a six percent return.⁷¹

3. Federal Earned Income Tax Credit Advance Payments or Refunds are Excluded for Nine Months Following Receipt.

The earned income tax credit (EITC) is a special tax credit that reduces the tax liability of certain working taxpayers with low or moderate income.⁷² This tax credit sometimes results in a payment to the taxpayer, either as an advance from an employer or as a refund from the Internal Revenue Service. Any unspent tax refund or advance payment made by an employer related to an EITC is excluded from resources for the nine calendar months following the month the refund or payment is received.⁷³ New York has an additional 30% State EITC and New York City has an additional 5% EITC.

4. Grants, Scholarships, Fellowships or Gifts to be used for Educational Expenses are not Counted for Nine Months Following Receipt.

Section 435 of the Social Security Protection Act of 2004 provides a nine-month resource exclusion for grants, scholarships, fellowships, and gifts used to pay for tuition, fees, and other necessary educational expenses at any institution, including vocational and technical education.⁷⁴ If at the end of the nine-month exclusion period, all or some of the money was spent for a purpose other than educational expenses, those funds are not excluded and will be counted as income in the month they were used for other purposes or the month when they were no longer intended to be used for educational expenses, whichever occurs earlier.⁷⁵

5. Assistance under Title IV of Higher Education Act or Bureau of Indian Affairs Student Assistance Program is Excluded, Regardless of Use

As noted in part IV.B.5, above all student financial assistance received under the Higher Education Act (HEA), or Bureau of Indian Affairs student assistance programs, is excluded

⁷⁰POMS SI 01130.503.

⁷¹POMS SI 01130.503 A.3. and C.

⁷²20 C.F.R. § 416.1235; POMS SI 01130.675. See note 2, above, for a link to a policy and practice brief discussion the EITC.

⁷³Add cite

⁷⁴POMS SI 01130.455.

⁷⁵POMS SI 01130.455 D.1.c.

from income and resources, regardless of use.⁷⁶ The resource exclusion does not have a time limit, i.e., it is excluded regardless of how long the assistance is held.

6. Any Matching Funds Deposited into a Federally Qualified Individual Development Account is Excluded

An individual development account (IDA) is a special bank account that helps an individual save for future expenses.⁷⁷ When the IDA is authorized pursuant to a federally-sponsored “demonstration project,” under the authority of the Assets for Independence Act,⁷⁸ the IDA savings can only be authorized for postsecondary education, purchase of a first home, or to start a business. The individual must use earnings from work to set up an approved bank account for an IDA.

Depending on the IDA, the individual’s savings will be matched by the entity overseeing the program (typically a not-for-profit agency or state/local government agency acting in cooperation with the not-for-profit agency) at a rate typically ranging from two-to-one to four-to-one (i.e., the IDA entity will put up \$4 for every \$1 saved by the individual). An individual qualifies for a federally qualified IDA program if a recipient of Temporary Assistance for Needy Families (TANF, in New York the Family Assistance Program) or otherwise meets low-income criteria. To the extent that one or more IDAs exist in your region (there are a growing number of them), some SSI recipients will be prime candidates to take advantage of them.

If an SSI recipient is involved in a federally qualified IDA (SSA policy refers to them as “Demonstration Project IDAs”), the following principles will apply:

- **Contributions.** Any earnings the SSI recipient contributes are deducted from his or her wages in determining countable income. If they are deposited in a Demonstration Project IDA, they are excluded from resources.
- **Matching funds.** These are likewise excluded from income and resources.
- **Interest.** Any interest earned on the recipient’s deposits or matching funds are excluded from income and resources.
- **Disbursements.** Under IDA policy, disbursements can only be made for a qualified purpose (e.g., education, business capitalization, or home purchase) or allowable emergency. Disbursements made for a qualified purpose are excluded from income. Emergency withdrawals are loans and, therefore, are not income.

Readers should keep in mind that IDAs that are not federally qualified (i.e., not Demonstration Project IDAs) will not enjoy the income and resource exclusions as summarized above. The authors are not aware of any non-federal IDAs in New York State, but are aware that they exist throughout the country. To the extent that a non-federal IDA is established for a purpose related to a vocational goal (savings for education, savings to

⁷⁶POMS SI 01130.455 C.

⁷⁷POMS SI 00830.670 D.2.

⁷⁸42 U.S.C. § 604 Note.

establish a business), the SSI recipient may want to consider a PASS proposal as a means to achieve the income and resource exclusion otherwise available through the federal IDA.

G. Expedited Reinstatement of SSI Benefits

These provisions, like SSDI's expedited reinstatement (EXR) provisions, were effective January 1, 2001.⁷⁹ Under certain circumstances, they allow for reinstatement of SSI even if the individual has been ineligible for benefits for 12 or more consecutive months. These provisions allow reinstatement, without a new application, if the individual:

1. was eligible for SSI;
2. lost SSI due to earned income (or combined earned and unearned income) for 12 or more consecutive months;
3. requests reinstatement within 60 months of the last month of entitlement, or, if the request is filed after 60 months, good cause is established for missing the deadline;
4. has a disability that is the same as (or related to) the physical or mental disability that was the basis for their original claim;
5. the disability renders the person incapable of SGA; and
6. the person satisfies SSI's non-medical requirements (i.e., SSI's income and resource rules).⁸⁰

These provisions will allow a person to be reinstated well after he or she has exhausted the right to return to the SSI program following a period of non-eligibility due to earned income. Additionally, while the EXR application is pending, the person is eligible for up to six months of "provisional benefits."⁸¹ These benefits will not be considered an overpayment if the individual, in good faith, requested EXR benefits but they ultimately were not reinstated.

SSI's EXR provisions should be far less important than the parallel SSDI reinstatement provisions. This is because EXR will never be needed if the individual retained 1619(b) Medicaid status during the period of ineligibility for cash benefits.⁸² The individual who has been eligible for 1619(b) Medicaid can reestablish eligibility for cash benefits when earnings are reduced without the need to access the EXR provisions.

Although the EXR provisions will rarely be applicable for former SSI recipients to reestablish the right to cash benefits, the following example illustrates an individual who might need to take advantage of this work incentive.

Example. *Monique, age 30, has spina bifida (a neuromuscular disorder of*

⁷⁹The SSDI and SSI expedited reinstatement provisions are extensively discussed in the policy and practice brief, Expedited Reinstatement of Social Security or SSI Disability Benefits, available at http://www.ilr.cornell.edu/edi/publications/PPBriefs/PP_28.pdf.

⁸⁰Ticket to Work and Work Incentives Improvement Act of 1999, § 112, 42 U.S.C. § 1383(p).

⁸¹42 U.S.C. § 1383(p)(7).

⁸²See section IV.C, above.

the lower spine typically resulting in mobility problems and often resulting in periodic need for extensive treatment). She was receiving SSI, with no SSDI, when she graduated from college in 2003. Upon graduation, she started a job making \$26,000 per year. She lost her right to cash SSI but continued to receive Medicaid through section 1619(b).

In 2008, Monique was earning more than \$40,000 per year and feared she might eventually have too much in annual earnings for 1619(b) eligibility (she did not have enough in medical or other expenses to qualify for an individualized 1619(b) threshold). She also wanted to save more than the SSI resource limit of \$2,000. She applied for and was approved for the Medicaid Buy-In for Working People with Disabilities (MBI-WPD) program in April 2008 and dropped 1619(b). [The MBI-WPD program allows for persons with disabilities who are working, even minimally, to obtain Medicaid for little or no cost while having increased earnings and substantially higher resource limits than 1619(b) Medicaid.] The MBI-WPD allowed for annual wages to exceed \$50,000 (currently allowing eligibility up to \$55,188) and allowed resources up to about \$13,000 (currently \$13,800 allowed).

In 2010, Monique has two different surgeries and is out of work for nine months (January through September). She returns to work in the tenth month (October), working part-time and earning \$1,100 gross per month. During her period of absence from work, Monique is able to retain MBI-WPD eligibility under the grace period provisions, but only for the first six months. Eventually, faced with short-term disability benefits at much less than her earnings, she depletes most of her savings and has less than \$1,200 in savings when she starts work in October. Monique's short-term disability benefits were last received in July 2010 and her bank account has been below \$2,000 since the end of July. Can she take advantage of the SSI EXR provisions if she applies in October? (Assume that Monique lived alone during all relevant periods.)

It does appear that Monique will be able to qualify for reinstatement of SSI:

- She was eligible for SSI;
- She lost SSI due to earned income;
- She is requesting reinstatement within 60 months of her last month of entitlement (in this case, we treat her last month of entitlement for 1619(b) Medicaid, March 2008, as her last month of entitlement for SSI);
- She has a disability that is the same as the disability, spina bifida, upon which her benefits were awarded;
- Her disability renders her incapable of performing SGA, using the medical improvement review standard; and

- She satisfies SSI's non-medical, income and resource requirements.

If she applies in October 2010, she can immediately qualify for up to six months of provisional benefits while her expedited EXR application is pending. She can also qualify for retroactive SSI benefits, when approved, back to August 2010 which is the first month that both her income and her resources were within SSI limits.

During August and September 2010, when Monique's income from other sources was zero, she would have been eligible for a full SSI check at the living alone level of \$761. When she goes to work in October, her gross wages will be budgeted using the usual rules ($\$1,100 - 20 - 65 = \$1,015 \div 2 = \$507.50$). Subtracting her countable wages from the SSI base rate, her SSI check will be \$253.50 ($\$761 - 507.50$).

V. Conclusion

This policy to practice brief has focused on Supplemental Security Income benefits, Medicaid and the effect of work on those benefits. The incentives available to SSI recipients who work are many. Thus, it is critical that benefits practitioners, who are advising SSI recipients about the use of work incentives, present scenarios to show how varying levels of work will affect their SSI payment level and net disposable income.

The benefits practitioner should also assist the recipient to account for work-related expenses, like tax withholding, transportation, and child care expenses. Finally, whenever possible, the benefits practitioner should also make the recipient aware of the potential impact of work on other means-tested benefits, like food stamps or housing subsidies, including whether these programs have any applicable work incentives of their own. We hope this policy to practice brief will help practitioners assist SSI recipients to take advantage of the incentives available to them.

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