

A stylized map of New York State is positioned behind the main title. The map is filled with a gradient of green, matching the overall color scheme of the document. The background of the top section features a pattern of thin, white, curved lines that create a sense of depth and movement.

# New York Makes Work Pay

Developing a path to employment for New Yorkers with disabilities

[www.NYMakesWorkPay.org](http://www.NYMakesWorkPay.org)

Policy to Practice Brief #1

## **Plan for Achieving Self-Support**

An SSI Work Incentive and Approach to  
Self-Directing Vocational Rehabilitation to  
Support a Range of Work Goals

James R. Sheldon, Jr., J.D.  
Neighborhood Legal Services

Edwin J. Lopez-Soto, J.D.  
Employment and Disability Institute

## About Policy-to-Practice Briefs

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This document is one of a series of policy-to-practice briefs published as part of the New York Makes Work Pay Project, 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 Blatt Institute at Syracuse University and the Employment and Disability Institute (EDI) at Cornell University. The New York Makes Work Pay Initiative is currently funded for calendar years 2009 and 2010 and will provide an array of services to 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.<sup>1</sup>

This brief is based, in part, on a similar document last updated by the authors in 2003 and originally published by the Work Incentives Support Center in the Employment and Disability Institute at Cornell. Materials were reviewed for accuracy by the Social Security Administration (SSA), Office of Employment Support Programs. However, 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 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 Social Security and Supplemental Security Income (SSI) laws, regulations and policy. However, unlike earlier versions, the current version is specifically targeted to New Yorkers with disabilities and, as such, will use New York's SSI rates in all its examples. Also, as relevant, we will specifically mention New York agencies by name and reference any New York-specific supports which may be able to assist New Yorkers with disabilities achieve their work goals when used in combination with SSI's Plan for Achieving Self Support. Notwithstanding this focus on New York, this publication will include extensive references to SSI policy and will be a valuable reference throughout the nation.

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<sup>1</sup> A 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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## I. Introduction

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This policy-to-practice brief provides an in-depth illustrated description of the Plan for Achieving Self-Support (PASS) work incentives. This brief reviews how the PASS can be used to promote a work goal; the criteria for approving a PASS; and how the PASS can be used in conjunction with other programs to promote and achieve vocational success. Throughout the brief, examples are used to illustrate principles and provide an example in the appendices to show how to propose a PASS that meets all of SSA's criteria for approval. Extensive citations to law, regulation, and policy appear in footnotes to maximize the usefulness of this publication to benefits planners who are engaged in writing PASS proposals for individuals.

## II. The Case of Ann

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Ann, who resides in Syracuse, New York, injured her spinal cord at age 13. This left her paralyzed from the waist down, with limited use of her arms, hands and fingers. She uses a power wheelchair, has difficulty writing, and depends on others to meet most personal needs, including bathing and dressing. Now, age 19, Ann is about to graduate from high school and enter college. Ann must overcome many disability-related barriers in order to succeed in college and eventually become an elementary education teacher.

The physical barriers to Ann's success can be overcome with a combination of personal assistance services and assistive technology (e.g., a power wheelchair, adapted personal computer equipment, and a specially modified van). However, the cost of these items and college tuition creates a major barrier to long-term vocational success. With only \$850 in monthly Social Security Disability Insurance (SSDI) benefits, Ann cannot finance her education, purchase a vehicle, wheelchair, personal computer, and meet monthly living expenses.

There is a multi-tiered solution available to Ann. Ann and her family will first contact New York's state vocational rehabilitation program, the Office of Vocational and Educational Services for Individuals with Disabilities (VESID), for assistance in supporting her long-term vocational plans. VESID can probably provide Ann with counseling and financial support with tuition, books, and transportation expenses for commuting to college.<sup>2</sup> Ann can simultaneously apply for assistance available through New York's Tuition Assistance Program (TAP),<sup>3</sup> the federal PELL grant program,<sup>4</sup> other grants and scholarships, and student loans. Hopefully, Ann can be directed through the application process for VESID and the other programs through her high school's guidance office or through her local school's transition coordinator.

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<sup>2</sup> For more information on VESID's program, see [www.vesid.nysed.gov](http://www.vesid.nysed.gov)

<sup>3</sup> For more information on New York's TAP program, see [www.tapweb.org](http://www.tapweb.org)

<sup>4</sup> For more information on PELL grants, see [www.ed.gov/programs/fpg/index.html](http://www.ed.gov/programs/fpg/index.html)

Even if Ann finds good resources at her high school to apply for all these programs and qualifies for them, the assistance through VESID and the other programs may not be enough to meet all of Ann's college and vocationally-related expenses. For example, VESID might not be able to assist Ann with all her tuition expenses if she attends a private college; might not be able to assist her with all the computer-related items she needs; and may not be able to help her with the price for a van.

Using a Plan for Achieving Self Support (PASS),<sup>5</sup> Ann can use her SSDI dollars to pay for items and services that would not be paid by other sources. These items and services might include tuition, other educational expenses, a vehicle, and a computer. With an approved PASS to cover these "vocationally related" expenses, she would qualify for SSI to cover monthly living expenses. In many cases, SSI will replace the SSDI benefits dollar for dollar.

### III. The History of PASS

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So why do so few New Yorkers with disabilities take advantage of this work incentive? In 1974, when SSI began, Congress included the PASS provisions, which allow for the exclusion of income and resources if used toward the achievement of a vocational goal. Ten years after their creation, however, the PASS provisions were dormant. In the mid 1980s, the Social Security Administration (SSA) sought to dust off the so-called work incentive provisions.<sup>6</sup> Through outreach efforts, which have continued to the present, SSA increased public awareness of work incentives in general and the PASS in particular.

Beginning in the late 1980s, many organizations stepped in to help individuals understand and use the PASS. These efforts came primarily from the Centers for Independent Living, a handful of other agencies which serve persons with disabilities, and numerous freelance advocates. These efforts were quite successful; some would say too successful. Because of perceived abuses in the program, the U.S. General Accounting Office (GAO) began an investigation. In February 1996, the GAO issued a well-publicized and highly critical report. Leveling much of its criticism on SSA itself for not consistently interpreting its PASS regulations and policy, the GAO concluded that the PASS was not meeting its promise of making disability beneficiaries self-sufficient.<sup>7</sup>

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<sup>5</sup> Pub. L. No. 92-603, Title III, § 301, 86 Stat. 1329 (1972); 42 U.S.C. §§ 1328a(b)(4)(A)(iii) and (POMS) SI 00870.000 *et seq.*; (July 2000). Proposed amendments to the PASS regulations were published on July 11, 2005, 70 Fed. Reg. 39689-39692.

<sup>6</sup> For a thorough discussion of this subject, see the Cornell EDI Policy and Practice Brief series, available at [www.ilr.cornell.edu/edi/s-PPBriefs.cfm](http://www.ilr.cornell.edu/edi/s-PPBriefs.cfm); Empire Justice Center, *BENEFITS MANAGEMENT FOR WORKING PEOPLE WITH DISABILITIES: AN ADVOCATE'S MANUAL* (2009 ed. Lopez, E. & Sheldon, J., authors and editors).

<sup>7</sup> See U.S. GENERAL ACCOUNTING OFFICE, *PASS PROGRAM, SSA WORK INCENTIVE FOR DISABLED BENEFICIARIES POORLY MANAGED*, GAO/HEHS-96-51 (Feb. 1996) (hereinafter the "GAO report"), available at [www.gao.gov](http://www.gao.gov) (using search by report number).

Reacting to the GAO report, SSA declared a moratorium on new PASS approvals while it changed its PASS-review procedures and substantially revised its Program Operations Manual System (POMS) policy on the PASS. Under revised procedures originally established in 1996, PASS proposals have, during the past 13 years, been reviewed by a "Cadre" of PASS specialists, specially-trained SSA personnel whose primary job it is to review PASS proposals. There are now PASS specialists assigned to every region in the country.

Prior to the GAO's 1996 report, the number of approved PASSes had soared to more than 10,000 nationwide in 1995. Following policy changes and the appointment of the PASS Cadre in 1996, the national statistics for approved PASS applications dropped to 3,483 in September 1997 and then to 1,016 in June 1999. In the years immediately following the passage of the Ticket to Work and Work Incentives Improvement Act in 1999, SSA actively sought to promote the PASS as and a number of other work incentives. In New York, SSA did this through community outreach, often in partnership with community-based programs such as the SSA prior-funded Benefits Planning, Assistance and Outreach (BPA&O) projects, currently called Work Incentives Planning and Assistance (WIPA) projects. With this promotion and outreach, the number of approved PASS applications, nationally, had gradually increased, with 1,598 in existence as of December 2004. New York State followed this national trend and it had over 100 approved PASS applications in existence as of December 2004.

During the peak of SSA's proactive activity in promoting the PASS (roughly 2000 to 2004), the PASS Cadre for New York State included seven full-time staff, with four serving New York City and surrounding counties and three serving upstate counties. In more recent years, this staffing pattern has gradually gone down through retirements and staff reassignments. As this is written, there is one full-time PASS Cadre member serving upstate New York and one and a half full-time staff serving the New York City region. These decreased staffing patterns have resulted in a reduction in the amount of proactive outreach being conducted to promote the PASS in a number of years. With reduced staff and almost no outreach, the number of PASS applications within the state has decreased to 86 in 2006.

Based on this current climate, the New York Makes Work Pay Initiative has prioritized expansion of the PASS as an underused tool to help more New Yorkers with disabilities obtain self-supporting employment and self-employment. To make more individuals with disabilities and agency personnel aware of the PASS, the initiative will promote an active outreach and development campaign building on the release of this policy-to-practice brief. The initiative will include more dedicated publications on the topic of PASS, featured staff development and training on the PASS provision through both face-to-face and distance learning modalities, and ongoing toll free technical support through 1-888-224-3272. The goal is that these activities will result in a 20% increase in the number of New Yorkers with approved PASS applications in 2009.



## IV. Why the PASS is Important

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The majority of individuals reading this brief probably work for agencies that support the efforts of individuals with disabilities in obtaining self-supporting employment and self-employment. In many cases, the role of these agencies is to link the consumer with the services and supports that will help the individual achieve his or her work goals. In many cases, the service or item needed (e.g., transportation, child care, tuition costs, computers) are not easily obtained at no cost to the consumer. This is where the PASS can help.

Efforts to help individuals with disabilities understand and use the PASS can prove to be enormously beneficial and life changing for these individuals. By promoting the PASS as a way to reach one's work goals, a path from dependence on benefits to financial independence can be paved.

The PASS can be tailored to meet vocationally-related needs that cannot be funded by other sources. With comprehensive planning, the PASS can be used to supplement what can be funded under a state's vocational rehabilitation program, like New York's VESID or Commission for the Blind and Visually Handicapped (CBVH), or through third party insurance programs like Medicaid or Medicare.

## V. How the PASS Works

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The PASS allows a person to exclude income and/or resources that would otherwise be counted in determining SSI eligibility. If used for approved goods or services, the money set aside in a PASS will not be counted by the SSI program. This then allows the individual to become eligible for SSI, retain SSI eligibility, or become eligible for a larger SSI check.

### A. SSI Is a Program for the Financially Needy

SSI is an entitlement program for persons with limited income and resources.<sup>8</sup> SSDI is, by contrast, available because a wage earner paid into the system through payroll deductions. SSI can be one's only source of income or it can supplement another source of income such as SSDI benefits or wages.

SSI is a nationwide program, administered by SSA. Since states supplement the SSI federal benefit rate (FBR) at their option, payment levels will vary. The examples used in this article are based on the 2009 New York SSI rates which include a state supplement.<sup>9</sup>

To be eligible for SSI, an individual's countable monthly income cannot exceed the relevant SSI rate for his or her state. For example, in New York where an individual who lives alone will receive a maximum SSI check of \$761 per month, an individual who receives an \$850

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<sup>8</sup> See 20 C.F.R. §§ 416.1100, *et seq.* (income), §§ 416.1201, *et seq.* (resources).

<sup>9</sup> Readers from other states can substitute their state SSI rates to see how an example works out in their state.

SSDI check will be ineligible for SSI. This is because the first \$20 of monthly unearned income is excluded in determining the monthly SSI check. Since the countable income of \$830 will be more than the SSI base rate of \$761, this individual will not qualify for SSI.

Additionally, an individual can have no more than \$2,000 in non-exempt resources. Thus, a savings account containing more than \$2,000, for example, will make the person ineligible for SSI, even if monthly income is within eligibility limits.

In 39 states, the District of Columbia, and the Northern Mariana Islands, a person who receives any amount of SSI qualifies for Medicaid automatically.<sup>10</sup> New York is one of the 39 states in which Medicaid is automatic for SSI recipients. In the other 11 states, known as section 209(b) states, Medicaid eligibility will be determined under separate criteria.<sup>11</sup> The states which exercise the 209(b) option include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma and Virginia.<sup>12</sup>

## **B. The PASS Is an Income and Resource Exclusion Device**

Using the hypothetical case of Ann introduced earlier and an ongoing presumption of her continuing to meet SSA's disability standard, if she takes \$830 of her \$850 SSDI check and uses it in an approved PASS to save toward a van purchase to meet her vocational goal of becoming a teacher, the \$830 will be excluded and no longer counted by the SSI program. With the \$20 unearned income exclusion and the \$830 PASS exclusion, her monthly countable income for SSI purposes is reduced to \$0 ( $\$850 - 20 = \$830 - 830 = \$0$ ). With no countable income or resources, Ann is now eligible for an SSI check at the full 2009 New York living with others rate of \$697 per month. She will also qualify for automatic Medicaid because Medicaid is automatic for SSI recipients in New York. As she puts this \$830 per month into a special bank account, the resources of this bank account will be exempt and not count toward Ann's \$2,000 resource limit. With the PASS, Ann will now have \$717 a month for living expenses, plus \$830 a month to go into her PASS savings account. As pointed out below, Ann must be prepared to live off the \$717 available for living expenses rather than the \$850 available before the PASS was approved.

## **C. The Beneficiary Must Have a Continuing Disability**

To use a PASS, the SSI applicant or beneficiary must meet SSI's disability criteria. If the disability ceases due to medical improvement, benefits will usually stop.<sup>13</sup> However, SSI benefits will continue under the "section 301" provisions, despite evidence of medical improvement, if the individual is in an approved vocational program at the time of medical improvement. The PASS is considered an approved vocational program under

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<sup>10</sup> 42 U.S.C. § 1396a(a)(10)(A)(i).

<sup>11</sup> 42 U.S.C. § 1396a(f).

<sup>12</sup> POMS SI 01715.020.

<sup>13</sup> See section XI.F.

the section 301 provisions. This means that both SSI and SSDI benefits can continue, after medical improvement is found, until the PASS is completed.<sup>14</sup>

## VI. Criteria for PASS Approval

### A. The PASS Must Be in Writing<sup>15</sup>

The PASS is a written spending plan. SSA has a 15-page PASS application form, SSA-545-BK. A reformatted copy of that form, completed for Ann in the example above, is included as an appendix to this article. The PASS form also appears as an attachment to SSA's Procedural Operations Manual System (POMS).<sup>16</sup> While SSA does not require that PASS proposals be submitted on this form, advocates should use the form with all PASS applications. If an application is submitted in another format, SSA personnel are required to complete form SSA-545 to the extent necessary.

Anyone, including the SSI applicant or beneficiary, can write the PASS. It is best, however, to find a trained advocate or benefits and work incentives practitioner to write the PASS. Personnel at the local SSA office are required to write the PASS if asked to do so.<sup>17</sup> However, some SSA personnel may not be as knowledgeable or creative as the well-trained advocate.

### B. Items to Include in the Written Plan

The PASS must contain a number of items:

#### 1. The Specific Work Goal

Each PASS must specify and clearly describe a single occupational goal, e.g., school teacher, dance instructor, plumber, etc. If the stated objective is feasible and other criteria are met, the PASS should be approved.

##### a. Feasibility

To be feasible, the individual need only have a reasonable chance of attaining the work goal. SSA will review the history of prior work, education, training and relevant volunteer work to determine if the work goal is reasonable.<sup>18</sup>

<sup>14</sup> 42 U.S.C. § 1383(a)(6); 20 C.F.R. § 416.1338. SSDI Benefits will continue under parallel provisions. 42 U.S.C. § 425(b); 20 C.F.R. § 404.316(c).

<sup>15</sup> 20 C.F.R. § 416.1181; POMS SI 00870.006 E.3.

<sup>16</sup> 20 C.F.R. SI 00870.100, Exhibit 1.

<sup>17</sup> POMS SI 00870.004 A.

<sup>18</sup> POMS SI 00870.006 A.6.

The feasibility of the work goal is presumed if the PASS preparer or the preparer agency has vocational rehabilitation credentials or expertise. The POMS encourages SSA to scrutinize the preparer's credentials and not apply the presumption, however, if there is a history of problems with PASS applications submitted by the preparer.<sup>19</sup>

When feasibility is questionable, SSA may obtain corroboration from an authoritative source other than the one involved in writing or supporting the PASS.<sup>20</sup> If the person had a prior PASS, the person must satisfy SSA that there is a good reason why he or she is not working in the job identified in the prior PASS and that the new PASS is needed.<sup>21</sup>

### **b. When Goal Will be Limited to an Entry-Level Position**

The general rule is that a PASS is available to help a person attain an entry-level position in the person's chosen profession. How this general rule will be applied and when the PASS can be used to support advanced degrees or positions beyond entry level will depend on individual circumstances.

SSA's policy allows a person to use a PASS to pursue an advanced degree if the "profession of the individual's choice" (or, "chosen career path" as used in the POMS) requires this degree to enter the profession. The policy also allows for approval of a PASS even if the person is already working or about to start work if the level of income to be generated would not currently meet the expenses in the proposed PASS. A goal beyond entry level will be approved, for example, if earnings at the entry level are not enough to meet work expenses, medical expenses, and other financial obligations.<sup>22</sup>

Going back to the case of Ann in the hypothetical above, assume that her PASS proposes to save toward both a bachelor's and master's degree in education. Will SSA be inclined to approve the additional expenses associated with the advanced degree? This will depend on the circumstances.

If we assume that Ann can obtain an entry-level teaching job with a bachelor's degree and can meet all of her expenses without a continued PASS, SSA would probably not approve a continued PASS at that point. If we assume that most schools or even state policy would require a master's degree to obtain the entry level teaching position, then the continued PASS could potentially be approved. New York State's Education Department requires a master's degree for entry level certification as a teacher. Ann should plan to submit proof with her PASS application of this requirement and specify her plan to look for teaching jobs in New York State.

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<sup>19</sup> POMS SI 00870.025 B.3.

<sup>20</sup> POMS SI 00870.025 B.3.e.

<sup>21</sup> POMS SI 00870.025 B.1.

<sup>22</sup> POMS SI 00870.006 A.1.

### **c. A PASS Must be Expected to Increase a Person's Prospects for Self Support**

The PASS must be expected to increase prospects for self-support, measured by higher earnings potential upon completion of the PASS. SSA will approve a PASS if the higher earnings are likely to reduce or eliminate benefits paid by SSA.<sup>23</sup>

If an individual is already eligible for SSI before the PASS begins, the occupational goal must be designed to reduce the individual's SSI benefit substantially. If a person is eligible for SSDI only, and not concurrently eligible for SSI before a PASS is submitted and approved, the occupational goal must be designed to result in the eventual loss of the SSDI check based on an expected wage at the substantial gainful activity (SGA) level (i.e., \$980 in 2009 for persons who are not legally blind).<sup>24</sup>

This latter policy, which first appeared in the July 2000 revision to the POMS, is extremely important. This is because a large percentage of PASS applications have been approved, historically, for persons who become eligible for SSI by placing SSDI benefits into a PASS. Under this policy, a PASS applicant who wishes to use SSDI benefits in an approved PASS in order to become eligible for SSI must state an earnings goal that is expected to be at the SGA level at the time the goal is achieved.

## **2. The Individual's Medical, Educational, and Vocational Background**

### **a. Medical Background**

The PASS application asks about the disabling illness, injury, or condition. The applicant must describe how he or she expects to do the duties of the anticipated work goal in light of the disability. The applicant must address these issues in a straightforward manner. For example, in the case of Ann (presented earlier) she will describe her limitations and how she will work as a teacher despite this disability:

"I am paralyzed from the waist down, with limited use of my arms, hands, and fingers. I use a wheelchair for mobility, have difficulty writing, and depend on others for bathing and dressing."

"As long as I have occasional support from a teacher's aide or assistant, I will be able to carry out the duties of an elementary grade education teacher."

### **b. Past Employment**

In this section of the PASS application, SSA appears to be seeking information to determine: whether the applicant already has the experience and skills to achieve self-support without the PASS; and whether the applicant has the kind of background that makes the present work goal a good career choice. For example, an individual with Ann's disability, quadriplegia, who had worked as a nurse before her injury, might make a good candidate to work in another medically-related field.

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<sup>23</sup> POMS SI 00870.006 A.5.a & b.

<sup>24</sup> POMS SI 00870.006 A.5.a & b.

In general, the work history should go no further back than 15 years, with the most recent jobs more important to describe in the greatest detail in most cases.

### **c. Educational Background**

Like the past employment section, this section seeks to identify background related to the present ability to achieve self-support and the appropriateness of the chosen career goal. If the individual already has a degree that might appear to lead to an entry-level position, the applicant must explain why this does not make the individual self-supporting: e.g., the entry-level position requires a more advanced degree; the entry-level position will not generate enough income to allow the individual to meet all of his or her expenses; or the position in question is not appropriate in light of the disability. This may need to be explained in the comments section of the application, in a separate letter from the applicant, or in a supporting letter from a rehabilitation counselor.

## **3. List of Items or Activities Requiring Savings or Payments and Anticipated Amounts<sup>25</sup>**

The proposed PASS must list each item and/or service and its cost. Additionally, the individual must explain how the cost was determined and how the specific item or service will help to achieve the vocational goal.

One plan will identify items to be purchased, like a computer or a vehicle. Another will identify monthly or weekly expenses for items like gasoline, a driver, or school supplies. A third plan may include all of these items. The PASS applicant must work hard to come up with good estimates of how money will be spent, obtaining prices to be included with the application packet.

### **a. A PASS to Start a Business Will Generally Be Limited to Start-up Costs**

The general rule is that a PASS will only be approved for items to allow a person to start a job or business.<sup>26</sup> In applying this general rule, the POMS requires PASS specialists to take a “common sense approach,” approving any expense that is reasonable and necessary to allow the person to reach a point in his or her chosen career path that would generate enough earnings to meet all their expenses.<sup>27</sup>

This approach is also consistent with SSA’s policy on business start-up costs, in which the general rule is to limit PASS expenses to those business-related costs occurring within the first 18 months of the business. The POMS cautions the PASS specialist to ignore the general rule when circumstances dictate:

“You may approve expenses the person incurs after the start up period if the individual would not otherwise have sufficient remaining income and

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<sup>25</sup> POMS SI 00870.025 B.5.a.

<sup>26</sup> POMS SI 00870.006 B.4.

<sup>27</sup> POMS SI 00870.006 A.1, .006 B.2. & 3, .025 A.2.

resources to cover living expenses, medical expenses, and work expenses as describe in SI 00870.006 A.1.<sup>28</sup>

### **b. Business Plan to Support Self-Employment**

The PASS proposal must include a detailed business plan when self-employment is a goal.<sup>29</sup> The POMS details the minimum information that must be included in the business plan:<sup>30</sup>

- Business name, address, owner
- Business form (sole proprietorship, partnership or incorporation)
- Principal activity of the business, including the product and/or service to be provided
- How the business will start (new or franchise)
- Reasons for why the business should succeed
- Who or what the market is for the business and the size and geographic location of that market
- The mechanism for pricing the product and/or service
- The advertising plan to reach the market and sell the product and/or service
- List of employees and managers and their functions in the business, including qualifications of these individuals which may contribute towards the success of the business
- The financial plan, including anticipated expenses and anticipated revenue especially those items not otherwise accounted for under the PASS

### **c. A Proposed Expense Must Be the Least Costly Alternative**

Both the POMS and the PASS application emphasize the requirement that expenditures proposed under a PASS must be the least costly alternative that will allow the individual to meet his or her work goal.<sup>31</sup> Singled out for special scrutiny are vehicles and computer equipment.<sup>32</sup> In completing the PASS application, the individual must be prepared to explain to SSA what less expensive alternatives were considered and why they were not chosen.

## **4. Cash Resources to Put into the PASS**

An SSI recipient can have no more than \$2,000 in the bank.<sup>33</sup> A person with cash or other liquid resources above \$2,000 may wish to put these excess resources into the PASS. This

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<sup>28</sup> POMS SI 00870.025 B.5.b.

<sup>29</sup> POMS SI 00870.006 A.10.

<sup>30</sup> POMS SI 00870.026 C.2. – C.7.

<sup>31</sup> POMS SI 00870.006 B.1, 3. & 4, 00870.025 B.5.d.

<sup>32</sup> POMS SI 00870.006 B.5, 6. & 7.

<sup>33</sup> 20 C.F.R. § 416.1205.



will reduce resources below SSI limits and will allow the person to use the money on vocationally-related items.

In one case, an individual may have saved money in anticipation of going to school. In another case, he or she may have received an inheritance or a lump sum settlement from a lawsuit. In these cases, the PASS can make the funds or bank account exempt and reduce resources below the \$2,000 limit.

## 5. Specific Savings and Planned Disbursement Goals

The PASS applicant must document how much needs to be set aside each month and how and when he or she intends to spend the money. This savings and spending plan should be as simple or complex as the individual facts dictate.

Assume a person wants to buy a vehicle for \$12,000 and has \$620 per month in SSDI benefits. With the first \$20 disregarded under SSI rules, \$600 per month can be put into the PASS and disregarded for 20 months. Since the PASS can only be approved, initially, for up to 18 months, a two-month extension would have to be requested at a later date.<sup>34</sup> At the end of 20 months, \$12,000 will be disbursed to pay for the car or van. In this case, since countable income is reduced to \$0, the person will qualify for a full SSI check based on the state's SSI rate (i.e., \$761 for living alone, \$697 for living with others based on 2009 New York SSI rates).

## 6. Specific Beginning and Completion Dates for PASS "Milestones"

The PASS application must specify when it will begin and end. If the PASS is to pay for college or another training program, the objective is ordinarily achieved when the degree or certificate is received. In other cases, the duration of the PASS will be tied to the time it takes to save for a purchase, to pay off a loan or to take the necessary steps to set up a business.<sup>35</sup>

According to the POMS, a PASS application must include milestones or interval steps that measure progress as a person moves toward a work goal.<sup>36</sup> The approval of certain goods and/or services may be contingent on the successful completion of milestones on which the need for the goods and services is predicated. Thus, for example, if an initial goal (milestone) is to obtain a commercial driver's license, SSA may not approve savings for a vehicle purchase until the first milestone is met (i.e., the license is obtained).

The applicant must do his or her best to calculate the time needed to accomplish the steps identified in the PASS application. By meeting these milestone requirements, this should help the person to think about what is needed to accomplish their work goal. Keep in

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<sup>34</sup> See section VI.

<sup>35</sup> See section VI. POMS SI 00870.006 D.

<sup>36</sup> POMS SI 00870.006 A.4.



mind, however, that the PASS can always be amended as circumstances change or as new items or time frames are clarified.

### **C. The PASS Must Be Approved by SSA**

All PASS applications will be sent to SSA's PASS Cadre for approval. SSA has established no time limit within which they must act on a PASS application. However, SSA must review a proposed plan "as soon as possible."<sup>37</sup>

In urging its PASS specialists to expedite PASS decisions, SSA's policy points out: "Remember that a delay can result in a loss of a job or training opportunity for the individual."<sup>38</sup> If there is some urgency to the PASS applicant's situation, such as needing approval to begin a school or training program that should be communicated to the PASS specialist when the proposal is submitted. If the applicant or advocate believes that a PASS proposal has sat for too long without a decision, he or she should contact the PASS specialist responsible for the case.

If possible, the person submitting the PASS should establish a rapport with the PASS specialist before the PASS application is submitted. Let him or her know ahead of time if delays will hurt your client. For example, if a proposed PASS application is submitted in late June to fund college expenses in September, let SSA know they need to make a decision by early August so that SSI checks will begin on September first. In some cases the advocate must be assertive and remind the PASS specialist if a decision on the PASS application is not made promptly.

## **VII. How May Excluded Income and Resources Be Used?**

### **A. Examples of Expenses That Can Be Approved**

Legislative history indicates that the PASS provisions should be liberally construed if necessary to accomplish the self-support objective.<sup>39</sup> This suggests that any expense, which is reasonably related to attaining one's vocational goal can be approved.

The following is a representative, but by no means exhaustive list of items that can be funded through a PASS:<sup>40</sup>

- Attendant care
- Basic living skills training related to the work goal
- Child care

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<sup>37</sup> POMS SI 00870.025 A.2.

<sup>38</sup> *Id.*

<sup>39</sup> Pub. L. No. 92-603, note 1, above, 1972 U.S. Code Cong. & Admin. News 4989, 5138; POMS SI 00870.001 A.

<sup>40</sup> POMS SI 00870.025 B.5.g.

- Costs for room and board when attending educational, training, employment, trade, or business activities
- Dues and subscriptions for publications for academic or professional purposes
- Equipment, supplies, operating capital and inventory required to establish and carry on a trade or business
- Equipment or tools either specific to the individual's condition or designed for general use
- Meals consumed during work hours
- Operational or access modifications to buildings, vehicles, etc., to accommodate disabilities
- Tuition, books, supplies and all fees and costs imposed by or in connection with an educational or occupational training facility including tutoring, testing, counseling, etc.
- Uniforms, specialized clothing, safety equipment and appropriate attire (e.g., suits and dresses) for job interviews or working in an office or professional setting
- Maintenance costs for any of the above items
- Transportation costs, including: lease, rental or purchase of vehicle, subject to the limitations on installment payments discussed in section IV.B.2.a, above; public transportation and common carriers; fuel costs, registration fees and initial cost of insurance premiums
- Job coaching/counseling services
- Job search or relocation services
- Preparation fees for developing a PASS (but not for monitoring a PASS)
- Taxes and government-imposed user fees (e.g., permits, licenses) connected with obtaining any of the above
- Finance and service charges connected with obtaining any of the above

## **B. General Rule: Approved PASS Expenses Must Be In Addition to Expenses Currently Incurred by the Person**

The POMS state that the approved expense cannot “have existed before the individual began activities to achieve the occupational goal (which can predate submission of the PASS and SSI eligibility).<sup>41</sup>” The POMS invite at least three ways in which current expenses can be approved in a PASS that has not yet been submitted:

- First, when submitting a PASS, the person may seek retroactive approval for up to 24 months back to the date the person began incurring this expense.<sup>42</sup>
- Second, an existing or ongoing expense can be approved prospectively so long as its earlier existence was related to “activities to achieve the occupational goal.”<sup>43</sup>

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<sup>41</sup> POMS SI 00870.006 B.1.

<sup>42</sup> POMS SI 00870.025 B.2.

<sup>43</sup> POMS SI 00870.006 B.1.

- Third, the POMS specifically allow “the increased costs for a pre-existing expense that are caused by the PASS.<sup>44</sup>” For example, ongoing car maintenance costs may have increased dramatically because of commuting costs to work or school.

Here again, the fall back position should be that any proposed expense should be analyzed using a “common sense approach,” approving any expense that is reasonable and necessary to allow the person to reach a point in his or her chosen career path that would generate enough earnings to meet all their expenses.<sup>45</sup>

### C. Use the PASS to Supplement What Other Sources Can Fund

Other funding sources may exist for many of the items listed above. For example, the state vocational rehabilitation agency, VESID or the Commission for the Blind, may pay for tuition and books. A private insurance company or Medicaid may pay for durable medical equipment. Scholarships and grants may pay for tuition, books and other costs related to college or training.

The PASS should be used to supplement other funding sources, not as a substitute for them. For example, in Ann’s case VESID could, up to certain dollar limits, pay for tuition. In another case, VESID could help to pay for supplies to start a business. VESID, like most state vocational rehabilitation agencies will not pay to purchase or lease a vehicle, but could fund modifications to allow a person with a disability to drive it. Accordingly, in New York and most states the PASS can be used to purchase a vehicle and the state vocational rehabilitation agency money could then be used to pay for modifications. This of course makes a presumption of eligibility for vocational rehabilitation services and feasibility and viability of the plan to support her vocational objective.

A PASS is preferred over a loan, which a person has to repay. With many PASS applications however, a loan is secured to obtain the needed item and the PASS is used to pay off the loan subject, of course, to the rules governing installment payments. In Ann’s case, she should only go into debt through student loans after exhausting funding through VESID, the state TAP program, the federal PELL grant, other grants and scholarships, and the PASS.<sup>46</sup>

## VIII. Time Limits for the PASS

The Social Security Act requires that the time limits for the PASS take into account the length of time that the individual needs to achieve a work goal.

Under the current POMS, in all cases, a PASS can be approved for up to 36 or 48 months. The PASS proposal must specify beginning and ending dates. The new regulations only

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<sup>44</sup> *Id.*

<sup>45</sup> POMS SI 00870.006 A 1, .006 B.2. & 3, .025 A.2.

<sup>46</sup> Pub. L. No. 103–296, § 203, 42 U.S.C. § 1383b(d).

require that there be a beginning and end date to meet the employment goal.<sup>47</sup> Both the current regulations and POMS contemplate approval and progress reviews (see section VIII, below) that are tied to the achievement of milestones that must be listed in the written PASS.

A PASS may be extended beyond 36 or 48 months in intervals up to six months as necessary to allow the person to achieve his or her goal.<sup>48</sup> There is no limit on the number of six-month extensions. Until SSA conforms the POMS to the new regulations, a PASS may only be extended in intervals of up to six months.

## **IX. Modifications to the PASS**

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### **A. Amended Plans Are Allowed**

An approved PASS may need to be amended. In one case, the cost of a computer may have increased and extra time is needed to save for it. In another case, a student who is blind may have forgotten to include the cost of readers.

Any number of amendments are allowed as long as SSA approves them.<sup>49</sup> It is best, of course, to anticipate everything at the beginning so that amendments are kept to a minimum. When amending a PASS, the SSA-545-BK form should be used unless the PASS specialist agrees to accept a short letter. The person preparing the PASS should write "Amendment" on the top of the form and complete only those items which are being amended.

### **B. A Second PASS Is Allowed**

A person is allowed one approved PASS for each occupational objective. If the earlier goal did not work out, a second, or in rare cases a third PASS application could be appropriate. The individual who had a prior PASS must satisfy SSA that there is good reason why he or she is not working in the job identified in the prior PASS and that a new PASS is needed.<sup>50</sup>

### **C. Suspension or Termination of the PASS**

The PASS will be suspended when the plan is abandoned, the conditions of the plan are not followed, or the goal is achieved. A PASS will be terminated if SSA approves a new PASS application, eligibility for SSI is terminated, or 12 consecutive months elapse after a PASS is suspended without it being resumed.<sup>51</sup>

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<sup>47</sup> 20 C.F.R. § 416.1181 (a) 8 & (b).

<sup>48</sup> POMS SI 00870.006 D.3.

<sup>49</sup> POMS SI 00870.050.

<sup>50</sup> POMS SI 00870.006 A.2.

<sup>51</sup> POMS SI 00870.070 A. & B.

Income that was set aside under the PASS will start counting as of the suspension or termination month. Any resources or accumulated savings still in the PASS will start counting, under SSI's resource rules, in the month following termination of the PASS.<sup>52</sup>

A person should always consider other alternatives before abandoning a PASS. If the person must drop out of school for one semester because the disability worsened, an amendment should be considered to extend the time by six or 12 months. If the college goal is now unrealistic, a new vocational goal can be established and a new PASS application submitted.

A suspended PASS may resume when the person resolves the reason for the suspension and the PASS specialist approves the request, including any amendment, to pursue the PASS.<sup>53</sup>

## X. Progress Reviews

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The "**Progress Check**" is to be used by the PASS specialist to quickly see how things are going and to help the person quickly remedy any potential problem. The POMS do not require any schedule for progress checks.<sup>54</sup>

The "**Progress Review**" is to be conducted at least annually.<sup>55</sup> The PASS specialist uses this to determine whether the PASS should continue as is, be amended, suspended or terminated. SSA must take into account:

- Changes in income or other circumstances that might affect the PASS;
- Whether the person has met plan milestones on schedule and, if not, why not;
- Whether funds excluded under the PASS have been set aside and/or spent as agreed and, if not, why not.

The PASS specialist is to create and control a schedule of progress reviews based on relevant circumstances of each PASS, including:

- Key milestones; and
- Periods of six months or more during which funds are being set aside and not spent.

When SSA learns during a progress review that a person is not following the plan, the PASS specialist is expected to make every effort to work with the person to amend the PASS, "particularly if failure to follow the PASS is due to circumstances beyond the person's control."<sup>56</sup> The current POMS expect the PASS specialist to be proactive to ensure that

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<sup>52</sup> POMS SI 00870.070 C.1. & C.2.

<sup>53</sup> POMS SI 00870.080.

<sup>54</sup> POMS SI 00870.055 A.1.

<sup>55</sup> POMS SI 00870.055 A.2.

<sup>56</sup> POMS SI 00870.055 C.1.b.

the person has every opportunity to reach the work goal that is the foundation of their PASS. For example, if the person is working in the work goal and PASS expenses are paid, the specialist is to suspend the PASS and consider the appropriateness of alternative exclusions, such as an impairment related work expense. If the person is working but the expenses are not all paid, the specialist is expected to extend the PASS to pay for unpaid items and services if the person is unable to pay for the remaining PASS expenses as well as other personal expenses.<sup>57</sup>

In anticipation of progress reviews, the beneficiary must have receipts, bills, bank accounts, and other documentation in an organized fashion and be ready to discuss the activities related to achieving the work goal.

## XI. Most Likely Candidates for a PASS

Since the PASS consists of income and resource exclusion rules used by the SSI program, a person must have countable income and/or resources, other than the SSI benefit check, to make the PASS application feasible.

### A. Persons with Significant Unearned Income

Unearned income is income other than wages. SSDI benefits, private pension benefits and Department of Veterans Affairs benefits are common sources of unearned income.

In New York a person who lives alone and receives \$781 in SSDI benefits will not be eligible for SSI. After the first \$20 of unearned income is excluded, this person will have \$761 in countable income making him or her ineligible for SSI. Using the PASS, every dollar this person sets aside in an approved PASS to support a vocational goal will result in a one dollar increase in the SSI check. Here are two examples:

**Example 1:** Shirley is blind and receives \$781 monthly in SSDI and lives alone. She sets aside \$200 monthly in a PASS to purchase a computer and braille printer for a home-based business. Her countable income — reduced by \$20 by the unearned income exclusion and \$200 by the PASS exclusion — is now \$561 monthly. Her SSI check is now \$200 per month ( $\$761 - 561 = \$200$ ).

**Example 2:** Same facts. However, she now sets aside \$761 each month. Her countable income is now reduced to \$0 and she is eligible for a \$761 SSI check.

In example 2, Shirley has put all of her countable income into the PASS. This is typically the way to proceed as it allows her to obtain the highest level of SSI and purchase her computer and Braille printer at the earliest date possible.

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<sup>57</sup> POMS SI 00870.055 C.2.a.

## B. Persons with Significant Earnings

Under SSI rules, the first \$65 or \$85 of earned income and 50 percent of the remainder is disregarded.<sup>58</sup> Consider Greg, an Albany, New York resident who lives alone and receives \$761 in SSI benefits. If Greg goes to work and earns \$1,607 in gross wages, his countable income of \$761 will make him ineligible for SSI. In a state which does not supplement the SSI Federal Benefit Rate (FBR) of \$674 monthly, \$1,433 in gross wages would make the person ineligible for SSI. This amount of wages is often referred to as the “break even” point, since countable earned income is exactly equal to the maximum SSI rate.

Like Shirley, Greg will receive a one-dollar SSI increase for every dollar put into the PASS. For example, here is what his SSI budget would look like if he set aside \$200 monthly to pay for a driver to take him to college:

Gross wage	\$1,607
Earned income disregard	- 65
Unearned income disregard not otherwise used	- <u>20</u>
	\$1,522
Minus 50 % of remainder	- <u>761</u>
Countable earned income	\$ 761
PASS exclusion	- <u>200</u>
Countable income	\$ 561
Base SSI rate	\$ 761
Minus countable income	- <u>561</u>
SSI check	\$ 200

Under these facts, if he set aside an additional \$561 for college tuition, Greg’s countable income would be reduced to \$0 and he would qualify for the maximum \$761 SSI check.

## C. Persons with Significant Resources

Under SSI rules, a person can have no more than \$2,000 in non-exempt resources.<sup>59</sup> Resources above \$2,000 can be put into the PASS to ensure eligibility for SSI. For example, a person who is awarded \$25,000 in a personal injury settlement could place this money into an approved PASS to save toward the expense of college studies or the purchase of tools to become a mechanic, making this resource exempt for SSI purposes.

<sup>58</sup> 20 C.F.R. §§ 416.1112(c)(4), (c)(5) and (c)(7). The \$20 unearned income disregard, if not used to reduce unearned income, will be used to reduce earned income.

<sup>59</sup> 20 C.F.R. § 416.1205.



## D. Persons with Deemed Income from a Spouse or Parent

A spouse or child of a wage earner, who receives deemed income from a spouse or a parent, could be eligible for a PASS by excluding the deemed income.<sup>60</sup> For example, Maria is disabled and uses a wheelchair. She is 16 years old and lives with her mother and 12-year-old brother who does not have a disability. She was getting a \$697 SSI check (New York's 2009 living with others rate) until her mother went to work. Her countable deemed income is now \$747, or \$50 more than the 2009 living with others rate. Under SSI's formula for deeming income from a parent or stepparent, the mother's gross monthly wages would be \$1,810.01 in this situation (\$21,720.12 per year).

A PASS is proposed to put \$747 of the mother's monthly wage into an account to save for a van to allow Maria to attend college to become an engineer. If the PASS is approved, the deemed income will no longer be counted by SSI and Maria will qualify once again for a \$697 SSI check. She will also remain qualified for Medicaid in most states. If Maria saves this amount each month for two full years, or until deeming stops on her 18th birthday, she will be able to save more than \$18,000 in her PASS fund.

## E. Persons Who Receive In-Kind Support and Maintenance

A little-known provision of the POMS specifically authorizes a person to take in-kind support and maintenance, which is valued and counted as unearned income under the presumed maximum value (PMV) rule,<sup>61</sup> and use that money in the PASS for approved expenses.<sup>62</sup> For example, SSA may reduce an individual's SSI check below the full SSI FBR because he or she is not paying the full share of food or housing expenses. If SSA has valued this in-kind income at \$100 per month, the person's SSI check would be reduced from \$674 to \$574 per month (plus state supplement, if any). This \$100 of in-kind, unearned income could be set aside in a PASS to pay for expenses in a PASS. If the PASS were approved on that basis, the person's SSI check would increase by \$100.

Many adult children, who live with their parents, will receive a decreased SSI check amount under the PMV rule because their expected share of household expenses (e.g., rent or mortgage, taxes, utilities, and food) is so high the individual could not possibly pay the shared amount out of an SSI check. In some cases, the in-kind income attributed to the adult child under this rule will be as high as one-third of the FBR or \$225 in 2009. In such a case, this \$225 could be used in an approved PASS toward expenses to reach a vocational goal. Thus, the SSI check would then be increased by \$225.

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<sup>60</sup> POMS SI 01320.140, .710 A.

<sup>61</sup> See POMS SI 00835.300 for information about the PMV.

<sup>62</sup> *Id.* SI 00870.008 A.3.



## **XII. The PASS Application Packet: Items Generally Submitted with a PASS Proposal**

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Although there is a specified form for a PASS application, it is always best to assemble a packet of materials to show SSA the proposal is well conceived, feasible, viable and should be approved. What follows is a list of items the authors recommend submitting with the PASS proposal.

### **A. Before the PASS Application Submission: A Letter of Intent from the Individual or Advocate**

Although this may not always be needed, it can be a good idea. Generally, this would come from the advocate and would be a brief letter to the PASS Cadre or, preferably, to the PASS specialist whom you know will be assigned to the case. The letter should include the beneficiary's name, address, Social Security number, projected date of the PASS submission, and a brief summary of what the PASS will involve. In some cases, a phone conversation with the PASS specialist may suffice.

If the PASS application will be complicated or controversial, this will open up the lines of communication. A follow-up phone call can then be used to establish a rapport with the PASS specialist who will rule on this PASS application.

If the individual is not already receiving SSI cash benefits or extended Medicaid through the 1619(b) program, the purpose of this communication is to secure a "protected filing date" to ensure that the PASS approval (and the accompanying SSI application approval) can be back-dated to the date that the letter of intent was received (see section X.E).

### **B. Cover Letter from Advocate**

This can be anything from one paragraph to several pages. It is the advocate's opportunity to anticipate issues and address them ahead of time. If the PASS application is complicated or unusual, this is the opportunity to explain things.<sup>63</sup>

### **C. Letter from Applicant/Person with Disability**

The applicant should use this letter to supplement what appears in the completed PASS application. This is an opportunity to zero in on one or more issues that may raise questions with SSA. The advocate should, of course, help in writing this letter.

Depending on the circumstances, this could be viewed as an opportunity to breathe some real life into the PASS application. The applicant can explain, in his or her own words, how the PASS is expected to fill in the missing link on the route to independence and self-support. With these issues in mind, this letter may carry more weight if it is hand-written.

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<sup>63</sup> See Sample Letter from Advocacy, p. 39.

## D. Completed SSI Application

If the person is already an SSI recipient, a new application is not needed. If the person is not currently an SSI recipient (e.g., receives SSDI only), an SSI application must be completed.

As noted above, if the individual must submit an SSI application with the PASS proposal, a letter of intent should be submitted to the PASS Cadre at the earliest possible date to preserve up to 60 days of retroactive eligibility. The letter should explain that this is the reason the letter is being sent and that the PASS application and completed SSI application will follow within 60 days.

## E. Letter of Support from Vocational Counselor<sup>64</sup>

If the individual is working with a vocational rehabilitation (VR) agency, a letter from his or her VR counselor is important. The counselor can explain, as a VR expert, that the work goal is appropriate and confirm the need for items proposed in the PASS. Since the PASS specialist who rules on the proposed PASS is not a VR expert, it is difficult for him or her to second-guess the expert's opinion. You may wish to refer your client or consumer to the state VR agency if that has not already been done. This may help your client obtain additional funding toward the vocational goal and provide the needed expert opinion.

## F. The Proposed PASS

SSA's PASS application form covers all the issues SSA must address to approve the PASS. With the form, it is not enough to state that \$10,000 must be saved to purchase a van or \$6,000 spent to establish a home office. If a vehicle is to be purchased, you should obtain an invoice showing make, model, and its cost including sales tax. If a home office is to be established, make a list of the various items needed and their cost. When possible, obtain estimates for the items to be purchased. If written estimates are not available, explain how the cost was determined.

A detailed spending plan serves two purposes. First, it shows SSA the person is organized and knows what is needed to achieve the goal. Second, it forces the PASS applicant to plan for the future.

## G. The PASS Budgeting Form<sup>65</sup>

The authors believe a PASS budgeting form, something that does not appear in the PASS application form, should be submitted with the PASS application. The budget form shows how income, otherwise countable under SSI rules, is excluded when set aside for PASS expenses. The SSI budget also allows your client or consumer to see how the PASS, if approved, will affect him or her financially. As noted below, after the PASS is approved the individual needs enough disposable income for living expenses or the PASS is not realistic.

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<sup>64</sup> See Sample Letter from Rehabilitation Counselor, p. 38.

<sup>65</sup> See PASS Budget Form on p. 37.

## XIII. Other Considerations Related to the PASS

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### A. Are the Proposed Expenditures Reasonable?

A good rule to follow is this: “Don’t ask for a top-of-the-line brand name if a generic brand will do.” If the proposed PASS includes luxury-type items, such as air conditioning for a vehicle, explain their necessity in a cover letter or on the PASS application. For example, some conditions, such as multiple sclerosis, may be exacerbated by extremes of heat. In that case, it would be helpful to ask the person’s physician to write a letter stating that air conditioning is a necessity.

### B. Will the Person Have Enough Disposable Income to Meet Monthly Expenses After the PASS is Approved?

Since the income excluded must be used for the purposes defined by the PASS, the person must be prepared to live on the disposable income, which remains. Unfortunately, there are some instances in which a PASS is not realistic because it will reduce disposable income to a level that is too low. The PASS application requires the applicant to demonstrate the ability to live on the income that remains after the PASS exclusions are set aside or used for the purposes, set forth in the approved PASS.<sup>66</sup>

Here are a few examples:

**Example 1:** Joe receives \$791 monthly in SSDI and puts \$761 of it into a PASS, thereby receiving \$761 in SSI. Since the first \$20 of SSDI is disregarded, Joe has \$0 in countable income after putting \$761 into the PASS. Accordingly, he is entitled to the maximum \$761 SSI check in 2009 for a New Yorker who lives alone. Joe had \$791 in disposable income before and has \$781 in disposable income after the PASS is approved. His disposable income includes the \$20 of SSDI that was disregarded and the \$761 SSI check.

Since Joe will only lose \$10 in disposable income, the PASS should be realistic.

**Example 2:** Mary receives \$1,120 monthly in SSDI and puts \$1,100 of it into a PASS, thereby receiving \$761 in SSI. Mary had \$1,120 in disposable income before and has \$781 in disposable income after the PASS is approved.

Mary will lose \$339 in disposable income. Unless she is prepared to live on \$781 monthly, the PASS will not be realistic for her. NOTE: Other factors could enter the picture to make the PASS realistic despite the apparent loss in disposable income. For example, if Mary

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<sup>66</sup> See Form SSA-545-BKE.

was paying a \$333 monthly spend down to obtain Medicaid coverage<sup>67</sup> and could obtain automatic, cost-free Medicaid through an approved PASS, this could make the PASS realistic. Mary might also look into a loan to bridge the gap created by putting this much money into the PASS, keeping in mind that with the PASS the loan amount would be less than required if there was no PASS.

**Example 3:** Same facts as #2. Now, however, Mary is about to start work earning \$865 per month and wants to put all of her countable income into her PASS.

Here is how her PASS would work:

- \$20 is ordinarily excluded from unearned income, so \$1,100 of the SSDI is put into the PASS.
- \$65 plus one half the remainder or \$465 is ordinarily excluded from earned income, so \$400 of her wages is put into the PASS.
- Before going to work, and before the PASS Mary had \$1,120 in disposable income. She now has  $\$20 + \$465 + \$761 = \$1,246$  in disposable income after going to work and having the PASS approved.

Under these facts Mary will gain \$126 in disposable income, by timing the PASS with the start of her job, making the PASS highly desirable for her.

Before you take the time to complete a PASS application, always consider this issue of disposable income. Many advocates and beneficiaries have invested hours of their time only to find out the PASS was not realistic because the person would be left with insufficient disposable income. Worse yet, some PASS applications have been unsuccessful because the person used some of the money that had to go into the PASS, since they did not have enough money to meet living expenses. For these reasons, the beneficiary and advocate must always thoroughly review the issue of disposable income.

## C. How Will the PASS Affect Other Benefits?

### 1. Medicaid

#### a. Medicaid Eligibility from the PASS Itself

In New York, 38 other states, the District of Columbia, and the Northern Mariana Islands, Medicaid eligibility is automatic for SSI beneficiaries.<sup>68</sup> Thus, an approved PASS will ensure Medicaid coverage at no cost to the recipient. In the other 11 states, known as section 209(b) states, Medicaid eligibility is determined under separate criteria.<sup>69</sup> The states

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<sup>67</sup> This would be based on New York's 2009 medically needy or spend down eligibility level of \$767 for a household of one. With her countable income reduced by \$20 ( $\$1,120 - \$20$ ), Mary would face a \$333 per month spend down to obtain Medicaid ( $\$1,100 - \$767$ ).

<sup>68</sup> 42 U.S.C. § 1396a(a)(10)(A)(i).

<sup>69</sup> 42 U.S.C. § 1396a(f).

which exercise the section 209(b) option include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia.<sup>70</sup>

Will income and resources excluded by SSI under an approved PASS also be excluded by Medicaid in a section 209(b) state? This may vary state-by-state. The 209(b) option allows states to apply Medicaid criteria which is more restrictive than federal SSI criteria if the more restrictive criteria was in place in 1972.<sup>71</sup> The U.S. Court of Appeals for the Seventh Circuit has held that the State of Indiana could, pursuant to the 209(b) option, disregard income and resources excluded under an approved SSI PASS only for blind Medicaid recipients and not for sighted recipients. That decision, *Vaughn v. Sullivan*, held that Indiana's disparate treatment of PASS-generated income and resources does not violate the federal Medicaid Act, section 504 of the Rehabilitation Act, the Americans with Disabilities Act, or the U.S. Constitution's Equal Protection Clause.<sup>72</sup>

### **b. Linkage to 1619(b) Medicaid Through the PASS**

The PASS may also guarantee linkage to what is known as section 1619(b) Medicaid.<sup>73</sup> Under section 1619(b), a former SSI recipient who loses SSI cash benefits due to increased earnings may continue receiving Medicaid indefinitely if certain criteria are met. Since a person cannot qualify for section 1619(b) unless he or she has received SSI in the past, the PASS, by creating eligibility for SSI, creates the potential for section 1619(b) Medicaid eligibility.

Here is an example:

Paul is physically disabled and depends on Medicaid-funded home health aides 30 hours per week. He receives \$887 per month in SSDI and pays a \$100 spend down monthly to receive Medicaid coverage.<sup>74</sup> Despite his disability, he is about to graduate from college and start a job making \$24,000 per year. He cannot get to and from work without a specially modified van.

Paul uses a PASS to set aside SSDI and wages, allowing him to purchase a modified van. By doing this, he qualifies for SSI and also Medicaid without a spend-down. Twelve months after starting work, Paul loses his SSDI under substantial gainful activity rules and continues to put wages into the PASS.<sup>75</sup>

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<sup>70</sup> POMS SI 01715.020.

<sup>71</sup> 42 U.S.C. § 1396a(f).

<sup>72</sup> *Vaughn v. Sullivan*, 83 F.3d 907 (7th Cir. 1996).

<sup>73</sup> 42 U.S.C. § 1382h; POMS SI 02302.001 *et seq.* For a detailed explanation of section 1619(b), see our inaugural issue of the newsletter, *Working*, available at [www.NYMAKESWORKPAY.ORG](http://www.NYMAKESWORKPAY.ORG)

<sup>74</sup> See 42 U.S.C. § 1396a(a)(17); 42 C.F.R. § 435.831(d). Under optional spend down rules, in operation in about three fourths of the states, a Medicaid recipient is responsible for medical costs equal to his or her excess countable income based on the state's threshold for Medicaid eligibility. The example uses New York's 2009 monthly eligibility threshold of \$767 for a household of one.

<sup>75</sup> See discussion of substantial gainful activity rules and trial work period in section XI.D.

Later when the PASS ends, he will qualify for continued Medicaid under section 1619(b) because he will be an SSI recipient who lost SSI due to excess earnings. In New York State, which has a 1619(b) eligibility threshold of \$43,421 in 2009, Paul should be eligible for continued Medicaid eligibility when his PASS ends and SSI is terminated. In nearly all states, Paul would meet the financial threshold test for section 1619(b) with annual earned income of \$24,000.<sup>76</sup>

Had Paul not used the PASS he could not have qualified for section 1619(b) Medicaid. Without Medicaid, Paul could not afford to work since his home health care costs would probably exceed \$10,000 per year. Home health services, including personal care services and private duty nursing services are covered by New York's Medicaid program for adults.<sup>77</sup>

For persons with high medical costs, the use of the PASS as a way to link up with section 1619(b) Medicaid can be a lifesaver. Without section 1619(b), many individuals like Paul will choose not to work rather than risk losing Medicaid benefits.

Since July 2003, New York has had a Medicaid Buy-In for Working Persons with Disabilities program. If Paul had not been able to access section 1619(b) following the end of his PASS, this optional Medicaid Buy-In program could offer a continuing source of Medicaid coverage for him.<sup>78</sup> As of January 2009, the Medicaid Buy-In was offered in more than 40 states.

## 2. Government Rental Subsidies

Under the traditional Section 8 housing program (i.e., tenant-based and project-based), income excluded under an approved PASS will not be counted as income in determining the Section 8 rent payment.<sup>79</sup> Similar provisions apply in the new Housing Choice Voucher Program, a program that is replacing the tenant-based Section 8 program (sometimes called the Section 8 certificate program).<sup>80</sup>

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<sup>76</sup> POMS SI 02302.200 A.

<sup>77</sup> Both nursing services and home health aide services are required to be offered by states to individuals who qualify for home health services under 42 C.F.R. § 440.70. States, at their own option, may also provide home health services under several other service categories. See, e.g., 42 C.F.R. §§ 440.80 (private duty nursing) and 440.170(f) (personal care services).

<sup>78</sup> See the initial issue of our *Working* newsletter, note 74 above, for detailed summary of New York's Medicaid Buy-In for Working People with Disabilities.

<sup>79</sup> 24 C.F.R. § 5.609(c)(8)(ii).

<sup>80</sup> U.S. Department of Housing and Urban Development, *Housing Choice Voucher Guidebook*, Chap. 5, Exhibit 5-2.

### 3. Food Stamps

Under the federal Food Stamp law and regulations, income and resources put into a PASS will not be counted as income or resources by the Food Stamp Program.<sup>81</sup>

### 4. Assistance from the State Vocational Rehabilitation Agency

All states will have a state VR agency or agencies. Your state VR agency may be able to pay for things like tuition, books, transportation, training, and job coach services. An individual should first obtain whatever help is available from the state VR agency before looking to the PASS. The PASS should only be used to supplement the various benefits available from these sources. Student loans and other indebtedness should only be considered after exhausting resources available through the state VR agency, other grant programs, and the PASS.

## D. The Effect of SSDI's Trial Work Period and Extended Period of Eligibility Rules Upon the PASS

### 1. The TWP and EPE Explained

The trial work period (TWP) is a nine-month period during which the SSDI recipient may test his or her ability to work, without losing benefits.<sup>82</sup> During the TWP the SSDI recipient will be allowed to keep both paycheck and disability check, no matter how high the paycheck is. After nine months of trial work, if earnings are below the substantial gainful activity (SGA) level — \$980 gross monthly in 2009 (or \$1640 for individuals who are legally blind) — the SSDI will not be affected. If earnings are above the SGA amount, SSDI will be continued for a three-month grace period and then subject to the extended period of eligibility rules.

Following the ninth trial work month, the SSDI beneficiary enters a 36-month extended period of eligibility (EPE). During this 36-month period, the individual will get a benefit check for each month that gross earnings, after certain deductions, are less than the SGA amount. Following the initial month of SGA during this period, the individual will be entitled to continued benefits during a three-month grace period. Thereafter, and for the remainder of the 36-month EPE, the individual retains benefits when countable wages are below the SGA amount and loses benefits for months when countable wages are above the SGA amount.

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<sup>81</sup> 7 U.S.C. §§ 2014(d)(15) & (g); 7 C.F.R. § 273.9(c)(16).

<sup>82</sup> 42 U.S.C. § 20 C.F.R. § 404.1592.



## 2. Planning for the Impact of the TWP and EPE; Contrasting SSI's Section 1619(a) Provisions

The effect of the TWP and EPE rules on the SSDI beneficiary must be considered in planning for the PASS. If this person will work and earn more than the monthly SGA amount, we must assume that SSDI benefits will be terminated after 12 months — i.e., after nine months plus a three-month grace period (even sooner if the person has previously used up TWP months).

Under what are known as the section 1619(a) provisions,<sup>83</sup> the SGA rule does not apply to SSI beneficiaries. This means that a person who is receiving both SSDI and SSI will see SSI continue after the TWP ends.

Here is an example of how this would work:

Sharon is disabled, receives \$781 in SSDI benefits, and has not previously used any TWP months. In September 2009 a PASS is approved to pay for school and a vehicle with hand controls. She puts \$761 into the PASS and receives a \$761 SSI check.

In June 2011 she graduates and in July 2011 starts a job making \$1,265 monthly (assume that will be more than the 2011 SGA level). She amends her PASS to set aside an additional \$600 into the PASS, the amount of her countable earned income. SSI benefits will continue at \$761 monthly (or a higher amount based on annual cost of living increases) if the PASS is approved.

Assuming that July 2011 is her first TWP month, she will continue receiving SSDI benefits through June 2012 (nine months plus a three-month grace period). The SSDI benefits will be terminated effective July 2012. Now the only income she will set aside in the PASS is the \$600 of countable earned income.

This example assumes that Sharon will need her PASS to continue, after graduation, to meet all reasonable expenses to achieve her vocational goal.

Sharon's example is very common among college students who will lose SSDI benefits within 12 months of starting work following graduation. The benefits and work incentives practitioner must work with Sharon during college to monitor her TWP and project what money, in the form of SSDI benefits, will be available to put into the PASS if it is to continue following graduation.

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<sup>83</sup> 42 U.S.C. § 1382h; 20 C.F.R. §§ 416.261 *et seq.*



## E. Timing the PASS Application to Take Advantage of Section 1619(a)

As noted above, the SGA rule does not apply to SSI beneficiaries. The SGA rule does, however, apply to SSI applicants. This means that Sharon, in the last example, would have been denied SSI benefits had she applied for them after she started her job. If an SSI applicant is performing SGA at the time of application, the application will be denied.

Here is a strategy tip individuals must follow. If a person receives SSDI only, the PASS proposal must be submitted before the individual starts working and earning above the SGA level. Although there may be arguments that one or two months of income at the SGA level should not be enough to deny the SSI application, the safe course of action is to anticipate the job starting and submit the PASS application ahead of time. If the PASS cannot be submitted before work starts, at least send a letter to SSA indicating your intent to submit a PASS at a later date, seeking retroactive approval. A PASS can have retroactive effect if the individual was involved in the elements of the plan (e.g., saving money, making expenditures) prior to reducing it to writing. For retrospective monthly accounting purposes, since an exclusion of income will not increase the SSI check for one or two months, the first month of a PASS can be made retroactive for two months if there is no alternative source of funds to begin operation of the PASS.<sup>84</sup>

In the last example, Sharon guarantees her SSI eligibility by submitting her PASS application and setting aside her SSDI checks before she starts work. When the PASS ends, she will probably qualify for continued Medicaid under the section 1619(b) program because at the end of the PASS her SSI will be discontinued due to countable wages.<sup>85</sup> Thus, the PASS has provided her access to section 1619(b) Medicaid — a benefit she would not be eligible for without some prior receipt of SSI.

### 1. The Medicaid Buy-In as an Alternative to 1619(b)

Since July 2003, New Yorkers with disabilities have been able to access long-term Medicaid through the Medicaid Buy-In for Working Persons with Disabilities. In some cases, an individual whose only income comes from wages can earn as much as \$53,000 and remain Medicaid eligible. Sharon and her benefits planner can look at the relative merits of 1619(b) versus the Medicaid Buy-In as she plans for health insurance needs when she starts working.<sup>86</sup>

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<sup>84</sup> POMS SI 00870.007 B.2 & 4.

<sup>85</sup> POMS SI 02302.030 B.

<sup>86</sup> For more information on the Medicaid Buy-In for Working People with Disabilities, see the inaugural issue of the newsletter *Working*, available at [www.NYMAKESWORKPAY.ORG](http://www.NYMAKESWORKPAY.ORG)

**A note of caution:** Under an SSA policy that was sustained by the U.S. Supreme Court in the *Barnhart v. Walton* case<sup>87</sup> work performed within 12 months of the onset of a person's disability could result in the denial of an application for SSI benefits or the rescission of an approval already issued. While a complete discussion of this policy is beyond the scope of this article, this issue should be considered when the PASS applicant is expected to work at the SGA level within 12 months of the SSI application date. In most cases this should not be an issue, as the person should be able to show that the disability existed for at least 12 months before the SSI application date. A good summary of this policy appears in the Winter 2002 issue of The Benefits Planner newsletter.<sup>88</sup>

## F. What if the Beneficiary Medically Improves After the PASS is Approved?

All of the discussion in this article assumes that the individual seeking the PASS has a continuing disability. Generally, if the individual ceases to be disabled, he or she will no longer qualify for SSI and the rest of this article becomes academic. There is one exception based on what are known as the section 301 provisions.

All SSI and SSDI beneficiaries will have their cases reviewed periodically to determine whether they are still disabled. This will probably occur no more frequently than every three years.<sup>89</sup> When this review occurs, the fact that a PASS has been approved will not affect the decision on whether there is a continuing disability. However, pursuant to section 301, both SSI and SSDI benefits could continue after the finding of medical improvement.

Section 301, enacted as section 301 of the Social Security Amendments of 1980,<sup>90</sup> allows continued benefits for an SSI or SSDI beneficiary who is found to have medically improved following a continuing disability review or to be not disabled following an age 18 redetermination (in the case of SSI), if the improvement occurred after the start of an approved VR program.<sup>91</sup> Using the example of Sharon again, if she was found to have medically improved during her second year of a four-year college program, sponsored by her state VR program, this probably means that both her SSI and SSDI benefits would continue for the remainder of the college program, allowing her PASS to continue as well.

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<sup>87</sup> 535 U.S. 212 (2002).

<sup>88</sup> This newsletter is available on the Neighborhood Legal Services website at [www.nls.org/planner/winter02.htm](http://www.nls.org/planner/winter02.htm)

<sup>89</sup> 42 U.S.C. § 421(i); 20 C.F.R. § 404.1590(d).

<sup>90</sup> Pub. L. No. 96-265, § 301, 94 Stat. 441.

<sup>91</sup> 20 U.S.C. §§ 425(b), 1383(c)(6); 20 C.F.R. §§ 404.316(c), 416.1338; POMS DI 13515.001 *et seq.*

## G. If the PASS is Denied — the Right to Appeal

If the PASS proposal is denied, the applicant has a right to appeal. The first appeal will be a reconsideration.<sup>92</sup> The POMS provides instructions for processing a reconsideration appeal on PASS issues.<sup>93</sup> The individual seeking reconsideration may request either a case review (i.e., a paper review) or an informal conference, which may be either by telephone or in-person. If either a case review or informal conference by telephone is held, the decision maker will come from the team of PASS specialists. If the individual insists on a face-to-face conference, a member of the SSA field office staff will be assigned to conduct the conference and render a decision. The face-to-face conference may sometimes be preferred, as it will allow much more leeway for give and take communication.

If the PASS application is denied on reconsideration, a hearing may then be requested.<sup>94</sup> Subsequent appeals are to the Social Security Appeals Council and to the United States District Court.<sup>95</sup>

## XIV. Conclusion

It is hoped that this policy-to-practice brief will stimulate many readers to now look to the PASS as an important tool that is available to help individuals with disabilities on the road to self-supporting employment. The authors have attempted to cover the subject as thoroughly as possible, providing practical examples to aid in understanding. There are many issues, however, that could not be covered in the short space allotted to this brief. For example, we did not discuss the possibility of two or more persons joining forces and using the PASS to start a partnership or larger business. Imagine the start-up money, which could be generated if four individuals set aside \$500 monthly in a PASS toward the formation of a business.

Assisting a person with a disability in the formulation of a PASS application can be very rewarding, but it is a bit different from most of the benefits and work incentives planning that is typically done within a WIPA or similar project. If you assist in the preparation of a PASS application, in some cases you must also be prepared to discuss the availability of other sources of government assistance (e.g., VESID funding, educational loans and grants) and the effect that the PASS may have upon eligibility for various governmental benefits (e.g., public and subsidized housing, food stamps, etc.). In short, one must be willing, to some degree, to serve the role of a benefits and work incentives planner and manager.

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<sup>92</sup> 20 C.F.R. §§ 416.1407 *et seq.*

<sup>93</sup> POMS DI 60070.300.

<sup>94</sup> 20 C.F.R. §§ 416.1429 *et seq.*

<sup>95</sup> 20 C.F.R. §§ 416.1467 *et seq.* and 416.1481.

## **PASS EXAMPLE: Ann Lembke**

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### **Case Scenario**

Ann is 19 years old and a high school senior.

Disability:

Spinal cord injured. Paralyzed from waist down, with limited use of arms, hands and fingers. Cannot use public transportation; cannot effectively use conventional automobile.

### **Occupational Objective:**

Elementary education teacher

### **Education Program:**

Ms. Lembke will begin a four-year college program in September 2009 to become an elementary education teacher.

### **Anticipated Income:**

When college commences, she will have \$850.00 in Social Security Disability Insurance (SSDI) benefits.

### **Funding Needs:**

Ms. Lembke will graduate from high school in June 2009 and has no money saved for college. She will attend Lake Erie University where the tuition is \$4,400 per semester. New York VESID will pay \$2,000 per semester of her tuition (or the current state tuition rate) and Ms. Lembke must pay the rest.

Ms. Lembke would also like to purchase a van, modified for her use as a wheelchair user. The van will cost \$21,200 and the modifications will cost \$19,000. VESID has agreed to pay for the van modifications. She will also need \$1,000 for a laptop computer and \$200 for a printer.

### **Problem:**

Based on present expenses, Ms. Lembke cannot afford the extra \$2,400 per semester for tuition and cannot afford to set money aside for a van. How could she use a Plan For Achieving Self Support to set aside money for the van, the computer and printer, cover unmet college expenses and thus, qualify for SSI?

Assume that school will continue through May 2013.

## PASS Budgeting Form

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### SSI Budget: Ann Lembke

#### Total Income:

\$	850	Unearned (SSDI benefits)
	\$ 0	Earned

#### Total Expenses for PASS:

\$	830	Per month from SSDI benefits
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#### SSI Calculation:

\$	850	Unearned income
	- <u>20</u>	Unearned income exclusion
	830	
	- 830	PASS exclusion
	\$ <u>0</u>	Countable income
	\$ 697	Base SSI rate (New York, "living with others")
	- <u>0</u>	Countable income
	\$ 697	Total SSI check

#### Disposable Income Analysis:

Before PASS

\$	850
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After PASS

\$	717	(\$697 SSI check + \$20 excluded from SSDI)
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Net Loss in Disposable Income

\$	133	(Since monthly living expenses are \$680 the PASS is feasible for Ms. Lembke. Also, remember that she will qualify for Medicaid automatically in New York State as an SSI recipient. Without SSI, she would have a \$63 spend down each month to obtain Medicaid.)
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## Sample Letter from Rehabilitation Counselor

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Social Security Administration

etc.

Dear Ms. (or Mr.) :

I am writing on behalf of Ann Lembke, a 19 year old high school senior. Please accept this letter as support for Ms. Lembke's Plan for Achieving Self Support (PASS).

I am employed by the New York Office of Vocational and Educational Services to Individuals with Disabilities (VESID). I have been Ms. Lembke's rehabilitation counselor since January 2009. DVR has agreed to sponsor Ms. Lembke through an approved Individual Plan of Employment (IPE) with a goal of Elementary Education Teacher. I am fully familiar with Ms. Lembke's academic record and with the extent of her disability and fully support her goal of becoming a teacher.

Under DVR's IPE we will provide Ms. Lembke with funding for the following:

- Four years of college tuition @ the applicable state tuition rate (currently \$2,000 per semester)
- Van modifications at a cost of \$19,000
- Transportation to and from the Lake Erie University campus by private carrier
- A per semester allotment for books

VESID fully supports Ms. Lembke's need for her own vehicle. Since many teaching openings occur in the outlying suburbs and small towns, where there is not public transportation available, having her own van makes it more likely that she will find work.

We also support Ms. Lembke's need to purchase a new van. Based on VESID's experience, we discourage our consumers from purchasing used vehicles if they are to be equipped with hydraulic lifts and other modifications for a wheelchair user. We have found that there are fewer problems if these modifications are installed on a new vehicle.

Please call me at 000-0000 if you have any questions.

Sincerely,

Randy Rehab Counselor

## Sample Letter from Advocate

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Social Security Administration

etc.

Dear Ms. (or Mr.) :

This office represents Ann Lembke.

Enclosed please find the following documents in support of her Plan for Achieving Self Support (PASS):

- Completed PASS application (form SSA-545)
- Letter of Ann Lembke, PASS applicant
- SSI application of Ann Lembke
- Invoice showing current price of Dodge Caravan
- Provisional letter of acceptance form Lake Erie University
- Letter from Randy Rehab Counselor, Division of Vocational Rehabilitation

Ms. Lembke plans to use her PASS to save for the full purchase price of a Dodge Caravan which she will purchase in August 2013. As Ms. Lembke explains in her letter, she would be unable to meet her monthly living expenses and make monthly payments for the van out of the \$850 she receives in Social Security payments if she purchased the van sooner than August 2013 by making a down payment and taking out an installment loan.

I believe that the proposed PASS, as written, should be approved under current POMS criteria. Please do not hesitate to call me at 000-0000 if you have any questions.

Very truly yours,

# Plan for Achieving Self-Support

Date Received

*In order to minimize recontacts or processing delays, please complete all questions and provide thorough explanations where requested. If you need additional space to answer any questions, use the Remarks section or a separate sheet of paper.*

Name Ann Lembke SSN 000-00-0000

## PART I — YOUR WORK GOAL

- A. What is your goal? *(Show the job you expect to have at the end of the plan. Be as specific as possible. If you cannot be specific, provide as much information as possible on the type of work you plan to do. If you do not yet have a specific work goal and will be working with a vocational professional to find a suitable job match, show "VR Evaluation" and be sure to complete Part II, question F on page 4.)*

Elementary Education Teacher

If your plan involves paying for job coaching, show the number of hours of job coaching you will receive when you begin working \_\_\_\_\_ per week/month (circle one).

Show the number of hours of job coaching you expect to receive after the plan is completed. \_\_\_\_\_ per week/month (circle one).

- B. Describe the duties and tasks you expect to perform in this job. Be as specific as possible.

I will be teaching elementary grade students in public school.

- C. How did you decide on this work goal and what makes this type of work attractive to you?

I love working with children. I am paralyzed from the waist down, with limited use of arms, hands, and fingers. With minimal help from a teachers aide I will be able to perform this job, according to my DVR counselor.

- D. Is a license required to perform this work goal?  YES  NO  
*(If "YES," include the steps you will follow to get a license in Part III.)*

- E. How much do you expect to earn each week/month (gross) after your plan is completed?  
\$2500 per week/month (circle one).



**PART I – YOUR WORK GOAL (Continued)**

- F. If your work goal involves self-employment, explain why working for yourself will make you more self-supporting than working for someone else.

***Not Applicable***

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**IMPORTANT:** If you plan to start your own business, attach a detailed business plan. The business plan must include:

- the type of business
- the advertising plan
- technical assistance needed
- a profit-and-loss projection for the duration of the PASS and at least one year beyond its completion
- products or services to be offered by your business
- a description of the market for the business
- tools, supplies, and equipment needed

Also include a description of how you intend to make this business succeed.

For assistance in preparing a business plan, contact the Small Business Administration, Chamber of Commerce, local banks, or other business owners.

- G. Have you ever submitted a Plan for Achieving Self Support (PASS) to Social Security?

YES  NO

If "NO," skip to H.

If "YES," was a PASS ever approved for you?  YES  NO

If "NO," skip to H.

If "YES," when was your most recent plan approved (month/year)? \_\_\_\_\_

What was your work goal in that plan? \_\_\_\_\_

Did you complete that PASS?  YES  NO

If "NO," why weren't you able to complete it?

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If "YES," why weren't you able to become self-supporting?

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Why do you believe that this new plan you are requesting will help you go to work?

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- H. Have you assigned your "Ticket to Work?"  YES  NO

If "YES," show the name, address and telephone number of the person or organization it was assigned to.

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**PART II — MEDICAL/VOCATIONAL BACKGROUND**

A. List all your disabling illnesses, injuries, or conditions.

Spinal Cord Injury - Paralyzed from the waist down.

B. Describe any limitations you have because of your disabilities (e.g., limited amount of standing or lifting, stooping, bending, or walking; difficulty concentrating; unable to work with other people, difficulty handling stress, etc.) Be specific.

Paralyzed from waist down, with limited use of arms, hands, and fingers. I use a wheelchair for mobility, have difficulty writing, and depend on others for bathing and dressing.

In light of the limitations you described, how will you carry out the duties of your work goal?

As long as I have a teacher's aide or assistance, I will be able to carry out the duties of an elementary grade education teacher.

C. List the jobs you have had **most often** in the past few years. Also list any jobs, including volunteer work, which are similar to your work goal or which provided you with skills that may help you perform the work goal. List the dates you worked in these jobs. Identify periods of self-employment. If you were in the Army, list your Military Occupational Specialty (MOS) code; for the Air Force, list your Air Force Specialty (AFSC) code; and for the Navy, Marine Corps, and Coast Guard, list your rank.

Job Title	Type of Business	Dates Worked	
		From	To
<i>Playground Superintendent</i>		7/08	9/08

**PART II — MEDICAL/VOCATIONAL BACKGROUND (Continued)**

D. Circle the highest grade of school completed.

0 1 2 3 4 5 6 7 8 9 10 11 12      GED or High School Equivalency  
 College:      1                      2                      3                      4                      or more

Were you awarded a college or postgraduate degree?       YES       NO

If "NO," skip to E.

When did you graduate? \_\_\_\_\_

What type of degree did you receive? (AA, BA, BS, MBA, etc.) \_\_\_\_\_

In what field of study? \_\_\_\_\_

E. Have you completed any type of special job training, trade or vocational school?

YES       NO

If "NO," skip to F.

If "YES," complete the following:

Type of training \_\_\_\_\_

Date completed \_\_\_\_\_

Did you receive a certificate or license?       YES       NO

If "NO," skip to F.

If "YES," what kind of certificate or license did you receive?

\_\_\_\_\_

F. Have you ever had or expect to have a vocational evaluation or an Individualized Written Rehabilitation Plan (IWRP) or an Individualized Employment Plan (IEP)?

YES       NO

If "NO," skip to G.

If "YES," attach a copy of the evaluation.

If you cannot attach a copy, when were you evaluated (or when do you expect to be evaluated) and when was the IWRP or IEP done (or when do you expect it to be done?)

***Evaluated Last Year***

Show the name, address, and phone number of the person or organization who evaluated you or will evaluate you and who prepared the IWRP or IEP or will prepare the IWRP or IEP.

Name: ***Randy Smith, Rehabilitation Counselor***

Address: ***DVR, 125 Main Street, Willowby, NY 00000***      Telephone: ***000-000-000***

G. If you have a college degree or specialized training, and your plan includes additional education or training, explain why the education/training you already received is not sufficient to allow you to be self-supporting.

***N/A***

**PART III — YOUR PLAN**

I want my Plan to begin July 2009 (month/year)  
(This should be the date you started or will start working towards your work goal.)

and my Plan to end August 2013 (month/year)  
(This should be the date you expect to start working in your job goal.)

List the sequential steps that you have taken or will take to reach your work goal starting with your begin date above and concluding with your expected end date above. Be as specific as possible. If you are or will be attending school, show the number of courses you will take each quarter/semester and attach a copy of the degree program or plan that shows the courses you will study. Include the final steps to find a job once you have obtained the tools, education, services, etc., that you need.

<b>STEPS</b>	<b>Beginning Date</b>	<b>Completion Date</b>
<i>1. Start saving towards PASS Expenses</i>	<i>July 2009</i>	<i>August 2013</i>
<i>2. Apply, get accepted, and register for College</i>	<i>January 2009</i>	<i>August 2009</i>
<i>3. Obtain High School Diploma</i>	<i>June 2009</i>	
<i>4. Begin College, complete first year with minimum 2.0 average</i>	<i>September 2009</i>	<i>May 2010</i>
<i>5. Complete second year of college with minimum 2.0 average.</i>	<i>September 2010</i>	<i>May 2011</i>
<i>6. Begin third year of course emphasis on elementary grade teacher major. Meet departmental requirements for credits and grades.</i>	<i>September 2011</i>	<i>May 2012</i>
<i>7. Begin fourth year with course emphasis on elementary grade teacher major. Meet departmental requirements for credits and grades.</i>	<i>September 2012</i>	<i>May 2013</i>
<i>8. Complete 1 full semester of student teaching</i>	<i>January 2013</i>	<i>May 2013</i>
<i>9. Obtain bachelor's degree in elementary education</i>	<i>May 2013</i>	
<i>10. Begin job search - prepare resume</i>	<i>January 2013</i>	
<i>11. Attend driver training for wheelchair users</i>	<i>July 2013</i>	
<i>12. Obtain driver's license</i>	<i>August 2013</i>	
<i>13. Purchase van</i>	<i>August 2013</i>	
<i>14. Begin employment as elementary education teacher</i>	<i>September 2013</i>	

**PART IV — EXPENSES**

- A. Do you propose to purchase or lease a vehicle?  YES  NO

If "NO," skip to question B on page 7.

If "YES," list the purchase or lease of the vehicle as one of the steps in Part III and complete the following:

1. Explain why less expensive forms of transportation (e.g., public transportation, cabs) will not allow you to reach your work goal.

*I will be searching for work within a 30 mile radius of my home. Public transportation is not consistently available. I cannot take cabs. Additionally, friends and/or relatives are not available to transport me.*

2. Do you currently have a valid driver's license?  YES  NO

If "YES," skip to 3.

If "NO," does Part III include the steps you will follow to get a driver's license?

YES  NO

If "YES," skip to 3.

If "NO," who will drive the vehicle?

How will it be used to help you with your work goal?

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3. Do you already own a vehicle?  YES  NO

If "NO," skip to 4.

If "YES," explain why you need another vehicle to reach your work goal.

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4. Describe the type of vehicle you propose to purchase or lease:

Make Dodge

Model Caravan

Year 2013

Purchase Price \$28,000

OR Lease Price \_\_\_\_\_

5. If the vehicle is new, explain why a used vehicle is not sufficient to meet your work goal.

*I need a van than can be modified. Purchase of a van that would be modified by VESID would guarantee reliable transportation for 8 years.*

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**PART IV – EXPENSES (Continued)**

B. If you propose to purchase a computer or other major equipment, describe the computer and equipment you will purchase, including the cost for each item.

*Dell Laptop Computer \$1000 and suitable printer \$200*

C. Do you already own a computer?  YES  NO

If "YES," explain why you need another computer to reach your work goal.

D. Please explain why you need the capabilities of the particular computer and/or equipment you identified:

*This is the least expensive laptop I could find and I need a laptop so I can take it to school with me. The printer is just a basic inkjet.*

E. Other than the items identified in A through D above, list the items or services you are buying or renting or will need to buy or rent in order to reach your work goal. Be as specific as possible. If schooling is an item, list tuition, fees, books, etc. as separate items. List the cost for the entire length of time you will be in school. Where applicable, include brand and model number of the item. **(Do not include expenses you were paying prior to the beginning of your plan; only expenses incurred since the beginning of your plan can be approved.)**

**NOTE:** Be sure that Part III shows when you will purchase these items or services or training.

1. Item/service training *College Training*

Total Cost \$ *19,200*

Vendor provider *Lake Erie University*

How will you pay for this item (one-time payment, installment or monthly payments)?

*I will owe \$2,400 per semester after obtaining maximum funding from VESID. VESID has agreed to pay \$2,000 per semester toward \$4,400 per semester tuition. By saving up in PASS, I will make payments before every semester.*

How will this help you reach your work goal? *Without the appropriate college degree I will be unable to become a teacher.*

2. Item/service training \_\_\_\_\_

Total Cost \$ \_\_\_\_\_

Vendor provider \_\_\_\_\_

How will you pay for this item (one-time payment, installment or monthly payments)?

How will this help you reach your work goal? \_\_\_\_\_

**PART IV – EXPENSES (Continued)**

3. Item/service training \_\_\_\_\_

Total Cost \$ \_\_\_\_\_

Vendor provider \_\_\_\_\_

How will you pay for this item (one-time payment, installment or monthly payments)?

\_\_\_\_\_

How will this help you reach your work goal? \_\_\_\_\_

4. Item/service training \_\_\_\_\_

Total Cost \$ \_\_\_\_\_

Vendor provider \_\_\_\_\_

How will you pay for this item (one-time payment, installment or monthly payments)?

\_\_\_\_\_

How will this help you reach your work goal? \_\_\_\_\_

5. Item/service training \_\_\_\_\_

Total Cost \$ \_\_\_\_\_

Vendor provider \_\_\_\_\_

How will you pay for this item (one-time payment, installment or monthly payments)?

\_\_\_\_\_

How will this help you reach your work goal? \_\_\_\_\_

6. Item/service training \_\_\_\_\_

Total Cost \$ \_\_\_\_\_

Vendor provider \_\_\_\_\_

How will you pay for this item (one-time payment, installment or monthly payments)?

\_\_\_\_\_

How will this help you reach your work goal? \_\_\_\_\_

**PART IV – EXPENSES (Continued)**

F. Will any of the items, services, or training costs be reimbursed to you or paid by any other source, person or organization?  YES  NO

If "YES," be sure to complete Part V, question F on page 11.

**Current Living Expenses**

G. What are your current living expenses each month? \$ 680 /month

Include all living expenses:

- Rent, Mortgage, Property Taxes
- Property/Personal Insurance
- Utilities, Phone, Cable, Internet
- Food, Groceries
- Automobile Gas, Repair and Maintenance, Public Transportation
- Clothes, Personal Items, Laundry/Dry Cleaning
- Medical, Dental, Prescriptions
- Entertainment, Charity Contributions, etc.

H. If the amount of income you will have available for living expenses after making payments or saving money for your plan is **less than** your current living expenses, explain how you will pay for your living expenses.

N/A I will make due on the SSI check (\$697) plus the \$20 unearned income disregard from my SSDI check.

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**PART V — FUNDING FOR WORK GOAL**

A. Do you plan to use any items you already own (e.g., equipment or property) to reach your work goal?

YES  NO

If "NO," skip to B. If "YES," show the items you will use that you already own:

Item \_\_\_\_\_

How will this help you reach your work goal? \_\_\_\_\_

Item \_\_\_\_\_

How will this help you reach your work goal? \_\_\_\_\_

Item \_\_\_\_\_

How will this help you reach your work goal? \_\_\_\_\_

B. Have you saved any money to pay for the expenses listed on pages 6-9 in Part IV? (Include cash on hand or money in a bank account.)  YES  NO

If "YES," how much have you saved?

C. List the income you receive or expect to receive below. (Include Social Security benefits, wages, self-employment, assistance, royalties, pensions, dividends, prizes, insurance, support payments, etc.)

Type of Income	Amount	Frequency (Weekly, Monthly, Yearly)
<i>Social Security Disability Insurance</i>	<i>\$ 850</i>	<i>Monthly</i>
		<i>Weekly</i>
		<i>Weekly</i>
		<i>Weekly</i>
		<i>Weekly</i>
		<i>Weekly</i>

D. How much of this income will you set aside to pay for the vehicle, computer, major equipment and other items, services and training listed in Part IV? *\$830 - the SSDI amount (\$850), minus the unearned income disregard (\$20) which will be added to the SSI I receive (\$697) to help meet expenses. The \$830 will go into the PASS. The remaining \$717 will be used for living expenses.*

**PART V — FUNDING FOR WORK GOAL (Continued)**

- E. Do you plan to save any or all of this income for a future purchase which is necessary to complete your goal?

YES  NO If "NO," skip to F.

If "YES," you will need to keep this money separate from other money you have.

How will you keep the money separate? *(If you will keep the savings in a separate bank account, give the name and address of the bank and the account number.)*

Centerview Savings and Loan, 26 Broadway Avenue, Syracuse, N.Y. 00000; account number 0000000000.

- F. Will any other person or organization (e.g., grants, assistance, or Vocational Rehabilitation agency) pay for or reimburse you for any part of the expenses listed in Part IV or provide any other items or services you will need?  YES  NO

If "NO," skip to Part VI.

If "YES," provide details as follows:

Who Will Pay	Item/Service	Amount	When will the item/service be purchased?
VESID	College Tuition	\$ 2000	Each Semester
VESID	Van Modification	\$ 19,000	August 2013
VESID	Books	\$ 400	Each Semester
VESID	Transportation to College	\$ TBD	Each Semester

**PART VI – OTHER CONTACTS**

Did someone help you prepare this plan?  YES  NO

If "YES," give the name, address and telephone number of that person or organization:

Name James R. Sheldon, Jr., Esq.

Address 237 Main Street, Suite 400

City Buffalo State New York Zip Code 14203

Telephone 716-847-0650 Email address jsheldon@nls.org

Are they charging you a fee for this service?  YES  NO

If "YES," how much are they charging? \_\_\_\_\_

May we contact them if we need additional information about your plan?  YES  NO

Do you want us to send them a copy of our decision on your plan?  YES  NO

If "YES," please submit a Consent for Release of Information, form SSA-3288.

*(If you also wish to authorize this person or organization to act on your behalf in matters pertaining to this plan, please submit an Appointment of Representative, form SSA-1696.)*

**PART VII — REMARKS**

Use this section or a separate sheet of paper if you need additional space to answer any questions.

*See the following attachments:*

*Letter to Ann Lembke, PASS applicant*

*SSI Application of Ann Lembke*

*Invoice showing current price of Dodge Caravan*

*Provisional letter of acceptance from Lake Erie University*

*Letter from Attorney, James R. Sheldon, Jr., of Neighborhood Legal Services*

*Letter from Randy Smith, Rehab Counselor, Division of Vocational Rehabilitation*

Multiple horizontal lines for writing remarks.

**PART VIII — AGREEMENT**

**If my plan is approved, I agree to:**

- Comply with all of the terms and conditions of the plan as approved by the Social Security Administration (SSA);
- Report any changes in my plan to **SSA** immediately
- Keep records and receipts of all expenditures I make under the plan until asked to provide them to SSA.
- Use the income or resources set aside under the plan **only** to buy the items or services shown in the plan as approved by SSA.
- Report any changes that may affect the amount of my SSI payment immediately. (For example: income, resources, living arrangements, marital status.)

I realize that if I do not comply with the terms of the plan or if I use the income or resources set aside under my plan for any other purpose, SSA will count the income or resources that were excluded and I may have to repay the additional SSI I received.

I also realize that SSA may not approve any expenditure for which I do not submit receipts or other proof of payment.

I know that anyone who makes or causes to be made a false statement or representation of material fact in an application for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law and/or State Law. I affirm that all the information I have given on this form is true.

Signature Ann Lembke Date 00/00/2009

Address 128 Elm Street

City Syracuse State New York Zip Code 00000

Telephone:

Home 000-000-0000

Work 111-111-1111

Other \_\_\_\_\_

E-mail Address alembke@yahoo.com

If you have a representative payee, the representative payee must sign below:

Representative Payee Signature \_\_\_\_\_ Date \_\_\_\_\_

**PRIVACY ACT STATEMENT**

The Social Security Administration is allowed to collect the information on this form under section 1631(e) of the Social Security Act. We need this information to determine if we can approve your plan for achieving self-support. Giving us this information is voluntary. However, without it, we may not be able to approve your plan. Social Security will not use the information for any other purpose.

We would give out the facts on this form without your consent only in certain situations. For example, we give out this information if a Federal law requires us to or if your Congressional Representative or Senator needs the information to answer questions you ask them.

**PAPERWORK REDUCTION ACT STATEMENT**

**Paperwork Reduction Act Statement** – This information collection meets the requirements of 44 U.S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take you about 120 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. **SEND THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE.** The office is listed under U.S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213. You may send comments on our time estimate above to: SSA, 1338 Annex Building, Baltimore, MD 21235-6401. *Send only comments relating to our time estimate to this address, not the completed form.*

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## OUR RESPONSIBILITIES TO YOU

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We received your plan for achieving self-support (PASS) on \_\_\_\_\_.

Your plan will be processed by Social Security employees who are trained to work with PASS.

The PASS expert handling your case will work directly with you. He or she will look over the plan as soon as possible to see if there is a good chance that you can meet your work goal. The PASS expert will also make sure that the things you want to pay for are needed to achieve your work goal and are reasonably priced. If changes are needed, the PASS expert will discuss them with you.

You may contact the PASS expert toll-free at 1- \_\_\_\_\_.

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## YOUR REPORTING AND RECORDKEEPING RESPONSIBILITIES

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**If we approve your plan, you must tell Social Security about any changes to your plan and any changes that may affect the amount of your SSI payment. You must tell us if:**

- Your medical condition improves.
- You are unable to follow your plan.
- You decide not to pursue your goal or decide to pursue a different goal.
- You decide that you do not need to pay for any of the expenses you listed in your plan.
- Someone else pays for any of your plan expenses.
- You use the income or resources we exclude for a purpose other than the expenses specified in your plan.
- There are any other changes to your plan.
- There are any changes in your income, help you get from others, or things of value that you own.
- There are any changes in where you live, how you live, or your marital status.

You must tell us about any of these things within 10 days following the month in which it happens. If you do not report any of these things, we may stop your plan.

You should also tell us if you decide that you need to pay for other expenses not listed in your plan in order to reach your goal. We may be able to change your plan or the amount of income we exclude so you can pay for the additional expenses.

**YOU MUST KEEP RECEIPTS OR CANCELLED CHECKS TO SHOW WHAT EXPENSES YOU PAID FOR AS PART OF THE PLAN.** You need to keep these receipts or cancelled checks until we contact you to find out if you are still following your plan. When we contact you, we will ask to see the receipts or cancelled checks. If you are not following the plan, you may have to pay back some or all of the SSI you received



[www.NYMakesWorkPay.org](http://www.NYMakesWorkPay.org)

#### **Contact Information**

Employment and Disability Institute  
ILR School / Cornell University  
201 Dolgen Hall  
Ithaca, New York 14853-3901  
607.255.7727 (voice)  
607.255.2891 (tty)  
607.255.2763 (fax)  
ilr\_edi@cornell.edu  
www.edi.cornell.edu

#### **Partnering Organizations**

New York State Office Of Mental Health  
Employment and Disability Institute (Cornell University)  
Burton Blatt Institute (Syracuse University)

#### **Alternate Formats**

This publication is available in alternate formats. To request an alternate format, please contact us using the information provided above. This series of briefs are also available online in both text and pdf formats. They are located at [www.NYMakesWorkPay.org](http://www.NYMakesWorkPay.org).