



New York **Makes Work Pay**

Developing a path to employment for New Yorkers with disabilities

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Policy to Practice Brief #9

WORK INCENTIVES AND ASSISTIVE TECHNOLOGY

Using the SSDI, SSI, Medicare and Medicaid Work Incentives to Fund AT or Leverage Funding for AT

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About Policy-to-Practice Briefs

This 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 for self-supporting employment.¹

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

This publication is based on federal Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), Medicare and Medicaid laws, regulations, and policy, with a focus on how those provisions will affect New York State residents with disabilities. Although this is written for a New York audience and will focus on New York's unique SSI rates and the state's Medicaid Buy-In for Working People with Disabilities criteria in examples, the overwhelming majority of the principles discussed in this brief will be based on federal laws, regulations, and policy that will apply equally in all states. Therefore, this policy and practice brief will be a good resource for readers throughout the country.

¹ 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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Abbreviations Used In This Policy-to-Practice Brief

Assistive Technology	AT
Benefits Planning Query	BPQY
Blind Work Expense	BWE
Childhood Disability Benefits	CDB
Commission for the Blind and Visually Handicapped	CBVH
Continuing Disability Review	CDR
Cost of Living Adjustment	COLA
Disabled Adult Children	DAC
Durable Medical Equipment	DME
Expedited Reinstatement of Benefits	EXR
Federal Benefit Rate	FBR
Plan for Achieving Self Support	PASS
Social Security Disability Insurance	SSDI
Supplemental Security Income	SSI
Substantial Gainful Activity	SGA
Social Security Administration	SSA
Student Earned Income Exclusion	SEIE
Office of Vocational and Educational Services for Individuals with Disabilities	VESID
Vocational Rehabilitation	VR

OVERVIEW

I. The Purpose of This Policy-to-Practice Brief

The Ticket to Work and Work Incentives Improvement Act of 1999, in its “findings” section, recognizes the importance of Assistive Technology (AT)² in helping individuals with disabilities to work:

Coverage ... for personal assistance services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.

Individuals with disabilities have greater opportunities than ever before, aided by ... innovations in assistive technology, medical treatment and rehabilitation.³

The availability of AT can make a tremendous difference in the ability of an individual to work, even when that individual has a severe disability. In the work context, AT serves several functions: it may make it possible to participate in an education or training program; it may make it possible to get prepared to leave home for work or training; it may make it possible to travel to and from work; and in some cases, the work itself could not be done without the AT.

This brief will describe, through a primary case scenario and other scenarios, how AT can assist individuals with severe disabilities to overcome barriers to gainful employment. It will then describe how SSDI, SSI, Medicare and Medicaid work incentives can be used to pay for the AT itself, pay for a part of the cost of the AT, or allow the individual to leverage funding for the AT.

Like all of our policy-to-practice briefs, this is written for a very broad audience of individuals with disabilities, family members, service agencies, and advocates. In particular, we hope this publication will reach individuals who need or can be expected to need expensive AT devices and services to enable them to achieve a work goal.

²A listing of the abbreviations used in this article appears at page 4, above.

³Pub.L. 106-170, 113 Stat. 1912, section 2(a)(4) & (a)(7). The term durable medical equipment, which is used by Medicaid, Medicare, and private insurance plans, encompasses a wide range of equipment that meets the definitions of AT referenced in this article.

II. AT Definitions and Other Terminology

Assistive Technology is a term that gained popularity after it appeared in the Technology Related Assistance for Individuals with Disabilities Act in 1988.⁴ Known by many as the Tech Act and more recently as the AT Act,⁵ this legislation provides definitions for AT devices and services:

The term “assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

* * * * *

The term “assistive technology service” means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.⁶

The term “AT service” specifically includes evaluations to determine the need for a device, customizing or adapting the device for its user, repairs, maintenance and training on how to use the device.

The popular use of the term AT is of recent vintage, and only a few funding sources have adopted it to date, including the special education and vocational rehabilitation systems.⁷ The language used above in the AT Act, “any item, piece of equipment, or product system,” invites a very broad definition of AT. Readers should think of AT as any item or system that uses low-tech or high-tech “technology” to assist an individual in overcoming the effects of their disability.

Many persons with disabilities can benefit greatly from AT, including those with physical, visual, cognitive and hearing impairments. The following is a non-exhaustive list of AT devices that a person may need to benefit from an education, receive training, leave the home, travel to work, or perform work:

- Power and custom-made wheelchairs

⁴Pub. L. 100-407, 102 Stat. 1044, former 29 U.S.C. §§ 2201 et seq.

⁵Congress re-authorized this legislation as the Assistive Technology Act of 1998 and later as the Assistive Technology Act of 2004, both codified at 29 U.S.C. §§ 3001 et seq.

⁶29 U.S.C. §§ 3002(a)(4) & (5).

⁷See definitions for AT devices and services at 34 C.F.R. §§ 300.5 and 300.6 (special education) and §§ 361.5(b)(7) and (b)(8)(vocational rehabilitation).

- Speech generating devices
- Environmental control units
- Lifting devices, such as hydraulic lifts, electronic lifts, and ceiling track lifts
- Vehicle modifications, including wheelchair lifts, wheelchair lockdowns, and hand controls
- Computer equipment and adaptations, including braille printers, voice output software, voice dictation software,⁸ touch screens, and switches which allow computer access through voluntary movements such as eye blinks or head movements
- Assistive listening devices, including hearing aids and personal FM units
- Home modifications, including ramps, lifts and stair glides
- Work site modifications, including adapted office equipment and environmental control devices
- Classroom modifications, including adaptive seating systems

Funding for these devices and others have been obtained for persons with disabilities through a wide range of sources, including Medicaid, Medicare, private insurance plans, the special education system, the state vocational rehabilitation agency, and many other sources. The SSI work incentives can also provide funding for all or part of the cost of an AT device. Both the SSDI and SSI work incentives, by ensuring continued eligibility for the cash benefit, will also ensure continued eligibility for Medicare and Medicaid as primary AT funding sources.

Low-tech AT may cost under \$100. Some devices are much more expensive, however. For example, a package of computer equipment for a computer user who is blind may cost more than \$10,000. Similarly, many power wheelchairs will cost more than \$15,000, with some models costing more than \$30,000. As the cost increases, so does the challenge of obtaining funding.

III. Background on SSDI, SSI, Medicare and Medicaid

The Social Security Administration (SSA) administers separate Social Security Disability Insurance (SSDI) benefit programs for wage earners, widows or widowers of wage earners, and adult disabled children of wage earners (Child's Insurance Benefits, most commonly referred to by SSA as Childhood Disability Benefits (CDB) or Disabled Adult Child (DAC)) benefits). Since the work rules and work incentives,

⁸Software would be considered an AT device under the AT Act definitions.

discussed below, are in nearly all cases identical for each of these benefit programs, we will use the designation SSDI to refer to all of them.

SSDI is an insurance program. To qualify, a wage earner must meet an “insured status” test, i.e., must have paid sufficient amounts into the Social Security trust fund.⁹ Both the wage earner and his or her dependents may be eligible for benefits.¹⁰ Current earnings will not affect the SSDI check amount, but may affect whether the person is still eligible for a disability check.

Medicare¹¹ is most frequently associated with Social Security. Adults with disabilities can establish eligibility in four ways: 1) after 24 months of SSDI eligibility; 2) after 24 months of eligibility for Railroad Retirement disability benefits; 3) if diagnosed with kidney disease and not receiving SSDI, upon entering end stage renal disease or developing an impairment that requires regular dialysis or kidney transplantation to maintain life¹²; or 4) as a Medicare-Qualified Government Employee.¹³

A Medicare beneficiary qualifies automatically for Medicare Part A, known as hospital insurance benefits. This covers such things as inpatient care and skilled nursing facility care.¹⁴ Medicare Part B, supplemental medical insurance, is optional and requires payment of a monthly premium (\$96.40 per month in 2010 for most individuals who had been eligible in 2009, but \$110.50 for those who are newly eligible in 2010). It covers community-based services, including physician services, durable medical equipment, prosthetic devices, and home health services.¹⁵ Medicare Part D, the prescription drug benefit, is also optional and, depending on the individual, could require substantial out-of-pocket expenses for monthly premiums, co-payments, full payments during the ‘donut hole’, and deductibles.¹⁶

Supplemental Security Income (SSI) is for individuals with limited income and resources. It can be a person’s only source of income or, as its name suggests, supple-

⁹42 U.S.C. § 423(c).

¹⁰See, e.g., 42 U.S.C. § 402(d) (Child’s Insurance Benefits).

¹¹42 U.S.C. §§ 1395 et seq.

¹²42 U.S.C. §§ 426(b), 426-1, 1395c, 1395rr.

¹³Social Security Program Operations Manual Systems (POMS) HI 00801.440 B.

¹⁴42 U.S.C. § 1395d.

¹⁵42 U.S.C. §§ 1395j, 1395k.

¹⁶POMS HI 03001.000 et seq.

ment other income, such as SSDI. Because SSI is needs-based (means tested), income is always relevant in determining eligibility and the amount of the monthly check. However, once approved for SSI, the amount of earnings will not affect the determination of whether a person continues to be disabled.

Medicaid,¹⁷ like SSI, is needs-based. In 39 states (including New York), the District of Columbia, and the Northern Mariana Islands, a person who receives SSI automatically qualifies for Medicaid.¹⁸ In the 11 section 209(b) states, eligibility is not automatic for SSI beneficiaries. These states use their own Medicaid eligibility criteria, which differs from SSI criteria.¹⁹ States which exercise the 209(b) option include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia.²⁰

IV. A Primary Case Scenario to be Discussed

To provide some context for the discussion that follows, we will use a case scenario involving Mark, an adult with a disability who is an AT user and can be expected to need new or replacement AT devices (or “AT services,” such as training or repairs) as he pursues his employment goals over time. As we discuss the various work incentives, we will talk about how the incentives can be used to help pay for AT or leverage funding for the AT Mark will need. In some sections of the brief, we will discuss additional case scenarios of individuals with different disabilities and different needs.

The Case of Mark

Mark is 48 years old, has multiple sclerosis and a severe vision problem. He uses a power wheelchair for all mobility. He can use a computer, but has two difficulties: due to increasing problems with use of his fingers, his typing is extremely slow; because of his deteriorating vision, he must use a strong magnifying glass to see everything that is on the computer screen. ***(Mark’s AT needs: an adaptive***

¹⁷42 U.S.C. §§ 1396-1 et seq.

¹⁸42 U.S.C. § 1396a(a)(10)(A)(i).

¹⁹42 U.S.C. § 1396a(f).

²⁰POMS SI 01715.020.

keyboard/mouse or voice dictation software; an enhanced computer screen and/or voice output software.)

Mark worked as a reporter and columnist at the Snow City Gazette, a small-town newspaper in Snow City, New York, between ages 24 and 42. He stopped working in 2004 due to his multiple sclerosis. His SSDI application was approved in 2005, with benefits awarded retroactive to July 2004. Mark continues to receive SSDI of \$900 per month and his 16 year old daughter, Angela, receives Social Security dependents benefits of \$450 per month (Angela does not have a disability). Mark continues to be married to Laura, but they are separated. Angela lives with Mark who receives \$600 per month in child support from his wife to meet Angela's needs.

Mark has received Medicare benefits since 2006 and currently is eligible for Medicare Parts A, B and D. He pays a \$96.40 per month Part B premium via a deduction from his SSDI check, which reduces his check by \$96.40. He also pays only a small out-of-pocket contribution for Part D prescription drug coverage, as Mark currently meets the criteria for the Part D full low-income subsidy program (also referred to as "extra help"). He has no other health insurance coverage.

Mark's power wheelchair is now eight years old, is constantly in for repairs, and does not include all the features he now needs due to the progression of his disability during the last eight years. He would like to obtain a new power wheelchair, equipped with a tilt-in-space feature and a standing feature. The tilt-in-space feature will allow Mark to independently change his positioning to avoid pressure sores (i.e., decubitus ulcers). The standing feature will be needed to serve two purposes: it will allow him the medical benefits from a daily regimen called "passive standing"²¹; and it will allow him to rise to a standing position to allow him to reach items on shelves in stores he frequents on a regular basis (e.g., the grocery store or drug store). The standing wheelchair will also raise Mark to the same eye level as the athletes and coaches he interviews as he pursues part-time

²¹The medical benefits of passive standing are discussed in the case of *Forrest Johnson v. Minnesota Dept. of Human Services*, 565 N.W.2d 453 (Minn. App. 1997), including alleviating many of the problems caused by prolonged immobility, including bone calcium loss, urinary tract and bladder infections, muscle spasticity, muscle contractures, loss of range of motion, muscle atrophy, and decubitus ulcers. See also, *Sorrentino v. Novello*, 744 N.Y.S.2d 592 (N.Y.A.D. 4th Dept. 2002).

sports writing (see below). The power wheelchair without the standing feature will cost \$12,500; with the standing feature it will cost \$24,000.

The wheelchair vendor Mark is dealing with tells him that Medicare will not pay for the standing feature and that Mark's copayment on the \$12,500 power chair will be 20 percent or \$2,500.²² Additionally, Medicare is currently providing a personal care aid but will not cover more than 28 hours per week of services, according to the home health vendor. Realistically, Mark could use about 60 hours per week of home health services which would be available from his state Medicaid agency (in New York City, the Human Resources agency, or the County Department of Social Services in the rest of New York state) if he was eligible for Medicaid. ***(Mark's AT funding needs: He needs an additional source of funding to pay for the Part B premium and 20 percent copayment of \$2,500 for the wheelchair. He needs a funding source, like Medicaid or the state vocational rehabilitation agency (in New York, VESID), that is more likely to cover the standing feature on the wheelchair.)***

From the time his job ended in 2004 until the end of 2006, Mark did not work at all. Nearly four years ago, in January 2007, Mark started working part-time for his former employer, the Snow City Gazette, writing regular stories on high school and college sports. He was paid a monthly salary of \$1,650 during 2007, \$1,700 during 2008, \$1,750 during 2009, and \$1,800 during 2010. He also received and currently receives mileage reimbursement at the federal rate for automobiles (currently \$.50 per mile). During all the years in question, the newspaper paid Mark as an employee. Mark uses an 11 year old modified van, with 114,000 miles on it, to travel to and from sporting events he is covering. The van has a hydraulic wheelchair lift and a lock down for him to travel in the van as a passenger. The van has a fair market value of about \$4,000, but has damage to the engine and transmission that would require more than \$5,000 in repairs during the next six to 18 months. ***(Mark's AT needs: Some time in the next 18 months, Mark will need to buy a new or newer used van, modified for his travel as a passenger. The new or newer van will meet his needs as a part-time sports writer.)***

²²Medicare, under Part B, will pay for 80 percent of what it deems to be the reasonable cost for a piece of durable medical equipment, such as a wheelchair.

During 2007 and 2008, New York's vocational rehabilitation agency (VESID) paid the cost of a driver to accompany Mark to sporting events. In addition to driving, his driver (a retired neighbor) attends the baseball, soccer, hockey, basketball, and football games that Mark reports on. Since Mark cannot easily make out what is happening on the field of play, his driver acts as his eyes and explains what is happening and what player is involved. This way, Mark is able to either take notes or dictate key sports plays into his tape recorder. Using his notes and the taped comments, Mark writes his articles from his office at home.

During 2007 and 2008, VESID paid Mark's driver \$8 per hour for 50 hours per month of work during the months of January through June and September through December. Mark was not paid by the Snow City Gazette during the months of July or August and his driver was not paid either. During 2009 and 2010, Mark had to pay his driver directly at the same hourly rate for the same hours of work (\$8 per hour for 50 hours per month). Since Mark's daughter Laura obtained her driver's license in March 2010, she has also played the role of driver and "eyes at the game" for some soccer and basketball games. Mark does not pay Laura and this has saved him an average of \$100 per month that he does not have to pay the other driver.

During early September 2010, Mark met with the benefits practitioner and explained that his vision has deteriorated to the point that he is considered legally blind. He is not sure when he first became legally blind, but he knows that his treating neurologist told him as early as 2005 that he could no longer drive because of his limited vision.

Note: As we learn below, SSA uses the term "statutorily blind." The term "legally blind," used by New York's Commission for the Blind and Visually Handicapped (CBVH), uses criteria nearly identical to SSA's criteria. New York, like many states, has two state vocational rehabilitation (VR) agencies: the one serving individuals who meet the blindness criteria, the other serving all other disabilities. Technically, Mark's case should now be handled by CBVH, but given their extensive involvement with him, VESID may continue to serve him.

DISCUSSION OF THE SSDI AND MEDICARE WORK INCENTIVES

The focus of this brief is the use of work incentives to fund or leverage funding for AT. For this reason, we will summarily review some of the SSDI work incentives rules and work rules, when necessary, if the rules do not offer an opportunity to fund AT or leverage funding for AT. We will discuss, however, some of the key work incentives, like the trial work period, to provide context for the other discussion. A very comprehensive treatment of the SSDI work incentives appears in our policy-to-practice brief, *Social Security Disability Insurance, Medicare and Work: A Review of the SSDI and Medicare Rules Related to Work Activity. Guidelines for Proactively Using the SSDI and Medicare Work Incentives to Help Individuals with Disabilities Maximize Independence Through Work.*²³

I. The Substantial Gainful Activity Rule

During calendar year 2010 and in the year 2011, \$1,000 in monthly wages is considered to be substantial gainful activity (SGA) for nearly all individuals, and \$1,640 in monthly wages is considered to be SGA for those who are statutorily blind.²⁴ When an applicant for SSDI or SSI disability benefits has earnings above that amount, his or her application is ordinarily denied on a finding that the individual is not disabled. After an application is approved, the rules governing how work affects SSDI benefits and the available work incentives are very different. This article will focus on SSDI beneficiaries and will not focus on applicants.

SSA annually reviews and updates the monthly gross earnings figure that is considered to be SGA for non-blind individuals, based on changes to the National Wage Index. The SGA amount will increase if the wage index for the previous year has increased. If the index stays the same or goes down, the SGA amount for the previous year will continue unchanged.²⁵ The SGA amount that applies to individuals who are statutorily blind will increase only if there is both an increase in the National Wage Index and a cost-of-living adjustment (COLA).²⁶

²³Our SSDI brief is available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/SSDI%20Brief-2.0.pdf>

²⁴20 C.F.R. § 404.1584(d); POMS DI 10501.015 C.

²⁵20 C.F.R. §§ 404.1574(b)(2)(ii), 404.1584(d)(3), 416.974(b)(2)(ii).

²⁶For example, during calendar year 2009, the monthly SGA amounts were established at \$980 for individuals who are not statutorily blind and \$1,640 for those who are. For calendar year 2010, the SGA

If an individual is self-employed, a different and more involved analysis will be used to determine if the individual's work amounts to SGA.²⁷ One of three tests for finding SGA involves a determination of monthly business earnings (i.e., net earnings from self-employment) and whether those earnings are more than the SGA level for the year in question. There are a multitude of factors that come into play in determining this. There are two other tests for determining SGA, even if net earnings would not meet the SGA criteria. First, SSA will look at how the work and contributions to the business compare to what others are doing in similar businesses. If there is still no SGA, then SSA will analyze the value of the individual's services to the business even though the business profit may not equate with SGA based on the earnings test. Using these additional tests for determining SGA will likewise involve multiple factors that are beyond the scope of this publication. A separate policy-to-practice brief on self-employment will be published in the future.

II. The Trial Work Period

A. The Basic TWP Rules

The nine-month trial work period (TWP) allows an SSDI beneficiary to test his or her ability to work without losing benefits. During the nine TWP months, the individual will be allowed to get both a paycheck and an SSDI check no matter how much is earned. The nine months need not be consecutive. Once an individual has used up nine TWP months within any period of 60 consecutive months, the TWP is over. The SSI program has no TWP. When an SSI recipient works, the only impact of wages or self-employment income is a gradual reduction to the SSI check as countable income increases.

During calendar years 2010 and 2011, the TWP services monthly amount is \$720 gross per month. In determining whether a TWP month has been used, SSA will always use the gross amount in a person's paycheck. No deductions will be taken for taxes, Social Security withholding, or anything else that would reduce take-

amount went up to \$1,000 per month for most beneficiaries based on an increase in the National Wage Index, even though there was no COLA increase. However, the SGA amount for 2010 remains at \$1,640 for the statutorily blind because there was no COLA increase. In 2011, both figures will remain the same as there was no increase in the National Wage Index nor was there a COLA increase.

²⁷C.F.R. §§ 404.1575, 416.975; POMS DI 10510.001 et seq.; POMS DI 10515.005 (self-employment for the blind).

home pay. Nor will SSA allow any deduction for impairment-related work expenses (IRWEs) or subsidies as SGA is not an issue. IRWEs and subsidies are discussed in the next section on the extended period of eligibility (EPE) as SGA is an issue after the TWP. For self-employed individuals, either net earnings of \$720 per month or 80 hours or more worked in the business during a month, without regard to profit, will be enough to count as a TWP month in 2010 and 2011.

B. Application of the TWP in Mark's Case

Mark's first work after becoming eligible for SSDI benefits was in 2007. In 2007, the amount needed to be considered a TWP month was \$640. Since Mark worked and earned \$1,650 gross per month in every month except July and August of 2007, when he earned nothing, he would have completed his ninth TWP month in November 2007. His nine TWP months were January through June and September through November of 2007. During each of those months, Mark was entitled to keep his full SSDI check and his paycheck. Since his SSDI eligibility continued, his daughter Laura's Social Security dependents benefits continued as well.

III. The Extended Period of Eligibility (EPE)

A. The Basic EPE Rules

The EPE, like the TWP, applies only to SSDI beneficiaries. It does not apply to SSI recipients because SGA is not a factor in SSI payments. The EPE is sometimes referred to as the re-entitlement period.²⁸

The 36-month EPE immediately follows the ninth TWP month. The 36 months run consecutively whether the individual is working or not. During these 36 months, the SSDI beneficiary can move in and out of benefits status depending upon monthly earnings.

Here is how the EPE works. The first month of the EPE that gross earnings are above the SGA limit will be considered the "benefit cessation month." In all cases, the individual will continue to receive SSDI for the benefit cessation month and the following two months. These three months are known as the "grace period." To determine whether an individual has engaged in that first month of SGA during

²⁸20 C.F.R. § 404.1592a; POMS DI 13010.210 et seq.

the EPE, SSA will look at average wages if wages have fluctuated. (Income averaging principles are fully discussed in our policy-to-practice brief on SSDI and work, as cited in footnote 23, above.)

Following the grace period, and for the remainder of the EPE, the right to an SSDI check will depend on monthly wages:

- when countable wages for a month are above the SGA level for the year in question, the individual will not get an SSDI check;
- when countable wages for a month are below the SGA level for the year in question, he or she will get an SSDI check.

Paid time off, impairment-related work expenses, and subsidies can be subtracted from gross monthly wages to determine countable wages. If an individual is self-employed, business related expenses can also be deducted.

If an individual is not performing SGA upon completion of the EPE (e.g., not earning more than \$1,000 per month if the EPE ended in 2010 or 2011), SSDI benefits will continue.

B. Reducing Countable Income Below the SGA Level

1. Paid Time Off

Paid time off includes vacation time, personal time, holidays, and sick time. When measuring wages against the SGA level for the year in question, it is always best to look at paid time off first as a way of reducing gross wages to determine “countable wages.” If part of an individual’s monthly pay can be attributed to paid time off, that amount will be subtracted from gross pay to determine countable wages.²⁹

***Example.** Roger earns \$1,100 gross per month at his job (or \$50 gross per work day). In January 2010, Roger receives \$50 in holiday pay for January first and also receives \$100 in vacation pay for a Thursday and Friday he takes off during the month. To determine Roger’s countable wages for the month, we must deduct the combined holiday and vacation pay from his gross wages (\$1,100 – 150 = \$950). Since \$950 is less than the \$1,000 SGA level for 2010, Roger did not perform SGA during January.*

In Mark’s case, we will assume that the Snow City Gazette does not offer Mark the benefits of any paid time off. Readers should note, however, that many employ-

²⁹ PPOMS DI 10505.010 C.

ers will offer part-time employees paid time off on a prorated basis. For example, an individual who works half time might receive a half day's pay for Christmas Day. If Mark received this benefit for one or more days in December, the paid time off would be deducted from his gross pay to determine his countable earnings.

2. Impairment-Related Work Expenses

IRWEs are the reasonable cost of items and services that, because of an impairment, are needed and used in order to work.³⁰ This includes items such as attendant care, medical or prosthetic devices, drugs, medical services, residential modifications, and special transportation.

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

- it must be paid by the worker and not paid or reimbursed by another source;
- it must relate to the individual's disability or to another impairment for which the individual is receiving treatment; and
- if the individual did not pay the expense and receive the item or service, then he or she would be unable to work.³¹

A medical expense can be deducted as an IRWE even if it would be incurred in the absence of employment. The test is whether the person could work without paying the expense. For example, a person can deduct the cost of anticonvulsant medication as an IRWE, even though this medication would be required in any event to prevent seizures.³² Similarly, a person could deduct Medicare or private insurance copayments for the purchase of a speech generating device, to be used for work-related communication, even though the device would be needed in any event to meet all daily communication needs.

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

- vehicle modification expenses for persons who are mobility impaired (e.g., hand controls or a hydraulic lift for a vehicle);
- construction of ramps or lifts to allow a person to leave the home;
- purchase of a telecommunication device for a person who is deaf to perform work

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

³¹20 C.F.R. §§ 404.1576(b), 416.976(b). If the expense was paid by the employer or some third party, it may qualify as a subsidy in some circumstances.

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

- in an office or from home;
- specialized or modified office equipment (e.g., desks, phones, or computers) to work in an office or from home;
- specialized computer software to allow an individual to operate a computer through voice dictation and voice commands, or software that allows for voice output (i.e., reads aloud what is on the screen);
- copayments and/or deductibles paid to obtain any of these items; and
- repairs, maintenance, and/or warranty expenses for any of these items.

Use of IRWEs by Mark during his EPE:

Since Mark's ninth trial work month was November 2007, his 36-month EPE would begin on December 2007 and end on November 2010.

Was Mark statutorily blind any time after 2007? A Benefits Planning Query (BPQY) obtained by you in January 2010 states that Mark is not considered statutorily blind. However, based on Mark's need for a driver when he began work in 2007, you suspect there may be proof of his statutory blindness. Importantly, if Mark met the blindness criteria as the EPE began or some time during the EPE, his countable earnings would be measured against the SGA level for the blind rather than the SGA level for all other disabilities (i.e., in 2007, \$1,500 SGA level versus \$900 for everyone else). With Mark's written permission you obtain records from his neurologist, establishing that an ophthalmologist first certified that Mark was statutorily blind in November 2006.

Moving From Policy To Practice: Often benefits practitioners will need to show SSA that a disabled individual is statutorily blind, as noted in the Mark example above, so that SSA measures the countable income against the SGA level for the blind rather than the SGA level for all other disabilities. This can be done by getting documentation from CBVH, an ophthalmologist or even a neurologist, like in Mark's case above.

Since Mark was statutorily blind as his EPE began, his earnings would be measured against the SGA levels for the blind during the years in question. Here are Mark's gross earning levels and SGA levels during the periods of the EPE:

- December 2007: Gross earnings of \$1,650 and SGA level of \$1,500
- Calendar year 2008: Gross earnings of \$1,700 and SGA level of \$1,570

- Calendar year 2009: Gross earnings of \$1,750 and SGA level of \$1,640
- Calendar year 2010: Gross earnings of \$1,800 and SGA level of \$1,640

Although Mark's monthly gross earnings were more than the SGA levels by amounts ranging from \$110 in 2009 to \$160 in 2010, he would still be eligible for an SSDI check in any month when IRWEs (combined with any other deductions) reduced his countable earnings to the SGA level or below.

Note: The analysis that follows would apply equally if Mark's disability was multiple sclerosis only without the added statutory blindness. However, his countable earnings would then be measured against the much lower SGA levels for disabled individuals who are not blind.

2007: Life Gets In The Way and Mark's Van Needs Repairs to the Lockdown Mechanism

Mark's van has a lockdown mechanism which his wheelchair locks into for safe transportation. In early December 2007, the lockdown mechanism stopped working and Mark could not safely travel to basketball games scheduled for one weekend. The lockdown mechanism was then fixed at a cost of \$218. Mark paid for this repair and he was able to resume his work.

This expense meets the three-part test for being an IRWE (i.e., he paid for it; it was related to his disability; and he could not have worked without this safe transportation). After deducting the expense from his gross monthly wages (\$1,650 – 218) his countable earnings of \$1,432 are less than the 2007 SGA level for the blind (\$1,500 per month). Since he did not perform SGA in December 2007, he was entitled to an SSDI check for that month (i.e., the first month of his EPE).

2008: Life Gets In The Way and Mark Needs To Construct a Ramp at the Back Entrance to His Home

For several years, Mark depended on his ability to find two healthy adults who would carry him up and down his stairs in the wheelchair. In late 2007, this nearly resulted in a tragedy as one of the adults slipped on the icy steps and Mark and his wheelchair toppled to the ground. Luckily, nobody was hurt and the wheelchair suffered only scratches. In January 2008, Mark paid a contractor to construct a

ramp at the back entrance of his home at a cost of \$3,000. Mark borrowed money from his credit union to pay this expense.

This expense would meet the three-part test for an IRWE (i.e., he paid for it; it was related to his disability; and he could not safely leave the home for work without it). As a one-time expense, Mark has the option of using the entire IRWE in January or spreading it out over the 12 months of 2008.³³ Mark decides to spread it out and take a \$250 IRWE deduction each month ($\$3,000 \div 12 = \250). After deducting this monthly expense from his gross monthly wages ($\$1,700 - 250$), his countable earnings of \$1,450 each month are less than the SGA level for the blind in 2008 (\$1,570 per month). Since his countable earnings were below the SGA level each month during 2008, he continued to receive his monthly SSDI check during the year (months 2 through 13 of his EPE).

2009-2010: Payment of Driver; Unpaid Help

Neither the payments to the driver by VESID in 2007 and 2008 nor the unpaid help by Mark's daughter qualify as an IRWE. This is because Mark did not directly pay for these expenses.

Mark's out-of-pocket expenses for the driver/onsite assistant should meet the criteria as IRWE expenses (i.e., he paid for the service; his need for the service is disability-related; and he could not have done the job without the driver/assistant). During 2009 and the first two months of 2010, he paid the driver \$400 per month. Starting in March 2010, these payments were reduced to \$300 because of the unpaid assistance from his daughter. In 2009, the IRWE reduced his countable earnings to \$1,350 ($\$1,750 - 400$), well below the 2009 SGA level for the blind of \$1,640. In 2010, his countable earnings were \$1,400 when he paid the driver/assistant \$400 per month ($\$1,800 - 400$); countable earnings were \$1,500 when he paid the driver \$300 per month ($\$1,800 - 300$). In both cases, countable earnings were well below the 2010 SGA level for the blind of \$1,640 per month.

Based on the IRWEs alone, related to paying his driver, Mark's countable earnings were below the SGA level throughout 2009 and 2010 (i.e., months 14 through 36

³³20 C.F.R. §§ 404.1576(e)(2), 416.976(e)(2).

of his EPE, with December 2010 the first month after his EPE). Therefore, Mark will continue to be eligible for an SSDI check for this entire period.

3. Subsidies

Any part of wages that can be attributed to a subsidy will not count when measuring wages against the SGA rule. SSA will only count that part of wages that can be fairly attributed to a worker's productivity.³⁴ Always consider a subsidy possible if the person is working in a sheltered, supported, or special environment.³⁵ In competitive employment, a wage may contain a hidden subsidy, as the employer may pay more than productivity would justify or provide extra services to help the employee perform a job. This may be a reward for a long-term employee who is now disabled; the employee may be a friend; or this may be an act of charity.³⁶ Whatever the motive, it is crucial to establish the real worth of the person's labors.

Many government-sponsored training and job placement programs exist for persons with disabilities. If part of a wage is paid by a government agency, and is not related to productivity, there is a strong argument that the worker has not earned that part of the wage. For example, a person placed in a job may be paid \$9 per hour, but a state VR agency, like New York's VESID, may be paying \$4.50 per hour toward the wage. Under these circumstances, it may be possible to establish that only the amount paid by the employer, i.e., \$4.50 per hour, will count as earnings under the SGA rule.

Supported employment is a work option in which the person usually works a traditional job, but receives special assistance, often from a job coach. The job coach is typically provided by an agency other than the employer. SSA has recognized that while "special conditions on the job," like job coaching, "are not technically 'subsidies,'" the job coach's services should be factored in when SSA determines how

³⁴20 C.F.R. §§ 404.1574(a)(2), 416.974(a)(2); POMS DI 10505.010 A.

³⁵20 C.F.R. §§ 404.1574(a)(3), 416.974(a)(3).

³⁶See, e.g., *Scott v. Commissioner of Social Security*, 899 F. Supp. 275, 279 (S.D. W.Va. 1995) (where job was created by family members and only job requirement was to answer the telephone for 12 hours per week).

much earnings are based on the person's own productivity.³⁷ In effect, SSA's policy authorizes a subsidy calculation.

SSA requires that "special conditions" on the job, like job coaching, must be considered to determine if the individual's pay is based on his or her own productivity. In the relevant POMS provision, SSA explains that "examples of special conditions include on-the-job coaching and substitution during which the job coach performs part or all of the individual's duties, or close and continuous supervision."³⁸

SSA's POMS states that certain of the job coach's hours should be multiplied by the hourly rate of the person with a disability to determine the subsidy. The policy specifically cautions not to consider the job coach's salary to determine countable earnings. Although the POMS makes it clear that "special conditions" include both "on-the-job coaching" and "close and continuous supervision," the examples used in the policy both involve a job coach who actually performs part of the person's work. The examples count only the job coach hours spent doing the person's work as relevant to the subsidy calculation, with hours spent observing and verifying quality of work not counted – somewhat at odds with the language quoted immediately above. The examples, however, do not address whether job coach services or any other support services performed away from the job or during breaks are to be used in determining the subsidy.

Use of Subsidies by Mark during his EPE:

During December 2007 and throughout the 10 months he worked during calendar year 2008, VESID paid for Mark's driver. The total amount paid for the driver was \$400 per month (50 hours at \$8 per hour). As his driver, Mark's retired neighbor: activated the hydraulic lift to get Mark into his van; operated the lockdown mechanism to ensure Mark's safe travel; and reversed the process when he reached a destination. At the sporting event, the driver: directed Mark to where he would sit; described to Mark the activity on the playing field or court; helped Mark set up interviews of players and coaches; and helped him safely return to his van.

³⁷POMS DI 10505.010 A.

³⁸POMS DI 10505.010 A.4.

The services of the driver are part special transportation and part services at the job site. The services at the job site are, to some degree, analogous to what a job coach might do for an individual with a cognitive disability. The job coach might guide an individual with cognitive limitations through the multiple components of a job and, in some cases, model parts of the job for the individual. In Mark's case the driver, better described as a "worksite assistant" when at sporting events, plays a special role of describing the play on the field that Mark cannot see so that he can later write about it for the Snow City Gazette.

Clearly, Mark could not perform this work if VESID did not provide the driver/ worksite assistant to help him. Therefore, the 50 hours VESID actually pays for the service should be the basis for a subsidy. At a minimum, VESID's contribution of \$400 per month during these 13 months would reduce countable income to \$1,250 in December 2007 (\$1,650 – 400) and to \$1,300 in the 2008 work months (\$1,700 – 400), less than the blind SGA levels of \$1,500 and \$1,570 for the two years in question (without any separate consideration of IRWEs or paid time off). Based on this analysis, Mark did not perform SGA during December 2007 or calendar year 2008 and he was entitled to an SSDI check during this entire period (i.e., months 1 to 13 of his EPE).

4. Deductions for Individuals who are Self-Employed

Self-employment is becoming more common as an employment choice for individuals with disabilities. However, understanding its impact on SSDI or SSI is very challenging and a full treatment of the topic is beyond the scope of this brief. Under a previous project, Cornell's Employment and Disability Institute published a two-part series on this topic, *Self-Employment and the Benefits Planning Process* and *Self-Employment and the Benefits Planning Process Part II - The Case of Brenda Smith*.³⁹ An updated policy-to-practice brief on self-employment will be published in the future.

³⁹These publications are available on Cornell's EDI website at http://www.ilr.cornell.edu/edi/publications/PPBriefs/PP_17.pdf and http://www.ilr.cornell.edu/edi/publications/PPBriefs/PP_18.pdf

a. Business-Related Expenses

A person who is self-employed, whether receiving disability benefits or not, can deduct reasonable business expenses such as rent, utilities, car expenses, supplies, or a telephone bill when calculating taxable income. If the business is run out of the home, he/she may be able to allocate a portion of household expenses to the business. If the person has filed a tax return, and he/she should in most cases if self-employed, SSA will ordinarily accept the information appearing on the tax return. It will look at annual net income, after business-related deductions and, in most cases, divide by 12 to determine what amount of monthly income is measured against the SGA rule.⁴⁰

If Mark was self-employed, he could take off all of the expenses, discussed above, as business related deductions. This would include the cost of repairs to his van, the costs related to the construction of the ramp, the costs related to driving and maintaining his van (typically, an IRS-approved mileage allowance), and the payments to his driver/onsite assistant. In effect, he would be paying for his AT related expenses through business-related deductions.

b. Unincurred Business Expenses

In determining the net earnings from self-employment for individuals receiving disability benefits, to be measured against the SGA level, SSA policy authorizes the reduction of earnings by the value of unincurred business expenses.⁴¹ This can take the form of supplies for the business provided by the state's VR agency; free rent at a government-owned building; or free help from any assistance paid by the VR agency.

Application of Unincurred Business Expenses to Mark:

Since Mark has worked as an employee, we analyzed the value of the VESID-paid driver/onsite assistant under subsidy rules. If Mark had been self-employed, we would have considered this expense an unincurred business expense and reduced his net earnings from self-employment by \$400 per month during 2007 and 2008.

⁴⁰20 C.F.R. §§ 404.1575(c), 416.975(c).

⁴¹20 C.F.R. §§ 404.1575(c)(1), 416.975(c)(1); POMS DI 10510.012 B.3.

c. Unpaid Help

In the self-employment context, SSA will also deduct the reasonable value of any unpaid help furnished by a spouse, children or others.⁴²

If Mark had been self-employed, the value of his daughter's free help (\$100 per month beginning in March 2010) would be used to reduce his net earnings. Under these principles, we could also reduce his net earnings if a relative performed free van repairs or read sports articles to him to help him prepare his articles. SSA would reduce his earnings based on the reasonable amount Mark would have paid for the services if they were not free.

IV. The Expedited Reinstatement of SSDI Benefits

The expedited reinstatement (EXR) provisions⁴³ will be thoroughly covered in a new policy-to-practice brief on the topic, to be published in the near future. We will touch on EXR only summarily here.

The EXR provisions provide an extra safety net or way to return to SSDI benefits status for the individual whose SSDI benefits are terminated due to SGA-level work after the extended period of eligibility. Key criteria for EXR are as follows:

- The individual was receiving SSDI benefits;
- SSDI benefits were terminated due to SGA-level work after the EPE;
- The individual is no longer performing SGA because their work stopped or his/her countable earnings were reduced below the SGA level;
- The individual requests EXR within 60 months of the last month of the EPE or the last month of eligibility for SSDI, whichever occurs later; and
- The person meets the medical standard of disability, using SSA's medical improvement review standard.

The reader is directed to our EXR policy-to-practice brief for a full discussion of these criteria and many other provisions related to EXR.

Some Practical EXR Issues Related to Mark and His Ongoing Need for AT

Based on a variety of factors, it may be possible for Mark to resume full-time employment at the Snow City Gazette. These factors might include his extensive use

⁴²20 C.F.R. §§ 404.1575(c)(1), 416.975(c)(1); POMS DI 10510.012 B.1.

⁴³20 C.F.R. §§ 404.1592b – 404.1592f; POMS DI 13050.001 et seq.; POMS DI 28057.001 et seq.

of disability-related adaptations to his computer equipment; his ability to conduct more interviews over the phone; his continued and expanded use of a driver/on-site assistant; and various “reasonable accommodations” provided by his employer. With increased earnings, Mark is likely to face a termination of SSDI even after accounting for the higher SGA level for the blind and his use of impairment-related work expenses.

We will assume now that Mark loses his benefits due to SGA-level work, after his EPE. Two or three years later, he may experience a reduction of his countable earnings to a non-SGA level. This could occur for any number of reasons:

- Mark can no longer handle the physical demands of full-time work and voluntarily reduces his hours;
- Mark’s employer cuts back on their coverage of high school sports and Mark’s duties and pay are reduced;
- Mark’s pay remains constant and the SGA level for the blind goes up in future years;
- Mark must invest in additional or replacement AT, through purchases or copays, to enable him to work. Increased IRWEs bring his pay below the SGA level; or
- Some combination of these factors results in countable wages that are now below the SGA level for the blind.

When SSA evaluates Mark’s EXR application, they will apply all of the special rules that can be used to reduce countable wages. This includes paid time off, IRWEs, and subsidies. If Mark is self-employed, it can also include business-related expenses, unincurred business expenses, and unpaid help.

V. Continuing Medicare Eligibility While the Individual is Working

As we noted above, an SSDI beneficiary is entitled to Medicare benefits after 24 months of eligibility for benefits. If the SSDI beneficiary works despite a continuing disability, Medicare eligibility will continue throughout the nine-month trial work period as the person continues to receive SSDI benefits. Medicare Part A eligibility will continue to be automatic; Part B will be optional and subject to the same premium payment; Part D will also be optional and subject to certain out-of-pocket expenses.

After the end of the TWP, if the person's disability continues, Medicare coverage can be extended for at least 93 months. During this extended period, Part A will continue to be automatic and Parts B and D will continue to be optional, subject to a premium payment and/or other out-of-pocket costs.⁴⁴

An individual who exhausts the trial work period and Extended Period of Medicare Coverage may be able to continue Medicare eligibility through a "buy-in" program. He or she must continue to be disabled and the loss of SSDI must be due solely to earnings that exceed the SGA amount. Medicare eligibility can continue indefinitely so long as the individual continues to be disabled and pays the enrollment premiums.⁴⁵

DISCUSSION OF THE SSI AND MEDICAID WORK INCENTIVES

We remind the reader here that the focus of this brief is on the use of work incentives to fund or leverage funding for AT. We will not cover every one of the work incentives available to SSI recipients.⁴⁶ A very comprehensive treatment of the SSI work incentives appears in our policy-to-practice brief, *Supplemental Security Income, Medicaid and Work: Guidelines for Proactively Using the SSI and Related Medicaid Work Incentives to Help Individuals with Disabilities Maximize Independence through Work*.⁴⁷ That brief covers all of the SSI work incentives, including those mentioned above and a number of special work incentives that allow for the exclusion of resources.

This part of the brief will focus on the special income and resource rules that can be used to fully fund or partially fund AT, or which can be used to leverage other funding sources for AT. We will also explain the special work incentive known as section 1619(b), which allows for continuation of Medicaid when SSI benefits are terminated due to the budgeting of wages.

⁴⁴POMS DI 280055.001 B.

⁴⁵42 U.S.C. § 1395i-2a; POMS HI 00801.170.

⁴⁶For example, we will not address the provisions that allow individuals a temporary exemption from a continuing disability review while actively involved with the Ticket to Work program. Nor will we address the special provisions, known as section 301, that allow for the continuation of benefits following a determination that an individual is no longer disabled.

⁴⁷This publication is available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/SSIMedicaidPolicyPracticeBrief042010.pdf>

I. The Special Connection between SSI and Medicaid: Leveraging Medicaid as a Primary AT Funding Source

Medicaid is one of the most important funding sources for AT, which is most often referred to as Durable Medical Equipment (DME) by the Medicaid program. The DME category of Medicaid services makes funding available, in New York and other states, for a range of what we think of as AT, including: custom and power wheelchairs, speech generating devices, patient lifts, wheeled walkers, and many other items.

When the use of work incentives guarantees initial or continued eligibility for SSI, this also ensures eligibility for Medicaid and the existence of this very important AT funding source.

Moving from Policy to Practice: Many individuals will need to retain Medicaid indefinitely, even if cash SSI is not as important when they start to earn money. In a case like Mark's, this need is, in part, based on his periodic need for new or replacement DME and repairs to existing DME. The benefits practitioner can help Mark plan for the future retention of SSI by using the work incentives discussed below. Alternatively, he or she can help Mark plan for retained Medicaid through the 1619(b) work incentive.

II. SSI's Income Rules and Calculation of the SSI Payment

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

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

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

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

In addition to these rates, higher rates exist for SSI couples (\$1,115 per month for most couples, including a \$104 state supplement) and for individuals who reside in one of three “congregate care” levels.⁴⁸ All of the 2010 SSI rates for New York appear in the “SSI Benefit Levels Chart effective January 1, 2010,” as published by the State Office of Temporary and Disability Assistance on its website.⁴⁹

B. SSI’s Earned Income Exclusions as Work Incentives

The SGA rule will not apply to SSI recipients. When an SSI recipient works, the only impact of wages or self-employment income is a gradual reduction to the SSI check as countable income increases.

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

⁴⁸For example, the SSI rate for individuals who live in a state certified community residence is \$1,109 (with a \$435 state supplement) in New York City, Long Island, and Westchester and Rockland Counties. That community residence rate is \$1,079 in the rest of the state (with a \$405 state supplement). If an individual resides in a Medicaid certified institution, the SSI rate is a modest \$30 per month (with no supplement).

⁴⁹The chart is available at <http://www.otda.state.ny.us/MAIN/directives/2009/INF/09-INF-22-Attachment-1.pdf>

Moving from Policy to Practice: It is critical that benefits practitioners, who are advising SSI recipients about the use of work incentives, present scenarios to show how varying levels of work will affect their SSI payment level and net disposable income. To do this, the benefits practitioner should help the recipient to account for work-related expenses, like tax withholding, transportation, and child care expenses. Whenever possible, the benefits practitioner should also make the recipient aware of the potential impact of work on other means-tested benefits, like food stamps or housing subsidies, including whether these programs have any applicable work incentives of their own. The latter information may need to come from other sources with expertise on these topics. Finally, where appropriate, the benefits practitioner should make the recipient aware of the potential benefits from the federal earned income tax credit (again, typically referring the recipient to others with expertise on the matter) which will affect the recipient's ultimate "bottom line" benefit from working.

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

The SSI program distinguishes between unearned and earned income. Unearned income is anything other than wages and includes SSDI payments. Earned income includes wages received from employment or net income from self-employment.⁵⁰ In calculating the SSI check, the first \$20 of unearned income is disregarded as a general income exclusion.⁵¹ The first \$65 plus 50 percent of the remaining gross wages is also deducted. If the person has no unearned income, the \$20 will be added to the \$65 and the first \$85 of gross wages will be disregarded.⁵²

Let's look at an example:

Ginger lives alone in White Plains, New York and receives \$761 in monthly SSI. She is offered a part-time job earning \$885 in gross pay per month.

Since Ginger has no unearned income, the SSI program will exclude or disregard the first \$85 of her wages ($\$885 - 85 = \800). An additional 50 percent will then be disregarded ($\$800 - 400 = \400). Subtracting the countable income from the SSI

⁵⁰20 C.F.R. § 416.1110.

⁵¹20 C.F.R. § 416.1124(c)(12).

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

base rate, Ginger will be entitled to an SSI check of \$361 ($\$761 - 400$). Since Ginger lives in New York and SSI recipients in the state qualify for Medicaid automatically, she will continue getting Medicaid. Her net gain from going to work is the amount of the disregards (\$485) less any amounts taken out of her paycheck for taxes and other payroll deductions, both amounts that she should get back when she files her income tax return and earned income tax credit application in the following year.

Let's take this one step further:

Ginger is offered increased work hours. She would now make \$1,485 per month, but is concerned because she heard something about the \$1,000 SGA rule. Ginger's disability continues and her resources are within SSI limits.

As an SSI recipient, the \$1,000 SGA rule will not apply to her. For every additional \$2 in gross wages Ginger's SSI check will go down by \$1. Thus, after disregarding the first \$85 ($\$1,485 - 85 = \$1,400$) and 50 percent of the remaining wages ($\$1,400 - 700 = \700), Ginger will have \$700 in countable income. Subtracting this from the SSI base rate of \$761, Ginger winds up with a \$61 SSI check and her Medicaid continues.

2. Impairment-Related Work Expenses

IRWEs, as noted in the SSDI part of this brief, are the reasonable cost of items and services that, because of an impairment, an individual with disabilities needs, uses and pays for in order to work. With the SSI program, an IRWE will be used to reduce countable income when calculating the SSI payment. In all other respects, the IRWE rules discussed in the SSDI section apply equally here.

Consider the following example:

Leonard, age 61, had polio as a child. He lives alone in a home which he owns. Recently, his mobility problems worsened. Leonard receives \$420 in SSDI and earns \$885 in gross wages per month. His combined countable income, \$810 (\$400 from SSDI, \$410 from wages) makes him ineligible for SSI. He is eligible for Medicare, but is not eligible for automatic Medicaid since he is not an SSI recipient. He is not eligible for Medicaid under section 1619(b) because he never received SSI in the past.⁵³ (Leonard is probably a candidate for the Medicaid Buy-In for Working People with Disabilities if he

⁵³See part III, below.

*does not find a way to obtain SSI.*⁵⁴⁾

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

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

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

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

Eligibility for this minimal SSI check makes Leonard eligible for Medicaid as New York is one of 39 states (plus the District of Columbia and Northern Mariana Is-

⁵⁴See The Medicaid Buy-In For Working People With Disabilities: Individuals with Disabilities Can Earn Significant Wages and Qualify for This Important Health Care Benefit, available at <http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MBI%20Brief-2.0.pdf>

lands) in which SSI recipients are automatically eligible for Medicaid. This is important, since Medicaid may pay for many items which Medicare will not cover, including more extensive home health care in New York. Also, since Medicare will pay no more than 80 percent of the cost of durable medical equipment, Medicaid should be available to pay the co-payment.

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

3. Student Earned Income Exclusion

To qualify for this special exclusion, the student must be under age 22 and regularly attending a school, college, university, or course of vocational training. During calendar years 2010 and 2011, the first \$1,640 of gross monthly earnings is excluded, up to a maximum of \$6,600 per year.⁵⁵ Since 2002, the student earned income exclusion's (SEIE's) monthly and yearly maximum amounts have been adjusted annually based on a cost-of-living index.⁵⁶

This example illustrates application of the SEIE:

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

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

Step 1	Unearned income	\$ 0
Step 2	Earned income	\$2005
	Student earned income exclusion	<u>-1640</u>
		365

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

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

	General income exclusion (not otherwise used)	- 20
	Earned income exclusion	- 65
		280
	Additional 50% exclusion	- 140
	Counted	\$ 140
Step 3	Counted unearned income	\$ 0
	Counted earned income	140
	Total counted income	\$ 140
Step 4	Base SSI rate	\$ 761
	Counted income	- 140
	SSI benefit	\$ 621

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

Moving from Policy to Practice: The SEIE is a little known work incentive and is often not implemented by SSA unless the SSI recipient, a parent, or an advocate makes SSA aware that the recipient meets the criteria. Readers who are providing benefits advisement to the recipient or assisting in other ways may need to be proactive to make sure that recipients are able to access this wonderful work incentive. Also, in a case like Juan's, the recipient will need to be aware that even though all or most of the wages will be excluded in the income calculation, as of the first of the next month, any remaining wages will count toward SSI's \$2,000 resource limit. The recipient will need to make plans to use this extra money so that countable resources do not exceed \$2,000. For example, if Juan plans to use the money on college expenses he may want to look into putting the money into an approved PASS if he intends to have the money sit in a bank account for a month or more before using it. The reader is encouraged to consult our policy-to-practice brief on the PASS for guidance on these issues.⁵⁷

⁵⁷See Plan for Achieving Self-Support: An SSI Work Incentive and Approach to Self-Directing Vocational Rehabilitation to Support a Range of Work Goals, available at <http://www.ilr.cornell.edu/edinymakesworkpay/docs/PASS-1.3.pdf>

Using the SEIE to leverage money for AT: In theory, Juan's state VR agency (VESID in New York) should be able to fund any AT that he will need to maximize his chances of succeeding in college and moving to self-supporting employment. In some cases, however, Juan may face a challenge in convincing the VR agency that he cannot succeed without the AT. In other cases, the AT he seeks may be more related to his overall independence and, arguably, not available from the VR agency. During one three-month summer employment period, Juan will wind up with an extra \$4,920 from the SEIE alone. He could devote all or a significant part of this income, after tax withholding, to the purchase of AT. This could fund a wide range of items, including: a new laptop, with a large high-definition screen, allowing Juan better access to college lectures that are delivered to his current laptop (a much older and smaller model) through computer-assisted real time captioning (CART); a high quality cell phone (like the iPhone) that Juan can use to communicate with professors, student peers, family and friends; and a better alternative alarm clock, using lights rather than sound.

4. Blind Work Expenses as an Earned Income Exclusion

Individuals who are statutorily blind are allowed many deductions from earned income which are not allowed for any other disability.⁵⁸ The most common blind work expenses (BWEs) include:

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

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

10) Medical devices, medical supplies and physical therapy.⁵⁹

Any earned income used to meet “any expense reasonably attributable to the earning of income” will qualify as a BWE.⁶⁰

Many BWEs might also qualify as IRWEs.⁶¹ When an item can be used as either, it is always best to use the BWE. This is because the BWE is deducted from earned income after using the 50 percent earned income exclusion; the IRWE is deducted before using the 50 percent exclusion. The practical effect is that the person can see a dollar-for-dollar increase in the SSI check for BWEs. For IRWE expenditures, there is no more than a 50 cent increase in the SSI check for every one dollar spent.

Use of Blind Work Expenses by Mark:

Let us go back to our primary case scenario for Mark, who has multiple sclerosis and meets SSA’s definition of statutory blindness. In this example, we will assume that Mark does not receive SSDI. Mark was an SSI recipient when he began working for the Snow City Gazette as a sports writer. Currently, he earns \$2,585 gross per month. Mark has the following monthly expenses that meet SSI’s criteria as BWEs:

Income taxes (federal, state & local)	\$ 95
Social Security tax	160
Union dues	15
Driver/onsite assistant	300
Guide dog	45
Ramp construction payments	<u>250</u>
Total	\$865

Calculation of SSI check:

\$2,585	
- 85	(\$65 + \$20 exclusions)
2,500	
<u>-1,250</u>	Additional 50 % exclusion

⁵⁹POMS SI 00820.535 B.4.

⁶⁰20 C.F.R. § 416.1112(c).

⁶¹See POMS SI 00820.555.

1,250	
- 865	Blind work expenses
\$ 385	Countable income
\$ 761	Base SSI rate (NY living alone)
- 385	Countable income
\$ 376	Monthly SSI check

Keep in mind that, like IRWEs, expenses are only deductible as BWEs if the wage earner pays for the item. For example, if the employer pays for the driver/assistant as a reasonable accommodation under the Americans with Disabilities Act, those expenses cannot be taken as BWEs.

It is also important to point out that the ramp construction costs are deductible as BWEs, even though they are needed because of Mark's multiple sclerosis and not his blindness. An expense can be deducted as a BWE as long as it is "reasonably attributable to the earning of income."

The Case of Glenda:

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

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

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

The following would be Glenda's BWEs:

Income taxes (federal, state & local)	\$ 85
--	-------

Social Security tax (as self-employed)	306
Transportation	95
Guide dog	40
Readers	100
Braille paper	20
Cassette tapes	15
CDs	10
Payments, new equipment	200
Total	\$871

Calculation of SSI check:

\$2,000.00	
– 85.00	(\$65 + \$20 exclusions)
\$1,915.00	
– 957.50	Additional 50 % exclusion
957.50	
– 871.00	Blind work expenses
\$ 86.50	Countable income
\$ 761.00	Base SSI rate
– 86.50	Countable income
\$ 674.50	Monthly SSI check

Despite \$2,500 in revenue, Glenda is able to reduce her countable monthly income for SSI purposes to just under \$100. She has done this by using traditional business deductions, the usual SSI earned income exclusions, and BWEs. This allows her to generate an extra \$674.50 per month through SSI payments plus automatic Medicaid eligibility (in New York and most states) during that critical three-year start up period for her private law practice.

Moving from Policy to Practice: We assume that New York’s CBVH has supported Glenda, in some fashion, through her years of education and leading up to her vocational goal. Since CBVH can provide support to start a business, Glenda will want to make sure that she takes advantage of that support up to any dollar limits imposed by CBVH policy. CBVH could, in some cases, provide funding for: supplies for Glenda’s law practice, her readers, business equipment, advertising, business accounting fees, and a monthly Westlaw fee (for computerized research). Keep in mind that CBVH’s support may be time-limited. A benefits practitioner, if involved with Glenda, will want to work with her to ensure she is using

CBVH funding, BWEs, and the PASS (if appropriate) to maximize her chances of success with her business. Again, if a third party, such as CBVH, pays for a work-related expense it cannot separately be claimed as a BWE.⁶²

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

Continued Medicaid coverage, through section 1619(b), is one of the most important work incentives that currently exists within the SSI program.⁶³ In the case of SSI recipients who are AT users, the ability to retain Medicaid, guarantees a source of funding for some of the very expensive devices they will need. Medicaid will also (in New York) cover a range of other expensive items or services, such as home health care, prescription drugs, and psychiatric counseling.

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

Under 1619(b) criteria, a person must:

- 1) continue to be blind or disabled (A person age 65 or older may qualify if he or she is also blind or disabled.);
- 2) have unearned income less than the SSI limit;
- 3) have resources within SSI limits;
- 4) meet a prior month requirement;
- 5) meet a Medicaid use test; and
- 6) meet an income “threshold” test.⁶⁴

Items (2) through (6) require some discussion.

⁶²For more information about services offered through the Commission for the Blind and Visually Handicapped, see <http://www.ocfs.state.ny.us/main/cbvh>

⁶³42 U.S.C. § 1382h(b)

⁶⁴POMS SI 02302.010 B.

If a person would be ineligible for SSI based on unearned income alone, he or she cannot be eligible for 1619(b). For example, a New York resident who lives alone and receives a private disability pension of \$900 per month would not be eligible for SSI without regard to any additional earnings. This person, then, would be ineligible for 1619(b), even if he or she met the rest of the 1619(b) criteria. Similarly, an individual whose resources after exclusions exceed \$2,000 would be ineligible for 1619(b) Medicaid.⁶⁵ Under the prior month requirement, to be initially eligible for 1619(b), an individual must have been eligible to receive an SSI check during the past 12 months. An individual would lose prior month status for 1619(b) only if he or she went through a period of 12 consecutive months without any entitlement to an SSI check or 1619(b) benefits.

The Medicaid use test should be easy to meet in most cases. This test is met if the person (1) used Medicaid within the past 12 months; (2) expects to use Medicaid in the next 12 months; or (3) would be unable to pay unexpected medical bills in the next 12 months without Medicaid.⁶⁶ The criteria in (1) and (2) are straightforward. Most people who really need Medicaid will fit into one of the categories. Furthermore, only the rare individual with superior medical insurance and great job security will be outside the scope of criterion (3).

The final 1619(b) criterion is the “income threshold” test. To meet this test, one must have annual gross earnings below a certain threshold. The purpose is to measure whether an individual has sufficient earnings to replace SSI benefits, Medicaid, and publicly funded attendant care that would be lost due to the individual’s earnings.⁶⁷ The 1619(b) eligibility thresholds vary greatly from state to state, as the threshold is based on a combination of the state’s SSI rate and its annual per capita Medicaid expenditures.

There is both a “general threshold,” which applies to all individuals in a state, and an “individualized threshold,” which will be specific to an individual. A person who meets the other 1619(b) criteria will be eligible for Medicaid if annual earnings are

⁶⁵20 C.F.R. § 416.1205(c).

⁶⁶POMS SI 02302.040 A.1.

⁶⁷POMS SI 02302.045 A.

below the general threshold. If the person's income is above that threshold, he or she may still be eligible if individual expenses are high enough.

The general threshold is a dollar amount, calculated by adding together a base amount and a Title XIX (Medicaid) amount.⁶⁸ In New York, this 2010 threshold is \$43,956 (base of \$19,284 + Title XIX of \$24,672). In other states, the threshold may be higher or lower.⁶⁹

If the general threshold is exceeded, an "individualized threshold" for 1619(b) eligibility can be determined by totaling the following: Medicaid amount from the threshold chart, or actual Medicaid expenses (whichever is higher); BWEs; IRWEs; expenditures under an approved PASS⁷⁰; and publicly funded personal/attendant care that would be lost if the individual lost SSI. These expenses are then added to the base amount. The sum is the individualized threshold.⁷¹

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

In some states, commonly referred to as Section 209(b) states, the state determines Medicaid eligibility for persons who are aged, blind, or disabled using state criteria rather than SSI's criteria. Section 209(b) states are not required to provide automatic Medicaid for SSI beneficiaries.⁷²

The law governing section 1619(b) mandates Medicaid coverage in 209(b) states to those who were eligible for Medicaid, under a state's criteria, "provided they were eligible for Medicaid in the month prior to becoming eligible for 1619."⁷³ So long as a person was eligible for both SSI and Medicaid in the month prior to losing SSI,

⁶⁸POMS SI 02302.045 B.1.

⁶⁹The thresholds for each state are published in POMS SI 02302.200.

⁷⁰In New York and the 38 other states in which an SSI beneficiary automatically qualifies for Medicaid, an approved PASS would ensure SSI eligibility and, with it, automatic Medicaid eligibility.

⁷¹SI 02302.050 C. An individualized threshold calculation worksheet can be found at POMS SI 02302.300.

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

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

1619(b)'s prior month requirement would be met. Otherwise, the remainder of the 1619(b) criteria, as discussed above, will apply in 209(b) states.

Application of 1619(b) to Mark:

Here again, we will assume that Mark does not receive SSDI, but receives SSI benefits of \$376 per month in light of his \$2,585 in gross wages and \$865 in BWEs. As an SSI recipient in New York, he continues to get Medicaid automatically. Medicaid pays the copayments for his doctor visits and prescription drug costs, both covered through his private insurance plan. It covers 60 hours per week in home health aid services and can be expected to pay for a replacement power wheelchair when he needs it.

Mark has been offered a promotion to sports editor of the Snow City Gazette. The new job would pay \$3,500 per month gross (\$42,000 per year). Even if his BWEs of \$865 per month continue, his SSI case benefits would cease based on countable earned income of \$842.50 per month ($\$3,500 - \$85 = \$3,415 \div 2 = \$1,707.50 - \$865 \text{ BWEs} = \842.50), more than New York's 2010 SSI rate of \$761 (living alone). In fact, Mark's BWEs can be expected to go down as his in-person sports coverage, and his need for a driver goes down. Mark is concerned because he does not want to lose his Medicaid.

Mark should be eligible for continued Medicaid under section 1619(b) if he accepts the promotion. His annual earnings would be below the \$43,956 eligibility threshold for New York, he will continue to need Medicaid to cover the expenses listed above, and should meet all the other criteria. Importantly, he will need to keep his resources within SSI's \$2,000 limit.

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

SSI's Plan for Achieving Self Support (PASS) allows for the exclusion of income and/or resources that would usually be counted in determining SSI eligibility and payment amount. The PASS must be approved by SSA to allow the individual to use the excluded income/resources to pay for expenses related to a vocational goal. Readers who want to learn more about the PASS can read the relevant Working newsletter or extensive policy-to-practice brief on the subject.⁷⁴ Because those

⁷⁴See note 57, for a link to the policy-to-practice brief. The PASS newsletter is available at http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_Newsletter_2009SUMMER.pdf

publications are readily available to readers, we will only briefly describe the PASS here, by example.

Robert has cerebral palsy, lives alone in a small town about 50 miles north of Utica, New York, and receives monthly SSDI benefits of \$620 and SSI benefits of \$161. He will soon begin a community college program to become a social work assistant. New York's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) will pay for his tuition and other expenses related to his school attendance, but Robert will need a car with hand controls after graduation, to drive to any job he is expected to get in the future. Public transportation is not available to get to any of the Occupational Therapy Assistant positions, all of which are at least 20 miles from his home.

Robert proposes a PASS in which he will save \$600 monthly for 20 months ($20 \times \$600 = \$12,000$), accumulating \$12,000 that he will use in his last semester to purchase a newer used car, pay the first six months of car insurance, and make some modest wardrobe purchases to enhance his job prospects as he goes on interviews. VESID has agreed to pay for hand controls, costing more than \$2,000, to allow Robert to drive despite his inability to use a conventional gas pedal and brake. When the PASS is approved, the \$600 will no longer be counted by the SSI program. His SSI check will increase to the full \$761 living alone rate. The savings that he accumulates in a dedicated bank account will not count against the SSI program's \$2,000 resource limit.

By using this SSI work incentive to purchase a car – something for which there is not available funding through VESID or any other source that Robert can identify – Robert is then able to leverage the additional funding for hand controls through VESID, to allow him to drive this vehicle despite his disability.

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

Application of the PASS to Mark

In the primary case scenario, as originally presented, Mark has \$900 in SSDI benefits and \$1,800 in gross wages during 2010. For SSI purposes, Mark would have \$880 in countable unearned income ($\$900 - 20$) and \$2.50 in

countable earned income (\$1,800 – \$65 = \$1,735 ÷ 2 = \$867.50 – \$865 BWEs = \$2.50). His total countable income of \$882.50 would be too much to qualify for SSI.

The facts above, state that Mark will need to purchase a new or newer used van, modified for his travel as a passenger. Based on Mark's contacts, he believes he can purchase a newer used van, with the modifications he needs, for \$16,000 to \$18,000. Alternatively, a new van to meet his needs will cost about \$22,000 or more. With a new van he would need to turn to VESID (or CBVH, if they now have his case) to pay for the modifications, which they should be able to do.

For simplicity's sake, we will assume that Mark's needs can be met with a four-year old modified van that he can expect to purchase in about 18 months for \$16,000 (or \$17,280 with eight percent sales tax). If Mark puts his countable income of \$882.50 into an approved PASS each month for 20 months, he would accumulate \$17,280 in savings or just enough to purchase this new van.

Moving from Policy to Practice: In a real case, Mark would hopefully be working with a benefits practitioner who would assist him in coming up with a PASS proposal. The benefits practitioner would likely urge Mark to discuss his situation with professionals who modify vans to determine the disadvantages of going with a used van. The benefits practitioner could work with Mark to determine whether purchase of a new van is realistic from a financial standpoint. One way to purchase the new van within the 18 to 20 month time frame would be to use the PASS to make a down payment and possibly to extend the PASS to make monthly installment payments if he could not afford those payments without the PASS.

THE MEDICAID BUY-IN FOR WORKING PEOPLE WITH DISABILITIES

The Medicaid Buy-In for Working People with Disabilities (MBI-WPD) is a cornerstone of the New York Makes Work Pay Project. Our first issue of the *Working* newsletter was devoted to the MBI-WPD⁷⁵ and one of our first policy-to-practice briefs was devoted to this important work incentive.⁷⁶ Since the MBI-WPD's imple-

⁷⁵See the April 2009 issue of *Working* and its featured article on the MBI-WPD, available at http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_Newsletter_SP09.pdf

⁷⁶See The Medicaid Buy-In For Working People With Disabilities Individuals with Disabilities Can Earn

mentation in July 2003, thousands of New Yorkers have enrolled in this special program that allows individuals with disabilities to obtain or retain Medicaid while working. Our policy-to-practice brief and newsletter cover the MBI-WPD very thoroughly, so this publication will provide only the basics and some insight on the importance of this work incentive for those who need AT.

To qualify for the MBI-WPD, an individual must:

- Be a resident of New York State;
- Be at least 16 years of age (coverage up to 65 years of age);
- Have a disability as defined by SSA for the SSI or SSDI programs;
- Be engaged in paid work, either part-time or full-time;
- Have a gross income in 2010 that may be as high as \$55,188 for an individual whose only income is from a job (or \$73,884 for an individual couple);
- Have countable monthly income below \$2,257 in 2010 (after applying the SSI income exclusions); and
- Have non-exempt resources that do not exceed the Medicaid resource level of \$13,800 for an individual or \$20,100 for an eligible couple.

Generally, the MBI-WPD program will not be needed by individuals who receive SSI at the time they go to work. This is because the 1619(b) program, discussed above, will in most cases provide for continued Medicaid. The MBI-WPD program is, however, very important for the SSDI beneficiary who has never received SSI and could not access Medicaid through 1619(b). Since 2003, the MBI-WPD has allowed many SSDI beneficiaries and others to pursue their work goals knowing that Medicaid will be there to meet their health care expenses.

Application of the MBI-WPD program to Mark:

The original case scenario describes Mark as an individual who receives SSDI benefits of \$900 and is earning \$1,800 per month during 2010. He qualifies for Medicare Parts A, B and D. He does not receive Medicaid or any other form of health insurance. The scenario describes a man who is getting less in home health services than he needs because of the limitations of the Medicare program, who expects to pay a 20 percent copayment when he is approved by Medicare for a new power wheelchair, and who will not be able to obtain a wheelchair with a standing fea-

ture under Medicare criteria. If he can qualify for Medicaid, that program should cover the Medicare copayments, cover the standing wheelchair if he can satisfy Medicaid DME criteria, and cover the full extent of his home health care needs. We will assume that Mark's available savings are in the \$1,000 to \$1,500 range.

Mark should meet the MBI-WPD criteria and should be encouraged to apply if he:

- is a state resident, between 16 and 65;
- meets the disability criteria through his receipt of SSDI;
- is engaged in paid work;
- has countable monthly income of below \$2,257 (see calculation below); and
- has countable resources below the \$13,800 limit.

Let us look at how Mark's countable income is calculated, using the same rules as used by the SSI program:

Step 1:	SSDI benefit	\$900.00
	General income exclusion	- 20.00
	Countable unearned income	\$880.00
Step 2:	Gross earned	\$1,800.00
	Earned income exclusion	- 65.00
		\$1,735.00
	Additional 50 % exclusion	-867.50
		867.50
	Blind work expenses	-865.00
	Countable earned income	\$ 2.50
Step 3:	Counted unearned income	\$880.00
	Counted earned income	2.50
	Total counted income	\$882.50

Mark's countable income for MBI-WPD purposes is \$882.50, well below the \$2,257 monthly income limit for the program. Even if he did not have any BWEs and his countable income was \$1,747.50 (\$865 higher), this would still be below the eligibility threshold. With Medicaid eligibility established, Mark now has a funding source for the DME and/or DME copayments that will not be covered by Medicare. He also has a funding source for more extensive home health care services.

ADDITIONAL ISSUES RELATED TO THE SSDI, SSI, MEDICARE, MEDICAID AND AT

I. Medicare Savings Programs and AT Funding

Medicare beneficiaries can incur very substantial costs related to their Part B coverage. Beneficiaries who were eligible for Medicare in 2009 are responsible for a Part B premium of \$96.40 per month, while those newly eligible in 2010 will have a \$110.50 premium payment. They will also face a 20 percent copayment when Medicare funding is approved for DME, like the power wheelchair that Mark will need. Medicare Savings Programs (MSPs) can eliminate some or all of those costs.

There are three different MSPs:

- **Qualified Medicare Beneficiaries (QMB):** This is available to those with monthly countable income at or below 100 percent of the federal poverty level (in 2010, \$903 for an individual and \$1,215 for an eligible couple). This is the most generous of the three MSPs, covering Part B premiums, Part A premiums (in the rare event there are any), copayments and deductibles.
- **Special Low-Income Medicare Beneficiaries (SLMB):** This is available for those with income between 100 and 120 percent of the federal poverty level (in 2010, \$1,083 for an individual and \$1,457 for an eligible couple). This will pay the cost of Part B premiums only.
- **Qualified Individual (QI-1):** This is available for those with incomes between 120 and 135 percent of the federal poverty level (in 2010, \$1,219 for an individual and \$1,650 for an eligible couple). Like SLMB, this will pay for the Part B premium only but the individual cannot be otherwise eligible for Medicaid.

As of April 2008, there is no asset test for QMB, SLMB or QI-1. Deductions from the monthly income of the applicant and his/her spouse include all of the income exclusions that apply in the SSI program, as also applicable in the Medicaid spend down and MBI-WPD programs. These income exclusions include: the \$20 general income disregard, the student earned income exclusion, the first \$65 or monthly wages, impairment-related work expenses, 50 percent of remaining wages, and blind work expenses.⁷⁷

⁷⁷See N.Y. Soc. Serv. L. § 367-a(3)(c)(2) ("For purposes of this paragraph, income and resources are determined by the same methodology as is used for determining eligibility under the federal supplemental security income benefits under title XVI of the federal social security act.") See also,

Application of Medicare Savings Plans to Mark and his Need for AT:

Mark would be eligible for QMB when we apply all the SSI-related earned income exclusions. In the initial scenario he was receiving SSDI of \$900 (\$880 would count after a \$20 exclusion) and gross wages that ranged between \$1,650 per month in 2007 to \$1,800 in 2010. His countable wages, for MSP purposes would be \$867.50 in 2010 ($\$1,800 - \$65 = \$1,735 - \$867.50 = \$867.50 - \$865 \text{ for BWEs} = \2.50 in countable earned income). Combining this with his countable unearned income would give him \$882.50 in countable income for MSP purposes. Since this is below the 2010 eligibility threshold for QMB, \$903 per month, Mark will be eligible for QMB.

With QMB eligibility established, the Medicaid program will pay for Mark's Part B premium (\$96.40) and will pay for the copayments he would ordinarily owe on the power wheelchair that he is expecting Medicare to fund. Since the projected cost of the wheelchair is \$12,500, the 20 percent co-pay would ordinarily be \$2,500. With QMB coverage, the Medicaid agency will pay that as well.

Based on the facts presented, Mark should be eligible for Medicaid under the MBI-WPD. This should mean that Medicaid will either pay the \$2,500 copayment or approve the more expensive standing wheelchair. QMB eligibility will, however, guarantee that the \$96.40 Part B payment is covered. Additionally, to the extent that Mark sees medical providers that accept Medicare but not Medicaid, QMB would ensure that the 20 percent co-payments on those services are covered.

II. The Special Connection Between SSDI/SSI Eligibility and Needs-Based Criteria for VESID and CBVH Services, Including the Funding of AT

State VR agencies may follow a financial needs test when they provide VR services, but are not required to do so.⁷⁸ New York's VESID and CBVH, like all state VR agencies nationwide, do apply a financial needs test to most of the more expensive ser-

42 U.S.C. §§ 1396d(p)(1)(B) (requiring that income determinations in the QMB program, and by extension the other MSP programs, be made using SSI rules) and 1396d(P)(1)(C) requiring that resource determinations in the QMB program (for states that have an asset test) be made using SSI rules. For a much more extensive summary of these MSPs and eligibility criteria, see Medicare Savings Programs in New York – New York Health Access, available at <http://wnylc.com/health/entry/99/>.

⁷⁸34 C.F.R. § 361.54(a), (b)(1).

vices they deliver. However, based on the federal regulations governing state VR agencies, SSI and SSDI recipients are totally exempt from any financial needs test.⁷⁹

An individual who has established eligibility for VESID or CBVH services is potentially eligible for any service that is necessary for them to achieve the goal that has been established in their individual plan of employment. These services can include, for example, expenses associated with higher education (tuition, books, fees), transportation to an education or training program, and a wide range of AT as needed to support their work goals.⁸⁰

Application of this VR Eligibility Rule to Mark:

At various times in the case scenario, Mark had needs for items that could be funded by VESID or CBVH if the items were reasonable and necessary to support his work goal. These items included: an adaptive keyboard and mouse; voice dictation software; an enhanced computer screen; voice output software; the cost of his driver/onsite assistant at sporting events; the standing feature on his power wheelchair; and modifications for his new or newer used van to allow him to travel in it as a passenger.

Many of the work incentives that Mark has been able to access will allow him to continue to retain cash benefits as his wages increase. For example, based on the assumed facts, Mark has been able to retain SSDI through the use of the higher SGA level for the blind, combined with the use of other work incentives such as IRWEs and subsidies which would bring his wages below the SGA level for the years in question. When we changed the facts and made him SSI eligible, the use of BWEs allowed Mark to remain eligible for cash benefits as his wages got much higher. Importantly, Mark's ability to retain those cash benefits ensured his continued eligibility for needs-based assistance through either VESID or CBVH.

CONCLUSION

Many individuals with disabilities will need expensive AT to enable them to get ready for work, get out of the home, or actually do their work when they arrive at

⁷⁹34 C.F.R. § 361.54(b)(3)(ii).

⁸⁰For more detail on this subject, see State and Federal Vocational Rehabilitation Programs Services and Supports to Assist Individuals with Disabilities in Preparing for, Attaching to, and Advancing in Employment, available at http://www.ilr.cornell.edu/edi/publications/PPBriefs/PP_1.pdf.

their place of employment. In many cases, the individual will also need an array of AT in order to attend and benefit from an educational or training program.

We hope this brief has introduced the reader to some special strategies for obtaining AT through the use of SSDI, SSI, Medicare and Medicaid work incentives. In the end, if the individual can use one or more of these strategies to obtain appropriate AT, on a timely basis, the chances for a successful employment effort will be greatly enhanced.

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Partnering Organizations

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Employment and Disability Institute (Cornell University)
Burton Blatt Institute (Syracuse University)

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