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to: PABSS, BPAO, EDI

from: Ray Cebula

**re: Exemption of Work Activity as a Basis for a
Continuing Disability Review, Final Rules, November
17, 2006**

The Commissioner of SSA has released a notice of final rules concerning how work activity will be considered during a work related continuing disability review (CDR) as well as how work activity will be considered during a beneficiary's use of a ticket to work. The comment period ended on December 12, 2005, and final regulations were issued on November 17, 2006. 13 sets of comments were received.

What is the purpose of this rulemaking?

SSA is taking steps to implement section 221(m) of the Social Security Act.

SSA states in its summary that these proposed regulations are codifying existing POMS instructions discussing how SSA will deal with work activity at the last two steps in the CDR process. This is important information indicating SSA's intent to implement these regulations as they have the relevant POMS provisions.

The benefits populations involved are the group of Title II recipients who have received cash payment for at least 24 months, all individuals experiencing a work related CDR, those requesting expedited reinstatement (EXR) whose determination process moves to the last two steps of the sequential evaluation, and beneficiaries who are using a ticket to work.

What are continuing disability reviews and when does SSA start them?

In most cases, SSA will start a CDR because they must routinely evaluate whether a current beneficiary continues to be entitled to benefits as a disabled or blind individual. A beneficiary is subject to regularly scheduled CDRs at intervals ranging from 6 months to 7 years depending on whether, and the degree to which, SSA expects the individual's impairment(s) to improve.

SSA may also start a CDR because the beneficiary has returned to work or when SSA receives information that raises a question about whether the beneficiary is still under a disability, e.g., upon the completion of VR services.

The preliminary remarks contained in the notice of rulemaking contain lots of very useful information by way of reviewing the CDR processes and how SGA will impact an individual's disability status. For purposes of review some of that information will be contained in this memo.

How does SSA determine whether the individual's disability continues or ends?

Federal regulations at 20 CFR 404.1594 (Title II) and 416.994 (Title XVI) will control the determination process SSA uses during a CDR. These rules generally provide that SSA must determine if there has been any medical improvement and, if so, whether that medical improvement is related to the individual's ability to work. There also exist exceptions to the medical improvement standard.

An 8 Step Sequential Evaluation process is used during the CDR determination in SSDI cases. A 7 step sequential evaluation is used in the SSI program. The sequential evaluation process for an SSI beneficiary skips Step 1 as there is no consideration of SGA in the SSI program after initial entitlement is established.

The 8 steps are as follows:

1. Is the individual engaging in substantial gainful activity (SGA)? If so, and the TWP has ended, SSA will find that the disability has ended and the process stops.
2. If the individual is not engaging in SGA, does the individual have an impairment (or combination of impairments) that meets or equals the severity of any impairment in SSA's Listing of Impairments? If yes, the disability will be found to continue and the process stops.
3. If the individual's impairment(s) does not meet the severity of a listed impairment, has there been medical improvement? The current status of impairments used during the initial disability eligibility process is used and compared to the severity of those impairments at the time of the initial determination to decide if medical improvement has occurred. If there has been medical improvement as shown by a decrease in the medical severity of the individual's impairments, SSA moves on to step 4. If there has not been medical improvement, SSA moves to step 5 (skipping step 4).
4. If there has been medical improvement SSA must determine if that improvement is related to the individual's ability to work. If the medical improvement is not related to the individual's ability to work, SSA moves on to step 5. If the medical improvement is determined to be related to the individual's ability to work, SSA moves on to step 6 (skipping step 5).
5. If SSA found, at Step 3, that there has been no medical improvement, SSA will consider the exceptions to medical improvement and whether any of the exceptions apply to the individual's case and the process stops. The same result will occur if SSA found, at Step 4, that the medical improvement was not related to the individual's ability to work. If none of the exceptions apply, SSA will find that the individual's disability continues. If one of the exceptions applies, SSA will either find that the disability has ended or that the case must move to Step 6, depending upon which exception applies. See 20 CFR 404.1594(d) & (e) for the list of exceptions.
6. If SSA found that the medical improvement was related to the individual's ability to work, or if one of the exceptions applies to the case, SSA will determine whether the impairment(s) is severe (according to 20 CFR 404.1521). If the impairment(s) is not severe, SSA will determine that the individual's disability has ended and the process stops.
7. If SSA determines that the individual's impairment(s) is severe, SSA will then assess the individual's residual functional capacity (RFC) based on all current impairments and consider whether the individual

can still do work that s/he has done in the past. If SSA determines that past work can be done the impairment will be determined to have ended.

8. If the individual is not able to do past work considering all current impairments, SSA will then consider whether the individual's RFC, age, education and past work experience, will allow for the performance of other work. If the individual is determined able to engage in other work, disability will end. If not, disability will be continued.

When will the performance of SGA affect disability continuation?

SSDI – SSA will determine that the individual's disability has ceased in the first month in which that individual performs SGA following the completion of any applicable trial work period (TWP).

SSI – The performance of SGA does not affect the ability to continue SSI eligibility.

Section 221(m) of the Social Security Act

Section 221(m) of the Act provides that if an individual has received SSDI benefits, on the basis of disability or blindness, for at least 24 months SSA may not schedule a CDR solely as a result of the individual's work activity. Further, SSA may not use the individual's work activity as evidence that the individual's disability has ended nor may they use any work stoppage as evidence of the individual's inability to work.

The individual meeting the criteria set forth above will still be subjected to regularly scheduled medical CDRs that are not triggered by work activity. If, during this medical CDR process, the individual is performing SGA, benefits and disability status can be terminated in the case of a Title II beneficiary. The proposals explain that concurrent Title II and Title XVI beneficiaries will be treated as if they were Title II only beneficiaries for this purpose. As SGA is not a factor for post-entitlement individuals, there are no section 221(m) impact on the SSI only population.

Final Regulations

Please note that all sections of the regulations will not be discussed in this summary. This summary provide highlights of the sections of most significance to the PABSS and WIPA client populations.

SSDI/Title II Final Rules

Current Regulation

Proposed Change

20 CFR 404.903 – Administrative actions that are not initial determinations.	New language added (z) Starting or discontinuing a continuing disability review; and
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Initial determinations are those that are subject to the SSA administrative appeals process. The proposed regulation would not allow such a review for SSA's decision to initiate a CDR. This is consistent with current practice. However, SSA would allow for an individual who believes s/he is protected by section 221(m) to request that SSA review the initiation of a CDR. This opportunity, not an appeal, will be made in the initial notice informing the individual that a CDR has begun. 20 CFR 416.1403 is amended in a manner consistent with this proposal.

20 CFR 404.1574 – Evaluation guides if you are an employee.

(3)(B)(iii) – no existing language

(b) Earnings guidelines. (1) General. If you are an employee, we first consider the criteria in paragraph (a) of this section and Sec. 404.1576, and then the guides in paragraphs (b)(2) and (3) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see Sec. 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2) and (3) of this section. See Sec. 404.1574a for our rules on averaging earnings.

(2) Earnings that will ordinarily show that you have engaged in substantial gainful activity. We will consider that your earnings from your work activity as an employee (including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons) show that you engaged in substantial gainful activity if:

(i) Before January 1, 2001, they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) Beginning January 1, 2001, and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of \$10 where such amount is a multiple of \$5 but not of \$10 and to the

nearest multiple of \$10 in any other case.

Table 1

Your monthly earnings averaged more than:
For Months:

In calendar years before 1976.....	\$200
In calendar year 1976.....	230
In calendar year 1977.....	240
In calendar year 1978.....	260
In calendar year 1979.....	280
In calendar years 1980-1989.....	300
January 1990-June 1999.....	500
July 1999-December 2000.....	700

(3) Earnings that will ordinarily show that you have not engaged in substantial gainful activity.

(i) General. If your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We will generally not consider other information in addition to your earnings except in the circumstances described in paragraph (b)(3)(ii) of this section.

(ii) When we will consider other information in addition to your earnings. We will generally consider other information in addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to control when earnings are paid to you or the amount of wages paid to you (for example, if you are working for a small corporation owned by a relative). (See paragraph (b)(3)(iii) of this section for when we do not apply this rule.) Examples of other information we may consider include, whether--

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the

time, energy, skill, and responsibility involved in the work; and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

(iii) Special rule for considering earnings alone when evaluating the work you do after you have received social security disability benefits for at least 24 months. Notwithstanding paragraph (b)(3)(ii) of this section, we will not consider other information in addition to your earnings to evaluate the work you are doing or have done if--

(A) At the time you do the work, you are entitled to social security disability benefits and you have received such benefits for at least 24 months (see paragraph (b)(3)(iv) of this section); and

(B) We are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity (see Sec. Sec. 404.1592a(a)(1) and (3)(ii) and 404.1594(d)(5) and (f)(1)).

(iv) When we consider you to have received social security disability benefits for at least 24 months. For purposes of paragraph (b)(3)(iii) of this section, social security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability. We consider you to have received such benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you actually received social security disability benefits that you were due or constructively received such benefits. The 24 months do not have to be consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your

	<p>monthly benefit was withheld to recover an overpayment. Any months for which you were entitled to benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.</p>
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The final regulations amend the current regulations to bring them into parity with current practice as documented in the POMS. SSA removed the “secondary SGA” tests for considering work activity performed before January, 2001. This will allow SSA to consider all work activity in a similar manner. Secondary investigations in SGA determinations will only occur when SSA believes that circumstances indicate that SGA is being performed despite average wages below the appropriate dollar amount for that period, or when the individual may be in a position to control the amount of wages actually paid. Final language has been adjusted for consistency purposes making the provisions in the SSDI and SSI programs the same.

The “special rule” for considering earnings alone if the individual is protected by section 221(m) is new and will allow SSA to determine that disability has ended for this category of recipients. The requirements for meeting the 24-month period set forth in section 221(m) are set forth in the new regulations. Benefits payments do not need to be received in consecutive months. Any month in which the individual was eligible to receive SSDI but was not paid will not be counted toward the 24 month period. Nor will months in which a concurrent SSD/I recipient received SSI only. Based upon comments received, SSA has agreed to amend the proposal to allow months during which benefits are withheld to recoup an overpayment to count when counting the 24 months of receipt necessary to gain 221(m) protections.

<p>20 CFR 404.1575 – Evaluation guides if you are self-employed.</p> <p>(a) <i>If you are a self-employed person.</i> If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both. We will consider your activities and their</p>	<p>(a) If you are a self-employed person. If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (e) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both.</p>
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value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in §404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

(b) *What we mean by significant services.* (1) If you are not a farm landlord and you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be rendering significant services if you contribute more than half the total

(1) How we evaluate the work you do after you have become entitled to disability benefits. If you are entitled to social security disability benefits and you work as a self-employed person, the way we will evaluate your work activity will depend on whether the work activity occurs before or after you have received such benefits for at least 24 months and on the purpose of the evaluation. For purposes of paragraphs (a) and (e) of this section, social security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability. We will use the rules in paragraph (e)(2) of this section to determine if you have received such benefits for at least 24 months.

(i) We will use the guides in paragraph (a)(2) of this section to evaluate any work activity you do before you have received social security disability benefits for at least 24 months to determine whether you have engaged in substantial gainful activity, regardless of the purpose of the evaluation.

(ii) We will use the guides in paragraph (e) of this section to evaluate any work activity you do after you have received social security disability benefits for at least 24 months to determine whether you have engaged in substantial gainful

time required for the management of the business, or you render management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be rendering significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See §404.1082 of this chapter for an explanation of *material participation*.) If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be rendering significant services.

activity for the purpose of determining whether your disability has ceased because of your work activity.

(iii) If we have determined under Sec. 404.1592a(a)(1) that your disability ceased in a month during the reentitlement period because you performed substantial gainful activity, and we need to decide under Sec. 404.1592a(a)(2)(i) or (a)(3)(i) whether you are doing substantial gainful activity in a subsequent month in or after your reentitlement period, we will use the guides in paragraph (a)(2) of this section (subject to the limitations described in Sec. 404.1592a(a)(2)(i) and (a)(3)(i)) to determine whether your work activity in that month is substantial gainful activity. We will use the guides in paragraph (a)(2) of this section for these purposes, regardless of whether your work activity in that month occurs before or after you have received social security disability benefits for at least 24 months.

(2) General rules for evaluating your work activity if you are self-employed. We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(i) Test one: You have engaged in substantial gainful activity if you render services that are

(c) *What we mean by substantial income.* We deduct your normal business expenses from your gross income to determine net income. Once we determine your net income, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in §404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison

significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(ii) Test Two: You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(iii) Test Three: You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in Sec. 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

(c) What we mean by substantial income. (1) Determining countable income. We deduct your normal business expenses from your gross income to determine net income. Once we determine your net income, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in Sec. 404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount

with the earnings guidelines in §§404.1574(b)(2) and 404.1574(b)(3). See §404.1574a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in §404.1574(b)(2); or

(2) It averages less than the amounts described in §404.1574(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

we use to determine if you have done substantial gainful activity. For purposes of this section, we refer to this amount as your countable income. We will generally average your countable income for comparison with the earnings guidelines in Sec. 404.1574(b)(2). See Sec. 404.1574a for our rules on averaging of earnings.

(2) When countable income is considered substantial. We will consider your countable income to be substantial if--

(i) It averages more than the amounts described in Sec. 404.1574(b)(2); or

(ii) It averages less than the amounts described in Sec. 404.1574(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(e) Special rules for evaluating the work you do after you have received social security disability benefits for at least 24 months.

(1) General. We will apply the provisions of this paragraph to evaluate the work you are doing or have done if, at the time you do the work, you are entitled to social security disability benefits and you have received such benefits for at least 24 months. We will apply the provisions of this paragraph only when we are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity (see Sec. Sec. 404.1592a(a)(1) and (3)(ii) and 404.1594(d)(5) and (f)(1)). We will use the countable income test described in paragraph (e)(3) of this section to determine whether the work you do after you have received such benefits for at least 24 months is substantial gainful activity or demonstrates the ability to do substantial gainful activity. We will not consider the services you perform in that work to determine that the work you are doing shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled.

However, we may consider the services you perform to determine that you are not doing substantial gainful activity. We will generally consider work that you were forced to stop or reduce below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section.

(2) The 24-month requirement. For purposes of paragraphs (a)(1) and (e) of this section, we consider you to have received social security disability benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you actually received social security disability benefits that you were due or constructively received such benefits. The 24 months do not have to be consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment. Any months for which you were entitled to benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

(3) Countable income test. We will compare your countable income to the earnings guidelines in Sec. 404.1574(b)(2) to determine if you have engaged in substantial gainful activity. See paragraph (c)(1) of this section for an explanation of countable income. We will consider that you have engaged in substantial gainful activity if your monthly countable income averages more than the amounts described in Sec. 404.1574(b)(2) for the month(s) in which you work, unless the evidence shows that you did not render significant services in the month(s). See paragraph (b) of this section for what we mean by significant

	services. If your average monthly countable income is equal to or less than the amounts in Sec. 404.1574(b)(2) for the month(s) in which you work, or if the evidence shows that you did not render significant services in the month(s), we will consider that your work as a self-employed person shows that you have not engaged in substantial gainful activity.
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Given the protections provided by section 221(m) to those individuals who have received Title II (or concurrent Title II and XVI) benefits for at least 24 months, SSA has created a new test to be used when considering whether work activity is SGA for purposes of whether a disability has ended. This new test is the “countable income test”. The use of the SGA tests now contained in this section will depend upon whether the work activity performed by the beneficiary occurs before or after the individual has received SSDI benefits for at least 24 months as well as the purpose of the evaluation. If the work activity occurs after the 24 month requirement is met, SSA will use the “countable income test” to evaluate whether work is SGA for the purpose of determining whether disability has ceased. In all other situations (when work occurs before the 24-month period is met), SSA will apply the three pre-existing tests to evaluate self-employment and SGA.

After SSA makes a determination that disability has ceased in the reentitlement period because of the performance of SGA, SSA will use the three pre-existing tests to determine whether the individual is doing SGA in subsequent months in or after the reentitlement period regardless of whether work activity occurs before or after the 24-month period. This SGA determination is made to decide whether benefits should be started or stopped for a subsequent month(s) during the reentitlement period and to decide when entitlement to benefits terminates.

The three tests are used because they do not involve deciding whether the individual is still disabled, but rather determine whether the individual is eligible for payments.

The “countable income test” will be used after the individual has met the 24-month period requirement and to determine whether or not disability has ceased. SSA will apply certain deductions to income to decide the amount of income used to make an SGA determination. SSA will not consider the services performed by the individual to determine if the work being done indicates an ability to perform SGA and, therefore, the individual is no longer disabled. SSA will consider these services to decide that no ability to perform SGA exists.

Once SSA arrives at “countable income”, that amount will be compared to the appropriate SGA guidelines in order to determine if the individual has engaged in SGA. SGA will have been performed if the average monthly income is higher than the applicable guideline unless evidence exists to show that the individual did not engage in SGA. When the countable income amount is equal to or less than the appropriate guideline SSA will determine that no SGA has been performed in the absence of other evidence to the contrary.

20 CFR 404.1590 – When and how often we will conduct a continuing disability review.

a) *General.* We conduct continuing disability reviews to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits or a period of disability ends if the medical or other evidence shows that you are not disabled as determined under the standards set out in section 223(f) of the Social Security Act.

b) *When we will conduct a continuing disability review.* A continuing disability review will be started if—

(6) You tell us that you have recovered from your disability or that you have returned to work;

7) Your State Vocational Rehabilitation Agency tells us that—

- (i) The services have been completed; or
- (ii) You are now working; or
- (iii) You are able to work;

(8) Someone in a position to know of your physical or mental condition tells us that you are not disabled, that you are not following prescribed treatment, that you have returned to work, or that you are failing to follow the provisions of the Social Security Act or these regulations, and it appears that the report could be substantially correct;

(a) *General.* * * * In paragraphs (b) through (g) of this section, we explain when and how often we conduct continuing disability reviews for most individuals. In paragraph (h) of this section, we explain special rules for some individuals who are participating in the Ticket to Work program. In paragraph (i) of this section, we explain special rules for some individuals who work.

(b) When we will conduct a continuing disability review. Except as provided in paragraphs (h) and (i) of this section, we will start a continuing disability review if--
* * * * *

(6) You tell us that--

- (i) You have recovered from your disability; or
- (ii) You have returned to work;

(7) * * *

- (i) The services have been completed; or
- * * * * *

(8) Someone in a position to know of your physical or mental condition tells us any of the following, and it appears that the report could be substantially correct:

- (i) You are not disabled; or
 - (ii) You are not following prescribed treatment; or
 - (iii) You have returned to work; or
 - (iv) You are failing to follow the provisions of the Social Security Act or these regulations;
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(h) If you are participating in the Ticket to Work program. If you are participating in the Ticket to Work program, we will not start a continuing disability review during the period in which you are using a ticket. However, this provision does not apply to reviews we conduct using the rules in Sec. Sec. 404.1571-404.1576 to determine whether the work you have done

shows that you are able to do substantial gainful activity and are, therefore, no longer disabled. See subpart C of part 411 of this chapter.

(i) If you are working and have received social security disability benefits for at least 24 months.

(1) General. Notwithstanding the provisions in paragraphs (b)(4), (b)(5), (b)(6)(ii), (b)(7)(ii), and (b)(8)(iii) of this section, we will not start a continuing disability review based solely on your work activity if--

(i) You are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability; and

(ii) You have received such benefits for at least 24 months (see paragraph (i)(2) of this section).

(2) The 24-month requirement.

(i) The months for which you have actually received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due, or for which you have constructively received such benefits, will count for the 24-month requirement under paragraph (i)(1)(ii) of this section, regardless of whether the months were consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment. Any month for which you were entitled to benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. Months for which your social security disability benefits are continued under Sec. 404.1597a pending reconsideration and/or a hearing before an administrative law judge on a medical cessation determination will not be counted for the 24-month requirement. If you also receive supplemental security income payments based on disability or blindness under title XVI of the

Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

(ii) In determining whether paragraph (i)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability for at least 24 months as of the date on which we start a continuing disability review. For purposes of this provision, the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

(3) When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months. Even if you meet the requirements of paragraph (i)(1) of this section, we may still start a continuing disability review for a reason(s) other than your work activity. We may start a continuing disability review if we have scheduled you for a periodic review of your continuing disability, we need a current medical or other report to see if your disability continues, we receive evidence which raises a question as to whether your disability continues, or you fail to follow the provisions of the Social Security Act or these regulations. For example, we will start a continuing disability review when you have been scheduled for a medical improvement expected diary review, and we may start a continuing disability review if you failed to report your work to us.

(4) Reviews to determine whether the work you have done shows that you are able to do substantial gainful activity. Paragraph (i)(1) of this section does not apply to reviews we conduct using the rules in Sec. Sec. 404.1571-404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled.

(5) Erroneous start of the continuing disability review. If we start a continuing disability review

	<p>based solely on your work activity that results in a medical cessation determination, we will vacate the medical cessation determination if--</p> <p>(i) You provide us evidence that establishes that you met the requirements of paragraph (i)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and</p> <p>(ii) We receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.</p>
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The rules for the commencement of a CDR when an individual is participating in the ticket to work program and has a ticket in use or is protected by section 221(m) status will be added to this section of the federal regulations. A CDR will not be commenced while the individual is participating in the ticket to work program. Those individuals protected by section 221(m) will not see a CDR begun due to work activity alone. Regularly scheduled medical CDRs will continue on an “as scheduled basis”. The scheduling of a CDR is related to the individual’s coding as “medical improvement expected”, etc. The requirements of the 24-month period are also set out in this section of the proposal as well as are the types of Title II benefits that qualify an individual for 221(m) coverage.

This section also contains language allowing the individual who has been notified of the commencement of a CDR to request a review by SSA should the individual believe that s/he is protected by section 221(m). This review is not an appeal, as the decision to commence a CDR is not an “initial determination” for administrative review purposes.

<p>20 CFR 404.1592a – The reentitlement period.</p> <p>(a)(1) The first time you work after the end of your trial work period <i>and</i> engage in substantial gainful activity, we will find that your disability ceased. When we decide whether this work is substantial gainful activity, we will apply all of the relevant provisions of §§404.1571-404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses. We will find that your disability ceased in the first month after the end of your trial work period in which you do substantial gainful activity, applying all the relevant provisions in §§404.1571-404.1576.</p> <p>(2)(i) If we determine under paragraph (a)(1) of this section that your disability ceased during the reentitlement period because you perform substantial gainful activity, you will be paid benefits for the first month after the trial work</p>	<p>(a) * * *(1) * * * When we decide whether this work is substantial gainful activity, we will apply all of the relevant provisions of Sec. Sec. 404.1571-404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, as well as the special rules for evaluating the work you do after you have received disability benefits for at least 24 months. * * *</p> <p>(2)(i) * * * Once we have determined that your disability has ceased during the reentitlement period because of the performance of substantial gainful activity as explained in</p>
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period in which you do substantial gainful activity (i.e., the month your disability ceased) and the two succeeding months, whether or not you do substantial gainful activity in those succeeding months. After those three months, we will stop your benefits for any month in which you do substantial gainful activity. (See §§404.316, 404.337, 404.352 and 404.401a.) If your benefits are stopped because you do substantial gainful activity, they may be started again without a new application and a new determination of disability if you stop doing substantial gainful activity in a month during the reentitlement period. In determining whether you do substantial gainful activity in a month for purposes of stopping or starting benefits during the reentitlement period, we will consider only your work in, or earnings for, that month. Once we have determined that your disability has ceased during the reentitlement period because of the performance of substantial gainful activity as explained in paragraph (a)(1) of this section, we will not apply the provisions of §§404.1574(c) and 404.1575(d) regarding unsuccessful work attempts or the provisions of §404.1574a regarding averaging of earnings to determine whether benefits should be paid for any particular month in the reentitlement period that occurs after the month your disability ceased.

(3) The way we will consider your work activity after your reentitlement period ends (see paragraph (b)(2) of this section) will depend on whether you worked during the reentitlement period and if you did substantial gainful activity. If you worked during the reentitlement period and we decided that your disability ceased during the reentitlement period because of your work under paragraph (a)(1) of this section, we will find that your entitlement to disability benefits terminates in the first month in which you engage in substantial gainful activity after the end of the reentitlement period (see §404.325). (See §404.321 for when entitlement to a period of disability ends.) When we make this determination, we will consider only your work in, or earnings for, that month; we will not apply the provisions of §§404.1574(c) and 404.1575(d) regarding unsuccessful work attempts or the provisions of §404.1574a regarding

paragraph (a)(1) of this section, we will not apply the provisions of Sec. Sec. 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, the provisions of Sec. 404.1574a regarding averaging of earnings, or the special rules in Sec. Sec. 404.1574(b)(3)(iii) and 404.1575(e) for evaluating the work you do after you have received disability benefits for at least 24 months, to determine whether benefits should be paid for any particular month in the reentitlement period that occurs after the month your disability ceased.

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(3) The way we will consider your work activity after your reentitlement period ends (see paragraph (b)(2) of this section) will depend on whether you worked during the reentitlement period and if you did substantial gainful activity.

(i) If you worked during the reentitlement period and we decided that your disability ceased during the reentitlement period because of your work under paragraph (a)(1) of this section, we will find that your entitlement to disability benefits terminates in the first month in which you engaged in substantial gainful activity after the end of the reentitlement period (see Sec. 404.325). (See Sec. 404.321 for when entitlement to a period of disability ends.) When we make this determination, we will consider only your work in, or earnings for, that month;

<p>averaging of earnings. If we did not find that your disability ceased because of work activity during the reentitlement period, we will apply all of the relevant provisions of §§404.1571-404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, to determine whether your disability ceased because you performed substantial gainful activity after the reentitlement period. If we find that your disability ceased because you performed substantial gainful activity in a month after your reentitlement period ended, you will be paid benefits for the month in which your disability ceased and the two succeeding months. After those three months, your entitlement to a period of disability or to disability benefits terminates (see §§404.321 and 404.325).</p>	<p>we will not apply the provisions of Sec. Sec. 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, the provisions of Sec. 404.1574a regarding averaging of earnings, or the special rules in Sec. Sec. 404.1574(b)(3)(iii) and 404.1575(e) for evaluating the work you do after you have received disability benefits for at least 24 months.</p> <p>(ii) If we did not find that your disability ceased because of work activity during the reentitlement period, we will apply all of the relevant provisions of Sec. Sec. 404.1571-404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, as well as the special rules for evaluating the work you do after you have received disability benefits for at least 24 months, to determine whether your disability ceased because you performed substantial gainful activity after the reentitlement period. If we find that your disability ceased because you performed substantial gainful activity in a month after your reentitlement period ended, you will be paid benefits for the month in which your disability ceased and the two succeeding months. After those three months, your entitlement to a period of disability or to disability benefits terminates (see Sec. Sec. 404.321 and 404.325).</p> <p>* * * * *</p>
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The final rule adds language indicating the use of the 24-month protection of section 221(m) to the list of special tests that are used to determine if disability ends following the end of a TWP. Whether the special rules will be used depends upon whether the individual worked during the reentitlement period and whether that work was at SGA levels.

If SSA determines that disability ceased during the reentitlement period, benefits will be terminated after the first SGA month after the EPE ends. No special tests (unsuccessful work attempts, income averaging or 24-month rules) will be used.

If SSA determines that disability did not cease during the EPE because of SGA, all special rules will be used to determine when disability ends post-EPE due to SGA.

20 CFR 404.1594 – How we will determine whether your disability continues or ends.

(b) *Terms and definitions.* There are several terms and definitions which are important to know in order to understand how we review whether your disability continues.

(c) *Determining medical improvement and its relationship to your abilities to do work.* Paragraphs (b) (1) through (3) of this section discuss what we mean by medical improvement, medical improvement not related to your ability to work and medical improvement that is related to your ability to work. How we will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed below.

(f) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(b) Terms and definitions. * * * In addition, see paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.
* * * * *

(c) Determining medical improvement and its relationship to your abilities to do work. * * * (In addition, see paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.) * * * * *

(f) Evaluation steps. * * * The steps are as follows. (See paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.)
* * * * *

(i) If you work during your current period of entitlement based on disability or during certain other periods.

(1) We will not consider the work you are doing or have done during your current period of entitlement based on disability (or, when determining whether you are entitled to expedited reinstatement of benefits under section 223(i) of the Act, the work you are doing or have done during or after the previously terminated period of entitlement referred to in section

	<p>223(i)(1)(B) of the Act) to be past relevant work under paragraph (f)(7) of this section or past work experience under paragraph (f)(8) of this section. In addition, if you are currently entitled to disability benefits under title II of the Social Security Act, we may or may not consider the physical and mental activities that you perform in the work you are doing or have done during your current period of entitlement based on disability, as explained in paragraphs (i)(2) and (3) of this section.</p> <p>(2) If you are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act, and at the time we are making a determination on your case you have received such benefits for at least 24 months, we will not consider the activities you perform in the work you are doing or have done during your current period of entitlement based on disability if they support a finding that your disability has ended. (We will use the rules in Sec. 404.1590(i)(2) to determine whether the 24-month requirement is met.) However, we will consider the activities you do in that work if they support a finding that your disability continues or they do not conflict with a finding that your disability continues. We will not presume that you are still disabled if you stop working.</p> <p>(3) If you are not a person described in paragraph (i)(2) of this section, we will consider the activities you perform in your work at any of the evaluation steps in paragraph (f) of this section at which we need to assess your ability to function.</p>
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This rule incorporates the use of the “medical improvement standard” when making disability cessation or continuation determinations, explains how treatment will differ for those individuals covered by the section 221(m) protections and how SSA will determine eligibility for EXR.

The rule discusses the last two steps of the sequential evaluation used during the medical improvement review to determine if disability has ended. SSA will not consider work that the individual is doing at the time of the review, or work done during the current period of disability to be past work for the purposes of the last two steps in the sequential evaluation process when dealing with the medical improvement standard.

This work would also not be considered when determining whether the individual is eligible for EXR. SSA will only consider work done during or after a previous period of disability or that work which recently ended and is the basis for the EXR request when determining EXR eligibility.

Section 221(m) protections, if applicable to the individual, will prohibit work activity engaged in by the individual to be used as evidence that the disability has ended. Any determination by SSA terminating disability must be based on other evidence. As noted above, this work can be considered to support an SSA determination that disability continues.

If the individual is not protected by section 221(m) the currently used work consideration rules will apply. These rules are currently set forth in POMS interpretations of the statutory provisions.

SSA acknowledges that these provisions may be too complex and difficult for beneficiaries to understand but that no other interpretation of the statute would be appropriate. SSA states that new public information materials will be made available to help beneficiaries understand the new rules and that determinations will be explained to beneficiaries in written, plain language.

SSI/Title XVI Proposals

<p>20 CFR 416.974 – Evaluation guides if you are an employee.</p>	<p>*****</p> <p>(b) Earnings guidelines. (1) General. If you are an employee, we first consider the criteria in paragraph (a) of this section and Sec. 416.976, and then the guides in paragraphs (b)(2) and (3) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see Sec. 416.976). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2) and (3) of this section. See Sec. 416.974a for our rules on averaging earnings.</p> <p>(2) Earnings that will ordinarily show that you have engaged in substantial gainful activity. We will consider that your earnings from your work activity as an employee (including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons) show that you have engaged in substantial gainful activity if:</p> <p>(i) Before January 1, 2001, they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.</p>
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(ii) Beginning January 1, 2001, and each year thereafter, they average more than the larger of:

- (A) The amount for the previous year, or
- (B) An amount adjusted for national wage growth, calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of \$10 where such amount is a multiple of \$5 but not of \$10 and to the nearest multiple of \$10 in any other case.

Table 1

 Your monthly earnings averaged more than:
 For Months:

In calendar years before 1976.....	\$200
In calendar year 1976.....	230
In calendar year 1977.....	240
In calendar year 1978.....	260
In calendar year 1979.....	280
In calendar years 1980-1989.....	300
January 1990-June 1999.....	500
July 1999-December 2000.....	700

(3) Earnings that will ordinarily show that you have not engaged in substantial gainful activity.

(i) General. If your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We will generally not consider other information in addition to your earnings except in the circumstances described in paragraph (b)(3)(ii) of this section.

(ii) When we will consider other information in addition to your earnings. Unless you meet the criteria set forth in section 416.990 (h) and (i), we will generally consider other information in

	<p>addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to control when earnings are paid to you or the amount of wages paid to you (for example, if you are working for a small corporation owned by a relative). Examples of other information we may consider include, whether--</p> <p>(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; and</p> <p>(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.</p> <p>*****</p>
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<p>20 CFR 416.990 – When and how often we will conduct a continuing disability review.</p> <p>(a) <i>General.</i> We conduct continuing disability reviews to determine whether or not you continue to meet the disability or blindness requirements of the law. Payment ends if the medical or other evidence shows that you are not disabled or blind as determined under the standards set out in section 1614(a) of the Social Security Act if you receive benefits based on disability or §416.986 of this subpart if you receive benefits based on blindness.</p> <p>b) <i>When we will conduct a continuing disability review.</i> A continuing disability review will be started if—</p>	<p>(a) General. * * * In paragraphs (b) through (g) of this section, we explain when and how often we conduct continuing disability reviews for most individuals. In paragraph (h) of this section, we explain special rules for some individuals who are participating in the Ticket to Work program. In paragraph (i) of this section, we explain special rules for some individuals who work and have received social security benefits as well as supplemental security income payments.</p> <p>(b) When we will conduct a continuing disability review. Except as provided in paragraphs (h) and (i) of this section, we will start a continuing disability review if--</p>
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(4) You return to work and successfully complete a period of trial work;

(6) You tell us that you have recovered from your disability or that you have returned to work;

(8) Someone in a position to know of your physical or mental condition tells us that you are not disabled or blind, that you are not following prescribed treatment, that you have returned to work, or that you are failing to follow the provisions of the Social Security Act or these regulations, and it appears that the report could be substantially correct;

* * * * *

(4) You return to work;

* * * * *

(6) You tell us that--

(i) You have recovered from your disability;

or

(ii) You have returned to work;

* * * * *

(8) Someone in a position to know of your physical or mental condition tells us any of the following, and it appears that the report could be substantially correct:

(i) You are not disabled or blind; or

(ii) You are not following prescribed treatment; or

(iii) You have returned to work; or

(iv) You are failing to follow the provisions of the Social Security Act or these regulations;

* * * * *

(h) If you are participating in the Ticket to Work program. If you are participating in the Ticket to Work program, we will not start a continuing disability review during the period in which you are using a ticket. See subpart C of part 411 of this chapter.

(i) If you are working and have received social security disability benefits for at least 24 months.

(1) General. Notwithstanding the provisions in paragraphs (b)(4), (b)(5), (b)(6)(ii), (b)(7)(ii), and (b)(8)(iii) of this section, we will not start a continuing disability review based solely on your work activity if--

(i) You are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act (see subpart D of part 404 of this chapter); and

(ii) You have received such benefits for at least 24 months (see paragraph (i)(2) of this section).

(2) The 24-month requirement. (i) The months for which you have actually received disability

insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due under title II of the Social Security Act, or for which you have constructively received such benefits, will count for the 24-month requirement under paragraph (i)(1)(ii) of this section, regardless of whether the months were consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment. Any month for which you were entitled to social security disability benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. Months for which your social security disability benefits are continued under Sec. 404.1597a pending reconsideration and/or a hearing before an administrative law judge on a medical cessation determination will not be counted for the 24-month requirement. Months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

(ii) In determining whether paragraph (i)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act for at least 24 months as of the date on which we start a continuing disability review. For purposes of this provision, the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

(3) When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months. Even if you meet the requirements of paragraph (i)(1) of this section, we may still start a continuing disability review for a reason(s) other than your

	<p>work activity. We may start a continuing disability review if we have scheduled you for a periodic review of your continuing disability, we need a current medical or other report to see if your disability continues, we receive evidence which raises a question as to whether your disability or blindness continues, or you fail to follow the provisions of the Social Security Act or these regulations. For example, we will start a continuing disability review when you have been scheduled for a medical improvement expected diary review, and we may start a continuing disability review if you failed to report your work to us.</p> <p>(4) Erroneous start of the continuing disability review. If we start a continuing disability review based solely on your work activity that results in a medical cessation determination, we will vacate the medical cessation determination if--</p> <p>(i) You provide us evidence that establishes that you met the requirements of paragraph (i)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and</p> <p>(ii) We receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.</p>
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See discussion above for 20 CFR 404.1590.

<p>20 CFR 416.994 – How we will determine whether your disability continues or ends, disabled adults.</p> <p>(b)(1)<i>Terms and definitions.</i> There are several terms and definitions which are important to know in order to understand how we review whether your disability continues.</p> <p>(2) <i>Determining medical improvement and its relationship to your abilities to do work.</i> Paragraphs (b)(1)(i) through (b)(1)(iii) of this section discuss</p>	<p>* * * * *</p> <p>(b) Disabled persons age 18 or over (adults). * * *</p> <p>(1) Terms and definitions. * * * In addition, see paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods. * * * * *</p> <p>(2) Determining medical improvement and its relationship to your abilities to do work. * * * (In addition, see paragraph (b)(8) of this</p>
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what we mean by medical improvement, medical improvement not related to your ability to work, and medical improvement that is related to your ability to work. How we will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed below.

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

section if you work during your current period of eligibility based on disability or during certain other periods.) * * * * *

(5) Evaluation steps. * * * The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)* * * * *

(8) If you work during your current period of eligibility based on disability or during certain other periods.

(i) We will not consider the work you are doing or have done during your current period of eligibility based on disability (or, when determining whether you are eligible for expedited reinstatement of benefits under section 1631(p) of the Act, the work you are doing or have done during or after the previously terminated period of eligibility referred to in section 1631(p)(1)(B) of the Act) to be past relevant work under paragraph (b)(5)(vi) of this section or past work experience under paragraph (b)(5)(vii) of this section. In addition, if you are currently entitled to disability benefits under title II of the Social Security Act, we may or may not consider the physical and mental activities that you perform in the work you are doing or have done during your current period of entitlement based on disability, as explained in paragraphs (b)(8)(ii) and (iii) of this section.

(ii) If you are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or

widow's or widower's insurance benefits based on disability under title II of the Social Security Act, and at the time we are making a determination on your case you have received such benefits for at least 24 months, we will not consider the activities you perform in the work you are doing or have done during your current period of entitlement based on disability if they support a finding that your disability has ended. (We will use the rules in Sec. 416.990(i)(2) to determine whether the 24-month requirement is met.) However, we will consider the activities you do in that work if they support a finding that your disability continues or they do not conflict with a finding that your disability continues. We will not presume that you are still disabled if you stop working.

(iii) If you are not a person described in paragraph (b)(8)(ii) of this section, we will consider the activities you perform in your work at any of the evaluation steps in paragraph (b)(5) of this section at which we need to assess your ability to function. However, we will not consider the work you are doing or have done during your current period of eligibility based on disability (or, when determining whether you are eligible for expedited reinstatement of benefits under section 1631(p) of the Act, the work you are doing or have done during or after the previously terminated period of eligibility referred to in section 1631(p)(1)(B) of the Act) to be past relevant work under paragraph (b)(5)(vi) of this section or past work experience under paragraph (b)(5)(vii) of this section.

* * * * *

See discussion above for 20 CFR 404.1594.