

Authority: 15 U.S.C. 80b-3, 80b-4, 80b-6A, 80b-11, unless otherwise noted.

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§ 275.0-5 [Amended]

49. Section 275.0-5 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

§ 275.203-3 [Removed]

50. Section 275.203-3 is removed.

Dated: September 17, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AE22

Income Exclusions in the Supplemental Security Income Program

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These supplemental security income (SSI) regulations update existing regulations to reflect the statutory amendment of the exclusion from income of Alaska Longevity Bonus (ALB) payments. They also update existing regulations to reflect the statutory exclusion from income of hostile fire pay received by an SSI claimant or recipient and reflect the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. In addition, they update existing regulations to reflect the current operating procedure of excluding impairment-related work expenses, interest on excluded burial funds, appreciation in the value of excluded burial arrangements, and interest on the value of excluded burial space purchase agreements, when determining the countable income of an ineligible spouse or ineligible parent.

EFFECTIVE DATE: These regulations are effective October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Regarding this Federal Register document—Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1762; regarding

eligibility or filing for benefits—our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: For purposes of the SSI program, income is defined in our regulations to mean anything that is received in cash or in kind which can be used to meet an individual's needs for food, clothing, or shelter. These regulations include certain provisions which address items that are excluded from income.

Alaska Longevity Bonus Payments

Under section 1612(b)(2)(B) of the Social Security Act (the Act), ALB payments are excluded from income under certain circumstances.

Originally, the ALB program made monthly payments to residents of Alaska who had attained age 65 and had lived in the State continuously for at least 25 years. The SSI income exclusion applied to such payments if made under a program established before July 1, 1973. However, following a decision by the Alaska State Supreme Court that the 25-year residency requirement was unconstitutional, in 1984 the State legislature changed the residency requirement to 1 year.

Concerns were raised that since the revised (1984) ALB program was established after July 1, 1973, the controlling date of the original section 1612(b)(2)(B) provision, payments made under the revised ALB program could no longer be excluded for SSI purposes. Section 2616 of Public Law (Pub. L.) 98-369 was enacted on July 18, 1984 to address those concerns. Section 2616 amended section 1612(b)(2)(B) of the Act in such a way as to:

- Continue the ALB exclusion for persons who, prior to October 1985, became eligible for SSI and satisfied the 25-year residence requirement of the program as in effect prior to January 1, 1983; and
- Preclude extending the ALB exclusion to ALB payments based on the 1-year residency requirement.

Current regulations at §§ 416.1124(c)(7) and 416.1161(a)(12) follow the wording of the original statutory exclusion in section 1612(b)(2)(B) of the Act. Regulations at § 416.1124(c)(7) presently provide for excluding from the income of a claimant or recipient "[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on your length of residence and attainment of age 65 * * *." Regulations at § 416.1161(a)(12) presently provide for excluding from the income of an ineligible spouse or ineligible parent "[p]eriodic payments made by a State under a program established before July

1, 1973, and based solely on duration of residence and attainment of age 65 * * *."

These regulations change the wording of the above referenced regulations so that they conform to the 1984 legislation. The regulatory language will not change current operating procedures since those procedures already conform to the 1984 legislation.

Hostile Fire Pay

Although it is unlikely that an active member of the uniformed services would apply or be eligible for SSI benefits, some military service members have spouses and children who apply for and receive SSI benefits.

Under section 209(d) of the Act, basic pay is the only form of compensation to members of the uniformed services that is treated as wages for title II purposes. Under section 1612(a)(1) of the Act, earned income in the form of wages for SSI purposes is the same as wages for the title II annual earnings test.

Therefore, basic pay is the only form of military compensation that is treated as wages, and hence, as earned income, for SSI purposes.

All other forms of compensation to members of the uniformed services are considered unearned income. These other forms of compensation include allowances paid in cash for food, clothing, and shelter; free food, clothing, and shelter; and special and incentive pay.

One form of special pay is hostile fire pay, which is authorized under 37 U.S.C. 310. Hostile fire pay is a type of special pay to a service member who, for any month he/she is entitled to basic pay, is:

- Subject to hostile fire or explosion of hostile mines; or
- On duty in an area in which he/she is in imminent danger of being exposed to hostile fire or explosion of hostile mines, and

While on duty in that area, other service members in the same area are subject to hostile fire or explosion of hostile mines; or

- Killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

Section 13733(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Public Law 103-66, amended section 1612(b) of the Act to exclude from income any hostile fire pay received in or after October 1993.

Current regulations do not reflect the exclusion from income of hostile fire pay for eligible individuals, but hostile fire pay has been excluded under SSI operating procedure since October 1, 1993. Moreover, under these

instructions, such pay has been excluded in determining the income of ineligible spouses and parents whose income is deemed to eligible individuals.

In addition to adding to the regulations the statutorily required exclusion of hostile fire pay from an eligible individual's income, we have included the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. The new inclusion reflects the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out hostile fire pay for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. The statutory exclusion of hostile fire pay would have little meaning if not applied to ineligible spouses and parents since, as noted above, it is unlikely that an active member of the uniformed services would be eligible for SSI.

Impairment-Related Work Expenses

Impairment-related work expenses (IRWE) are expenses for items or services which are directly related to enabling a person with a disability to work and which are necessarily incurred by that individual because of a physical or mental impairment as explained at regulations §§ 404.1576 and 416.976.

Prior to December 1, 1990, in determining countable income, an individual's IRWE were deducted from his/her earned income once eligibility was established without using this exclusion. Effective December 1, 1990, section 5033 of Public Law 101-508 amended section 1612(b)(4)(B)(ii) of the Act and liberalized the IRWE exclusion. The legislation allows an individual to use the IRWE exclusion to establish eligibility.

Regulations at § 416.1112(c)(6) have been revised to implement changes enacted by section 5033 of Public Law 101-508.

These regulatory revisions were published in the Federal Register on August 12, 1994, at 59 FR 41400-41405.

Regulations at § 416.1161(a) list the types of income that are excluded from the income of an ineligible spouse and ineligible parent for deeming purposes. IRWE are not included in this list, but IRWE have been excluded from the income of ineligible spouses and ineligible parents under SSI operating procedures since 1990.

We have added to the regulations the current operating procedure which is to exclude IRWE when determining the countable income of an ineligible spouse or ineligible parent for deeming purposes. By specifically singling out IRWE for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual. These regulations reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances.

Interest and Appreciation in Value of Excluded Burial Funds and Burial Space Purchase Agreements

Effective November 1, 1982, section 185 of Public Law 97-248 amended the Act to provide that any interest earned on excluded burial funds and any appreciation in the value of excluded burial arrangements left to accumulate, may be excluded from income by regulation. Effective April 1, 1990, section 8013 of Public Law 101-239 amended the Act to provide that interest earned on the value of agreements representing the purchase of excluded burial spaces is excluded from income if left to accumulate.

Regulations at § 416.1124(c)(9) implement the exclusion of interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements, effective November 1, 1982. Regulations at § 416.1124(c)(15) implement the exclusion of any interest earned on the value of agreements representing the purchase of excluded burial spaces, effective April 1, 1990.

Regulations at § 416.1161(a) (relating to the treatment of income of an ineligible spouse or ineligible parent) do not apply these exclusions for purposes of deeming income, but both types of interest and appreciation have been excluded from the income of ineligible spouses and ineligible parents under SSI operating procedure.

We have added to the regulations the current operating procedure which is to exclude interest on burial funds, appreciation in the value of burial arrangements, and interest on the value of burial space purchase agreements, that are excluded from resources, when determining the countable income of an ineligible spouse or ineligible parent. These regulations reflect the statutory authority granted the Commissioner of Social Security under section 1614(f) (1) and (2) of the Act to waive the deeming of income from an ineligible spouse or parent to an eligible individual when such deeming is determined by the Commissioner of Social Security to be inequitable under the circumstances. By specifically singling out these monies for exclusion from an eligible individual's income, Congress expressed its intent that receipt of these monies should not have an adverse effect on an individual's SSI eligibility or payment amount. This intent would not be realized if these monies were deemed to an eligible individual.

We have made a technical change to conform the language of § 416.1124(c)(9) to a prior policy change. Effective July 11, 1990, changes related to the SSI burial fund exclusion were published in the Federal Register at 55 FR 28373-28377. As a result of these changes, regulations at § 416.1231(b)(1) were amended to require that excluded burial funds be kept separate from all other resources not intended for the burial of the individual or spouse. Furthermore, § 416.1231(b)(7) was revised to provide that interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded from resources if left to accumulate and become part of the separate burial fund.

Current regulations at § 416.1124(c)(9) provide that we will not count as income interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identifiable burial fund. We have conformed this regulation to the prior regulatory change requiring the burial fund to be separate from other nonburial-related assets and not merely separately identifiable.

These regulations were published in the Federal Register (60 FR 62356) as a notice of proposed rulemaking (NPRM) on December 6, 1995. Interested parties were given 60 days to submit comments. Public comments were received from an association of funeral directors which supported the proposed regulations. We are, therefore, adopting the regulations essentially as proposed.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations will impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and Recordkeeping Requirements, Supplemental Security Income (SSI).

Approved: September 6, 1996.
Shirley S. Chater,
Commissioner of Social Security.

For the reasons set out in the preamble, part 416, subpart K, of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**Subpart K—[Amended]**

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Section 416.1124 is amended by removing the “and” at the end of paragraph (c)(17) and the period at the end of paragraph (c)(18), by adding “; and” at the end of paragraph (c)(18), by revising paragraphs (c)(7) and (c)(9) and adding new paragraph (c)(19) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(7) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983; and was eligible for SSI;

* * * * *

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separate burial fund. (See § 416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in the value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later;

* * * * *

(19) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310.

3. Section 416.1161 is amended by removing the “and” at the end of paragraph (a)(21), and removing the period at the end of paragraph (a)(22) and adding a semi-colon in its place, and by revising paragraph (a)(12) and adding new paragraphs (a)(23), (a)(24) and (a)(25) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) * * *

(12) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983; and was eligible for SSI;

* * * * *

(23) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

(24) Impairment-related work expenses, as described in 20 CFR 404.1576, incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under title II of the Act; and

(25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to

accumulate as part of the value of agreements representing the purchase of excluded burial spaces (see § 416.1124(c) (9) and (15)).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 101**

[Docket No. 93N-0481]

RIN 0910-AA23

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the regulation authorizing a health claim on the relationship between folic acid and neural tube defects on the labels and in the labeling of dietary supplements that became final by operation of law. The agency has replaced this revoked regulation with one that it adopted in a final rule that published in the Federal Register of March 5, 1996 (61 FR 8752). **EFFECTIVE DATE:** October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS-175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5375.

SUPPLEMENTARY INFORMATION:**I. Background**

The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535) amended the Federal Food, Drug, and Cosmetic Act (the act) to give the Secretary of the Department of Health and Human Services (the Secretary), and by delegation FDA, the authority to issue regulations authorizing health claims on the labels and in the labeling of foods. Section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with procedures and standards established under section 403(r)(3) and (r)(5)(D) of the act.

The 1990 amendments also directed the Secretary to determine through rulemaking whether claims regarding 10 nutrient-disease relationships met the