

Medicaid Disability Manual

SSI-related category shall be claimed for medical care only from the effective date of disability, which is October 2009.

- c. SSI Recipients - SSI recipients in New York State are automatically eligible for Medicaid. To determine the effective date of disability for these individuals, the following fields on the SDX should be screened:
 - (1) Field 317 "Payment Status Code". If the code CO1 appears, the individual is in payment status. If the code NO1 appears, the individual is in Non Pay status due to excess countable income.
 - (2) Field 98 "Onset-Disability/Blindness Code". For individuals who have been determined disabled, this code will give the effective date of disability onset.

NOTE: For SSI recipients with medical bills incurred up to three months prior to month of application, refer to Section I.

7. Expiration Dates

All Group II cases must have an expiration date. The expiration date must be at least 12 months from the effective date (or onset date) for the initial disability period. Cases may be approved for more than 12 months whenever the medical evidence warrants a longer disability period. The Disability Review Team should consider the facts of the case (such as the individual's diagnoses, medical history and findings, extent of functional impairment, age, work history, etc.) when setting the expiration date. A maximum of seven years is recommended for the most severely disabled Group II cases. Group II cases must be re-evaluated for continuing disability before the expiration date. Such cases may, if appropriate, be recertified for less than one year since the 12-month duration requirement has already been fulfilled.

Some of the medical impairment listings in Appendix I contain specified lengths of time to approve cases when certain specific criteria are met. Examples are listings for heart and kidney transplants, liver disease, acute leukemia, and other cancers. Cases approved on the basis of HIV-related illness may be approved for up to seven years, if appropriate.

E. Vocational/Financial Considerations

1. Substantial Gainful Activity (SGA)

Department Regulation Section 360-5.2

- a. Definition - Substantial gainful activity is work activity that is both substantial and gainful as detailed below.
 - (1) Substantial work activity is work that involves doing significant physical and/or mental activities. Work can be considered substantial even if performed part-time and/or requires less responsibility than former work.

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- (2) Gainful work activity is work done for pay or profit, whether or not a profit is realized.
- (3) Other activities such as household tasks, attending school, therapy, hobbies, club activities or social programs generally are not considered substantial gainful activity.

b. Evaluation Guidelines

In determining whether or not an individual, who is not statutorily blind, is able to do work at the substantial gainful activity level, the following factors shall be considered on the basis of medical and vocational evidence:

- (1) **Nature of Work** - The performance of duties by the individual which involve the use of his/her skills or experience, supervision and responsibility, or contribute substantially to the operation of a business is evidence indicating that an individual has the ability to engage in substantial gainful activity.
- (2) **Adequacy of performance** - The adequacy of an individual's performance of assigned work is also evidence as to whether or not he/she has the ability to engage in substantial gainful activity. An individual's failure, due to his/her impairment, to perform ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work may constitute evidence of an inability to engage in substantial gainful activity. Performance of work that involves minimal duties that make little or no demands on the individual and are of little or no use to his/her employer does not demonstrate ability to engage in substantial gainful activity.
- (3) **Special employment conditions** - Work performed under conditions of employment which makes special provision for an employee's impairment (for example, work in a sheltered workshop or in a hospital by a patient) may provide evidence of skills and abilities that demonstrate an ability to engage in a substantial gainful activity, whether or not such work in itself constitutes substantial gainful activity.
- (4) **Time spent in work** - The amount of time spent in work is important but shall not be the sole basis for determining whether an individual is able to do substantial gainful activity. Evaluation as to whether the work is substantial and gainful is made regardless of whether the individual spends more or less time at the job than workers who are not impaired and are doing similar work as a regular means of livelihood.
- (5) **Earnings from work**
 - (a) **General** - The amount of gross earnings from work activities (minus

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appropriate impairment-related work expenses as set forth in Section E.1.b.(5)(e) may establish that the individual has the ability to engage in substantial gainful activity. Generally, activities which result in substantial earnings would show that the individual is able to do substantial gainful activity. However, the fact that the earnings are not substantial does not necessarily show that an individual is not able to do substantial gainful activity. Where an individual is forced to discontinue work activities after a short time due to an impairment, the earnings from such work do not demonstrate ability to engage in substantial gainful activity.

- (b) **Subsidized earnings** - If an individual's earnings are being subsidized, the amount of the subsidy is not counted when determining whether or not work is substantial gainful activity. Where work is done under special conditions (e.g., an impaired person who does simple tasks under close and constant supervision), only the part of the pay which is actually "earned" is considered. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If the employer does not set the amount of the subsidy, a decision by the agency shall be made as to the reasonable value of the work.
- (c) **Earnings at a monthly rate in excess of \$1070** - An individual whose average monthly earnings from work activities are more than \$1070 shall be deemed to demonstrate the ability to engage in substantial gainful activity in the absence of evidence to the contrary. Effective January 1, 2014, the SGA level was increased from \$1040 to \$1070. Federal regulations provide for an annual automatic cost of living adjustment (COLA) to this amount. An individual is generally considered not to be engaged in SGA if his/her earnings are less than the SGA level, unless there is evidence to the contrary.
- (d) **Factors considered when an individual is self-employed** - The earnings or losses of a self-employed individual often reflect factors other than the individual's work activities in carrying on his/her business. For example, a business may have a small income or may even operate at a loss even though the individual performs sufficient work to constitute substantial gainful activity. Thus, less weight shall be given to such small income or losses in determining a self-employed individual's ability to engage in substantial gainful activity and greater weight shall be given to such factors as the extent of his/her activities and the supervisory, managerial, or advisory services rendered by the individual.
- (e) **Impairment-related work expenses** – Impairment-related work expenses which, due to an individual's impairment(s), are expended to enable the individual to work shall be deducted in determining an

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individual's countable earned income and in deciding if he/she has done substantial gainful activity. These expenses must be paid by the disabled individual. No deduction will be allowed to the extent that payment has been or will be made by another source. The costs are deductible even though the items and services are also needed to carry out daily living functions unrelated to work.

The following are deductible impairment-related work expenses:

- (i) Assistance in traveling to and from work or, while at work, assistance with personal functions (e.g., eating, toileting), or with work-related functions (e.g., reading, communicating)
- (ii) Assistance at home with personal functions, (e.g., dressing, administering medications) in preparation for going to and returning from work. Payments made to a family member for attendant care services may be deducted only if such family member, in order to perform the services, incurs an economic loss by terminating his/her employment or by reducing the number of his/her work hours.
- (iii) Medical devices such as wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers
- (iv) Prosthetic devices, such as artificial replacements of arms, legs and other parts of the body
- (v) Work-related equipment, such as one-hand typewriters, telecommunication devices for the deaf, Braille devices, and specially designed work tools
- (vi) Residential modifications, in the form of changes to the exterior of the home to permit the individual to get to his/her means of transportation (e.g., exterior ramps, railings, pathways)
- (vii) For an individual working at home, modifications to the inside of his/her home in order to create a working space to accommodate an impairment (e.g., enlargement of a doorway leading into the office, modification of work space to accommodate problems in dexterity)

For a self-employed person, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

- (viii) Devices or appliances which are essential for the control of a disabling condition, either at home or in the work setting, and are verified as medically necessary (e.g., electric air cleaner for an

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individual with severe respiratory disease who cannot function in a non-purified air environment)

- (ix) Drugs or medical services, including diagnostic procedures, needed to control the individual's impairment

The drugs or services must be prescribed or used to reduce or eliminate symptoms of the impairment or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s). Some examples of deductible drugs and medical services are: anticonvulsant drugs, antidepressant medication for mental disorders, radiation treatment or chemotherapy, corrective surgery for spinal disorders, and tests to determine the efficacy of medication.

- (x) Expendable medical supplies, such as catheters, elastic stockings, bandages, irrigating kits, incontinence pads, face masks and disposable sheets and bags
- (xi) Physical therapy required because of an impairment and which is needed in order for the individual to work
- (xii) Costs of a seeing-eye dog, including food, licenses and veterinarian services
- (xiii) Payments for transportation costs in the following situations:

- Costs of structural or operational modifications to a vehicle required by an individual in order to get to and from work;

- Mileage allowance for an approved vehicle, limited to travel related to employment; and

- Cost of driver assistance or taxicabs, where such special transportation is not generally required by an unimpaired individual in the community.

2. **Trial Work Period**

- a. Trial Work Period is a period during which an individual may test his or her ability to work and still maintain disability status. During a trial work period an individual, who is still medically impaired, may perform "services" in as many as nine (9), not necessarily consecutive, months.
- b. "Services" in this section means any activity in employment or self-employment for pay or profit, or the kind of activity normally done for pay or profit. **Work**

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activity will be considered "services" if in any month the individual earns more than \$770 a month. Federal regulations provide for an annual automatic cost of living (COLA) adjustment to this amount. For self-employed individuals, work will be determined to be "services" only when the individual's monthly net earnings are more than the Trial Work Period amount or when the individual works more than 80 hours a month in his/her business.

Work is generally not considered to be "services" for the purpose of calculating trial work period months if the work is:

- (1) Part of a prescribed program of medical therapy;
 - (2) Carried out in a hospital under the supervision of medical and/or administrative staff;
 - (3) Not performed in an employer-employee relationship; or
 - (4) Not normally performed for pay or profit.
- c. The Disability Review Team may find that the individual's disability has ended at any time during the trial work period if the medical or other evidence shows that he/she is no longer disabled. An individual may have only one trial work period during a disability period.

3. Plans for Achieving Self-Support (PASS)

Department Regulation Section 360-4.6

Eligible blind and disabled individuals may participate in Plans for Achieving Self-Support. These plans are intended to assist certain A/Rs to accumulate money and/or set aside current income and/or resources in excess of the allowable income and/or resource level for use in accordance with a plan. The purpose of the PASS is to assist these individuals in obtaining or regaining a feasible occupational objective. PASS allows an individual to set aside money for short-term objectives like saving money for education, vocational training, or starting a business, or for a work-related item, such as a computer or even a custom van.

a. Conditions for Plans for Achieving Self-Support (PASS)

After application of all disregards for blind or disabled individuals under 65, or for blind or disabled individuals age 65 or over who received SSI payments or aid under the State Plan for the blind or disabled for the month before the month in which the individual attained age 65, any remaining countable income and/or resources may be set aside for a Plan to Achieve Self-Support (PASS).

A PASS must meet the following conditions:

- (1) A specific plan for self-support must contain a feasible designated occupational objective and must exist in writing.
- (2) The local Commissioner of Social Services must approve the plan and any subsequent plan changes.