

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Social Security Administration**

**20 CFR Parts 404 and 416**

[Regulations Nos. 4 and 16]

RIN 0960-AD96

**Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Benefit Reforms for Individuals Disabled Based on Drug Addiction or Alcoholism**

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Interim final rules with request for comments.

**SUMMARY:** The Social Security Independence and Program Improvements Act of 1994 contains provisions affecting the payment of benefits under titles II and XVI of the Social Security Act (the Act) to individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability. These interim final rules implement certain provisions related to limitations on benefit payments and the nonpayment and termination of benefits to these individuals.

**DATES:** These interim final rules are effective on March 1, 1995. To be sure that your comments are considered, we must receive them no later than April 11, 1995.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, or delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1758; regarding eligibility or filing for benefits—our national toll-free number, 1-800-772-1213.

**SUPPLEMENTARY INFORMATION:**

**History**

In 1972, Public Law (Pub. L.) 92-603 established the supplemental security income (SSI) program under title XVI of the Act. Aside from disability for children under age 18 and blindness, the Act provided the same definition of disability for individuals under title XVI as it does under title II. However, the SSI program included special provisions for disabled persons medically determined to be drug addicts or alcoholics. As implemented, those provisions applied to individuals whose drug addiction or alcoholism (DAA) was a contributing factor material to the determination that they were disabled (disabled based on DAA). The SSI provisions stated that an individual determined to be disabled based on DAA could receive SSI benefits only if he or she underwent appropriate treatment for the substance addiction when it was available and received payments through a representative payee.

The 1972 legislation also required the Secretary of Health and Human Services (the Secretary) to provide for the monitoring and testing of these individuals to assure compliance with treatment and to determine how the imposition of the treatment requirement contributes to the achievement of program purposes. The Secretary also was required to submit an annual report to Congress on the treatment and compliance of affected SSI recipients.

Prior to the passage of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103-296, enacted on August 15, 1994, there were no special program rules for Social Security beneficiaries whose medically determined drug addiction or alcoholism was a contributing factor material to the determination of disability.

**New Legislation**

The amendments made to the Act by section 201 of Pub. L. 103-296 introduced several new requirements and limitations for SSI recipients disabled based on DAA and applied similar requirements and limitations to Social Security beneficiaries disabled based on DAA, as well. These requirements and limitations are, in part, intended to discourage individuals from using Social Security or SSI benefits to support an addiction, as well as encourage the treatment and rehabilitation of individuals disabled based on DAA.

Section 201(a) of Pub. L. 103-296 contains the title II provisions related to

DAA and section 201(b) contains the corresponding SSI provisions. The new requirements and changes under both programs for individuals disabled based on DAA include:

- Paying benefits to a representative payee;
- A preference for selecting certain types of organizational payees, inclusion of certain State and local government agencies as qualified organizations, making permanent the provision authorizing certain qualified organizations to collect a fee from beneficiaries for whom they serve as representative payees, and increasing the upper limit of the fee that organizational payees can charge persons disabled based on DAA;
- Requiring both Social Security and SSI recipients who are disabled based on DAA to undergo appropriate substance abuse treatment, if available;
- Suspending benefits for months in which there is a failure to comply with appropriate, available treatment and requiring that individuals must demonstrate compliance with that treatment for a specified period of time before payments can resume;
- Terminating benefits after 12 consecutive months of suspension for noncompliance (the individual may reapply and receive disability benefits based on DAA for the remainder of the 36-month limit described below);
- Monitoring and testing of individuals to assure compliance;
- Establishing at least one referral and monitoring agency (RMA) in every State to identify appropriate treatment placements, to refer individuals disabled based on DAA to treatment and to monitor compliance with such treatment;
- Paying past-due benefits in installments, with a limited exception for individuals with outstanding debts related to housing who are at a high risk of homelessness;
- A 36-month limit on the payment of benefits beginning with the March 1995 payment month, with some differences between the title II and SSI programs as to how the months are counted (months of suspension will not be counted in the 36 months for either program);
- A "sunset date" of September 2004 for the 36-month limit on the payment of benefits;
- Continued Social Security benefit payments to auxiliaries after a disabled wage earner's benefits are suspended for failure to comply with treatment requirements or when entitlement is terminated after the 36 months, as long as the wage earner continues to be disabled;