

§ 406.13

age 65 is automatically entitled to hospital insurance under § 406.10.)

(iv) The day of death.

(e) *Continuation of Medicare entitlement when disability benefit entitlement ends* because of substantial gainful activity (SGA)—(1) *Definitions*. As used in this section—

Trial work period means the 9-month period provided under title II of the Act and as defined 20 CFR 404.1592, during which the individual may test his or her ability to work and still receive disability cash benefits; and

Reentitlement period means a period as defined in 20 CFR 404.1592a that begins with the first month after the trial work period and ends with the 36th month after the trial work period or, if earlier, with the first month in which the impairment no longer exists or is no longer disabling. (During the reentitlement period, benefits may be discontinued because of SGA. However, if SGA is later discontinued, benefits may be reinstated without a new application and a new disability determination.)

(2) *Duration of continued Medicare entitlement*. Effective January 1, 1988, if an individual's entitlement to disability benefits or status as a qualified disabled railroad retirement beneficiary ends because he or she engaged in, or demonstrated the ability to engage in, substantial gainful activity after the 36 months following the end of the trial work period, Medicare entitlement continues until the earlier of the following:

(i) The last day of the 24th month following the first month of SGA occurring after the 15th month of the individual's reentitlement period or, if later, the end of the month following the month the individual's disability benefit entitlement ends.

(ii) The last day of the month following the month in which notice is mailed to the individual indicating that he or she is no longer entitled to hospital insurance because of an event or circumstance (for example, there has been medical improvement, or the disabled widow has remarried) that would terminate disability benefit entitlement if it had not already been

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terminated because of substantial gainful activity.

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§ 406.13 Individual who has end-stage renal disease.

(a) *Statutory basis and applicability*. This section explains the conditions of entitlement to hospital insurance benefits on the basis of end-stage renal disease, and specifies the beginning and end of the period of entitlement. It implements section 226A of the Social Security Act.

(b) *Definitions*. As used in this section:

End-stage renal disease (ESRD) means that stage of kidney impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

Child or *spouse* means a child or spouse whose relationship to the parent or spouse meets the relationship requirements for entitlement to child's monthly social security benefits or to wife's, husband's, widow's, widower's, mother's or father's monthly benefits, as set forth in 20 CFR part 404. However, the duration of relationship requirements apply only to divorced spouses. (See 20 CFR 404.331.)

Dependent child means a person who, on the first day he or she has end-stage renal disease, is unmarried and meets the dependency requirements for entitlement to child's social security benefits on the basis of a parent's earnings (see 20 CFR 404.350-404.365) and who—

(1) Is under age 22;

(2) Is under a disability that began before age 22; or

(3) Is under age 26, is receiving at least one-half support from that parent, and has continuously received at least one-half support from that parent since the day before attaining age 22.

One-half support means regular contributions, in cash or in kind, that equals or exceeds one-half of the child's total support.

(c) *Requirements*. An individual is entitled to hospital insurance benefits if—

(1) He or she is medically determined to have ESRD;

(2) He or she is:

(i) Fully or currently insured under the social security program (title II of the Act) or would be fully or currently insured if his or her employment (after 1936) as defined under the Railroad Retirement Act were considered "employment" under the Social Security Act;

(ii) Entitled to monthly social security or railroad retirement benefits; or

(iii) The spouse or dependent child of a person who meets the requirements of paragraph (c)(2)(i) or (c)(2)(ii) of this section;

(3) He or she has filed an application for Medicare Part A; and

(4) He or she has satisfied the waiting period explained in paragraph (e) of this section.

(d) *Filing an application.* (1) An individual may obtain an application form, and help in completing it, from any social security office.

(2) An application is not valid if it is filed earlier than the third month before the month in which the individual meets the conditions of paragraphs (c)(1), (c)(2), and (c)(4) of this section.

(3) If an individual who has ESRD dies before he or she has filed an application, or is unable to file because of physical or mental condition, a relative or other person responsible for his or her affairs may file in his or her behalf. If a responsible person is not available, the hospital or dialysis facility that furnished treatment may file the application.

(e) *Beginning of entitlement*—(1) *Basic limitations.* Entitlement can begin no earlier than the first month in which the individual meets the conditions specified in paragraph (c) of this section, or the 12th month before the month of application, whichever is later.

(2) *Waiting period.* Entitlement begins on the first day of the third month after the month in which the individual initiates a regular course of renal dialysis, if the course is maintained throughout the waiting period, unless entitlement would begin earlier under paragraph (e) (3) or (4) of this section. This means that if dialysis

began in January, entitlement would begin April 1.

(3) *Exceptions: Early kidney transplant.* If the individual receives a transplant, entitlement begins with the first day of the month in which the transplant was performed. However, if the individual is admitted as an inpatient to a hospital that is an approved renal transplantation center or renal dialysis center (see §405.2102) for procedures preliminary to transplant surgery, entitlement begins—

(i) On the first day of the month in which he or she initially enters the hospital, if the transplant is performed in that month or in either of the next 2 months; or

(ii) On the first day of the second month before the month of kidney transplantation, if the transplant is delayed more than 2 months after the month of initial hospital stay.

For example, if an individual enters the hospital in January, and the transplant is performed in January, February, or March, entitlement would begin January 1. However, if the transplant is performed in April, entitlement would begin February 1.

(4) *Exceptions: Self-dialysis training.* Entitlement begins on the first day of the month in which a regular course of renal dialysis began if:

(i) Before the end of the waiting period, the individual participates in a self-dialysis training program offered by a participating Medicare facility that is approved to provide such training;

(ii) The patient's physician has certified that it is reasonable to expect the individual will complete the training program and will self-dialyze on a regular basis; and

(iii) The regular course of dialysis is maintained throughout the time that would otherwise be the waiting period (unless it is terminated earlier because the individual dies).

(f) *End of entitlement.* Entitlement ends with—

(1) The end of the 12th month after the month in which a regular course of dialysis ends; or

(2) The end of the 36th month after the month in which the individual has received a kidney transplant.

(g) *Resumption of entitlement.* Entitlement is resumed under the following conditions:

(1) An individual who initiates a regular course of renal dialysis or has a kidney transplant during the 12-month period after the previous course of dialysis ended is entitled to Part A benefits and eligible to enroll in Part B with the month the regular course of dialysis is resumed or the month the kidney is transplanted.

(2) An individual who initiates a regular course of renal dialysis or has a kidney transplant during the 36-month period after an earlier kidney transplant is entitled to Part A benefits and eligible to enroll in Part B with the month the regular course of dialysis begins or with the month the subsequent kidney transplant occurs.

(3) An individual who initiates a regular course of renal dialysis more than 12 months after the previous course of regular dialysis ended or more than 36 months after the month of a kidney transplant is eligible to enroll in Part A and Part B with the month in which the regular course of dialysis is resumed. If he or she is otherwise entitled under the conditions specified in paragraph (c) of this section, including the filing of an application, entitlement begins with the month in which dialysis is initiated or resumed, without a waiting period, subject to the limitations of paragraph (e)(1) of this section.

[48 FR 12536, Mar. 25, 1983, as amended at 60 FR 22535, May 8, 1995]

§ 406.15 Special provisions applicable to Medicare qualified government employment.

(a) *Definition.* As used in this section, *Medicare-qualified government employment* means Federal, State, or local government employment that is subject only to the hospital insurance portion of the tax imposed by the Federal Insurance Contributions Act (F.I.C.A.). This includes—

(1) Wages paid for Federal employment after December 1982.

(2) Wages paid to State and local government employees hired after March 31, 1986.

(3) Wages paid to State and local government employees hired before April

1, 1986 but whose employment after March 31, 1986 is covered, for Medicare purposes only, under an agreement under section 218 of the Act.

(b) *Crediting of wages that are taxable only for Medicare purposes.* Medicare qualified government employment is credited in the same way and in the same amount as social security covered employment is credited for monthly social security cash benefit purposes. However, since only the Medicare portion (not the social security portion) of the F.I.C.A. tax is imposed, Medicare qualified government employment does not help qualify the individual for monthly Social Security cash benefits.

(c) *Required quarters of coverage.* (1) To qualify for hospital insurance on the basis of Medicare qualified government employment, an individual must have the number of quarters of coverage necessary to qualify for hospital insurance under § 406.10, § 406.12, or § 406.13.

(2) An individual who has worked in Medicare qualified government employment may qualify for hospital insurance on the basis of Medicare qualified government employment exclusively, or a combination of Medicare qualified government employment and social security covered employment.

(d) *Transitional provision for Federal employment.* Any individual who was a Federal employee at any time both during and before January 1983 will receive credit for quarters of Federal employment before January 1983 without paying tax. This transitional provision applies even if the Federal employee did not receive Federal wages for January 1983, for instance, because he or she was on approved leave without pay or on loan to a State or foreign agency.

(e) *Conditions of entitlement.* An individual who has worked in Medicare qualified government employment (or any related individual who would be entitled to social security cash benefits on the employee's record if Medicare qualified government employment qualified for those benefits) is entitled to hospital insurance benefits if he or she—

(1) Would meet the requirements of § 406.10, § 406.12, or § 406.13 if Medicare qualified government employment