

§ 404.2106

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the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

(f) *Use of alternate participants.* The Commissioner, by written agreement or contract, may arrange for VR services through an alternate participant(s) for any disability beneficiary in the State with respect to whom the State is unwilling to participate through its VR agency(ies). In such a case, we may refer the beneficiary to such alternate participant for necessary VR services. The Commissioner will find that a State is unwilling to participate with respect to any of the following disability beneficiaries in that State:

(1) A disability beneficiary whom we referred to a State VR agency under paragraph (c) or (d) of this section if we do not receive a notice within the stated time period under paragraph (c)(2)(i) of this section of a decision by the VR agency either to accept the beneficiary as a client for VR services or to place the beneficiary into an extended evaluation process;

(2) A disability beneficiary with respect to whom we receive a notice under paragraph (c)(2)(ii) of this section of a decision by the VR agency not to accept the beneficiary as a client for VR services following the completion of the extended evaluation;

(3) The class(es) of disability beneficiaries excluded from the scope of the State's participation if the State has decided to limit participation of its VR agency(ies); and

(4) All disability beneficiaries in the State if the State has decided not to participate through its VR agency(ies).

[59 FR 11912, Mar. 15, 1994]

§ 404.2106 Basic qualifications for alternate participants.

(a) *General.* We may arrange for VR services through an alternate participant by written agreement or contract as explained in § 404.2104(f). An alternate participant may be a public or private agency, organization, institution

or individual (that is, any entity whether for-profit or not-for-profit), other than a State VR agency.

(1) An alternate participant must—

(i) Be licensed, certified, accredited, or registered, as appropriate, to provide VR services in the State in which it provides services; and

(ii) Under the terms of the written contract or agreement, have a plan similar to the State plan described in § 404.2104(a) which shall govern the provision of VR services to individuals.

(2) We will not use as an alternate participant any agency, organization, institution, or individual—

(i) Whose license, accreditation, certification, or registration is suspended or revoked for reasons concerning professional competence or conduct or financial integrity;

(ii) Who has surrendered such license, accreditation, certification, or registration pending a final determination of a formal disciplinary proceeding; or

(iii) Who is precluded from Federal procurement or nonprocurement programs.

(b) *Standards for the provision of VR services.* An alternate participant's plan must provide, among other things, that the provision of VR services to individuals will meet certain minimum standards, including, but not limited to, the following:

(1) All medical and related health services furnished will be prescribed by, or provided under the formal supervision of, persons licensed to prescribe or supervise the provision of these services in the State;

(2) Only qualified personnel and rehabilitation facilities will be used to furnish VR services; and

(3) No personnel or rehabilitation facility described in paragraph (a)(2) (i), (ii), or (iii) of this section will be used to provide VR services.

[59 FR 11914, Mar. 15, 1994]

PAYMENT PROVISIONS

§ 404.2108 Requirements for payment.

(a) The State VR agency or alternate participant must file a claim for payment in each individual case within the time periods specified in § 404.2116;

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(b) The claim for payment must be in a form prescribed by us and contain the following information:

(1) A description of each service provided;

(2) When the service was provided; and

(3) The cost of the service;

(c) The VR services for which payment is being requested must have been provided during the period specified in § 404.2115;

(d) The VR services for which payment is being requested must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, or, in the case of an alternate participant, under a negotiated plan, and must be services that are described in § 404.2114;

(e) The individual must meet one of the VR payment provisions specified in § 404.2101;

(f) The State VR agency or alternate participant must maintain, and provide as we may require, adequate documentation of all services and costs for all disability beneficiaries with respect to whom a State VR agency or alternate participant could potentially request payment for services and costs under this subpart; and

(g) The amount to be paid must be reasonable and necessary and be in compliance with the cost guidelines specified in § 404.2117.

[48 FR 6293, Feb. 10, 1983, as amended at 55 FR 8454, Mar. 8, 1990; 59 FR 11914, Mar. 15, 1994]

§ 404.2109 Responsibility for making payment decisions.

The Commissioner will decide—

(a) Whether a continuous period of 9 months of SGA has been completed;

(b) Whether a disability beneficiary whose disability has ceased should continue to receive benefits under § 404.316(c), 404.337(c), or 404.352(c) for a month after October 1984, based on his or her continued participation in a VR program;

(c) If and when medical recovery has occurred;

(d) Whether documentation of VR services and expenditures is adequate;

(e) If payment is to be based on completion of a continuous 9-month period

of SGA, whether the VR services contributed to the continuous period of SGA;

(f) Whether a VR service is a service described in § 404.2114; and

(g) What VR costs were reasonable and necessary and will be paid.

[55 FR 8454, Mar. 8, 1990, as amended at 59 FR 11914, Mar. 15, 1994; 68 FR 40123, July 7, 2003]

§ 404.2110 What we mean by “SGA” and by “a continuous period of 9 months”.

(a) *What we mean by “SGA”*. In determining whether an individual’s work is SGA, we will follow the rules in §§ 404.1572 through 404.1575. We will follow these same rules for individuals who are statutorily blind, but we will evaluate the earnings in accordance with the rules in § 404.1584(d).

(b) *What we mean by “a continuous period of 9 months”*. A continuous period of 9 months ordinarily means a period of 9 consecutive calendar months. Exception: When an individual does not perform SGA in 9 consecutive calendar months, he or she will be considered to have done so if—

(1) The individual performs 9 months of SGA within 10 consecutive months and has monthly earnings that meet or exceed the guidelines in § 404.1574(b)(2), or § 404.1584(d) if the individual is statutorily blind; or

(2) The individual performs at least 9 months of SGA within 12 consecutive months, and the reason for not performing SGA in 2 or 3 of those months was due to circumstances beyond his or her control and unrelated to the impairment (e.g., the employer closed down for 3 months).

(c) *What work we consider*. In determining if a continuous period of SGA has been completed, all of an individual’s work activity may be evaluated for purposes of this section, including work performed before October 1981, during the waiting period, during the trial work period and after entitlement to disability benefits terminated. We will ordinarily consider only the first 9 months of SGA that occur. The exception will be if an individual who completed 9 months of SGA later stops performing SGA, receives VR services and then performs SGA for a 9-month period. See § 404.2115 for the use of the