

§ 404.401a

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(1) The individual is an alien who has been outside the United States for more than 6 months (see § 404.460);

(2) The individual on whose earnings record entitlement is based has been deported (see § 404.464);

(3) The individual is engaged in substantial gainful activity while entitled to disability insurance benefits based on “statutory blindness” (see § 404.467); or

(4) The individual has not provided satisfactory proof that he or she has a Social Security number or has not properly applied for a Social Security number (see § 404.469).

(e) *Recalculation.* A reduction by recalculation of a benefit amount may be prescribed because an individual has been convicted of certain offenses (see § 404.465) or because the primary insurance amount is recalculated (see subpart C of this part).

(f) *Suspensions.* Suspension of monthly benefits may be required pursuant to section 203(h)(3) of the Act (the Social Security Administration has information indicating that work deductions may reasonably be expected for the year), or pursuant to section 225 of the Act (the Social Security Administration has information indicating a beneficiary is no longer disabled).

[40 FR 30813, July 23, 1975, as amended at 48 FR 37016, Aug. 16, 1983; 56 FR 41789, Aug. 23, 1991; 65 FR 16813, Mar. 30, 2000; 66 FR 38906, July 26, 2001; 68 FR 40122, July 7, 2003; 69 FR 25955, May 10, 2004]

§ 404.401a When we do not pay benefits because of a disability beneficiary’s work activity.

If you are receiving benefits because you are disabled or blind as defined in title II of the Social Security Act, we will stop your monthly benefits even though you have a disabling impairment (§ 404.1511), if you engage in substantial gainful activity during the re-entitlement period (§ 404.1592a) following completion of the trial work period (§ 404.1592). You will, however, be paid benefits for the first month after the trial work period in which you do substantial gainful activity and the two succeeding months, whether or not you do substantial gainful activity in those two months. If anyone else is receiving monthly benefits based on your

earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period. Except as provided in § 404.471, earnings from work activity during a trial work period will not stop your benefits.

[49 FR 22271, May 29, 1984, as amended at 58 FR 64883, Dec. 10, 1993; 71 FR 66865, Nov. 17, 2006]

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

(a) *Deductions, reductions, adjustment.* Deductions because of earnings or work (see §§ 404.415 and 404.417); failure to have a child “in his or her care” (see § 404.421); as a penalty for failure to timely report noncovered work outside the United States, failure to report that he or she no longer has a child “in his or her care,” or failure to timely report earnings (see §§ 404.451 and 404.453); because of unpaid maritime taxes (see § 404.457); or nonpayments because of drug addiction and alcoholism to individuals other than an insured individual who are entitled to benefits on the insured individual’s earnings record are made:

(1) Before making any reductions because of the *maximum* (see § 404.403),

(2) Before applying the benefit *rounding* provisions (see § 404.304(f)), and,

(3) Except for deductions imposed as a penalty (see §§ 404.451 and 404.453), before making any adjustment necessary because an error has been made in the payment of benefits (see subpart F). However, for purposes of charging excess earnings for taxable years beginning after December 1960 or ending after June 1961, see paragraph (b) of this section and § 404.437 for reductions that apply before such charging.

(b) *Reductions, nonpayments.* (1) Reduction because of the *maximum* (see § 404.403) is made:

(i) Before reduction because of simultaneous entitlement to old-age or disability insurance benefits and to other benefits (see § 404.407);

(ii) Before reduction in benefits for age (see §§ 404.410 through 404.413);

(iii) Before adjustment necessary because an error has been made in the payment of benefits (see subpart F of this part);

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(iv) Before reduction because of entitlement to certain public disability benefits provided under Federal, State, or local laws or plans (see § 404.408);

(v) Before nonpayment of an individual's benefits because he is an alien living outside the United States for 6 months (see § 404.460), or because of deportation (see § 404.464);

(vi) Before the redetermination of the amount of benefit payable to an individual who has been convicted of certain offenses (see § 404.465); and

(vii) Before suspension of benefits due to earnings (see § 404.456), for benefits payable or paid for months after December 1995 to a non-working auxiliary or survivor who resides in a different household than the working auxiliary or survivor whose benefits are suspended.

(2) Reduction of benefits because of entitlement to certain public disability benefits (see § 404.408) is made before deduction under section 203 of the Act relating to work (see §§ 404.415, 404.417, 404.451, and 404.453) and failure to have care of a child (see §§ 404.421 and 404.451).

(3) Reduction of the benefit of a spouse who is receiving a Government pension (see § 404.408(a)) is made after the withholding of payments as listed in paragraph (d)(1) of this section and after reduction because of receipt of certain public disability benefits (paragraph (b)(2) of this section).

(c) *Alien outside the United States; deportation nonpayment—deduction.* If an individual is subject to nonpayment of a benefit for a month under § 404.460 or § 404.464, no deduction is made from his benefit for that month under § 404.415, § 404.417, or § 404.421, and no deduction is made because of that individual's work from the benefit of any person entitled or deemed entitled to benefits under § 404.420, on his earnings record, for that month.

(d) *Order of priority—deductions and other withholding provisions.* Deductions and other withholding provisions are applied in accordance with the following order of priority:

(1) Current nonpayments under §§ 404.460, 404.464, 404.465, 404.467, and 404.469;

(2) Current reductions under § 404.408;

(3) Current reductions under § 404.408a;

(4) Current deductions under §§ 404.417 and 404.421;

(5) Current withholding of benefits under § 404.456;

(6) Unpaid maritime tax deductions (§ 404.457);

(7) Withholdings to recover overpayments (see subpart F of this part);

(8) Penalty deductions under §§ 404.451 and 404.453.

[40 FR 30813, July 23, 1975, as amended at 44 FR 29047, May 18, 1979; 48 FR 37016, Aug. 16, 1983; 48 FR 46148, Oct. 11, 1983; 56 FR 41789, Aug. 23, 1991; 60 FR 8146, Feb. 10, 1995; 68 FR 15659, Apr. 1, 2003; 68 FR 40122, July 7, 2003]

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

(a) *General.* (1) The Social Security Act limits the amount of monthly benefits that can be paid for any month based on the earnings of an insured individual. If the total benefits to which all persons are entitled on one earnings record exceed a maximum amount prescribed by law, then those benefits must be reduced so that they do not exceed that maximum.

(2) The method of determining the total benefits payable (the *family maximum*) depends on when the insured individual died or became eligible, whichever is earlier. For purposes of this section, the year in which the insured individual becomes eligible refers generally to the year in which the individual attains age 62 or becomes disabled. However, where eligibility or death is in 1979 or later, the year of death, attainment of age 62, or beginning of current disability does not control if the insured individual was entitled to a disability benefit within the 12 month period preceding current eligibility or death. Instead the year in which the individual became eligible for the former disability insurance benefit is the year of eligibility.

(3) The benefits of an individual entitled as a divorced spouse or surviving divorced spouse will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record will be determined under this section as if no such divorced