

§ 404.436

§ 404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.

Under the annual earnings test, excess earnings (as described in § 404.430) are not charged to any month in which an individual is deemed not entitled to a benefit. A beneficiary (*i.e.*, the insured individual or any person entitled or deemed entitled on the individual's earnings record) is deemed not entitled to a benefit for a month if he is subject to a deduction for that month because of:

- (a) Engaging in noncovered remunerative activity outside the United States (as described in §§ 404.417 and 404.418); or
- (b) Failure to have a child in his or her care (as described in § 404.421).

[32 FR 19159, Dec. 20, 1967, as amended at 38 FR 9429, Apr. 16, 1973; 38 FR 17716, July 3, 1973; 43 FR 8133, Feb. 28, 1978; 68 FR 40123, July 7, 2003]

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

We will further reduce your benefits (other than a disability insurance benefit) because of your excess earnings (see § 404.430), after your benefits may have been reduced because of the following:

- (a) The family maximum (see §§ 404.403 and 404.404), which applies to entitled beneficiaries remaining after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in non-covered remunerative activity outside the United States or failure to have a child in one's care);
- (b) Your entitlement to benefits (see § 404.410) for months before you reach full retirement age (see § 404.409(a)) (this applies only to old-age, wife's, widow's, widower's or husband's benefits);
- (c) Your receipt of benefits on your own earnings record, which reduces (see § 404.407) your entitlement (or deemed entitlement; see § 404.420) to benefits on another individual's earnings record; and
- (d) Your entitlement to benefits payable (or deemed payable) to you based on the earnings record of an individual

20 CFR Ch. III (4-1-08 Edition)

entitled to a disability insurance benefit because of that individual's entitlement to workers' compensation (see § 404.408).

[70 FR 28814, May 19, 2005]

§ 404.439 Partial monthly benefits; excess earnings of the individual charged against his benefits and the benefits of persons entitled (or deemed entitled) to benefits on his earnings record.

Deductions are made against the total family benefits where the excess earnings (as described in § 404.430) of an individual entitled to old-age insurance benefits are charged to a month and require deductions in an amount less than the total family benefits payable on his earnings record for that month (including the amount of a mother's or child's insurance benefit payable to a spouse who is deemed entitled on the individual's earnings record—see § 404.420). The difference between the total benefits payable and the deductions made under the annual earnings test for such month is paid (if otherwise payable under title II of the Act) to each person in the proportion that the benefit to which each is entitled (before the application of the reductions described in § 404.403 for the family maximum, § 404.407 for entitlement to more than one type of benefit, and section 202(q) of the Act for entitlement to benefits before retirement age) and before the application of § 404.304(f) to round to the next lower dollar bears to the total of the benefits to which all of them are entitled, except that the total amount payable to any such person may not exceed the benefits which would have been payable to that person if none of the insured individual's excess earnings had been charged to that month.

Example: A is entitled to an old-age insurance benefit of \$165 and his wife is entitled to \$82.50 before rounding, making a total of \$247.50. After A's excess earnings have been charged to the appropriate months, there remains a partial benefit of \$200 payable for October, which is apportioned as follows:

	Original benefit	Fraction of original	Benefit ¹
A	\$165	2/3	\$133
Wife	82.50	1/3	66

Social Security Administration

§ 404.446

	Original benefit	Fraction of original	Benefit ¹
Total	247.50	199

¹ After deductions for excess earnings and after rounding per § 404.304(f).

[38 FR 9429, Apr. 16, 1973, as amended at 38 FR 17717, July 3, 1973; 43 FR 8133, Feb. 28, 1978; 48 FR 46149, Oct. 11, 1983]

§ 404.440 Partial monthly benefits; prorated share of partial payment exceeds the benefit before deduction for excess earnings.

Where, under the apportionment described in § 404.439, a person's prorated share of the partial benefit exceeds the benefit rate to which he was entitled before excess earnings of the insured individual were charged, such person's share of the partial benefit is reduced to the amount he would have been paid had there been no deduction for excess earnings (see example). The remainder of the partial benefit is then paid to other persons eligible to receive benefits in the proportion that the benefit

of each such other person bears to the total of the benefits to which all such other persons are entitled (before reduction for the family maximum). Thus, if only two beneficiaries are involved, payment is made to one as if no deduction had been imposed; and the balance of the partial benefit is paid to the other. If three or more beneficiaries are involved, however, reapportionment of the excess of the beneficiary's share of the partial benefit over the amount he would have been paid without the deduction is made in proportion to his original entitlement rate (before reduction for the family maximum). If the excess amount involved at any point totals less than \$1, it is not reapportioned; instead, each beneficiary is paid on the basis of the last calculation.

Example: Family maximum is \$150. Insured individual's excess earnings charged to the month are \$25. The remaining \$125 is prorated as partial payment.

	Original benefit	Fraction of original total benefit	Benefit after deductions for excess earnings but before reduction for family maximum	Benefit reduced for maximum but without deductions for excess earnings	Benefit payable after both deductions and reductions (and rounded)
Insured Individual	\$100	2/5	50	100.00	75
Wife	50	1/5	25	16.60	16
Child	50	1/5	25	16.60	16
Child	50	1/5	25	16.60	16

[32 FR 19159, Dec. 20, 1967, as amended at 48 FR 46149, Oct. 11, 1983]

§ 404.441 Partial monthly benefits; insured individual and another person entitled (or deemed entitled) on the same earnings record both have excess earnings.

Where both the insured individual and another person entitled (or deemed entitled) on the same earnings record have excess earnings (as described in § 404.430), their excess earnings are charged, and their partial monthly benefit is apportioned, as follows:

Example: M and his wife are initially entitled to combined total benefits of \$264 per month based on M's old-age insurance benefit of \$176. For the taxable year in question, M's excess earnings were \$1,599 and his wife's excess earnings were \$265. Both were under age 65. M had wages of more than \$340 in all months of the year except February, while

his wife had wages of more than \$340 in all months of the year. After M's excess earnings have been charged to the appropriate months (all months through July except February), there remains a partial benefit payment for August of \$249, which is allocated to M and his wife in the ratio that the original benefit of each bears to the sum of their original benefits: \$166 and \$83. His wife's excess earnings are charged against her full benefit for February (\$88), her partial benefit for August (\$83), her full benefit for September, and from \$6 of her October benefit, leaving an \$82 benefit payable to her for that month.

[48 FR 46149, Oct. 11, 1983]

§ 404.446 Definition of "substantial services" and "services."

(a) *General.* In general, the substantial services test will be applicable