

§416.1161a

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under title XX of the Social Security Act) to provide you with chore, attendant or homemaker services;

(17) Certain support and maintenance assistance as described in §416.1157(c);

(18) Housing assistance as provided in §416.1124(c)(14);

(19) The value of a commercial transportation ticket as described in §416.1124(c)(16). However, if such a ticket is converted to cash, the cash is income in the month your spouse or parent receives the cash;

(20) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in §416.1112(c);

(21) Payments from a fund established by a State to aid victims of crime (see §416.1124(c)(17));

(22) Relocation assistance, as described in §416.1124(c)(18);

(23) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

(24) Impairment-related work expenses, as described in 20 CFR 404.1576, incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under title II of the Act;

(25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of agreements representing the purchase of excluded burial spaces (see §416.1124(c) (9) and (15)); and

(26) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than section 1613(a) of the Social Security Act.

(27) Earned income of a student as described in §416.1112(c)(3).

(b) *For an essential person or for a sponsor of an alien.* We include all the income (as defined in §416.1102) of an essential person or of a sponsor of an alien and of the spouse of the sponsor (if the sponsor and spouse live in the same household) except for support and maintenance assistance described in §416.1157(c), and income excluded under Federal laws other than the Social Se-

curity Act. For information on these laws see the appendix to this subpart.

(c) *For an ineligible child.* Although we do not deem any income to you from an ineligible child, we reduce his or her allocation if the ineligible child has income (see §416.1163(b)(2)). For this purpose, we do not include any of the child's income listed in paragraph (a) of this section. In addition, if the ineligible child is a student (see §416.1861), we exclude his/her earned income subject to the amounts set in §416.1112(c)(3).

(d) *For an eligible alien.* Although we do not deem any income to you from an eligible alien, if your ineligible spouse or ineligible parent is also a sponsor of an eligible alien, we reduce the alien's allocation if he or she has income (see §416.1163(c)(2)). For this purpose exclude any of the alien's income listed in paragraph (a) of this section.

[45 FR 65547, Oct. 3, 1980, as amended at 46 FR 57276, Nov. 23, 1981; 48 FR 33259, July 21, 1983; 50 FR 48576, Nov. 26, 1985; 51 FR 39523, Oct. 29, 1986; 52 FR 8883, Mar. 20, 1987; 52 FR 44971, Nov. 24, 1987; 55 FR 28378, July 11, 1990; 58 FR 63888, 63890, Dec. 3, 1993; 61 FR 1712, Jan. 23, 1996; 61 FR 49964, Sept. 24, 1996; 67 FR 11034, Mar. 12, 2002; 71 FR 45378, Aug. 9, 2006; 71 FR 66866, Nov. 17, 2006]

§416.1161a Income for deeming purposes where Medicaid eligibility is affected.

(a) *General.* In many States, an individual who is eligible for SSI or a Federally administered State optional supplementary payment is in turn eligible for Medicaid. Also, several other States use SSI deeming rules in determining eligibility for Medicaid. In all of these States, in extraordinary cases, the Department will not apply the usual rules on deeming of income where those rules would result in an individual's being ineligible for SSI (or a Federally administered State optional supplementary payment) and Medicaid. Any determination made under this section may at any time be revised based on new information or changed circumstances.

(b) *When special deeming rules apply:*

(1) The Department will consider not applying the usual deeming rules only upon application by a State Medicaid agency (requirement approved under

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OMB No. 0960-0304) and on condition that the agency must show:

(i) Deeming would result in lack of Medicaid eligibility for the individual.

(ii) Medicaid eligibility would, prospectively, result in savings to the Medicaid program; and

(iii) The quality of medical care necessary for the individual would be maintained under the arrangements contemplated.

(2) The Department may also in particular cases require that additional facts be demonstrated, or that other criteria or standards be met, before it determines not to apply the usual deeming rules.

(c) *Amount of income to be deemed.* If the usual rules of deeming do not apply, the Department will determine an amount, if any, to be deemed.

(d) *Temporary effect of special deeming rules.* This provision is temporary and will be continued only through December 31, 1984. Determinations made under this section will nevertheless remain in effect unless they are revised based on changed circumstances (including establishment in the State of a Medicaid program of home and community-based services or eligibility under a State plan provision) or new information.

[49 FR 5747, Feb. 15, 1984]

§416.1163 How we deem income to you from your ineligible spouse.

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in §416.1161(a).

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. *Exception:* We do not allocate for ineligible children who are receiving public income-maintenance payments (see §416.1142(a)).

(1) The allocation for each ineligible child is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases when-

ever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in §416.1160(b)(2) applies.

(2) Each ineligible child's allocation is reduced by the amount of his or her own income as described in §416.1161(c).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations we deduct the balance from your ineligible spouse's earned income.

(c) *Allocations for aliens sponsored by your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and who have income deemed from your ineligible spouse.

(1) The allocation for each alien who is sponsored by and who has income deemed from your ineligible spouse is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to compute your benefit for a current month is based on the Federal benefit rate that applied in the second prior month (unless the current month is the first or second month of eligibility or re-eligibility as explained in §416.420(a) and (b) (2) and (3)).

(2) Each alien's allocation is reduced by the amount of his or her own income as described in §416.1161(d).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations, we deduct the balance from your ineligible spouse's earned income.

(d) *Determining your eligibility for SSI.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to