

§416.1165

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one-half the remainder) to Mr. Simon's \$237 earned income, leaving \$86. This gives the couple total income of \$166 (\$80+\$86.). The \$166 is less than the \$504 Federal benefit rate for a couple so Mrs. Simon would be eligible based on deeming. Since she is eligible, we determine the amount of her benefit based on her income (including any deemed from Mr. Simon) in July. For the way we deem Mr. Simon's income to Mr. Ollie, see the rules in §416.1166a.

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§416.1165 How we deem income to you from your ineligible parent(s).

If you are a child living with your parents, we apply the deeming rules to you through the month in which you reach age 18. We follow the rules in paragraphs (a) through (e) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (f) of this section. The rules in paragraph (g) of this section apply to changes in your family situation. Paragraph (i) of this section discusses the conditions under which we will not deem your ineligible parents' income to you if you are a disabled child living with your parents.

(a) *Determining your ineligible parent's income.* We first determine how much current monthly earned and unearned income your ineligible parents have, using the appropriate exclusions in §416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in §416.1163(b).

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible parent.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible parent as described in §416.1163(c).

(d) *Allocations for your ineligible parent(s).* We next deduct allocations for your parent(s). We do not deduct an allocation for a parent who is receiving public income-maintenance payments (see §416.1142(a)). The allocations are calculated as follows:

(1) We first deduct \$20 from the parents' combined unearned income, if any. If they have less than \$20 in un-

earned income, we subtract the balance of the \$20 from their combined earned income.

(2) Next, we subtract \$65 plus one-half the remainder of their earned income.

(3) We total the remaining earned and unearned income and subtract—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(e)(1) *When you are the only eligible child.* If you are the only eligible child in the household, we deem any of your parents' current monthly income that remains to be your unearned income. We combine it with your own unearned income and apply the exclusions in §416.1124 to determine your countable unearned income in the month. We add this to any countable earned income you may have and subtract the total from the Federal benefit rate for an individual to determine whether you are eligible for benefits.

(2) *When you are not the only eligible child.* If your parents have more than one eligible child under age 18 in the household, we divide the parental income to be deemed equally among those eligible children.

(3) *When one child's income makes that child ineligible.* We do not deem more income to an eligible child than the amount which, when combined with the child's own income, reduces his or her SSI benefit to zero. (For purposes of this paragraph, an SSI benefit includes any federally administered State supplement). If the share of parental income that would be deemed to a child makes that child ineligible (reduces the amount to zero) because that child has other countable income, we deem any remaining parental income to other eligible children under age 18 in the household in the manner described in paragraph (e)(2) of this section.

(f) *Determining your SSI benefit.* In determining your SSI benefit amount, we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible parents' income in the second month prior to the current month. We vary this rule if any of the exceptions in §416.1160(b)(2) applies

(for example, if this is the first month you are eligible for payment of an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility for payment (or re-eligibility) we deem your ineligible parents' income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month we deem your ineligible parents' income in that month to determine whether you are eligible for a benefit but we again use your countable income (including any that was deemed to you) in the first month to determine the amount of your benefit.

(g) *Special rules for a change in status.* We have special rules to begin or stop deeming your ineligible parents' income to you when a change in your family situation occurs.

(1) *Ineligible parent becomes eligible.* If your ineligible parent becomes eligible for SSI benefits, there will be no income to deem from that parent to you to determine your eligibility for SSI benefits beginning with the month your parent becomes eligible. However, to determine your benefit amount, we follow the rule in §416.420.

(2) *Eligible parent becomes ineligible.* If your eligible parent becomes ineligible, we deem your parents' income to you in the first month of the parents' ineligibility to determine whether you continue to be eligible for SSI benefits. However, if you continue to be eligible, in order to determine your benefit amount, we follow the regular rule of counting your income in the second month prior to the current month.

(3) *Ineligible parent dies.* If your ineligible parent dies, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see §416.1160(b)(2)(B)). However, if you live with two ineligible parents, and one dies, we continue to deem income from the surviving parent.

(4) *Ineligible parent and you no longer live in the same household.* If your ineligible parent and you no longer live in the same household, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the first month following the month in which one of you leaves. However (if you continue to be eligible), to determine your benefit amount we follow the rule in §416.420 of counting your income including income deemed from your parent in the second month prior to the current month.

(5) *Ineligible parent and you begin living in the same household.* If your ineligible parent and you begin living in the same household, we consider that parent's income to determine whether you continue to be eligible for SSI benefits beginning with the month following the month of change. However (if you continue to be eligible), to determine your benefit amount, we follow the rule in §416.420 of counting your income in the second month prior to the current month.

(6) *You become subject to the \$30 Federal benefit rate.* If you become a resident of a medical treatment facility and the \$30 Federal benefit rate applies, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits beginning with the first month for which the \$30 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the \$30 Federal benefit rate applies, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent.

(7) *You attain age 18.* In the month following the month in which you attain age 18 and thereafter, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits. In determining your benefit amount beginning with the month following your attainment of age 18, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see §416.1160(b)(2)(B)). Your income for the current and subsequent months must include any income in the form of cash

or in-kind support and maintenance provided by your parents. If you attain age 18 and stop living in the same household with your ineligible parent, these rules take precedence over paragraph (g)(4) of this section which requires continued use of deemed income in the benefit computation for 2 months following the month you no longer live in the same household.

(h) *Examples.* These examples show how we deem an ineligible parent's income to an eligible child when none of the exceptions in §416.1160(b)(2) applies. The Federal benefit rates are those effective January 1, 1992.

Example 1. Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of \$365 per month and his father earns \$1,165 per month. Henry and his brother have no income. First we deduct an allocation of \$211 for Henry's brother from the unearned income. This leaves \$154 in unearned income. We reduce the remaining unearned income further by the \$20 general income exclusion, leaving \$134. We then reduce the earned income of \$1,165 by \$65 leaving \$1,100. Then we subtract one-half of the remainder, leaving \$550. To this we add the remaining unearned income of \$134 resulting in \$684. From this, we subtract the parent allocation of \$633 (the Federal benefit rate for a couple) leaving \$51 to be deemed as Henry's unearned income. Henry has no other income. We apply Henry's \$20 general income exclusion which reduces his countable income to \$31. Since that amount is less than the \$422 Federal benefit rate for an individual, Henry is eligible. We determine his benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See §416.420.

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives \$542 a month in unearned income. We reduce the unearned income by the \$20 general income exclusion, leaving \$522. We then subtract the amount we allocate for the mother's needs, \$422 (the Federal benefit rate for an individual). The amount remaining to be deemed to James and Tony is \$100, which we divide equally between them resulting in \$50 deemed unearned income to each child. We then apply the \$20 general income exclusion, leaving each child with \$30 countable income. The \$30 of unearned income is less than the \$422 Federal benefit rate for an individual, so the children are eligible. We then determine each child's benefit by subtracting his countable income (including

deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See §416.420.

Example 3. Mrs. Jones is the ineligible mother of two disabled children, Beth and Linda, and has sponsored an eligible alien, Mr. Sean. Beth, Linda, and Mr. Sean have no income; Mrs. Jones has unearned income of \$924 per month. We reduce the mother's unearned income by the \$211 allocation for Mr. Sean, leaving \$713. We further reduce her income by the \$20 general income exclusion, which leaves a balance of \$693. Next, we subtract the amount we allocate for the mother's needs, \$422 (the amount of the Federal benefit rate for an individual). The balance of \$271 to be deemed is divided equally between Beth and Linda. Each now has unearned income of \$135.50 from which we deduct the \$20 general income exclusion, leaving each child with \$115.50 countable income. Since this is less than the \$422 Federal benefit rate for an individual, the girls are eligible. We then determine each child's benefit by subtracting her countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See §416.420. (For the way we deem the mother's income to Mr. Sean, see examples No. 3 and No. 4 in §416.1166a.)

Example 4. Jack, a disabled child, lives with his mother, father, and two brothers, none of whom are eligible for SSI. Jack's mother receives a private pension of \$350 per month and his father works and earns \$1,525 per month. We allocate a total of \$422 for Jack's ineligible brothers and subtract this from the parents' total unearned income of \$350; the parents' unearned income is completely offset by the allocations for the ineligible children with an excess allocation of \$72 remaining. We subtract the excess of \$72 from the parents' total earned income leaving \$1,453. We next subtract the combined general income and earned income exclusions of \$85 leaving a remainder of \$1,368. We subtract one-half the remainder, leaving \$684 from which we subtract the parents' allocation of \$633. This results in \$51 deemed to Jack. Jack has no other income, so we subtract the general income exclusion of \$20 from the deemed income leaving \$31 as Jack's countable income. Since this is below the \$422 Federal benefit rate for an individual, Jack is eligible. We determine his payment amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month. See §416.420.

(i) *Disabled child under age 18.* If you are a disabled child under the age of 18 living with your parents, we will not deem your parents' income to you if—

(1) You previously received a reduced SSI benefit while a resident of a medical treatment facility, as described in §416.414;

(2) You are eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(3) You would otherwise be ineligible for a Federal SSI benefit because of the deeming of your parents' income or resources.

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§416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child. For the purpose of this section, SSI benefits include any federally administered State supplement. We then follow the rules in §416.1165(e) to determine the child's eligibility for SSI benefits and in §416.1165(f) to determine the benefit amount.

(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 next deduct an allocation for each ineligible child in the household as described in §416.1163(b).

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible spouse as described in §416.1163(c).

(d) *Determining your eligibility for SSI benefits and benefit amount.* We then follow the rules in §416.1163(c) to find out if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow paragraph (e) of this section to deter-

mine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in §416.1163(e).

(e) *Determining your child's eligibility and amount of benefits.* (1) If you are eligible for SSI benefits after your spouse's income has been deemed to you, we do not deem any income to your child. To determine the child's own countable income without deeming from the benefit rate for an individual.

(2) If you are not eligible for SSI benefits after your ineligible spouse's income has been deemed to you, we deem to your eligible child any of your spouse's income which was not used to reduce your SSI benefits to zero.

(f) *Examples.* These examples show how we deem income to an eligible individual and an eligible child in the same household. The Federal benefit rates used are those effective January 1, 1984.

Example 1. Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns \$605 per month. We determine Mary's eligibility first. Since John's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$605 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the \$605 by the \$20 general income exclusion, and then by the earned income exclusion of \$65 plus one-half the remainder. This leaves John and Mary with \$260 in countable income. The \$260 countable income is less than the \$472 Federal benefit rate for a couple, so Mary is eligible; therefore, there is no income to be deemed to Peter.

Example 2. Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns \$1,065 a month. Since Dora's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$1,065 as earned income available to Al and Dora as a couple. We reduce this income by the \$20 general income exclusion and then by \$65 plus one-half the remainder (earned income exclusion), leaving \$490 in countable income. Al is ineligible because the couple's