

(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.

[52 FR 8885, Mar. 20, 1987, as amended at 54 FR 19164, May 4, 1989; 57 FR 48562, Oct. 27, 1992; 60 FR 361, Jan. 4, 1995; 62 FR 1056, Jan. 8, 1997; 64 FR 31974, June 15, 1999; 72 FR 50874, Sept. 5, 2007]

§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

§416.1166a

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

\$490 countable income exceeds the \$472 Federal benefit rate for a couple. Since AI is ineligible, we deem to Jeff \$18, the amount of income over and above the amount which causes AI to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the \$18 deemed to Jeff as unearned income, and we apply the \$20 general income exclusion, reducing Jeff's countable income to zero. Jeff is eligible.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48578, Nov. 26, 1985; 52 FR 8887, Mar. 20, 1987; 64 FR 31975, June 15, 1999]

§416.1166a How we deem income to you from your sponsor if you are an alien.

Before we deem your sponsor's income to you if you are an alien, we determine how much earned and unearned income your sponsor has under §416.1161(b). We then deduct allocations for the sponsor and the sponsor's dependents. This is an amount equal to the Federal benefit rate for an individual for the sponsor (or for each sponsor even if two sponsors are married to each other and living together) plus an amount equal to one-half the Federal benefit rate for an eligible individual for each dependent of the sponsor. An ineligible dependent's income is not subtracted from the sponsor's dependent's allocation. We deem the balance of the income to be your unearned income.

(a) *If you are the only alien applying for or already eligible for SSI benefits who has income deemed to you from your sponsor.* If you are the only alien who is applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(b) *If you are not the only alien who is applying for or already eligible for SSI benefits and who has income deemed from your sponsor.* If you and other aliens applying for or already eligible for SSI benefits are sponsored by the same sponsor, we deem the income to each of you as though you were the only alien sponsored by that person. The income deemed to you becomes your unearned income.

(c) *When you are an alien and income is no longer deemed from your sponsor.* If you are an alien and have had your sponsor's income deemed to you, we

stop deeming the income with the month in which the third anniversary of your admission into the United States occurs.

(d) *When sponsor deeming rules do not apply to you if you are an alien.* If you are an alien, we do not apply the sponsor deeming rules to you if—

(1) *You are a refugee.* You are a refugee admitted to the United States as the result of application of one of three sections of the Immigration and Nationality Act: (1) Section 203(a)(7), effective before April 1, 1980; (2) Section 207(c)(1), effective after March 31, 1980; or (3) Section 212(d)(5);

(2) *You have been granted asylum.* You have been granted political asylum by the Attorney General of the United States; or

(3) *You become blind or disabled.* If you become blind or disabled as defined in §416.901 (at any age) after your admission to the United States, we do not deem your sponsor's income to you to determine your eligibility for SSI benefits beginning with the month in which your disability or blindness begins. However, to determine your benefit payment, we follow the rule in §416.420 of counting your income in the second month prior to the current month.

(e) *Examples.* These examples show how we deem a sponsor's income to an eligible individual who is an alien when none of the exceptions in §416.1160(b)(2) applies. The income, income exclusions, and the benefit rates are in monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Mr. John, an alien who has no income, has been sponsored by Mr. Herbert who has monthly earned income of \$1,300 and unearned income of \$70. Mr. Herbert's wife and three children have no income. We add Mr. Herbert's earned and unearned income for a total of \$1,370 and apply the allocations for the sponsor and his dependents. Allocations total \$1,008. These are made up of \$336 (the Federal benefit rate for an eligible individual) for the sponsor, plus \$672 (one-half the Federal benefit rate for an eligible individual, \$168 each) for Mr. Herbert's wife and three children. The \$1,008 is subtracted from Mr. Herbert's total income of \$1,370 which leaves \$362 to be deemed to Mr. John as his unearned income. Mr. John's only exclusion is the \$20 general income exclusion. Since