

the \$342 balance exceeds the \$336 Federal benefit rate, Mr. John is ineligible.

*Example 2.* Mr. and Mrs. Smith are an alien couple who have no income and who have been sponsored by Mr. Hart. Mr. Hart has earned income of \$1,350 and his wife, Mrs. Hart, who lives with him, has earned income of \$150. Their two children have no income. We combine Mr. and Mrs. Hart's income (\$1,350+\$150=\$1,500). We deduct the allocations of \$336 for Mr. Hart (the Federal benefit rate for an individual) and \$504 for Mrs. Hart and the two children (\$168 or one-half the Federal benefit rate for an eligible individual for each), a total of \$840. The allocations (\$840) are deducted from the total \$1,500 income which leaves \$660. This amount must be deemed independently to Mr. and Mrs. Smith. Mr. and Mrs. Smith would qualify for SSI benefits as a couple in the amount of \$504 if no income had been deemed to them. The \$1,320 (\$660 each to Mr. and Mrs. Smith) deemed income is unearned income to Mr. and Mrs. Smith and is subject to the \$20 general income exclusion, leaving \$1,300. This exceeds the couple's rate of \$504 so Mr. and Mrs. Smith are ineligible for SSI benefits.

*Example 3.* Mr. Bert and Mr. Davis are aliens sponsored by their sister Mrs. Jean, who has earned income of \$800. She also receives \$250 as survivors' benefits for her two minor children. We do not consider the \$250 survivors' benefits to be Mrs. Jean's income because it is the children's income. We exclude \$336 for Mrs. Jean (the Federal benefit rate for an individual) plus \$336 (\$168, one-half the Federal benefit rate for an eligible individual for each child), a total of \$672. We subtract the \$672 from Mrs. Jean's income of \$800, which leaves \$128 to be deemed to Mr. Bert and Mr. Davis. Each of the brothers is liable for rent in the boarding house (a commercial establishment) where they live. Each lives in his own household, receives no in-kind support and maintenance, and is eligible for the Federal benefit rate of \$336. The \$128 deemed income is deemed both to Mr. Bert and to Mr. Davis. As a result, each has countable income of \$108 (\$128 minus the \$20 general income exclusion). This is less than \$336, the Federal benefit rate for an individual, so that both are eligible for SSI. We use their income in a prior month to determine their benefit payments.

*Example 4.* The same situation applies as in example 3 except that one of Mrs. Jean's children is disabled and eligible for SSI benefits. The eligibility of the disabled child does not affect the amount of income deemed to Mr. Bert and Mr. Davis since the sponsor-to-alien and parent-to-child rules are applied independently. The child's countable income is computed under the rules in §416.1165.

[52 FR 8887, Mar. 20, 1987]

#### §416.1167 Temporary absences and deeming rules.

(a) *General.* During a temporary absence, we continue to consider the absent person a member of the household. A temporary absence occurs when—

(1) You, your ineligible spouse, parent, or an ineligible child leaves the household but intends to and does return in the same month or the month immediately following; or

(2) You enter a medical treatment facility and are eligible for either benefit payable under §416.212. We consider your absence to be temporary through the last month benefits under §416.212 were paid unless you were discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

(b) *Child away at school.* If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider you temporarily absent from your parents' household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income (or resources) to you. Being subject to parental control affects deeming to you only if you are away at school.

(c) *Active duty military service.* If your ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty, we continue to consider that person to be living in the same household as you, absent evidence to the contrary. If we determine that during such an absence, evidence indicates that your spouse or parent should no longer be considered to be living in the same household as you, then deeming will cease. When such evidence exists, we determine the month in which your spouse or parent should no longer be considered to be living in the same household as you and stop deeming his or her income and resources beginning with the month following that month.

*Example:* Tom is a child who receives SSI. In January 1996, Tom's father leaves the household due solely to an active duty assignment as a member of the Armed Forces. Five months later in June 1996, while Tom's

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father is still on an active duty assignment, Tom's parents file for divorce. As a result, Tom's father will not be returning to live in Tom's household. Therefore, Tom's father should no longer be considered to be living in the same household with Tom. Beginning July 1, 1996, deeming from Tom's father will cease.

[50 FR 48579, Nov. 26, 1985, as amended at 61 FR 10280, Mar. 13, 1996; 62 FR 42411, Aug. 7, 1997; 72 FR 50874, Sept. 5, 2007]

### §416.1168 How we deem income to you from your essential person.

(a) *Essential person's income.* If you have an essential person, we deem all of that person's income (except any not counted because of other Federal statutes as described in §416.1161(b)) to be your own unearned income. If your essential person is also your ineligible spouse, or if you are a child whose essential person is your ineligible parent, we apply the essential person deeming rules in this section. See §416.1169 for the rules that apply when an ineligible spouse or parent ceases to be your essential person.

(b) *Determining your eligibility for an SSI benefit.* We apply the exclusions to which you are entitled under §§416.1112 and 416.1124 to your earned income and to your unearned income which includes any income deemed from your essential person. After combining the remaining amounts of countable income, we compare the total with the Federal benefit rate for a qualified individual (see §416.413) to determine whether you are eligible for an SSI benefit.

(c) *Determining your SSI benefit amount.* We determine your SSI benefit amount in the same way that we determine your eligibility. However, in following the procedure in paragraphs (a) and (b) of this section we use your essential person's income that we deemed to you in the second month prior to the current month. *Exception:* Beginning with the month in which you no longer have your essential person, we do not use any of the income deemed to you from that essential person in a prior month to determine the amount of your benefit (see §416.1160(a)(3)(ii)(C)). We use only your own countable income in a prior month.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48579, Nov. 26, 1985]

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### §416.1169 When we stop deeming income from an essential person.

If including the income deemed to you from your essential person causes you to be ineligible for an SSI benefit, you are no longer considered to have that essential person whose income makes you ineligible. To determine your eligibility for that month we deduct only your own countable income from your Federal benefit rate. However, other deeming rules may then apply as follows:

(a) *Essential person is your spouse.* If the person who was your essential person is your ineligible spouse, we apply the deeming rules in §416.1163 beginning with the month that the income of your essential person is no longer deemed to you.

(b) *Essential person is your parent.* If you are a child under age 18, and the person who was your essential person is your ineligible parent, we apply the deeming rules in §416.1165 beginning with the month that the income of your essential person is no longer deemed to you.

[50 FR 48579, Nov. 26, 1985]

### ALTERNATIVE INCOME COUNTING RULES FOR CERTAIN BLIND INDIVIDUALS

#### §416.1170 General.

(a) *What the alternative is.* If you are blind and meet the requirements in §416.1171, we use one of two rules to see how much countable income you have. We use whichever of the following rules results in the lower amount of countable income:

(1) The SSI income exclusions in §§416.1112 and 416.1124; or

(2) The disregards that would have applied under the State plan for October 1972.

(b) *State plan.* As used in this subpart, *State plan for October 1972* means a State plan for providing assistance to the blind under title X or XVI (AABD) of the Social Security Act. That plan must have been approved under the provisions of 45 CFR chapter II as in effect for October 1972.

#### §416.1171 When the alternative rules apply.

(a) *Eligibility for the alternative.* We use the alternative income counting