

## Social Security Administration

## § 416.1260

funds previously excluded under paragraph (a) of this section may not be excluded if the individual establishes a subsequent period of eligibility by filing a new application.

[61 FR 67207, Dec. 20, 1996]

### § 416.1248 Exclusion of gifts to children with life-threatening conditions.

In determining the resources of an individual who has not attained 18 years of age and who has a life-threatening condition, we will exclude any gifts from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. We will exclude any in-kind gift that is not converted to cash and cash gifts to the extent that the total gifts excluded pursuant to this paragraph do not exceed \$2000 in any calendar year. In-kind gifts converted to cash are considered under income counting rules in the month of conversion.

[70 FR 41139, July 18, 2005]

### § 416.1249 Exclusion of payments received as restitution for misuse of benefits by a representative payee.

In determining the resources of an individual (and spouse, if any), the unspent portion of any payment received by the individual as restitution for title II, title VIII or title XVI benefits misused by a representative payee under § 404.2041, § 408.641 or § 416.641, respectively, is excluded for 9 months following the month of receipt.

[70 FR 41139, July 18, 2005]

### § 416.1250 How we count grants, scholarships, fellowships or gifts.

(a) When we determine your resources (or your spouse's, if any), we will exclude for 9 months any portion of any grant, scholarship, fellowship, or gift that you use or set aside to pay the cost of tuition, fees, or other necessary educational expenses at any educational institution, including vocational or technical institutions. The 9 months begin the month after the month you receive the educational assistance.

(b)(1) We will count as a resource any portion of a grant, scholarship, fellow-

ship, or gift you (or your spouse, if any) did not use or set aside to pay tuition, fees, or other necessary educational expenses. We will count such portion of a grant, scholarship, fellowship or gift as a resource in the month following the month of receipt.

(2) If you use any of the funds that were set aside for tuition, fees, or other necessary educational expenses for another purpose within the 9-month exclusion period, we will count such portion of the funds used for another purpose as income in the month you use them.

(3) If any portion of the funds are no longer set aside for paying tuition, fees, or other necessary educational expenses within the 9-month exclusion period, we will count the portion of the funds no longer set aside as income in the month when they are no longer set aside for paying tuition, fees, or other necessary educational expenses. We will consider any remaining funds that are no longer set aside or used to pay tuition, fees, or other educational expenses as a resource in the month following the month we count them as income.

(4) We will count any portion of grants, scholarships, fellowships, or gifts remaining unspent after the 9-month exclusion period as a resource beginning with the 10th month after you received the educational assistance.

[71 FR 45378, Aug. 9, 2006]

### § 416.1260 Special resource provision for recipients under a State plan.

(a) *General.* In the case of any individual (or individual and spouse, as the case may be) who for the month of December 1973 was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI, of the Act (see § 416.121), the resources of such individual (or individual and spouse, as the case may be) shall be deemed not to exceed the amount specified in § 416.1205 during any period that the resources of such individual (or individual and spouse, as the case may be) do not exceed the maximum amount of resources specified in such State plan as in effect in October 1972, provided that such individual:

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(1) Has, since December 1973, resided continuously in the State under whose plan he was eligible for the month of December 1973; and

(2) Has not, since December 1973, been ineligible for an SSI benefit for a period exceeding 6 consecutive months. An SSI benefit means a Federal benefit only; it does not include any State supplementation.

(b) For purposes of this section, an individual will cease to reside continuously in a State if he leaves the State with the present intention to abandon his home there. In the absence of evidence to the contrary,

(1) If an individual leaves the State for a period of 90 calendar days or less, his absence from the State will be considered temporary and he will be considered to continue to reside in such State; and

(2) If an individual leaves the State for a period in excess of 90 calendar days, he will no longer be considered to reside continuously in such State.

(c) *State plan; defined.* As used in this subpart, *an approved State plan as in effect in October 1972* and *State plan for October 1972* means a State plan as approved under the provisions of 45 CFR Ch. II as in effect in October 1972.

[41 FR 47424, Oct. 29, 1976, as amended at 52 FR 29841, Aug. 12, 1987]

**§416.1261 Application of special resource provision.**

In determining the resources of an individual (and spouse, if any) who meets the conditions specified in §416.1260(a), either the State plan resource limit and exclusions (as specified in §416.1260) or the resource limit (as specified in §416.1205) and exclusions (as specified in §416.1210), whichever is most advantageous to the individual (and spouse, if any) will be used.

**§416.1262 Special resource provision applicable in cases involving essential persons.**

(a) *Essential persons continuously meet criteria of eligibility.* In determining the resources of an individual (and spouse, if any) who meet the conditions specified in §416.1260 and whose payment standard is increased because such individual has in his home an essential person (as defined in §416.222), either

the State plan resource limit and exclusions (as specified in §416.1260) applicable to cases in which the needs of an essential person are taken into account in determining the individual's needs, or the resource limit as specified in §416.1205 and exclusions as specified in §416.1210, whichever is most advantageous to the individual (and spouse), will be used.

(b) *Essential person fails to meet criteria of eligibility.* If for any month after December 1973 a person fails to meet the criteria for an essential person as specified in §416.222, in determining the resources of an individual (and spouse, if any) either the State plan resource limit and criteria as specified in §416.1260 applicable to the individual or individual and spouse, as the case may be, or the resource limit as specified in §416.1205 and exclusions as specified in §416.1210, whichever is most advantageous to the individual (and spouse), will be used.

[39 FR 33797, Sept. 20, 1974, as amended at 51 FR 10616, Mar. 28, 1986]

**§416.1264 Spouse ineligible under a State plan in December 1973.**

In the case of an individual who meets the conditions specified in §416.1260 but whose spouse does not meet such conditions, whichever of the following is most advantageous for the individual (and spouse, if any) will be applied:

(a) The resource limitation and exclusions for an individual as in effect under the approved State plan for October 1972, or

(b) The resource limitation (as specified in §416.1205) and exclusions (as specified in §416.1210) for an individual and eligible spouse or an individual living with an ineligible spouse.

**§416.1266 Individual under special resource provision dies after December 1973.**

Where only one person, either the eligible individual or the eligible spouse, meets the conditions specified in §416.1260 and that person dies after December 1973, the State plan resource limitation and exclusions will not be applied to determine the amount of resources of the surviving individual. The resource limitation (as specified in