

Social Security Administration

§ 416.2045

(b) *Relationship to actual cost differences.* Under the agreement, variations in State supplementary payment levels will be permitted for each living arrangement the State elects. These differences must be based on rational distinctions between both the types of living arrangements and the costs of those arrangements.

(c) *Effective month of State supplementary payment category.* The State supplementary payment category which applies in the current month will be used to determine the State payment level in that month. This rule applies even if the countable income in a prior month is used to determine the amount of State supplementary payment.

[40 FR 7640, Feb. 21, 1975, as amended at 50 FR 48579, Nov. 26, 1985; 56 FR 41455, Aug. 21, 1991; 62 FR 38455, July 18, 1997]

§ 416.2035 **Optional supplementation: Additional State options.**

(a) *Residency requirement.* A State or political subdivision may impose, as a condition of eligibility, a residency requirement which excludes from eligibility for State supplementary payment any individual who has resided in such State (or political subdivision thereof) for less than a minimum period prescribed by the State. Any such residency requirement will be specified in the agreement.

(b) *Lien and relative responsibility.* A State which elects Federal administration of its supplementary payments may place a lien upon property of an individual as a consequence of the receipt of such payments or may require that a relative of the individual contribute to a reasonable extent to the support of the individual, providing it is stated in the agreement that:

(1) The Commissioner has determined that the specific State laws and their enforcement are consistent with the supplemental security income program purpose of providing unencumbered cash payments to recipients; and

(2) The Federal Government is not involved in the administration of such laws and will not vary the State supplementary payment amount it makes to comply with such laws; and

(3) Neither the basic Federal benefit nor any part of the State supple-

mentary payment financed by Federal funds will be subject to the liens or encumbrances of such laws.

[40 FR 7640, Feb. 21, 1975, as amended at 62 FR 38455, July 18, 1997]

§ 416.2040 **Limitations on eligibility.**

Notwithstanding any other provision of this subpart, the eligibility of an individual (or couple) for optional State supplementary payments administered by the Federal Government in accordance with this subpart shall be limited as follows:

(a) *Inmate of public institution.* A person who is a resident in a public institution for a month, is ineligible for a Federal benefit for that month under the provision of § 416.211(a), and does not meet the requirements for any of the exceptions in § 416.211 (b), (c), or (d), or § 416.212, also shall be ineligible for a federally administered State supplementary payment for that month.

(b) *Ineligible persons.* No person who is ineligible for a Federal benefit for any month under sections 1611(e)(1)(A), (2), (3), or (f) of the Act (failure to file; refuses treatment for drug addiction or alcoholism; outside the United States) or other reasons (other than the amount of income) shall be eligible for such State supplementation for such month.

(c) *Recipient eligible for benefits under § 416.212.* A recipient who is institutionalized and is eligible for either benefit payable under § 416.212 for a month or months may also receive federally administered State supplementation for that month. Additionally, a recipient who would be eligible for benefits under § 416.212 but for countable income which reduces his or her Federal SSI benefit to zero, may still be eligible to receive federally administered State supplementation.

[40 FR 7640, Feb. 21, 1975, as amended at 56 FR 41455, Aug. 21, 1991; 61 FR 10280, Mar. 13, 1996; 68 FR 40124, July 7, 2003]

§ 416.2045 **Overpayments and underpayments; federally administered supplementation.**

(a) *Overpayments.* Upon determination that an overpayment has been made, adjustments will be made against future federally administered State supplementary payments for

§ 416.2047

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

which the person is entitled. Rules and requirements (see §§ 416.550 through 416.586) in effect for recovery (or waiver) of supplemental security income benefit overpayments shall also apply to the recovery (or waiver) of federally administered State supplementary overpaid amounts. If the overpaid person's entitlement to the State supplementary payments is terminated prior to recoupment of the overpaid State supplementary payment amount, and the overpayment cannot be recovered from a Federal benefit payable under this part, the person's record will be annotated (specifying the amount of the overpayment) to permit recoupment if the person becomes re-entitled to supplementary payments of such State or to a Federal benefit under this part.

(b) *Underpayments.* Upon determination that an underpayment of State supplementary payments is due and payable, the underpaid amount shall be paid to the underpaid claimant directly, or his representative. If the underpaid person dies before receiving the underpaid amount of State supplementary payment the underpaid amount shall be paid to the claimant's eligible spouse. If the deceased claimant has no eligible spouse, no payment of the underpaid amount shall be made. (See §§ 416.538 through 416.543.)

[40 FR 7640, Feb. 21, 1975, as amended at 65 FR 16815, Mar. 30, 2000]

§ 416.2047 Waiver of State supplementary payments.

(a) *Waiver request in writing.* Any person who is eligible to receive State supplementary payments or who would be eligible to receive such State supplementary payments may waive his right to receive such payments if such person makes a written request for waiver of State supplementary payments. Any such request made at time of application for the Federal benefit shall be effective immediately. Any such request filed after the application is filed shall be effective the month the request is received in a social security office, or earlier if the recipient refunds to the Social Security Administration the amount of any supplementary payment(s) made to him for the subject period.

(b) *Revocation of waiver.* Any individual who has waived State supplementary payments may revoke such waiver at any time by making a written request to any social security office. The revocation will be effective the month in which it is filed. The date such request is received in a social security office or the postmarked date, if the written request was mailed, will be the filing date, whichever is earlier.

§ 416.2050 Mandatory minimum State supplementation.

(a) *Determining the amount.* The amount of a mandatory State supplementary payment in the case of any eligible individual or couple for any month is equal to:

(1) The amount by which such individual or couple's December 1973 income (as defined in paragraph (b) of this section) exceeds the amount of such individual or couple's title XVI benefit plus other income which would have been used by such State in computing the assistance payable under the State's approved plan for such month; or

(2) Such greater amount as the State may specify.

(b) *December 1973 income.* "December 1973 income" means an amount equal to the aggregate of:

(1) *Money payments.* The amount of the aid or assistance in the form of money payments (as defined in 45 CFR 234.11(a)) which an individual would have received (including any part of such amount which is attributable to meeting special needs or special circumstances) under a State plan approved under title I, X, XIV, or XVI of the Act in accordance with the terms and conditions of such plan relating to eligibility for and amount of such aid or assistance payable thereunder which were in effect for the month of June 1973 together with the bonus value of food stamps for January 1972 if for such month such individual resides in a State which SSA has determined provides supplementary payments the level of which has been found by SSA pursuant to section 8 of Pub. L. 93-233 (87 Stat. 956) to have been specifically increased so as to include the bonus value of food stamps, and