

Dated: July 31, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 416

[Regulations No. 16]

RIN 0960-AD86

#### **Deeming in the Supplemental Security Income (SSI) Program When an Ineligible Spouse or Parent is Absent From the Household Due Solely to Active Military Service**

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** We are adding a rule on how the income and resources of ineligible spouses or parents affect the eligibility and benefit amounts of Supplemental Security Income (SSI) claimants and recipients when those spouses or parents are absent from their households due solely to a duty assignment as a member of the Armed Forces on active duty. We are adding this rule because the current rules do not reflect the provision of the Social Security Act (the Act), as amended by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), that addresses this situation.

**DATES:** This rule is effective September 8, 1997.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3298 for information about this rule.

For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

#### **SUPPLEMENTARY INFORMATION:**

Regulations at § 416.1167(a) state that a "temporary" absence, for SSI deeming purposes, occurs when an SSI claimant/recipient, an ineligible spouse or parent, or an ineligible child leaves the household but intends to, and does, return in the same month or the month immediately following. If the absence is temporary, we continue to consider the person a member of the household for deeming purposes.

Under our policy prior to October 1, 1993, an ineligible spouse or parent who was absent from an SSI claimant's or recipient's household for any reason,

including active duty military service, and whose absence was not temporary (§ 416.1167(a)), was not considered to be a member of the household for deeming purposes effective with the first day of the month following the month the spouse or parent left the household.

Section 13733(a) of OBRA 1993 (Pub. L. 103-66) changed SSI policy, effective October 1, 1993, on the treatment of ineligible spouses and parents who are absent from deeming households solely because of active duty military assignments. Under this legislation, which added paragraph (4) to section 1614(f) of the Act, the service member continues to be considered a member of the household, absent evidence to the contrary, for income and resources deeming purposes. Current regulations do not specifically address this situation.

The change in the deeming rules made by section 13733(a) of Public Law 103-66 was intended to prevent an absent deeming's active military service from adversely affecting an SSI claimant's or recipient's benefits. Prior to the change in the deeming rules, and under certain circumstances, it was possible for an individual to receive a smaller SSI benefit—or no benefit at all—as a result of a spouse's or parent's absence from the household due to military service.

For SSI purposes, the treatment of an ineligible spouse's or parent's earnings differs depending on whether the spouse or parent is considered to be living in the same household as the SSI recipient. If the spouse or parent is considered to be living in the same household as the SSI recipient, the earnings are treated as earned income. If the spouse or parent is not considered to be living in the same household, any earnings that are made available to the household are treated as unearned income. In the SSI program, more generous exclusions apply to earned income than to unearned income.

For example, under prior policy, if an absent military member whose income and resources were no longer deemed sent wages home, or his or her wages were directly deposited into a bank account held jointly with other family members, income so received by household members was considered to be *unearned* for SSI eligibility and payment computation purposes. In contrast, wages received while the military deeming resided in the household were considered to be *earned* income for program purposes. Accordingly, prior policy had the effect of disadvantaging certain SSI claimants and recipients.

As a result of section 13733(a) of OBRA 1993, a military spouse's or parent's absence from the SSI household because of an active duty assignment is generally not considered for program purposes; the same deeming rules that apply to "at home" spouses and parents will generally apply to spouses and parents who are temporarily absent from the household due to active duty military service. Therefore, we are amending our regulations at § 416.1167 to reflect section 13733(a) of OBRA 1993.

The statute and the rule recognize that circumstances may change, and an absent service member who originally intended to continue to live in the deeming household may decide not to do so. Taking this into consideration, under the final rule, we provide that if an absent service member's intent to continue to live in the household changes, deeming stops beginning with the month following the month in which the intent changed.

We assume, absent evidence to the contrary, that the absent service member intends to return to the deeming household upon conclusion of the military assignment. "Evidence to the contrary" is evidence indicating that the service member does not intend to return to the deeming household upon conclusion of the military assignment. Evidence to the contrary includes (but is not limited to) a signed statement by the "at home" spouse or parent, or by the absent service member, indicating that the service member does not intend to return to the deeming household. Other examples of evidence to the contrary are evidence of divorce or legal separation that will result in the service member not returning to the deeming household. Also, diminished support from the absent service member to the household—e.g., an absent spouse who no longer makes his or her military wages available to the deeming household—may be evidence that the absent service member no longer intends to return to the deeming household.

On January 24, 1997, we published this final rule as a proposed rule in the **Federal Register** at 62 FR 3633 with a 60-day comment period. We received no comments during the public comment period. Therefore, we are publishing the final rule unchanged from the proposed rule.

#### **Regulatory Procedures**

##### *Executive Order 12866*

We have consulted with the Office of Management and Budget and determined that this rule does not meet

the criteria for a significant regulatory action under Executive Order 12866.

#### *Regulatory Flexibility Act*

We certify that this rule will not have a significant economic impact on a substantial number of small entities since this rule affects only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### *Paperwork Reduction Act*

This rule imposes no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 96.006-Supplemental Security Income)

#### **List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 28, 1997.

**John J. Callahan,**

*Acting Commissioner for Social Security.*

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

#### **PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

##### **Subpart K—[Amended]**

1. The authority citation for subpart K of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211 of Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Section 416.1167 is amended by adding new paragraph (c) to read as follows:

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

\* \* \* \* \*

(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 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.

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#### **SOCIAL SECURITY ADMINISTRATION**

##### **20 CFR Part 416**

[Regulation No. 16]

RIN 0960-AE61

##### **Reduction in Supplemental Security Income (SSI) Payable to Institutionalized Children Whose Medical Costs Are Covered by Private Insurance**

**AGENCY:** Social Security Administration.  
**ACTION:** Final rules.

**SUMMARY:** The interim final rules published at 62 FR 1053, on January 8, 1997, are adopted as final without change. These rules implement an amendment to section 1611(e)(1)(B) of the Social Security Act (the Act) made by section 214 of Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**DATES:** These rules are effective beginning January 8, 1997.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-3298 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

##### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 1611(e)(1)(A) of the Act generally precludes eligibility for SSI benefits when a claimant is a resident of

a public institution throughout a month. However, section 1611(e)(1)(B) provided an exception to that bar. Under that section, payments could be made at the reduced Federal benefit rate to individuals in institutions "receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX \* \* \*" This language was implemented through regulations to mean that individuals in institutions would receive only the reduced benefit amount when "Medicaid (title XIX of the Social Security Act) pays a substantial part (more than 50 percent) of the cost of" the claimant's care (§ 416.211(b)).

Section 214 of Pub. L. 104-193, effective for benefits beginning with the month of December 1996, amends section 1611(e)(1)(B) of the Act by extending applicability of the reduced SSI benefit rate to children under age 18 in medical care facilities receiving payments on their behalf under a health insurance policy issued by a private provider (hereinafter referred to as private health insurance). Prior to the enactment of section 214, children under the age of 18 in private institutions with private health insurance generally could be eligible for a full SSI payment. Section 214 now restricts the SSI payment for such children to the Federal reduced benefit rate. Also, prior to this legislation, individuals in public institutions not receiving substantial Medicaid payments on their behalf generally were ineligible for SSI. However, as a result of this legislation, children under age 18 in public institutions receiving private health insurance on their behalf now are eligible for SSI payments at the reduced Federal benefit amount.

The final rules apply the reduced Federal benefit amount to children under age 18 with private health insurance when it, either alone or in combination with Medicaid, pays a substantial part (more than 50 percent) of the cost of their care in the institution.

##### **Regulatory Changes**

During the public comment period, we received two comments within the scope of this rulemaking. One commenter, representing a major advocacy group for retarded citizens, expressed agreement with the Social Security Administration's interpretation of the provision regarding the amount of private insurance payments required in order for the reduced Federal SSI benefit rate to apply. Another commenter asked that we add a clarification specifying that Health Maintenance Organizations (HMOs) are