

Did You Know?

State Vocational Rehabilitation (VR) Agencies And Financial Need Criteria

SSI and Social Security Disability Beneficiaries Are Exempt from VR Agency's Financial Needs Test

State VR agencies can pay for a range of AT devices and AT services to support the vocational goals of an individual with a disability who is eligible for VR services. See 34 CFR 361.48 for a list of services that must be available to eligible individuals. Many individuals will qualify for expensive AT devices to support their vocational goals. Examples of AT eligible for VR agency payment, when needed to support the work goal, include: vehicle modifications; adapted computer equipment; home modifications which allow an individual to leave the home to attend an education/training program, or to support a home office; and even wheelchairs to the extent that payment is not available through other sources, like Medicaid, Medicare, or a private insurance plan.

A VR Agency May Use a Financial Needs Test:

Title I of the federal Rehabilitation Act, 29 USC 701 *et seq.*, and its implementing regulations, 34 CFR Part 361, allow state VR agencies to establish a financial needs test for the great majority of the services it funds, including the more expensive services like college tuition, rehabilitation technology, and AT. 34 CFR 361.54(b). The following services cannot be subject to a financial needs test: diagnostic services; counseling, guidance and referral services; job placement; personal assistance services; and "any auxiliary aid or service," such as interpreter or reader services. 34 CFR 361.54(b)(3).

Any financial needs test must be based on a written policy that takes into account the individual's disability-related expenses. The VR agency may establish a policy requiring that some individuals, based on available income, contribute to the cost of VR services. However, the level of financial contribution required must not be so high as to "effectively deny the individual a necessary service." 34 CFR 361.54(b)(2).

SSDI/SSI Beneficiaries Are Exempt from Financial Needs Test:

Beneficiaries of either Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) automatically meet any needs-based criteria established by the State VR agency. Stated another way, they are totally exempt from any financial needs test. 34 CFR 361.54(b)(3)(ii). So long as the individual receives any amount of either SSI or SSDI benefits, he or she becomes eligible for all VR services without cost to the individual. The income and resources of responsible relatives, including parents and spouses, are irrelevant to the VR agency's financial need determination if the individual is a recipient of either SSDI or SSI benefits.

Example: High SSDI Payment, Plus Part-Time Wages

Ted had a good work record before he became disabled. He now receives \$1,800 in SSDI benefits which is too much to qualify for SSI. Since Ted automatically meets his state VR agency's financial need criteria, based on his receipt of SSDI, he will qualify for any services (including AT) that are available through the agency.

If we assume that Ted attends college, works part-time, continues receiving SSDI payments, and earns \$800 per month at a part-time job, will that change his status in terms of financial need?

The answer is no. Since Ted continues to receive SSDI benefits, he continues to meet the criteria for the exemption from the financial needs test. The fact that Ted's combined income is now \$2,600 per month does not matter.

Example: Loss of SSI Due to Wages, with Medicaid Continued Through 1619(b)

The work incentive known as section 1619(b) allows individuals, who lose the right to an SSI cash payment because of wages, to continue eligibility for Medicaid so long as the individual continues to have a disability and meets other 1619(b) criteria. 42 USC 1382h; see Social Security Program Operations Manual System (POMS) SI 02302.030 *et seq.* for a detailed discussion of 1619(b) eligibility criteria. For example, an individual who resides in a state that pays the 2011 SSI federal benefit rate of \$674 per month would lose SSI cash payments at gross wages of \$1,433 per month (after applying various earned income exclusions). In most cases, that individual should be able to continue Medicaid eligibility under section 1619(b), provided they keep their resources below the SSI \$2,000 limit.

Will eligibility for 1619(b) benefits allow the person to continue his or her exemption from the state VR agency's financial needs test?

We believe the answer is yes. The regulation in question states that the VR agency cannot apply a financial needs test to individuals who have been determined "eligible for Social Security benefits under Titles II or XVI of the Social Security Act." It is clear that this definition not only applies to SSI cash beneficiaries but also to former SSI cash beneficiaries who continue to receive Medicaid under section 1619(b). Section 1619(b) is located within Title XVI of the Social Security Act and states that for the purposes of Medicaid eligibility, a 1619(b) recipient "shall be considered to be receiving [SSI] benefits under" Title XVI. 42 USC 1382h.

Those reading this as email should use "reply all" to share comments or questions that they want to reach all participants on the list serve. Use "reply" to communicate only with the person who did the posting (or just contact the author below).

Posted by: James R. Sheldon, Jr. Supervising Attorney
National AT Advocacy Project