

The Benefits Planner

Spring 2001

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THE BENEFITS PLANNER

KEYS TO EFFECTIVE BENEFITS PLANNING, ASSISTANCE AND OUTREACH

Welcome to *The Benefits Planner*

This is the first issue of *The Benefits Planner*, a quarterly newsletter of the New York State Work Incentives Support Center. The Support Center will provide a wide range of services for persons with disabilities, their families, and the public and private agencies that work with them. The goal of the Center is to assist individuals with disabilities, who want to prepare for, attach to or advance in work, by providing timely and accurate information to assist them in maneuvering the complex maze of government benefits. In addition to the newsletter, the Center will provide training, through conventional means and by use of the latest technology for distance learning, and will operate a toll-free number [1-888-224-3272] for statewide technical assistance on issues related to benefits and work.

The *Benefits Planner* will provide valuable information on how work affects government benefits, with an emphasis on the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) work

incentives. Each newsletter will contain a lead article and several smaller articles, boxes, or resource links. Our goal is to provide an ongoing dialogue on topics related to benefits and work.

Readers can access the newsletter in three ways. The newsletter will be available in a traditional print format and three-hole punched so that subscribers can retain back issues in an orderly fashion. Individuals can request a subscription through the toll-free number listed above. The newsletter will also be available in two electronic formats: as a PDF or text downloadable file from the Cornell University website (www.ilr.cornell.edu/ped), and as an email abridged version with web links available through subscription to the Center's statewide listserv (request free subscription by sending name and email address to tpg3@cornell.edu). This array of formats has been intentionally designed to enhance the number of individuals who can access this information.

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This publication is sponsored in part by the NYS Developmental Disabilities Planning Council and the Social Security Administration through the NYS Department of Labor (*NY Works Project*), and is a collaborative publication of Cornell University's Program on Employment and Disability and Neighborhood Legal Services, Inc. (NLS) of Buffalo, NY. The editors and primary authors are James R. Sheldon, Jr. of NLS and Edwin J. Lopez-Soto of the Greater Upstate Law Project, Rochester, NY.

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Getting Perspective

SSA's National Infrastructure for Work Incentives Planning and Assistance

*By Thomas P. Golden, Faculty, Cornell University's Program on Employment and Disability
Director, Work Incentives Support Center*

Never in the history of the United States of America has there been a more exciting time to support individuals with disabilities in making decisions toward, preparing for, attaching to, or advancing in employment. With the passage of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIA), came sweeping provisions to remove specific barriers to employment that have existed since the inception of our current disability programs. While new continuing disability review protections, expedited reinstatement of benefits, and extended Medicare provisions of TWWIA, coupled with the most recent rule modifications to substantial gainful activity levels, trial work period and the student-earned income exclusion provide a reinforced foundation for return to work for SSI and SSDI beneficiaries, these are greatly enhanced by TWWIA's recognition of the importance of a national infrastructure for work incentives planning and assistance.

The work incentives planning infrastructure provisions of TWWIA provide two important vehicles for ensuring SSI and SSDI beneficiaries access to comprehensive benefits planning, assistance and outreach. Internal to the Social Security Administration (SSA) the establishment of

an Employment Support Representative (ESR) pilot creates an internal infrastructure for SSA to provide their beneficiaries and recipients with access to qualified and trained personnel, well-versed and equipped to support individuals in their pursuit of employment. Providing an essential human resource framework, which pre-TWWIA had been intermittent at best, these ESRs will provide important services and supports as individuals seek to maneuver the complex employment process and utilize existing work incentive provisions to support independence.

Building on this internal infrastructure, SSA released a Request for Proposals last summer seeking applicants interested in being a part of SSA's external benefits planning, assistance and outreach (BPA&O) network. The external network will be comprised of an array of community agencies and providers under cooperative agreement with the SSA to deliver BPA&O services and supports. Through this application process SSA will ensure geographic equity and access to BPA&O services and supports nationally and has awarded seven projects in New York State toward this end. These projects include:

Resource Center for Independent Living	Burt Danovitz	315-797-4642	401-409 Columbia Street, P.O. Box 210, Utica, NY 13503-0210
Research Foundation for Mental Hygiene ("Brooklyn Works")	Doug Cooper	518-485-2584	44 Holland Avenue, 6 th Floor Albany, NY 12229
Neighborhood Legal Services of Buffalo, Inc.	James R. Sheldon, Jr.	716-847-0650	295 Main Street, Room 495, Buffalo, NY 14203
Abilities, Inc., National Center for Disability Services	Francine M. Tishman	516-465-1480	201 I.U. Willets Road, Albertson, NY 11507
Barrier Free Living, Inc.	Paul B. Feuerstein	212-677-6668 ext. 123	270 East Second Street, New York, NY 10009
Queens Independent Living Center	Robin Shaikun	718-658-2526	140-40 Queens Blvd., Jamaica, NY 11435
Independent Living, Inc.	Douglas Hovey	845-565-1162 ext. 210	5 Washington Terrace, Newburgh, NY 12550

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Special SSI Waiver Rules to Be Tested in Buffalo and New York City

New York Works Participants Can Receive Special Exclusions for Income and Resources

This issue's lead article describes the *NY Works* research demonstration project and four special waiver provisions that will provide extra work incentives for the SSI recipients it serves. Specifically described are four SSI waiver rules that have been approved by the Social Security Administration (SSA) to be implemented over the next two to three years:

- a rule providing that the first \$65 plus three fourths of remaining earned income will be disregarded in calculating SSI eligibility (known as the "three-for-four rule")
- a rule providing that unearned income generated by work activity (including unemployment insurance benefits, worker's compensation, State disability payments, and private disability payments) will be treated the same as earned income under the three-for-four rule
- an "Independence Account" waiver, allowing individuals to save up to \$8,000 per year in an exempt bank account
- a moratorium on "continuing disability reviews" for individuals participating in the project

WHAT IS NY WORKS?

The project is officially known as *New York Works: Self-Sufficiency through Employment Incentives*. In late 1998, New York was one of 12 states to receive a Cooperative Agreement from the Social Security Administration (SSA) to operate a research demonstration project. Following extensive planning, the project began serving individuals during the latter part of 2000.

NY Works is testing the impact of both full program services and enhanced services to SSI recipients on return-to-work outcomes in New York City and Erie County (including the City of Buffalo). Full services include: a client-centered team approach, with a vocational case manager/

employment coordinator; intensive benefits counseling and management; any SSA-approved waivers, as well as housing subsidy waivers approved by the U.S. Department of Housing and Urban Development and the State Office of Mental Health; expedited access to a Plan for Achieving Self-Support (PASS); and presumed vocational rehabilitation (VR) eligibility. Enhanced services will not include the team approach or employment coordinator, but will include the other services. A control group will receive none of the special services, but will be provided information about existing SSI and SSDI rules.

SSI recipients with serious mental illness, who are 21 or older, do not reside in a nursing home, are not incarcerated, are not currently an inpatient at a psychiatric hospital, and reside in New York City or Erie County, will be randomly assigned to a full service group, an enhanced service group, or a control group. Each group will have 450 members, with 650 in the control group. Through October 2003, SSA wants to test the effect on an individual returning to work under each model to determine whether it should make any future changes to its existing policies. Individuals will be able to enroll in the *NY Works* project in one of two ways: by responding to a mailing sent to randomly selected SSI recipients; or by an agency referral process. Further information on the project is available by calling 1-800-732-7697.

This article will first explain the current law in the areas in which SSA will provide waivers. At the end of each section, we explain the waiver provisions which will be implemented starting with the spring of 2001.

SSI'S TREATMENT OF INCOME

SSI is a needs-based cash benefit program. Therefore, income and resource rules are an essential part of eligibility determinations, along with the categorical (aged, blind or disabled) eli-

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gibility criteria. The amount and type of income received by an individual will determine both income eligibility and the monthly benefit amount. The SSA classifies income as earned or unearned. Each type of income is treated very differently.

Income Defined

Income is anything an individual receives in cash or in-kind that can be used either directly, or indirectly (e.g., by selling), to meet basic needs for food, clothing or shelter. 20 C.F.R. § 416.1102. This very broad definition includes cash, wages, government benefits, and food, clothing or shelter provided by someone else. To calculate whether an individual is eligible for SSI, we must determine the amount and type of their income, and determine what part of it is “countable.” The countable income will be subtracted from the appropriate SSI rate to calculate the monthly SSI check. New York’s 2001 SSI rates are: \$617 for persons who live alone, \$553 for persons who live with others and share expenses, and \$376.34 for persons who live with others but do not contribute to household expenses. These are called “base rates,” since SSI often supplements other forms of income.

SSI’s Treatment of Earned and Unearned Income Under The Current Law

The SSI program will allow a \$20 disregard from unearned income to determine what is subtracted from the base rate. By contrast, it will disregard the first \$65 of earned income (\$85 if there is no unearned income) and 50 percent of remaining earned income. What is left is subtracted from the base rate.

Earned income is income from work, including gross wages, salary or tips. It also includes net earnings from self-employment. Sheltered workshop wages are classified as earned income and must be considered in determining SSI income eligibility and benefit amount.

If an SSI recipient works, the first \$65 earned each month is not counted (or \$85 if there is no unearned income). The SSI check is then reduced by \$1 for every additional \$2 in gross monthly wages. For example, an SSI recipient with gross monthly wages of \$385 and no unearned income would have their benefit amount calculated as

follows. First, as there is no unearned income, the first \$85 would not be counted leaving \$300 in countable wages. Second, the countable income would be reduced by \$150, half of the remaining gross wages. Thus, an individual living alone would have their \$617 SSI check reduced by \$150 ($\$617 - 150 = \467) when they have \$385 in gross monthly wages. Using the same formula, an individual with \$685 in gross monthly wages will have \$300 in countable income and receive an SSI check of \$317.

Proponents of a more generous earned income exclusion (like the “three-for-four waiver,” described below) have argued that this “one-for-two” reduction rule is not enough of an incentive to encourage many SSI recipients to work. The exclusion may not totally cover the extra expenses many incur to work, including payroll taxes, transportation, new clothing, and child care. In some cases, the current earned income exclusions are also offset by reductions in other public benefits, such as welfare benefits, food stamps and housing subsidies, which are caused by increased earnings.

Unearned income is income from non-work sources, including child support, alimony, interest on bank accounts, annuities, Social Security benefits, Veteran’s Administration benefits, workers’ compensation, and unemployment insurance benefits. It also includes gifts, inheritances and income “deemed” from a responsible parent or spouse. Finally, rental income that cannot be considered a part of a trade or business is unearned income.

The SSI program will allow a \$20 per month general or unearned income exclusion. The balance of unearned income reduces the SSI payment dollar for dollar. For example, an individual who lives alone and receives \$385 per month in unemployment insurance benefits (UIB) will receive a \$242 SSI supplement. The SSI program will disregard the first \$20 of UIB ($\$385 - 20 = \365) and subtract the remaining \$365 from the base rate ($\$617 - 385 = \242) to determine the SSI check amount. If the same individual receives \$685 in UIB, the SSI check would be reduced to \$0 per month. Using the same formula, SSI would reduce the income from \$685 to \$665. Since \$665 is higher than the \$617 base rate, the individual is not entitled to an SSI check.

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Proponents of a more liberal treatment of UIB and work-related disability benefits (like the “three-for-four unearned income waiver,” described below) point out that an SSI recipient is often worse off for having worked and been laid off than if they never worked at all. For example, an individual living alone with \$637 or more in UIB benefits will lose SSI and, with it, the right to automatic Medicaid. As the UIB increases, their monthly disposable income does not increase because the individual must now incur a spend down in order to retain Medicaid.

The “Three-for-Four” Waiver Rule Applies to Earned Income and Unearned Income That Stems From Work Activity

Under the waiver rules, SSA will exclude the first \$65 of monthly earned income plus an additional 75 percent of any remaining earned income. Let’s look at the examples above. The SSI recipient with gross monthly wages of \$385 and no unearned income would have their benefit amount calculated as follows. First, as there is no unearned income, the first \$85 would not be counted leaving \$300 in countable wages. Second, countable income would be reduced by \$225 which is 75 percent of the remaining gross wages ($\$300 - 225 = \75). An individual living alone would have their \$617 SSI check reduced by \$75 ($\$617 - 75 = \542) when they have \$385 in gross monthly wages. Thus, this SSI recipient would have an additional \$75 in disposable income in the month because of the waiver. In the second example, with the \$685 in earned income, the income would be reduced by \$85 and then by an additional 75 percent ($\$685 - 85 = \$600 - 450 = \$150$). The \$617 base amount is then reduced by \$150 to \$467 per month, a \$150 increase over the amount calculated using current rules.

The application of the three-for-four rule to certain types of unearned income produces even more dramatic results. This waiver will apply to the following types of unearned income related to work activity: unemployment insurance benefits, worker’s compensation benefits, New York State disability benefits, and private disability benefits. Since these forms of income are treated as earned income under the three-for-four rule,

SSI eligibility will be calculated the same way as in the earned income examples above. For example, if the \$385 and \$685 income is UIB or state disability benefits, the first \$85 and 75 percent of the remainder will be excluded, resulting in SSI checks of \$542 and \$467 under the waiver (the same as in the earned income examples). This compares to \$252 and \$0 under traditional SSI rules governing treatment of unearned income. This waiver ensures that both cash SSI benefits and automatic Medicaid benefits continue during a temporary period of unemployment due to lay off or disability.

SSI’S TREATMENT OF RESOURCES

The Current Rules

SSI eligibility for an individual or a couple depends in part on their resources. If an individual has no more than \$2,000 in countable resources, or a couple has no more than \$3,000 in countable resources, the individual or couple is within the resource limit. Resources include “cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.” 20 C.F.R. § 416.1201. The \$2,000/\$3,000 resource limits make it difficult for individuals to save money for things that will allow them to become more independent.

The SSI Waiver Will Create A New Resource Exclusion, An Independence Account

Under the waiver provisions, SSA will allow *NY Works* participants to maintain an “Independence Account” as a resource, in addition to the current \$2,000 resource limit. SSA will exclude one separate account for saved wages, not to be commingled with other monies, and with deposits limited to 50 percent of gross earnings, not to exceed \$8,000 per year. The account can be a checking or savings account, certificate of deposit, money market or mutual fund account. It cannot be any type of retirement plan. SSA will provide a 24-month spend-down period after October 1, 2003, the expiration of the period for making deposits into the Independence Account.

With the independence account an individual could save for a wide range of expenses, like the

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down payment on a home, a vehicle purchase, the costs associated with moving into a better apartment (e.g., first and last month's rent, security deposit, moving expenses and new furniture), or the costs associated with accessibility modifications to one's home. An independence account, which must be approved by SSA, can be used to purchase any item or service which the participant can demonstrate will contribute to their independence and/or integration into the community. With the ability to save increased amounts of wages and retain some SSI, some *NY Works* participants may be able to significantly improve their lives.

CONTINUING DISABILITY REVIEWS

The Current Rules

SSA will conduct periodic continuing disability reviews (CDRs) to determine if an SSI or SSDI recipient is still disabled. These are referred to as medical CDRs. How often SSA conducts a CDR depends on classification of the disability for which benefits were granted. If it classified the recipient as medical improvement not expected (MINE), SSA will review once every 5 to 7 years. If it classified the recipient as medical improvement possible (MIP), it will review once every 3 years. If it classified the recipient as medical improvement expected (MIE), it will review about 12 to 18 months after first awarding benefits. If SSA determines that a person has medically improved, SSI or SSDI benefits will ordinarily be terminated.

Waiver Rule: Medical CDRs Will Be Suspended For Certain Participants

SSA will not conduct medical CDRs for participants in the demonstration project who are eligible for SSI only (i.e., not concurrently eligible for both SSI and SSDI) and who have been categorized as MINE or MIP. For a project participant meeting these criteria, SSA will not initiate a medical CDR during the period the waiver is in effect as long as the individual remains a project participant.

The threat of a CDR has always been a barrier for SSI recipients who want to work. This provision will allow certain *NY Works* participants to test their ability to work without the specter of a CDR looming over their heads.

CONCLUSION

Many individuals with severe disabilities hope to enter or return to the workforce. However, the fear of losing SSI due to earnings or receipt of government benefits, like unemployment insurance benefits, is often a barrier to work activity that would help them attain a level of financial independence. For some, resources accumulated while employed can be the cause of their ineligibility for SSI. Finally, for others the fear of a continuing disability review is enough to keep them from returning to the work force.

We believe each of the new waiver provisions is an important work incentive that will assist adults with disabilities in their efforts to enter or reenter the workforce. While the new waiver provisions will be limited to approximately 450 *NY Works* participants, SSA's decision to test the waivers to determine whether any or all of them should be adopted as policy for all recipients should be applauded. Stay tuned to this newsletter for anecdotes on the effects of these important provisions.

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Getting Perspective

The services to be provided are critical to supporting beneficiaries and recipients in making informed choices regarding employment. Contact the project closest to you and begin to build a relationship to promote access to these essential services and supports. Working together in New York State, employment for individuals with disabilities can become a reality.

New SSI and SSDI Regulations Will Improve Work Incentives

On December 29, 2000, SSA published final SSI and SSDI regulations. These regulations, which became effective on January 29, 2001, represent another positive step in SSA's efforts to encourage more individuals to work without quickly losing benefits. Under the new regulations SSA will:

- Make automatic adjustments each year to the substantial gainful activity level (currently \$740 for calendar year 2001) for individuals with impairments other than blindness, based on any increases in the national average wage index;
- Increase, from the 2000 figure of \$200 to \$530 for 2001, the minimum amount of monthly earnings that SSA considers as showing that an SSDI recipient has worked a trial work month as part of a nine-month trial work period, and automatically adjust the amount annually based on increases in the national average wage index; and,
- Increase the maximum monthly (from \$400 to \$1,290) and yearly (from \$1,620 to \$5,200) Student Earned Income Exclusion amounts they use in determining SSI eligibility and payments, and automatically adjust the monthly and yearly exclusion amounts annually based on increases in the cost of living index.

SSA Releases Emergency Policy on New "Expedited Reinstatement" Provisions

The SSA has implemented expedited reinstatement of benefits provisions without the publication of regulations or Program Operations Manual System (POMS) instructions, through the issuance of Field Instructions on February 15, 2001. The instructions permit an SSDI or SSI beneficiary to regain eligibility for benefits without having to file a new application. The former beneficiary must: file a request for reinstatement within 60 months of termination of benefits because of work; be disabled based on the same impairment, or one that is related to it; and be unable to perform substantial gainful activity because of that impairment.

According to the instructions, payment of retroactive benefits is possible for SSDI beneficiaries as of January 1, 2001. SSI beneficiaries are not eligible for retroactive benefits and the first month that SSI benefits may be paid is February 1, 2001. SSDI and SSI beneficiaries have to undergo a disability predetermination, using a medical improvement standard, but provisional benefits may be paid for up to six months pending a final determination. SSA notes that provisional benefits usually will not be recovered as an overpayment if the final determination is unfavorable.

SSI PAYMENTS RATES FOR 2001

	<u>Individual</u>	<u>Couple</u>
Living Alone	\$617.00	\$900.00
Living With Others	\$553.00	\$842.00
Living in the Household of Another	\$376.34	\$576.67
Level II Residential Care (includes adult care facilities, community residences, other state licensed facilities)		
• NY City, Nassau, Suffolk, Westchester, Rockland Counties	\$965.00	\$1,930.00
• Rest of State	\$935.00	\$1,870.00

The NY State Work Incentives Support Center will provide statewide services, including: training through traditional means and through use of the latest technology for distance learning; a toll-free technical assistance line, 1-888-224-3272; and a quarterly newsletter, *The Benefits Planner*. To subscribe to the Center's listserv, send your name and email address to tpg3@cornell.edu. To request a print copy of this newsletter, contact the toll-free number above.



In Our Next Issue ...

- SSI and Medicaid, including section 1619(b)
- Medicaid for persons not receiving SSI, including spend down rules
- Will NY soon have a Medicaid "Buy-In" program?

If you have special needs and would like *The Benefits Planner* sent in a special format, or you would like the newsletter delivered by email, please call our toll-free technical assistance line, 1-888-224-3272.

Welcome to *The Benefits Planner*, a Quarterly Newsletter of The NY State Work Incentives Support Center

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