

SUBSIDIES AND SUBSTANTIAL GAINFUL ACTIVITY

A Subsidy Exists When the Employer:

- ◆ Willingly pays more in wages than the value of services performed; or
- ◆ Receives full value only because some agency provides extra services to the employee.

How Subsidies Affect the Substantial Gainful Activity (SGA) Determination:

- ◆ The \$980 SGA rule (\$1,640 for persons who are legally blind) applies to SSDI applicants and recipients and SSI applicants who are not legally blind.
- ◆ The monthly subsidy is deducted from gross earnings to obtain countable earnings.
- ◆ If monthly countable earnings are less than \$980, after subsidy deductions, the person is not performing SGA.
- ◆ NOTE: Impairment related work expenses and paid time off (vacation, personal, holiday, and sick pay) could also be used to reduce countable income.

Some Indicators That a Subsidy May Exist:

- ◆ The individual works shorter hours, or has fewer duties than others.
- ◆ Extra help or supervision is given.
- ◆ The individual produces less, or their work is of lesser quality than others.
- ◆ The individual is frequently absent, or receives more breaks or rest periods.

A Subsidy Provided by an Employer May Be Specific or Non-Specific:

- ◆ With a specific subsidy, the employer assigns a specific amount as a subsidy.
 - E.g., the employer states that the individual is paid \$6 per hour even though his or her productivity would only justify \$4 per hour (a specific \$2 per hour subsidy).
 - As a general rule the Social Security Administration (SSA) accepts the subsidy figure that is identified by the employer.
- ◆ With a non-specific subsidy, the employer either does not set the value of the subsidy or does not adequately explain how it was calculated.
 - In these cases, the SSA will investigate to determine the value of the subsidy.
 - The advocate or rehabilitation professional can play an important role in assisting the employer (or SSA) in accurately assessing the value of the subsidy.

Examples of Agency-Sponsored Subsidies:

- ◆ Some special training grants will help the employer pay for the individual's salary.
 - E.g., the on-the-job training grant (OJT) is generally sponsored by the state vocational rehabilitation (VR) agency, with the VR agency paying all or part of the individual's salary. Since the payment from the VR agency (such as VESID) is not based on the individual's work product, it could be considered a subsidy in many cases.
 - Any part of wages that is subsidized does not count as earnings.
- ◆ In a supported employment position, the extra services such as job coaching, may be considered to determine the amount of a subsidy.
 - SSA's official policy is that the subsidy value is calculated by multiplying the job coach's hours by the hourly wage of the disabled worker.
 - Many believe that the more rational policy, accepted by many administrative law judges, would be to calculate the subsidy by determining the actual cost to the agency of providing the support services (i.e., hourly salary, fringe benefits and overhead).