

# **Return to Work Within a Year of Onset for Title II Disability Beneficiaries**

## **A Summary of POMS DI 13010.105**

### **December 2007**

#### **Introduction to the Issue**

When a beneficiary returns to work less than one year after the disability onset date, it may indicate that the 12-month duration requirement for disability was not met and thus the individual's disability claim must be denied. Remember that SSA defines disability as the inability to engage in Substantial Gainful Activity (SGA) due to a mental or physical impairment and the impairment must have lasted 12 months, be expected to last 12 months, or be expected to result in death. A beneficiary who works at the SGA level within 1 year of disability onset could be determined to NOT meet the SSA definition of disability.

If the disability claim has already been adjudicated (meaning a final determination has been issued in writing), it could indicate one of two things:

1. that the beneficiary's disability continues since the work would be subject to the protections afforded by the Trial Work Period (TWP), or
2. that the prior favorable determination should be reopened and revised to a denial or approved with a later disability onset date.

In either case, paid employment at the SGA level within 12 months of disability onset often means the beneficiary will be overpaid by the time final actions are taken by SSA.

#### **Factors SSA Considers in Return to Work within One Year of Onset Cases**

SSA will consider the following factors to arrive at the proper determination in these cases:

- SGA level work performed less than 12 months from onset, and prior to the date of the final determination, cannot be protected by the TWP provisions and is a reason to deny a claim or establish a later onset (if SGA subsequently stopped). This means the individual did NOT meet SSA's definition of disability and thus cannot be protected by the TWP provisions.
- Work performed in or after the month of entitlement and more than 12 months from onset is protected by the TWP provisions, regardless of whether the work occurs before or after the final determination. This work occurs beyond the 12 month duration requirement so it is protected by the TWP work incentive.
- Work performed after the 5-month waiting period, and after the final determination date, is protected by the trial work provisions, regardless of whether the work occurs less than, or more than, 12 months after onset.

However, it is important for WIPA personnel to understand that SGA level work that is otherwise protected by the trial work provisions still raises the issue of possible medical recovery in cases that are coded as “Medical Improvement Expected” or (MIE). The only exception to this would be when a beneficiary has been entitled to disability benefits for 24 months or longer which would afford that person the special CDR protection established by the Ticket Legislation. This protection is unlikely to apply in these cases, because individuals working within 12 months of onset would not typically be within 24 months of initial entitlement. The performance of SGA level work in these cases will indicate the need for a medical review.

Work performed prior to the month of application, or the month of entitlement, must be evaluated under Unsuccessful Work Attempt (UWA) provisions, but is not protected by TWP provisions. Remember that anytime SSA is making an SGA determination, whether during an initial application or at any other time, the basic tools and work incentives used to evaluate work are applied. This includes UWA provisions, as well as IRWE and Subsidy provisions. The TWP provisions cannot be used to protect an individual from an adverse SGA determination prior to the month of application or prior to the month of entitlement because this provision is only afforded to beneficiaries whose claim has been fully adjudicated and formal notice of award provided.

### **Date of Final Determination and Date of Entitlement**

The date of the final determination is the date the notice was received by the beneficiary. SSA presumes the notice was received the fifth day following the date it was mailed, unless the exact date of receipt is established. A copy of the notice is the most definitive evidence of the mailing date. The date of entitlement refers to the date on which benefits first became payable. For title II benefits, this is after the 5-month waiting period has been accounted for.

### **Determining if Return to Work is within a Year of Onset**

The “onset date” is the first day on which the beneficiary was under a disability as defined by SSA. It is not the first month in which benefits were payable, which is Date of Entitlement. Both of these important dates are included on the Benefits Planning Query or BPQY.

Return to work within a year (or 12 months) of onset is defined on an exact year basis. Therefore, an individual who returns to work prior to the first anniversary of his/her date of onset has returned to work within a year of onset. An individual who returns to work on or after the first anniversary of the date of onset has not returned to work within a year of onset. For example, if an individual's date of onset is 1/17/2002 and he/she returns to work on or before 1/16/2003, the individual has returned to work within a year of onset.

### **Return to Work During the 5-Month Waiting Period**

When an individual returns to work at the SGA level while in the 5-month waiting period and the SGA level work continues, SSA will deny the claim. If the claim had previously been awarded,

SSA will reopen the determination and revise the allowance to a denial. When an individual returns to work at the SGA level during the waiting period and the work activity subsequently stops, SSA will conduct a formal SGA determination. If the work is determined to be SGA, even after considering the UWA criteria, the file will be forwarded to the DDS to determine if the onset date should be changed to the date the SGA level work stopped.

NOTE: When the claimant returns to work in the last month of the waiting period and the claimant's earnings in that month do not exceed the current SGA guideline, the work does not represent SGA in the waiting period. However, SSA will still consider the work to represent a return to work less than 12 months after onset.

### **Return to Work After the Waiting Period and Before the Date of Final Determination**

#### **1. Information Received Before Adjudication**

If an individual engages in SGA level work within 12 months of onset and this information is received before the final determination, SSA will recall the folder from the DDS, if applicable, and deny disability benefits based on SGA. Since this is an initial determination of entitlement, the individual does not have due process rights. This means the individual is NOT provided advance notice of the denial to the claimant. If SGA work activity later stopped, or the work activity is determined to be an Unsuccessful Work Attempt (UWA), SSA will make a work issue determination and send the case to the DDS to consider reopening and revising the determination to a later onset date.

#### **2. Information Received After Adjudication**

If the final determination has been made and then SSA receives information that an individual returned to SGA within 12 months of onset, SSA will reopen the award determination. When an individual returns to work at the SGA level and the work activity later stops, SSA will make a SGA determination. If the work is determined to be SGA, even after considering the UWA, SSA will forward the file to the DDS for consideration of a later onset.

### **Return to Work After the Waiting Period AND After the Date of Final Determination**

If an individual returns to SGA after BOTH the 5-month waiting period AND after the date of the final determination, and the individual is NOT coded as Medical Improvement Expected (MIE), the TWP provisions are applied. However, if the individual is classified as an MIE and an MIE diary has been established, SSA will develop a possible medical recovery case. Keep in mind that this may occur even when the work effort does NOT represent SGA for individuals coded as MIE.

## **Return to Work More than 12 Months After Onset and Information Received Prior to Date of Final Determination**

If the case has not been scheduled for an MIE review and the TWP is not otherwise excluded, the individual is entitled to the protections of a TWP. SSA will process the claim action and diary for completion of the TWP.

If the DDS has already made a determination and has scheduled the case for a MIE review, SSA will evaluate the work and will send this information and the folder back to DDS for a possible revised determination. When DDS returns the folder, if the determination has not been revised, SSA will process the claim and diary the case for completion of the TWP

## **Return to Work More than 12 Months after Onset and Information Received after Date of Final Determination**

If the final determination has been made and the work in question occurred more than 12 months after the date or onset, the issue involved is strictly one of continuing disability. SSA will evaluate the work using regular SGA determination procedures, if and when the TWP ends.

## **What WIPA Personnel Need to Know**

The issue of working within 12 months of onset is important for WIPA personnel to understand because it can actually cause an individual to be found NOT disabled by SSA's standard, or it can cause an initial determination to be reopened and subsequently denied. In addition, for some individuals who work within a year of onset, the TWP protections will not apply so an important work incentive will be unavailable. Exactly how work within one year of onset will affect a particular individual will depend upon whether the work represents SGA and when the work occurred in relation to disability onset, the 5-month waiting period, and the notice of final determination.

In addition, CWICs must remember that work activity of any level within one year of onset of may trigger a medical review for some beneficiaries, especially for individuals who are coded as "Medical Improvement Expected" or MIE. The current BPQY reports do not indicate the MIE, MIP or MINE designations, but they do indicate when the next diariied date is for a CDR. The BPQY also indicates the Medical Re-Exam Cycle. While individuals who have been entitled to title II disability benefits for at least 24 months are protected from having work activity used as a reason to initiate a medical review, individuals within 1 year of onset typically would not qualify for this protection since they have not been on benefits long enough. Although it may not be a common occurrence, it is possible for earnings of any level to cause a medical termination for certain beneficiaries who work within one year of disability onset. Beneficiaries need to be counseled on this possibility when they are considering returning to work within 12 months of disability onset.

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