

# A Summary of the Revised Section 301 Regulations

*NOTE: In June of 2005, the Social Security Administration published revised regulations for section 301 payments. These revised regulations may be found in the Federal Register: June 24, 2005 (Volume 70, Number 121), Page 36494-36509 or retrieved online from the Federal Register Online via GPO Access ([wais.access.gpo.gov](http://wais.access.gpo.gov)) using document ID DOCID: fr24jn05-17.*

## Background

When the Social Security Administration (SSA) conducts a continuing disability review (CDR) or an SSI age-18 medical redetermination, it may find that the beneficiary no longer meets the medical requirements to receive disability benefits. If that happens, SSA usually stops the individual's benefits. Under certain specific conditions, however, SSA may continue to provide cash disability payments and medical insurance (Medicare and/or Medicaid) to individuals who are participating in programs that may enable them to become self-supporting.

Because the statutory authority for these continued benefits first appeared in section 301 of the Social Security Disability Amendments of 1980, they often are called "section 301 payments." The current statutory authority for them is in sections 225(b) and 1631(a)(6)(A) of the Social Security Act.

### Important Section 301 Facts

- Section 301 provisions only offer extended benefits to eligible individuals who would otherwise terminate from benefits due to medical recovery, not individuals who lose benefits due to work activity or other reasons.
- Section 301 allows continued benefit payments for any auxiliaries drawing off of the insured worker (such as a spouse or dependent children).
- Section 301 payments are accompanied by continuation of Medicare and/or Medicaid health insurance, as applicable.
- Section 301 provisions apply to SSI as well as the disability benefits authorized under title II of the Social Security Act. This would include Social Security Disability Insurance (SSDI), Childhood Disability Benefits (CDB) and Disabled Widow(er) Benefits (DWB).
- SSI recipients must continue to meet all SSI eligibility criteria such as the income and resource limits to retain section 301 payments

## **Basic Section 301 Requirements**

The three basic requirements for section 301 payments remain in effect under the revised rules. First, the individual has to be participating in an approved program. Second, participation must have begun BEFORE the date as of which the individual no longer meets Social Security's disability criteria. Finally, SSA must find that continued participation in or completion of the program will increase the likelihood that the individual will not need disability benefits again in the future. While the 3 basic requirements still apply to section 301, the new rules do change some important details within each of these requirements. This document will provide a summary of the changes for each requirement.

### **1. Participation in an Approved Program**

The section 301 rule prior to June of 2005 stated that individuals had to be actively participating in a program consisting of the Ticket to Work and Self-Sufficiency program or another program of vocational rehabilitation (VR) services, employment services, or other support services approved by the Commissioner of Social Security (Section 101(b) of The Ticket to Work and Work Incentives Improvement Act, P.L. 106-170). This language actually reflected an expansion of the allowed programs created by the passage of the Ticket to Work and Work Incentives Improvement Act of 1999 since it added Employment Networks or ENs.

The new rule states that the ceased beneficiary must be participating in an "appropriate program of vocational rehabilitation, services, employment services, or other support services". These services are further defined as including:

1. A program that is carried out under an individual work plan (IWP) with an employment network (EN) under the Ticket to Work and Self-Sufficiency Program;
2. A program that is carried out under an individualized plan for employment (IPE) with a State vocational rehabilitation agency or an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities;
3. A program of vocational rehabilitation services, employment services, or other support services that is carried out under a similar, individualized written employment plan with an agency of the Federal Government (for example, the Department of Veterans Affairs) or a one-stop delivery system or specialized one-stop career center operating under the Workforce Investment Act of 1998;
4. A program of services approved by SSA and provided by another provider, including but not limited to:
  - a. A public or private organization with expertise in the delivery or coordination of vocational rehabilitation services, employment services, or other support services; or

- b. A public, private or parochial school that provides or coordinates a program of vocational rehabilitation services, employment services, or other support services carried out under an individualized program or plan; or
- c. For beneficiaries aged 18 through 21, an individualized education program developed under policies and procedures approved by the US Secretary of Education for assistance to States for the education of individuals with disabilities under the Individuals with Disabilities Education Act (IDEA).

The most significant change here is the inclusion of individualized educational programs provided under the IDEA which provides a powerful incentive to students with disabilities to remain in school and to complete their educational program or vocational skill training.

The new rules also define participation in the program as taking part in the activities and services as outlined in the plan – whether that is an IWP, an IPE, an IEP, or other similar individualized plan. This also represents a significant positive change since the old rules defined participation as being “actively involved” in the approved program and further prescribed that services occur under one of four specific State VR agency status codes:

Status 12 - VR plan developed and approved

Status 14 - Counseling and guidance

Status 16 - Physical restoration

Status 18 - Training (vocational, college, etc.)

This old definition of participation was highly restrictive and was difficult to apply because other providers of vocational rehabilitation, employment services or other support services didn't use these codes, and even some State VR systems had stopped using them.

**IMPORTANT NEW RULE!** As of March 1, 2006, a Plan to Achieve Self-Support (PASS) qualifies as an appropriate program of VR services, employment services, or other support services for the purpose of section 301 payments. This means that an individual who is operating under an approved PASS and who is determined to no longer meet the medical standard of disability may seek section 301 continuation of benefits. See POMS SI 00870.010 for more information.

In another positive development, SSA has included a provision in the new rules to accommodate temporary interruptions in program participation. For the interruption to be considered temporary, the individual must resume taking part in the activities and services outlined in the individualized plan no more than three months after the interruption occurred. This means that section 301 payments may continue while an individual experiences a short term health or disability problem or other life circumstance that might temporarily cause the person to be unable to participate in the program of vocational rehabilitation, employment services or other support services. The previous rules made no such accommodation for temporary lapses in participation

SSA personnel are primarily responsible for gathering the information necessary to indicate continued benefits under Section 301. During a medical CDR, SSA will gather this information using form SSA-454-BK. Question 8.A. of Section 8 of Form SSA-454-BK asks whether the individual is receiving vocational rehabilitation, employment, or other support services. During SSI age-18 re-determinations, SSA gathers this information on Form SSA-3368-BK. Section 8 of this form asks whether the individual is participating in the Ticket program or another program of VR services, employment services, or other support services while Section 7 of this form asks about education and training.

Claims Representatives at the local Field Office use Form SSA-4290-F4 (See POMS DI 14540.001A) to collect information from providers of VR services, employment services, or other support services needed to determine whether an individual is entitled to Section 301 continued disability or blindness payments. The form is divided into two parts. Part I contains beneficiary background information. Part II is used to obtain information from the service provider regarding the individual's participation in a VR or similar program.

## **2. Participation in the Program Began Before the Disability Ceased**

This original section 301 requirement remains virtually unchanged after the June 2005 amendments. For section 301 payments to be provided beneficiaries must have started participating in the appropriate program of vocational rehabilitation, employment services or other support services before the date on which the disability ended or no longer met the standard. Keep in mind that in some cases, a medical Continuing Disability Review or CDR is not actually performed until after the original dated date. When the CDR is finally conducted, the date on which the disability actually is determined to have ceased may have been some time ago. Participation in the program must have begun before that date, not the date on which the CDR is conducted or the date that notification is provided. For the most part, SSA defines the start date of participation in services as being the date on which the individual plan was signed.

Section 301 payments also apply to students whose disability is determined to have ended as a result of the SSI age-18 medical redetermination. Disability may cease at this point because the age-18 redetermination is based upon the more stringent adult definition of disability instead of the child's definition used in the SSI program for beneficiaries under age 18. The age 18 redetermination is not treated like a traditional CDR which uses the Medical Improvement Review Standard (MIRS). This redetermination is really treated like an initial SSI application since a whole new definition of disability is being applied. Again, the requirement is that the student be participating in the appropriate program under an individualized plan before the disability is determined to have ended. In this case, the disability would be determined to have ended upon turning 18 since that is the date at which the adult standard is applied. Keep in mind that the age-18 redetermination generally occurs at some time during the 18<sup>th</sup> year. This means it may be some months after the 18<sup>th</sup> birthday when the review is conducted and a disability determination is made. While the SSI payment will continue for two months after the determination is made and then stop, section 301 continued payments will not be available beyond this point if the student was not already participating in school under an IEP, or in some other vocational rehabilitation or employment services program by the 18<sup>th</sup> birthday.

### **3. Continuation in the program will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls**

Under the old section 301 rules, the “likelihood” decision tended to be the most complex aspect of determining eligibility for continued payments. To begin with, the VR program was required to have a specific occupational goal; a generic goal of “competitive employment” was not sufficient. In addition, the VR plan had to contain a specific projected completion date for training/counseling/ physical restoration services. To determine whether the VR program had an occupational goal that would increase the likelihood that the person would be permanently removed from the disability rolls, a number of factors were considered. First, SSA looked to see whether the program would provide transferable skills or work experience so that even if the person were 55 or over or capable of performing only sedentary work, the vocational capability would be sufficient to support a decision of “not disabled”. Second, if transferable skills or work experience would be gained by completing the VR program, SSA tried to determine whether the person would be able to perform the entry level job based on current medical evidence. If the vocational goal was self-employment, SSA would try to ascertain whether the claimant could conduct the business considering the physical/mental limitations, and whether the business would logically be expected to result in earnings at the SGA level.

Predictive determinations of this type would be difficult for even experienced and skilled vocational rehabilitation professionals, and virtually impossible for someone without extensive training in this area. The new regulations are greatly simplified and should make the likelihood decision much easier for SSA personnel to make. The new rules state that SSA will determine that the program will increase the likelihood that the person will be permanently removed from the disability rolls if they determine that the program will provide the person with either of the following:

- a. Work experience such that the individual would be more likely to be able to perform past relevant work in spite of possible future reduction in residual functional capacity. Past relevant work is work that an individual performed within the past 15 years, was at the substantial gainful activity (SGA) level, and lasted long enough for him/her to learn to do it.

In other words, the work must last long enough that the person is able to learn to do it, provide earnings of at least SGA level, and have physical or mental requirements that could still be met if the disabling condition got worse. The physical and mental demands of the work should be such that the individual would still be able to meet those demands despite a reduction in residual functional capacity. Residual functional capacity (RFC) refers to what the individual can still do despite his/her impairments; it is the individual’s capacity to perform work-related activities.

- b. An improvement in any of the vocational factors of education, or skilled or semi-skilled work experience which would make the individual more likely to be able to adjust to other work in the national economy, in spite of a possible reduction in residual functional capacity. Education means formal schooling or other training which contributes to the individual’s

ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetic.

The education and/or training should provide for direct entry into skilled or semi-skilled work that exists in the national economy at the substantial gainful activity level. The physical and mental demands of the work should be such that the individual would still be able to meet those demands despite a reduction in residual functional capacity. Skilled or semi-skilled work experience should provide the individual with skills that will enable him/her to adjust to other work (different from past relevant work) that exists in the national economy, at the substantial gainful activity level, despite a possible future reduction in his/her residual functional capacity.

Work is considered to exist in the national economy when it exists in significant numbers either in the region where the individual lives or in several other regions of the country. It does not matter whether the work exists in the immediate area in which the individual lives, a specific job vacancy exists, or the individual would be hired if he/she applied for work. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where the individual lives are not considered work which exists in the national economy.

SSA made a critical amendment to the rules for students ages 18 through 21 who are receiving services through an IEP. Under the new rules, SSA will assume that continuation in or completion of the program will increase the likelihood that there would be no need to return to the disability rolls. This means that students who cease due to a medical CDR or an adverse age-18 redetermination avoid having to pass case-by-case “likelihood” determinations. In effect, SSA is making a general policy statement based upon current research that completing an educational program is assumed to lead to positive outcomes which are beneficial to the disability programs. When an individual is receiving transition services after an IEP, SSA must make a likelihood determination.

The SSA Office of Disability Operations or ODO is responsible for determining whether an individual’s completion of the VR or similar program, or continuation in the program for a specified period of time, will increase the likelihood that the individual will not return to the disability or blindness benefit rolls. These likelihood determinations are guided by instructions provided in per POMS DI 14525.005.

### **When Section 301 Payments End**

Basically, section 301 payments stop when an individual either completes the appropriate program of vocational rehabilitation, employment services, or other support services, or stops participating in this program for whatever reason. Section 301 payments under the new revised rules may continue if the interruption in participation is temporary, meaning that it lasts for no more than 3 months.

In addition, section 301 payments may stop if SSA determines that continuing participation in the program would no longer increase the likelihood that the individual would not have to return to the disability rolls. This last requirement would not apply to students aged 18 through 21 since SSA is making a broad assumption that participation in an individualized educational program will increase the likelihood that the student will not need to come back on the disability rolls. For these students, case-by-case likelihood determinations are not made. Keep in mind that individuals who receive continued SSI payments under section 301 must also continue to meet all of the non-disability related standards for this program including the income and resource limits. Under no circumstances will SSA stop benefit payments earlier than the second month after the month in which the disability ceased, provided that all other requirements for entitlement to benefits are met.

## **How Employment Affects Continuation of Benefits under Section 301**

Since section 301 payments are made to help individuals support themselves while they prepare for employment, it stands to reason that engaging in paid work while in section 301 status could have an affect on payment of benefits. When SSA receives a work report on an individual in section 301 status, they first determine if the work experience is part of the individual's IWP, IPE, similar individualized written employment plan, or IEP. If so, no further action is required and section 301 payments may continue. .

If the work experience is not part of the individual's plan, SSA will determine if the individual has stopped participating in his/her plan or if the program is completed. If so, section 301 payments will terminate. If the individual is still participating in his/her program but the work experience is not part of the plan, SSA will consider the following factors:

- Is the work at the substantial gainful activity level?
- Has the individual acquired the education, work skills or experience that was the basis for the initial likelihood determination?

These are indicators that the individual's continued participation in the program will no longer increase the likelihood of his/her permanent removal from the disability or blindness benefit rolls. If this is the case, SSA will generally terminate section 301 payment.

Substantial gainful activity (SGA) determinations, the trial work period (TWP) and the extended period of eligibility (EPE) do not apply to individuals who receive title II section 301 payments due to participation in a VR or similar program. However, non-disability requirements for continued entitlement to or payment of title II disability benefits still apply.

For SSI recipients, the standard SSI income and eligibility provisions continue to apply. This includes the application of work incentives such as Impairment Related Work Expenses (IRWE), Blind Work Expenses (BWE), Student Earned Income Exclusions (SEIE) and Plans to Achieve Self-Support (PASS). It is important to understand that while an existing PASS may be modified

while an individual is receiving section 301 payments, SSA cannot approve a new PASS after they have determined that an individual is no longer disabled or blind.

## **Appeals and Overpayments During Section 301 Status**

Section 301 determinations are subject to all of the usual appeal processes which apply to other SSA determinations. Individuals may appeal the initial section 301 determination made by ODO and may appeal the termination of section 301 payments. In addition, individuals may appeal the original medical decision that preceded the section 301 payments while section 301 payments are being received. There is no rule saying that individuals may not receive section 301 payments while appealing the original determination of medical recovery.

Because medical cessations will not be effectuated while section 301 determinations are pending, beneficiaries will continue to receive benefits until ODO makes a determination. A person who is overpaid because he/she received continued payments while awaiting a section 301 determination can be found without fault for the overpayment if the person acted in good faith in believing he/she was participating in a qualified program and cooperated with SSA's development of his/her participation. However, this does not mean that automatic waiver of overpayment recovery applies. Full waiver development must still be performed. The following are examples of when a person may not have acted in good faith.

- The person knew he/she did not begin participating in a program before the medical cessation or that participation did not continue for at least 2 months after cessation.
- The person knew the program, or the services received under the program would not qualify for Section 301 benefits.
- The person did not cooperate with Section 301 development requests from SSA and/or DDS.

If a good faith determination is needed, SSA personnel are instructed to make sure they consider any physical, mental, educational, or linguistic limitations the person has which affects his/her ability to act in good faith.

## **Conclusion**

While continued payments under section 301 have provided an important protection to beneficiaries who have medically ceased since 1980, this provision has been and continues to be underutilized. The new section 301 rules which took effect in June of 2005 have made some significant improvements to this provision, making eligibility for continued payments both simpler and more generous. Clearly SSA understands that investing in medically ceased beneficiaries by allowing them to retain cash payments and health insurance while they prepare for improved employment outcomes is good social policy. It is hoped that this new policy will reap major dividends in terms of savings to the Social Security trust fund as former beneficiaries obtain better jobs with higher pay and lessen their dependence on public disability benefits.

## **Conducting Independent Research**

- DI 14500.000: [Continued Payments to Individuals Participating in a Vocational Rehabilitation or Similar Program - Table of Contents](#)
- DI 14505.000: [Background of Continued Payments to Individuals Participating in a VR or Similar Program Table of Contents](#)
- DI 14505.001: [Background of Section 301 Payments to Individuals Participating in a Vocational Rehabilitation or Similar Program](#)
- DI 14510.000: [Overview of Continued Payments to Individuals Participating in a VR or Similar Program - Table of Contents](#)
- DI 14510.001: [Introduction to Section 301 Payments to Individual Participating in a Vocational Rehabilitation or Similar Program](#)
- DI 14510.005: [Policy for Section 301 Payments to Individuals Participating in a VR or Similar Program](#)
- DI 14515.000: [FO Responsibilities in Cases Involving Participation in a VR or Similar Program - Table of Contents](#)
- DI 14515.001: [FO Responsibilities in Cases Involving Participation in a VR or Similar Program](#)
- DI 14515.005: [FO Responsibilities in Section 301 Cases after ODO Determination](#)
- DI 14520.000: [DDS Responsibilities in Cases Involving Participation in a VR or Similar Program - Table of Contents](#)
- DI 14520.001: [DDS Responsibilities in Cases Involving Participation in a VR or Similar Program](#)
- DI 14525.000: [ODO Responsibilities in Determining Participation in a VR or Similar Program - Table of Contents](#)
- DI 14525.001: [ODO Responsibilities in Determining Participation in a VR or Similar Program](#)
- DI 14525.005: [Making a Likelihood Determination](#)
- DI 14525.010: [Processing Allowances and Denials of Section 301 Payments](#)
- DI 14525.015: [Post-adjudicative Actions for Section 301 Cases](#)
- DI 14530.000: [Appeals Process for Cases Involving Continued Payments under a VR or Similar Program Table of Contents](#)
- DI 14530.001: [Appeals Process for Cases Involving Section 301 Determinations](#)
- DI 14535.000: [Notices for Cases Involving the Issue of Participation in a VR or Similar Program - Table of Contents](#)
- DI 14535.001: [Notices for Cases Involving the Issue of Participation in a VR or Similar Program](#)
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- DI 14540.000: [Exhibits for Cases Involving Participation in a VR or Similar Program - Table of Contents](#)
- DI 14540.001: [Exhibits for Cases Involving Participation in a VR or Similar Program](#)

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