

Question: How can I tell whether a beneficiary is engaging in self-employment or wage employment?

Self-employment has become an increasingly popular employment objective for individuals with disabilities. It offers both significant flexibility as well as high earnings potential. WIPA referrals on self-employment cases have increased over the past few years. As a result, CWICs should develop specific expertise in working with and counseling beneficiaries either interested or already engaged in self employment.

Before a CWIC can offer advice about how a certain type of income could potentially affect disability benefits, it is essential that they are clear on how SSA would categorize that income – would it be considered wages, self employment income, or neither? CWICs are not expected to be experts in determinations of wage employment or self-employment. There are literally hundreds of POMS citations covering this topic and the issues can involve complex legal interpretations. They do, however, need to develop a general understanding of how wage employment and self-employment differ, and how SSA determines which applies to a beneficiary with earned income. CWICs may also need to work with the beneficiary to report earnings to SSA so that a formal determination can be made.

When SSA personnel look at a beneficiary's income, the first decision to be made is whether the income is “earned” or “unearned.” Essentially, if an employer-employee relationship exists, or if the individual meets the definition of being self-employed, the income will be considered earned. There are four basic types of employment relationships that may exist, and each has specific criteria. Individuals with earned income may be classified as being: Employees; Independent contractors (a specific type of self-employment); Statutory employees; or Statutory non-employees. With only minor exceptions, these classifications are virtually the same across SSA, IRS and DOL. For more information about these classifications, a briefing paper can be found on the VCU-NTC website entitled “Wage Employment vs. Self-Employment.” One rule of thumb for CWICs is to ask the beneficiary what type of wage information they receive at the end of the year. Generally, a W-2 form would indicate wage employment, while a 1099 would be an indicator of self-employment.

The general law governing employer-employee relationships appears to be simple as stated in the following POMS:

“In general, under the common-law rules an individual is an employee if he is subject to the right of direction and control by the person for whom his services are performed as to the details and means by which the result is accomplished.” (POMS RS 02101.005)

To help Claims Representatives make decisions about when a beneficiary would be considered an employee, Social Security provides a list of the principle indicators of wage employment in POMS RS 02101.027 – RS 02101.068.

SSA typically considers an individual to be engaged in a trade or business as a self-employed person in the following case: the individual is regularly engaged in an occupation or profession for the purpose of deriving a livelihood. The factors of continuity of work, and of profit motive indicate the existence of a trade or business, even though there may be no “holding out” of the goods or services as available to the general public. For more information, see the following POMS RS 01802.002 – Factors Indicating the Existence of a Trade or Business.

Self-employed individuals generally report net earnings from self-employment (NESE) and self-employment income (SEI) on their federal income tax returns. In this case, there is typically no need for SSA to question the existence of the trade or business. In some instances, however, the individual has NOT reported income to the IRS and it is not clear if the income should be treated as earned or unearned. If the IRS has issued a ruling to the individual regarding the existence of a trade or business and the ruling can be verified, SSA will accept it without question. When no such ruling is available, SSA personnel gather the information necessary to determine whether or not a trade or a business is in evidence. For further information, refer to POMS RS 01802.010 – Development of Questionable Trade or Business.

Certain activities do not constitute a trade or business, and income derived from pursuing what is interpreted as a hobby would NOT be considered to be earned income by either SSA or the IRS. This clearly would have implications for SSA disability benefits (both SSI and the title II disability programs) and would affect a person’s tax liability. Additionally, income derived from a hobby would count as unearned income under the SSI program.

Self-employment determinations can be extremely complex. When in doubt about whether a beneficiary is in wage employment or self-employment, or how a type of income should be treated, refer the beneficiary to the local SSA field office for a formal determination. In some cases, it is a good idea to refer the beneficiary to a competent tax advisor prior to reporting the income to the SSA. It is critically important for CWICs to have a basic understanding of the differences between wage employment and self-employment, since the income derived from these activities affect DI/SSI benefits in different ways. However, CWICs are not authorized to make determinations of what is or is not considered self-employment income, but must defer to SSA personnel on these matters. CWICs are also encouraged to contact their VCU-NTC TA Liaison with questions.