



(PPS-107)

SSR 83-33

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SSR 83-33: TITLES II AND XVI: DETERMINING WHETHER WORK IS SUBSTANTIAL GAINFUL ACTIVITY -- EMPLOYEES

This Program Policy Statement (PPS) supersedes PPS-60 (also published as Social Security Ruling ([SSR](#) 83-39), Determination of Substantial Gain Activity of Employees -- Use of Earnings Guidelines -- Gross vs. Net Earnings -- Subsidies -- Impairment-Related Work Expenses.

PURPOSE: To state the policy regarding whether work performed by employees is substantial gainful activity (SGA) under the disability provisions of the law. (This PPS pertains only to the evaluation of the work activity of employees. [SSR 83-34](#), PPS-108, Determining Whether Work Is Substantial Gainful Activity -- Self-Employed Persons, deals with the evaluation of work of self-employed persons.)

CITATIONS (AUTHORITY): Sections 216(i), 223(d) and 1614(a) of the Social Security Act, as amended; Regulations No. 4, Subpart P, sections 404.1571, 404.1572, 404.1573, 404.1574, 404.1578 and 404.1584; Regulations No. 16, Subpart I, sections 416.971, 416.972, 416.973, and 416.974.

PERTINENT HISTORY: Under the disability provisions of the law, except within the trial work period (TWP) provisions, a person who is engaging in SGA is not eligible for payment of disability benefits. SGA is defined in the regulations as work "that involves doing significant physical or mental activities . . . [and] is the kind of work usually done for pay or profit. . . ." "Significant activities" are useful in the accomplishment of a job and have economic value. Work may be substantial even if it is performed on a part-time basis, or even if the individual does less, is paid less, or has less responsibility than in previous work. Work activity by an employee is gainful if it is the kind of work usually done for pay, whether in-cash or in-kind. Activities such as self-care, household tasks, unpaid training, hobbies, therapy, school attendance, clubs, social programs, etc., are not generally considered to be SGA.

By working, an individual may demonstrate that he or she is, at least during the time of working, able to engage in SGA. A finding that the individual did not engage in SGA during a particular period, however, does not answer the question of the individual's *ability* to engage in SGA. To answer this question, it is necessary to consider all the medical and vocational evidence, of which the work performed after alleged onset of disability is only a part. The complete evidence may show that the individual's impairment is less severe than alleged, or that he or she has the physical, mental and vocational capabilities necessary for SGA.

Originally, the determination as to whether a person engaged in SGA was based on criteria as to the energies, responsibilities, skills, hours, earnings, regularity and related factors pertaining to the work performed. Later it was found that this method was not satisfactory because it frequently resulted in inconsistent decisions. It was decided that earnings provided an objective and feasible measurement of work. Therefore, an earnings test was established and it has been the primary SGA guide since 1958. The SGA Earnings Guidelines are summarized in the table below.

According to the SGA Earnings Guidelines for employees, earnings considered indicative of substantial work are those which average more per month than the primary amount for the particular calendar year. On the other hand, earnings which average less per month than the secondary amount for the particular calendar year are considered indicative of insubstantial work, unless there is evidence to the contrary. Finally, earnings which average per month at least the secondary amount but not more than the primary amount may or may not indicate substantial work depending upon an analysis of all pertinent factors concerning the employee's services, e.g., time and energy spent on the job, the skills utilized, responsibilities assumed, and the worth of services performed.

SSA primary and secondary monthly guideline amounts have been published in the Social Security regulations and are increased periodically to

conform generally to increases in wages and salaries. Effective 1978, statutorily blind persons under title II became subject to SGA primary guideline amounts higher than those applicable to the nonblind. There are no secondary guidelines for the blind beginning 1978. (The blind under title XVI are not subject to an SGA provision.)

POLICY STATEMENT: In evaluating an employee's work activity for SGA purposes, the primary consideration is "earnings" derived from such services. Accordingly, regulations sections 404.1574 and 416.974 prescribe an earnings test to be used in determinations of SGA. The following table summarizes the SGA Earnings Guidelines for blind and nonblind persons.

SGA Earnings Guidelines and Effective Dates

Based on Year of Work Activity

A. Blind and Nonblind Individuals.

Year(s)	"Countable Earnings" indicate SGA if they average more per month than the primary amount of:	"Countable Earnings" usually do not indicate SGA if they average less per month than the secondary amount of:
1975 and before	\$200	\$130
1976	230	150
1977	240	160

B. Nonblind Individuals Only.

Year(s)	"Countable Earnings" indicate SGA if they average more per month than the primary amount of:	"Countable Earnings usually do not indicate SGA if they average less per month than the secondary amount of:
1978	\$260	\$170
1979	280	180
1980 and later	300	190

C. Blind Individuals Only.

Year(s)	"Countable Earnings" indicate SGA if they average more per month than the amount of:
1978	\$334
1979	375
1980	417
1981	459
1982	500
1983	550

The SGA Earnings Guidelines are a basis for evaluating whether an individual engaged in SGA. Evaluation of work activity for SGA purposes is concerned with only those earnings which represent a person's own productivity. Therefore, before applying the Earnings Guidelines, it is necessary to ascertain what portion of the individual's earnings represents the actual value of the work he or she performed. To do so, the adjudicator must first determine the individual's gross earnings, i.e., the total earnings reported for work activity. Gross earnings include payments in kind (e.g., room and board) which are made for the performance of work in lieu of cash. Once gross earnings are determined, it is necessary to deduct the value of any subsidized earnings provided by the employer and the amount of certain impairment-related work expenses (IRWE) paid by the employee. (The issues of subsidy and IRWE are discussed later in detail.) Standard payroll reductions (e.g., Federal and State withholding taxes, insurance premiums, Federal Insurance Contributions Act taxes, pension payments, union dues, etc.), however, are not deductible from gross earnings because they are attributable to a person's work activity. The portion of the individual's earnings remaining after the applicable deductions represents the actual value of work performed. This is the amount which is counted for purposes of determining the issue of SGA and is, therefore, compared to the Earnings Guidelines. For ease of reference in this PPS, this amount is called "countable earnings."

When based on the earnings test, determinations as to SGA are made in terms of *average* monthly earnings. Thus, if an employee's average monthly "countable earnings" exceed the Earnings Guidelines, he or she will be found to be engaged in SGA. See [SSR 83-35](#), PPS-109, Averaging of Earnings in Determining Whether Work Is Substantial Gainful Activity, for discussion of the policy and procedure on averaging of earnings.

In addition to the SGA earnings test, the Secretary has prescribed services tests as nonmonetary standards for the evaluation of an employee's work activity. When an employee's average monthly "countable earnings" are not more than the primary amount, a finding of SGA will be made if the employee's work either is comparable to that of unimpaired individuals in the community engaged in the same or similar occupations as their means of livelihood, or, according to the prevailing pay scales in his or her community, is clearly worth more than the primary SGA amount shown for the particular calendar year in the Earnings Guidelines. However, an employee engaged in sheltered employment ordinarily will be considered as not engaged in SGA if "countable earnings" do not exceed the primary amount. (See sections B.2. and B.3. below.)

An employee's work would not demonstrate the ability to engage in SGA if, after working for a short time (that is, no more than 6 months), the employee involuntarily discontinued or reduced such work below the level of SGA for reasons relating to his or her impairment; such an effort would be identified as an unsuccessful work attempt (UWA). (Regulations sections 404.1574(a)(1) and 416.974(a)(1).)

Evaluation of Work Activity of Employees

Note: The following discussion is applicable to nonblind claimants and beneficiaries under title II and nonblind claimants and recipients under title XVI for all years, and to blind claimants and beneficiaries under title II through calendar year 1977. (See section B. in "Evaluation of Work Activity in Title II Blindness Cases" below concerning work activity by blind claimants and beneficiaries under title II in 1978 and later. The SGA tests are not applicable to blind persons under title XVI.)

A. Determining "Countable Earnings."

Subsidized earnings and IRWE must be deducted from gross earnings in order to ascertain "countable earnings." These issues are discussed below.

1. *Subsidies.* An employer may, because of a benevolent attitude toward a handicapped individual, subsidize the employee's earnings by paying more in wages than the reasonable value of the actual services performed. When this occurs, the excess will be regarded as a subsidy rather than earnings.

In most instances, the amount of a subsidy can be ascertained by comparing the time, energy, skills, and responsibility involved in the individual's services with the same elements involved in the performance of the same or similar work by unimpaired individuals in the community and estimating the proportionate value of the individual's services according to the prevailing pay scale for such work.

When precise monetary evaluation is not feasible, it may be possible to determine the approximate extent of a subsidy on the basis of gross indications of a lack of productivity; for example, when unusual supervision or assistance is required in the performance of simple tasks, or the employee is extremely slow, inefficient or otherwise unproductive.

If an organization hiring handicapped individuals operates at a deficit or receives charitable contributions or government aids, this would not necessarily establish that a particular employee is being paid a subsidy, since an individual employee in such an establishment may be as productive as those in other establishments with more favorable financial balances. The individual's productivity rather than the financial condition of the employer's business must be the determinant of whether there is a subsidy and the amount of it.

a. The following circumstances indicate the strong possibility of a subsidy:

- (1) The employment is "sheltered;" or
- (2) Childhood disability is involved; or
- (3) Mental impairment is involved; or
- (4) There appears to be a marked discrepancy between the amount of pay and the value of the services; or
- (5) The employer, employee, or other interested party alleges that the employee does not fully earn his or her pay (e.g., the employee receives unusual help from others in doing the work); or
- (6) The nature and severity of the impairment indicate that the employee receives unusual help from others in doing the work;
or
- (7) The employee is involved in a government-sponsored job training and an employment program.

b. Employer Calculates Subsidy. An employer desiring to subsidize the earnings of handicapped workers may designate a specific amount as such, after figuring the reasonable value of their services. Such a calculation is more likely to be made by an institutional employer, such as a sheltered workshop, than by a private employer. However, regardless of the type of employer, an adequate explanation as to how a specific subsidy was calculated will normally suffice without the additional development indicated in c., below.

c. Nonspecific Subsidies. If the employer cannot furnish a satisfactory explanation identifying a specific amount as a subsidy, then it will be necessary to obtain answers to the questions outlined in this section. When this is necessary, the employer should be

informed that the questions are asked in the interest of the employee for the purpose of determining his or her "countable earnings." (In some cases, information already obtained will eliminate the need for some of the questions.)

(1) *Need for services.* (Omit if employer is a sheltered workshop.)

Why was the individual hired?

What are the individual's job duties?

How much time does the individual spend on those duties?

Who did the job before the individual was hired; and how much time did that person spend on the duties of the job?

If the individual were separated from the job, would he or she be replaced; if so, how much time would the replacement spend on the individual's duties?

How often is the individual absent from work?

Does someone else do the individual's work when he or she is absent?

How much time does the temporary replacement take to do the individual's job?

(2) *Relationship of pay to services.*

How are the individual's total earnings computed?

Is the individual's pay reduced proportionately when he or she is absent from work? (Compare the employer's practice concerning the impaired individual to that which applies to unimpaired workers, explaining any difference.)

Does the individual receive any unusual assistance or supervision? (Describe.)

If the individual's pay is not set according to normal business practices, what consideration is given to the size of the individual's family, number of years of past service with the employer, previous earnings, friendship or relationship to the employer, or other factors unrelated to the performance of the work?

Does the employer consider the individual's work to be worth substantially less than the amount paid and, if so, what are the employer's reasons for this view? (Give the employer's estimate of the value of the services and explain how this estimate was reached.)

If the individual is still on the payroll, despite unsatisfactory work, what is the employer's reason for retaining him or her?

If the individual is no longer employed, what led to the termination of employment?

2. *Impairment-Related Work Expenses.*

a. *Expenses paid before December 1, 1980.* Expenses paid before December 1, 1980, for things (e.g., medication or equipment) that an individual required in order to work because of his or her impairment are deductible from earnings, but not if such things were required even when the individual was not working. Such expenses are deductible in determining "countable earnings" only to the extent that they exceeded what would have been work-related expenses if the person were not impaired (e.g., the amount by which the use of special transportation exceeded what the individual, if unimpaired, would have had to pay for regular transportation to and from work). Example 1: A partially paralyzed worker could get to work only by cab which cost \$7 a day for the round trip. The difference between the cost of normal transportation (bus at \$1.80 a day) and the special transportation, \$5.20 a day, could be deducted to obtain "countable earnings." Example 2: A blind teacher obtained a job teaching French in a community college. In order to keep her job, she hired a sighted person to grade examination papers and reports. The cost of these services would be deducted in determining her "countable earnings." Example 3: A disability beneficiary who managed a bookstore required expensive medication to control a serious heart condition. Since this medication was required whether or not he worked, its cost was not deductible in calculating his "countable earnings."

b. *Expenses paid December 1, 1980, and later.* IRWE paid on or after December 1, 1980 can, however, be deducted from earnings in determinations as to SGA, regardless of whether these items and services are also needed for normal daily activities. The amount deductible from earnings is the cost of certain attendant care services, medical devices, equipment, prostheses, and similar items and services. The costs of routine drugs and routine medical services are not deductible unless such drugs and services are necessary to control the disabling condition so as to enable the individual to work. The amount of IRWE may be deducted only if the cost is paid by the disabled individual, i.e., the individual has not been, cannot be, and will not be reimbursed by any source for the expense; and payment must be within "reasonable limits" and on a monetary (not an "in-kind") basis. (IRWE will also be deducted from earnings for the purpose of determining an SSI recipient's monthly payment amount. However, an individual initially filing for title XVI disability payments who is working and alleges IRWE, must first meet the SSI income test and qualify for SSI payments without the deduction of IRWE.)

B. Evaluating "Countable Earnings."

When an individual's earnings or work activities vary from month to month, it may be necessary to average the "countable earnings" reported over a number of months in order to compare the employee's average monthly "countable earnings" with the monthly amount for the particular calendar year shown in the Earnings Guidelines. (See [SSR 83-35](#), PPS-109, Averaging of Earnings in Determining Whether Work Is Substantial Gainful Activity.) Once the employee's average monthly "countable earnings" are obtained, the following evaluation guides are applied.

1. *Earnings Which Average More Than the Primary Amount Ordinarily Demonstrate SGA.* An employee will ordinarily be considered engaged in SGA if his or her "countable earnings" average more than the primary amount shown for the particular calendar year in the Earnings Guidelines.

2. *Earnings Which Average Less Than the Secondary Amount and Earnings from Sheltered Employment Which Do Not Average More Than the Primary Amount Are Ordinarily Presumed Not To Demonstrate SGA.* An employee will generally be considered not engaged in SGA if his or her "countable earnings" average less than the secondary amount shown for the particular calendar year in the Earnings Guidelines. If there is evidence, however, showing that an individual may be engaging in SGA, or appears to be in a position to defer compensation, or by special arrangement is able to suppress earnings, then it will be necessary to develop fully the facts concerning the comparability of the employee's work to that of unimpaired individuals (see 3.a. below), and the worth of the employee's work (see 3.b. below).

An employee working in a sheltered workshop or comparable facility for severely impaired persons will ordinarily be considered not engaged in SGA if the employee's "countable earnings" do not average more than the primary amount shown in the Earnings Guidelines.

A finding that a sheltered worker is not engaged in SGA will ordinarily be justified without consideration of the tests of comparability and worth of work discussed in subsections 3.a. and b. below. If there is evidence, however, that a sheltered employee may be engaging in SGA, the tests of comparability and worth of work should be applied.

Sheltered employment is employment provided for handicapped individuals in a protected environment under an institutional program. The most common types of sheltered employment are the following:

a. *Sheltered Workshops.* Sheltered workshops engage in manufacturing, assembly, reconditioning, repair, and other operations. These may involve direct sales to consumers and retailers, or the fulfillment of industrial contracts. Some workshops also furnish services or facilities for medical care, physical restoration, psychiatric therapy, recreation, vocational evaluation and training, job placement, etc.

b. *Hospitals, Veterans' Administration Domiciliaries, and Long-term Care Institutions.* Hospitals, Veterans' Administration (VA) domiciliaries, and similar institutions for the care of individuals with long-term impairments, usually have occupational therapy programs designed to encourage the use of patients' residual physical and mental capacities. If the institution furnishes free room and board to nonworking patients (as, for example, VA domiciliaries do), then the value of room and board is not considered pay to patients who work. However, an individual who works for an institution after he or she has been discharged from patient status may receive room and board as part of regular pay. When this occurs, the value of room and board is considered payment in-kind and is included in gross earnings.

c. *Homebound Employment.* "Homebound employment" refers to work done at home by individuals under public or institutional programs designed to provide them with paid employment. Pay for the work is usually on a piece-rate basis. The employer delivers raw materials to the individual's home and picks up finished merchandise. Sometimes family members may assist the impaired individual in performing the work. The value of such assistance should be deducted from wages before the Earnings Guidelines are applied.

3. *Earnings Which Are At or Above the Secondary Amount But Not More Than the Primary Amount May or May Not Demonstrate SGA.* When the average monthly "countable earnings" are at or above the secondary amount but not more than the primary amount shown for the particular calendar year in the Earnings Guidelines, the substantiality of an employee's work activity cannot be determined on the basis of earnings alone. In this instance, the adjudicator will also generally consider nonmonetary standards of evaluating the individual's work activity, consisting of two tests. The need for consideration of these nonmonetary standards is particularly apparent in those situations where there is evidence showing that an individual may be engaging in SGA, or appears to be in a position to defer compensation, or by special arrangement is able to suppress earnings.

Both of the following tests must be considered before a finding can be made that the individual is or is not engaged in SGA.

- a. *Test of comparability*: Is the employee's work comparable to that of unimpaired individuals in the community engaged in the same or similar occupations as their means of livelihood? The individual's work is considered SGA if analysis of the time, energy, skills and responsibility involved in its performance shows that the work is essentially the same in quality and quantity as that done by unimpaired individuals engaged in the same or similar occupations as their means of livelihood. For obvious reasons, the performance of the same work under the same circumstances as that done by unimpaired individuals as their means of livelihood must be considered SGA regardless of the amount of earnings the impaired person receives for such work. The amount of corroborative development required will depend upon the extent to which information already in the file discloses limitations in duties, hours, or efficiency. In some cases it will be clear that the individual's work is not comparable to that of unimpaired individuals in the community doing the same or similar work as their means of livelihood. Generally, a statement to this effect will be sufficient evidence that the individual's work is not SGA. Where there is doubt, it will be necessary to contact the employer, the U.S. Employment Service, or other informed sources in the community for information as to the time, energy, duties, and responsibilities of unimpaired workers doing the same or similar work. The precise manner in which such development is carried out will vary with individual cases and requires the exercise of judgment, together with a background knowledge of local conditions. Regardless of whether a conclusion is clear from the evidence already in file or whether further development is required, the file must reflect thorough consideration of this question.
- b. *Test of worth*: Is the employee's work clearly worth more than the primary amount shown for the particular calendar year in the Earnings Guidelines (e.g., is it worth more than \$300 in 1982)? If the individual's work is not comparable to that of unimpaired individuals according to the test of comparability, it will still be considered SGA if, according to the prevailing pay scales in his or her community, it is clearly worth more than the primary SGA amount shown for the particular calendar year in the Earnings Guidelines.

Documentation under the comparability and worth of work tests should consist of not only the employee's description of his or her work, but also a detailed description of how the work is performed by unimpaired persons in the community, including their remuneration, hours, duties, and responsibilities. This information should be obtained from the local employment service or other authoritative source.

Under the tests of comparability and worth of work, a finding of SGA will not be made if there is a reasonable explanation as to why an employee's earnings are not substantial. A reasonable explanation might be the inability to perform the full responsibilities of the job, such as working at a slower rate or working fewer hours (part-time) than unimpaired persons. It would be speculative to conclude that such an individual could increase a limited work effort to a level of SGA. Such a decision requires consideration of medical and vocational factors. The SGA determination should be based only on consideration of work activity actually performed.

The fact that there are unimpaired persons who work for the same low earnings as the impaired person would not be persuasive that the individual is engaged in SGA. For the impaired individual's work to be SGA, the evidence would have to show that unimpaired individuals make their livelihood doing the same or similar work for the same low earnings, or that the impaired individual's work is clearly worth more than the applicable primary amount in the Earnings Guidelines.

If there is any reasonable doubt as to whether an individual engaged in SGA under the tests of comparability or worth of work, the adjudicator should generally conclude that the individual did not engage in SGA.

Evaluation of Work Activity in Title II Blindness Cases^[1]

NOTE: The following discussion is applicable to blind claimants and beneficiaries under title II. Section B. highlights those changes applicable to work activity by blind individuals in 1978 and later.

A. *Work Activity before 1978.*

For work activity performed before 1978 by blind employees under title II, the principles of evaluation and the earnings considered sufficient to show an ability to do SGA activity are the same for blind employees as for other employees. (See the preceding section on "Evaluation of Work Activity by Employees.")

B. *Work Activity in 1978 or Later.*

For evaluation of work activity performed in 1978 or later by blind employees under title II, there is an SGA earnings amount for each year that is higher than the SGA primary earnings amount for nonblind persons; there is no secondary amount for blind individuals. Specific

amounts (as shown in the SGA Earnings Guidelines) have been established for years 1978 through 1982. After 1982, any increases in the SGA earnings amount for blind persons depend on increases in the retirement test exempt amount applicable to beneficiaries who have attained age 65.

Prior to applying the Earnings Guidelines for a determination as to SGA, the earnings and activities of blind employees should be evaluated in the same manner as those of nonblind individuals in order to determine "countable earnings." That is, any subsidy and any IRWE must be deducted from gross earnings. A blind employee will be considered engaged in SGA in 1978 or later if his or her "countable earnings" average more than the amount shown for the particular calendar year in the SGA Earnings Guidelines.

Cases in which average monthly "countable earnings" in 1978 or later do not exceed the amount shown for blind persons for the particular calendar year in the SGA Earnings Guidelines need not be evaluated under the comparability and worth of work tests. It should be assumed that such average monthly "countable earnings" do not demonstrate an ability to engage in SGA.

EFFECTIVE DATE: The policy explained herein is effective as of the date of publication of this PPS.

CROSS-REFERENCES: Program Operations Manual System, Part 4, sections DI 00503.001, 00503.005, 00503.020, 00503.100, 00503.105, 00503.130, 00503.205, 00503.210, 00503.410; [SSR 83-35](#), PPS-109, Averaging of Earnings in Determining Whether Work Is Substantial Gainful Activity; [SSR 82-67](#), PPS-77, Extension of Eligibility for Benefits Based on Disability; [SSR 83-34](#), PPS-108, Determining Whether Work Is Substantial Gainful Activity -- Self-Employed Persons.

[1] Blindness is defined in regulations section 404.1581.

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